

## TERMS AND CONDITIONS

1. **PRICES:** Prices for Blue Diamond Industries, LLC ("Seller") goods ("Goods") are controlled by the terms of the Quote. If Buyer changes the quantity subsequent to the Quote, Seller has the right to adjust pricing. Seller reserves the right to modify prices for accepted purchase orders upon a material or freight increase in any of such costs. Prices are subject to adjustment to conform to prices in effect on the date of order shipment and apply only to the specific product ordered.
2. **PAYMENT:** Payment is due within thirty (30) days of the invoice date. A one percent (1%) per month (a rate of twelve percent (12%) per annum) service charge is due on all past due amounts.
3. **SHIPPING:** The Goods' shipping date is controlled by the terms of the Quote. Seller will use its best efforts to ship the Goods by the estimated date, but Seller shall not be liable in damages or otherwise for failure to do so, regardless of the cause. The Goods ship F.O.B. place of shipment.
4. **CREDIT APPROVAL:** All sales and shipments are subject to credit approval by the Seller.
5. **PERMISSIBLE VARIATIONS:** Variations in the Goods as to components, dimensions and the like shall be permissible and shall not constitute cause for Buyer's rejection of any product variations that fall within the applicable product specifications in effect at the time of manufacture.
6. **INSPECTIONS AND REJECTIONS:** Upon receipt of Goods, Buyer shall immediately and thoroughly inspect Goods and independently confirm that Goods conform to the order. Goods shall be finally inspected and accepted within fifteen (15) days after their receipt by Buyer unless notice of rejection or notice of any claim is given in writing to Seller within said period. If Buyer does not rejected Goods within fifteen (15) days, then acceptance shall constitute performance in full by the Seller and a waiver by Buyer of any and all claims related to any of the Goods' nonconformities or deficiencies.
7. **CANCELLATION, RESCHEDULING and RETURNS:** Orders may not be cancelled or rescheduled, and goods may not be returned, without Seller's prior written consent and subject to a minimum \$75.00 or 20% restocking charge, whichever is greater.
8. **EXPRESS WARRANTY:** Seller warrants Goods sold under this agreement shall be free from defects in material and workmanship for a period of one year from the date of shipment from Seller to Buyer; provided however, that this warranty shall not cover defects resulting from improper or abnormal use or installation, ordinary wear and tear, UV exposure, or alteration or repair by anyone other than Seller. Further, the Warranty is contingent on Buyer giving Seller written notice at 4040 Finn Way, Suite 240, Lexington, KY 40517, of any such defect within sixty (60) days of discovery and no longer than one (1) year from date of shipment from Seller to Buyer.
9. **DISCLAIMER OF WARRANTY:** **THE EXPRESS WARRANTY IS MADE IN LIEU OF ANY OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES HEREIN ARE EXCLUSIVE AND BUYER WAIVES ANY OTHER WARRANTIES EXPRESS OR IMPLIED.** Buyer assumes all risk and liability resulting from the use of the Goods, whether used singly or in combination with other goods. Seller neither assumes nor authorizes any person to assume for Seller any other liability in connection with the sale or use of the Goods sold.
10. **LIMITATION OF REMEDY:** Buyer's sole and exclusive remedy for all claims, including, but not limited to, breach of warranty, arising out of this purchase is return of the defective goods and replacement or repayment of the price, at the Seller's sole option. The Seller is not obligated for transportation charges or cost (including, but not limited to labor) of removal and installation. The Seller's aggregate and total liability on any claims for loss, cost, damage, expense or any and all other liabilities arising out of or connected with this sale or any obligation arising there from, or the manufacture, resale, repair, service or use of any Good covered by this agreement whether based in contract, tort, warranty, or otherwise, and shall in no event exceed the sale price.
11. **EXCLUSION OF CONSEQUENTIAL DAMAGES.** Seller shall not be liable for any incidental, consequential and special damages in any way related to the Goods or from a failure to deliver the Goods by a specified date, and Buyer hereby waives any claims for incidental, consequential and special damages. Seller shall not be liable for incidental, consequential or special damages even if Seller fails to replace defective product or the exclusive remedy in any way fails for its essential purpose.

12. **FORCE MAJEURE:** Seller shall not be held responsible for any delay in performance resulting in whole or in part from or made impossible or impracticable by any cause beyond the control of Seller, including, but not limited to, terrorism, natural disaster, war, fire, explosion, accident, breakdown, strike, adverse weather conditions, failure or refusal of any carrier to transport materials, delay in transport thereof, inability to obtain on terms deemed by Seller to be commercially practicable, any raw material or other needed resources (including energy), failure of any transportation media, sale or transfer of manufacturing facilities, embargo or any act of God or action or request of any government authority, failure or refusal of any carrier or contractor, or any other contingency or delay or failure or cause beyond Seller's control.

13. **APPLICABLE LAW, VENUE, AND LIMITATIONS.** The purchase of the Goods shall be deemed to have occurred in the Commonwealth of Kentucky and governed by the laws of the Commonwealth of Kentucky. Exclusive jurisdiction of all claims or matters arising from or related to the Goods or the purchase of the Goods shall be in the state or federal court in Fayette County, Lexington, Kentucky. No action or claim arising out of the sale of the Goods shall be brought against Seller more than two (2) years after the accrual of the cause of action.

14. **ATTORNEYS' FEES.** Buyer agrees to pay all costs, including attorneys' fees, reasonably incurred by Seller to collect amounts due from Buyer or incurred by Seller as the prevailing party in any legal proceedings arising out of or related to this Sales Order or the Goods.

15. **ENTIRE AGREEMENT:** Seller's acceptance of the Buyer's order is expressly conditioned upon Buyer's acceptance of these terms and conditions. The Quote, Sales Order and terms and conditions represent the entire agreement of Seller and Buyer with respect to Goods and supersedes all other negotiations, understandings and agreements, whether written or verbal. Acceptance of any Goods shipped will confirm Buyer's acceptance of these terms and conditions. These terms and conditions may be modified only by written agreement signed by Seller and Buyer.

