

## **ACCEPTANCE OF TERMS – BATTLE OF FORMS**

All agreements for purchase of goods made between Westermeyer Industries, Inc. (“Seller”) and any purchaser of those goods (“Buyer”) shall be subject to the following terms and conditions. Acceptance by Seller of any offer by Buyer is conditioned upon the inclusion of the following terms and conditions in the agreement between Buyer and Seller. Buyer hereby objects to and rejects the provisions of any prior acknowledgment, order acceptance, invitation to offer, warranty statement, or invoice, which are inconsistent with or add to these terms and conditions. These terms and conditions are the complete and exclusive terms of the agreement of the parties with respect to the products named. No prior invitations to offer, proposals, quotations, statements, or forecasts shall be part of this agreement.

## **LIMITED WARRANTY**

Seller warrants that its products are free from defects in materials and workmanship if used under normal recommended operating conditions within design limitations. Seller’s liability is limited to repair and replacement of a product due to defects in material and workmanship for a period of twelve (12) months from the date of delivery to Buyer. Seller’s liability shall not extend to any additional parts incorporated into its products by Buyer or repair or alteration performed by anyone other than Seller. Under no circumstances shall Seller be liable for consequential damages or the cost of labor in replacing/repairing defective components. Seller is not responsible for errors by Buyer as to the quantity or sizing of products. No representations, express or implied, are made to Buyer that Sellers’ products are suitable for any use other than set forth in relevant product specifications. **FURTHER, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE MERCHANTABILITY OF ITS PRODUCTS OR THE FITNESS OF ITS PRODUCTS FOR ANY PARTICULAR PURPOSE EXCEPT AS EXPRESSLY SET FORTH IN RELEVANT PRODUCT SPECIFICATIONS. NO PERSON, AGENT OR DEALER, OTHER THAN SELLER, SHALL BE AUTHORIZED TO GIVE ANY WARRANTIES OR ASSUME ANY LIABILITY FOR SELLER.**

## **OTHER TERMS AND CONDITIONS OF SALE**

Buyer acknowledges that all prices are subject to change without notice. Any price quotations expire ninety (90) calendar days from the date of quotation, unless withdrawn or stipulated by Seller in writing. Buyer acknowledges that their minimum order value shall be \$50.00. Buyer acknowledges that any price quotation given by Seller does not include applicable sales, use, excise, or similar taxes. If Seller is required to collect or pay any tax from Buyer, quoted prices will be increased to include said tax. Buyer will pay applicable tax as part of the purchase price. If said tax is not collected at the time of payment, Buyer will hold Seller harmless from the same. Seller shall grant to Buyer a 1% discount in purchase price if an order is paid for within ten (10) days of the receipt of Seller’s invoice.

Any shipment of goods shall be F.O.B. at Seller’s factory. Title and risk of loss will transfer to Buyer upon delivery to a carrier. Seller will not be liable for delays or failure in delivery due to acts of God or public authority, labor disputes, accidents, floods, fires, weather conditions, failure or delay of carrier, delay of supplier, or any other reason beyond Seller’s control. Any delivery date requested by Buyer will be subject to Seller’s acceptance. Buyer shall inspect all products upon receipt and make any claim for shortage within ten (10) days after receipt and any claim for any other reason within fifteen (15) days of Buyer learning of the facts giving rise to the claim. As to OEM orders, Seller shall be permitted to undership goods by at most ten percent (10%) of any ordered amount.

Order cancellation and/or reschedules are subject to Seller’s approval and are also subject to cancellation charges and price increases. Cancelled orders for custom products will be subject to charges including but not limited to purchased raw material and custom tooling. Goods shall not be returned without Seller’s approval after Buyer has called Seller to request a “return goods authorization number” (RGA). Buyer shall prepay freight for all returned goods. Returned goods are subject to a 25% restocking fee the first year after purchase and a 50% restocking fee the second year after purchase. No returns shall be authorized for goods over two (2) years old.

Seller reserves the right to make changes to specifications and dimensions of products in its catalog without notice.