



Terms and Conditions of Sale

These Terms and Conditions of Sale (the "Terms") will govern the products ("Products") and services provided by Graco Inc. ("Seller") to the buyer ("Buyer") as set forth in the proposal to which these Terms are attached. These Terms, together with the proposal and any of its attachments, constitute the entire understanding and agreement between Seller and Buyer with respect to the Products and services described in the proposal (collectively, the "Agreement"), supersede all prior oral and written communications, and may be amended, modified or changed only in writing when signed by both parties. If there is a conflict between these Terms and the terms of the proposal, these Terms will govern. Buyer's issuance of a purchase order or other documents is considered Buyer's acceptance of this Agreement. Any provision in Buyer's purchase order or other documents issued by Buyer which conflicts with or adds to this Agreement are hereby rejected unless expressly accepted in writing by a duly authorized representative of Seller with specific reference to these Terms.

1. PRICES. Prices are FCA Seller's premises. The prices to be paid by Buyer shall be as quoted on the attached proposal. Prices so quoted may be revised by Seller any time before acceptance by Buyer. Prices on Products sold by Seller are firm for thirty (30) days from the date of proposal. Prices on auxiliary equipment and accessories of other manufacturers are subject to change without notice.

2. TERMS. Payment terms are subject to Buyer's credit. Payment terms shall be set forth in a Purchase Order, subject to approval by Seller. Any unpaid amounts may be assessed a late charge of the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed under law.

3. TAXES. The amount of any present or future sales, revenue, excise, or other taxes applicable to the Products purchased hereunder shall be added to the purchase price and shall be paid by Buyer, whether included in the proposal or not.

4. MATERIAL DATA. Buyer shall provide all material specifications and OSHA safety data sheets for materials to be processed through the Products upon the issuance of a purchase order to Seller.

5. FINANCIAL RESPONSIBILITY. If Seller shall reasonably doubt Buyer's financial responsibility, or a petition in bankruptcy shall be filed by or against Buyer, or if Buyer shall make an assignment for the benefit of its creditors, or shall apply to its creditors to compromise its debts or for an extension of time in which to pay its debts, or if a receiver or trustee of Buyer or its property shall be appointed, Seller may stop further production hereof, refuse to make further deliveries, and may stop any Products in transit. In such cases, Buyer shall make no deductions (including, without limitation, any alleged damages) from payments due hereunder. Further, Seller may, without prejudice to any other remedy which it may have, cancel this Agreement, or demand and receive all payments and debts owed which are or shall be owed by Buyer for continuing performance thereof.

6. DELIVERY. Time of shipment promised is approximate and is not guaranteed. The time quoted hereunder begins from receipt by Seller of complete order information. Seller will make a reasonable effort to fill orders promptly, and on stated delivery date, but Seller shall not be responsible for damages of any kind, direct or indirect, growing out of, or in consequence of delay in delivery. Seller shall have the right to deliver the Products at one time or in installments from time to time within the quoted time of delivery. When delivery in installments is chosen by Seller, the delivery of non-conforming Products, or a default of any nature, in relation to one or more installments, will not substantially impair the value of this Agreement as a whole and will not constitute a total breach of the Agreement. When delivery in installments is chosen by Buyer, Seller shall prepare an invoice showing the price of the Products shipped at the time of each shipment, and Buyer shall pay the amount of the invoice as provided in this Agreement. Custom designed and manufactured systems may include unique components and parts that are not maintained in inventory by Seller. Seller recommends that customers maintain an adequate inventory of spare and service parts in order to maintain the appropriate mean-time-to-repair to ensure required manufacturing process availabilities.

7. SHIPMENT; TITLE AND RISK OF LOSS. The Products ship FCA Seller's premises. Title and risk of loss or damage to the Products shall pass to Buyer in accordance with such shipping terms. All freight charges, handling, insurance, duty, taxes, and other charges are at Buyer's expense and risk thereafter. Claims for loss or damage should be made promptly to the carrier at the point of delivery. Unless the carrier is designated in writing by Buyer, Seller is authorized, as Buyer's agent, at Buyer's risk, to determine means of transportation and to select the carrier.

8. EXCUSABLE DELAY FOR NONPERFORMANCE. Neither Buyer nor Seller shall be liable for a failure to perform hereunder arising from: (a) acts of God or public enemy, (b) acts of the government of the United States or any state or political subdivision or any department or regulatory agency thereof or entity created thereby, (c) acts of any person engaged in subversive activity or sabotage, (d) fires, floods, explosions, or other catastrophes, (e) epidemics or quarantine restrictions, (f) strikes, slow-downs, lock-outs, or labor stoppages or disputes of any kind, (g) freight embargoes, (h) unusually severe weather, or, without limiting the foregoing, (i) causes or events beyond the reasonable control and without the fault or negligence of Buyer or Seller in failing to perform hereunder. To the extent that, and so long as, the obligations of either party are affected by any such cause or event, such obligations shall be suspended.

9. PERFORMANCE BONDS AND MONIES. Due to events and matters that are often beyond the control of Seller, Seller cannot make proposals or accept orders which should necessitate the posting of a performance bond or monies providing for late delivery. This Agreement is made pursuant to the understanding that no such bond or its equivalent is or will be required. If such is required, Seller has the right to terminate this Agreement, and Seller shall have no liability to Buyer, and the Agreement between Buyer and Seller shall be null and void.

10. CANCELLATIONS. Orders are accepted with the understanding that they are not subject to cancellation. Any order entered on the basis of this Agreement shall be subject to changes, specifications or cancellations by Buyer only with Seller's written consent and at a charge which Seller shall determine sufficient to indemnify it against loss.

11. START-UP. Upon request and unless specifically stated on the proposal otherwise, Seller will provide, at the current rate plus expenses, a technician to supervise the setting up and starting of the Products. Seller accepts no responsibility for material and equipment or the acts of personnel furnished by Buyer. Seller strongly recommends Buyer engage a technician from Seller to assure proper implementation of Products furnished. Except to the extent provided in Section 12, Seller shall not be responsible for the performance of Products which are not set up or started by a technician provided by Seller.

12. WARRANTY. Unless otherwise specifically stated in writing, warranties are limited to the following: Seller warrants all Products referenced in this document that are manufactured by Seller and bearing its name to be free from defects in material and workmanship on the date of sale to the original purchaser for use. With the exception of any special, extended, or limited warranty published by Seller, Seller will, for a period of twelve (12) months from the date of sale, repair or replace any part of the Products determined by Seller to be defective. This warranty applies only when the Products are installed, operated and maintained in accordance with Seller's written recommendations. This warranty does not cover, and Seller shall not be liable for, general wear and tear, or any malfunction, damage or wear caused by faulty installation, misapplication, abrasion, corrosion, inadequate or improper maintenance, negligence, accident, tampering, or substitution of non-Seller component parts. Nor shall Seller be liable for malfunction, damage or wear caused by the incompatibility of the Products with structures, accessories, equipment or materials not supplied by Seller, or the improper design, manufacture, installation, operation or maintenance of structures, accessories, equipment or materials not supplied by Seller. This warranty is conditioned upon the prepaid return of the Products claimed to be defective to Seller or to an authorized distributor of Seller for verification of the claimed defect. If the claimed defect is verified, Seller will repair or replace free of charge any defective parts. The Products will be returned to Buyer transportation prepaid. If inspection of the Products does not disclose any defect in material or workmanship, repairs will be made at a reasonable charge, which charges may include the costs of parts, labor, and transportation.

THIS WARRANTY IS EXCLUSIVE, AND IS IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Seller's sole obligation and Buyer's sole remedy for any breach of warranty shall be as set forth above. Buyer agrees that no other remedy (including, but not limited to, incidental or consequential damages for lost profits, lost sales, injury to person or property, or any other incidental or consequential loss) shall be available. Any action for breach of warranty must be brought within two (2) years of the date of sale.

SELLER MAKES NO WARRANTY, AND DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH ACCESSORIES, EQUIPMENT, MATERIALS OR COMPONENTS SOLD BUT NOT MANUFACTURED BY SELLER. These items sold, but not manufactured by Seller (such as electric motors, switches, hose, etc.), are subject to the warranty, if any, of their manufacturer. Seller will provide Buyer with reasonable assistance in making any claim for breach of these warranties.

13. SUBSTITUTIONS. Substitution of materials or accessories may be made by Seller at any time.

14. COMPLIANCE WITH LAW. Seller certifies that the Products are produced in compliance with the applicable provisions of the Fair Labor Standards Act, as amended. Seller further certifies that to the best of its knowledge it is in compliance with all laws, State and Federal, and regulations issued thereunder, which may be applicable to the Products furnished hereunder.

15. PATENTS. Subject to the last sentence of this Section, Seller agrees to defend any suit brought against Buyer so far as it is based on a claim that any Products or any part thereof in the particular form sold by Seller infringes a United States patent or trademark, but only on the condition that Buyer shall promptly notify Seller, in writing, of any such claim, and shall give Seller full authority for the conduct of such suit, and shall render to Seller whatever information and assistance may be reasonably required for such defense. Upon such conditions, Seller shall pay damages and costs, if any, awarded against Buyer in such suit, and in case the Products, or any part thereof, are held to infringe or the use of the Products or a part is enjoined, Seller shall have the option of obtaining for Buyer the right to continue using the Products or a part, replacing the same with a non-infringing product, modifying the same so as to avoid infringement, or removing it and granting Buyer a credit for such Products as depreciated and accept their return. The depreciation shall be an equal amount per year over the lifetime of the Products as established by Seller. The foregoing states Seller's entire liability for patent or trademark infringement. Buyer shall defend and hold Seller harmless for any expense or loss resulting from infringement of patents or trademarks arising from compliance with Buyer's designs or specifications.

16. DEFAULT. Upon the happening of one or more of the following events, Seller shall forthwith have the unrestricted right to cancel this Agreement, in whole or in part, without cost or liability to Buyer and/or pursue any further remedies available at law, or in equity:

(a) Buyer's insolvency or inability to meet obligations as they come due, (b) the appointment of a trustee or receiver of Buyer, or any substantial part of Buyer's assets by any court, (c) the filing of a voluntary or involuntary petition of bankruptcy under any provision of the Federal Bankruptcy Code or any state insolvency law, or (d) Buyer fails, or appears to be unable, to perform any of its obligations in accordance with the terms and conditions of this Agreement. No waiver by Seller of a breach by Buyer of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. All of Seller's rights and remedies hereunder shall be cumulative and not exclusive.

17. LIMITATION OF SELLER'S LIABILITY (STATUTE OF LIMITATIONS). In no event shall Seller be liable for indirect, incidental, special, punitive or consequential damages (including but not limited to loss of profits or business opportunity) arising out, connected with, or resulting from this Agreement, Seller's performance or failure to perform hereunder, or the furnishing, performance, or use of any Products or services sold hereto regardless of whether such damages arise in tort, contract or otherwise, and even if advised of the possibility of such loss. Seller's liability on any claim, of any kind, for any loss or damage arising out of, connected with, or resulting from this Agreement, Seller's performance or failure to perform hereunder, or the furnishing, performance, or use of any Products or services sold hereto, shall in no case exceed the price actually paid for the Products or services or unit thereof which gave rise to the claim. Seller shall not be liable for penalties of any description. Except as expressly stated in Section 12 regarding warranty claims, any action resulting from any breach on the part of Seller as to the Products or services delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

18. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to the conflicts of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply to this Agreement. Each party hereto irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Minnesota and of the United States of America located in Hennepin County, Minnesota for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby, and agrees to waive the defense of an inconvenient forum.

19. CONTROLLING PROVISIONS. These terms and conditions shall supersede any provisions, terms, and conditions contained on any confirmation order, purchase order or other writing Buyer may give or receive, and the rights of Buyer and Seller shall be governed exclusively by the provisions, terms, and conditions hereof. Seller makes no representations or warranties concerning this Agreement except such as are expressly contained herein.

20. CONFIDENTIALITY. This Agreement, including any accompanying or subsequent prototypes, samples, information, specifications, data, drawings, or other materials related thereto, are confidential between Seller and Buyer. Any release to a third party must be with the express, prior written consent of Seller. Breach of this provision shall entitle Seller to obtain immediate injunctive relief.

21. ENTIRE AGREEMENT; MODIFICATIONS; SEVERABILITY. This Agreement contains the entire agreement as to the standard terms and conditions governing the sale of Products and provision of services. This Agreement may be modified or rescinded only by written agreement signed by an authorized representative of Seller. The provisions of this Agreement are severable, and the invalidity or unenforceability of any term or provision hereof shall not operate to invalidate or render unenforceable the remaining terms and provisions which are valid and enforceable.

8201-R9 Rev. 09/24/19

INTENDING TO BE LEGALLY BOUND, each of the parties hereto have caused this Agreement to be executed by a duly authorized representative of such party.

AGREED AND ACCEPTED

Buyer

Graco Inc.

By:

By:

Authorized Signatory

Authorized Signatory

Title:

Title:

Date:

Date:
