

# WILLOUGHBY INDUSTRIES, INC. TERMS AND CONDITIONS

1. **ACCEPTANCE.** This order is accepted subject to the following terms and conditions. Conditions stated by buyer in any other communication, prior or subsequent hereto, shall not be binding on Willoughby Industries (hereafter referred to as "Willoughby") if in conflict with or in addition to any of the provisions of these terms and conditions, unless expressly agreed to in writing by Willoughby. Unless otherwise expressed in writing, placement of any order by Buyer or acceptance by Buyer of any goods provided hereunder shall constitute acceptance of the terms and conditions stated herein.
2. **ALTERATION OF TERMS.** Changes in the terms and conditions herein shall not be binding on Willoughby unless made in writing and executed by a duly authorized officer of Willoughby; and any representations given by any sales representative, employee or agent of Willoughby inconsistent with those Terms and Conditions shall not be binding on Willoughby.
3. **PAYMENT.** Upon tender of delivery by Willoughby of goods or merchandise to a carrier for transportation, payment is due from Buyer net 20 days unless otherwise stated. All past due accounts are subject to interest thereon at the rate of 12% per month, and Buyer shall reimburse Willoughby for any costs of collection incurred in collecting any past due sums, including court fees, out-of-pocket expenses, and attorneys' fees.
4. **SHIPMENT, RISK OF LOSS AND INDEMNIFICATION.** Buyer shall accept the goods F.O.B. Willoughby's facility, Indianapolis, Indiana. Method and route of shipment are at Willoughby's discretion, unless Buyer supplies explicit instructions otherwise. Willoughby shall tender delivery of all goods to a carrier for transportation to Buyer's designated shipment destination, but all costs of transportation shall be borne by Buyer (unless specified otherwise on the face hereof), and all risk of loss shall pass to Buyer when the goods are made available to the carrier at Willoughby's facility including all risk of loading and transportation. All claims for loss, damage or delay against the carrier must be made by Buyer.
5. **DELAYS AND DAMAGES.** Willoughby shall endeavor as far as practicable to make deliveries in accordance with this order, but if for any cause Willoughby shall fail to make such deliveries or fail to do so within the time stated in the order, or shall cancel any such orders, Willoughby shall not be liable for any loss or damage resulting from any such failure or delay in delivery or from cancellation of any order or for loss of use or loss of profits.
6. **INSPECTION.** Buyer shall have the right to inspect all goods tendered for delivery at the place of destination before delivery is considered complete.
7. **REJECTION OF NONCONFORMING GOODS.** Any rejection of goods for being nonconforming must be made within ten (10) days after their delivery at the place of destination by immediately notifying Willoughby and confirming in writing the rejection. Such notification shall identify each and every alleged nonconformity of the goods, and describe that portion of the shipment being rejected. Willoughby shall then respond with instructions as to the disposition of the goods. If Buyer shall fail to give such notice or if Buyer uses the goods in any manner inconsistent with the rights of Willoughby, the goods shall be deemed to conform with the terms of the contract, and Buyer shall be bound to accept and pay for the goods in accordance with the terms hereof.
8. **CANCELLATION.** An order accepted by Willoughby may be cancelled by Buyer only upon the written approval of Willoughby and upon terms that indemnify Willoughby against loss.
9. **NO WARRANTY AS TO RESALE ITEMS.** With respect to resale items not manufactured by Willoughby. WILLOUGHBY MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY, ARISING FROM THE USE OF SUCH RESALE ITEMS OR FOR CONSEQUENTIAL DAMAGES. The Buyer's sole warranty shall be given by the original manufacturer of said resale items.
10. **LIMITED WARRANTY AND LIMITATION OF REMEDY AND DAMAGES FOR GOODS MANUFACTURED BY WILLOUGHBY.** With respect to goods manufactured by Willoughby, Willoughby warrants the goods to be free from defects in materials and workmanship under normal use and service for one year from the date of shipment; and Willoughby will replace or repair, at its option, any goods which are found defective in material or workmanship within said one-year period from date of shipment upon notification by Buyer identifying each and every defect. Willoughby's obligation with respect to such goods shall be limited to replacement or repair. F.O.B. Indianapolis, Indiana and in no event shall Willoughby be liable for consequential or special damages, or for transportation, installation, adjustment, replacement or other expenses which may arise in connection with such goods. Any misuse or abuse of the goods voids this limited warranty. THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
11. **INDEMNIFICATION.** Buyer shall indemnify and hold harmless Willoughby and its agents from any claims, damages or expenses, including reasonable attorneys' fees, arising or alleged to arise in whole or in part from (1) any asserted deficiencies or defects in the goods caused by any alteration thereof made by Buyer with or without Willoughby's consent or any improper handling or storage by Buyer, (2) any breach of any terms stated herein, or (3) any act or omission of Buyer, irrespective of whether or not such claim, damage or expense is caused or alleged to be caused, in part by Willoughby's joint, several or comparative, but not sole negligence, breach of contract or warranty, or any other breach of duty of Willoughby, whether asserted under a strict or other product liability theory or any other legal theory.
12. **NON-PERFORMANCE.** Neither party hereto shall be liable to the other for failure to perform its obligations hereunder, in whole or in part, when performance is prevented by flood, drought, fire or any other casualty, war, riot, insurrection, acts of God, restrictions or interferences by any government or governmental agency, strike, work stoppage or slowdown, and any causes beyond the control of the party so failing to perform.
13. **ARBITRATION.** Any claim or controversy arising out of or relating to this agreement shall be settled finally and exclusively before a single arbitrator in Indianapolis, Indiana, under the Uniform Arbitration Act. In Code § 34-4-2-1, the Federal Arbitration Act. 9 U.S.C. § 1, and the auspices of the American Arbitration Association. All costs and expenses of the arbitration, including actual attorneys' fees, shall be allocated among the parties according to the arbitrator's discretion. Proceeding to arbitration and obtaining an award thereunder shall be a condition precedent to the bringing or maintaining of any action in any court with respect to any dispute arising under this agreement, except for the institution of a civil action to maintain the status quo during the pendency of any arbitration proceeding. Any and all actions which may be brought in court for any claim or controversy arising under this agreement shall be filed and maintained only in a state or federal court of appropriate jurisdiction sitting in the State of Indiana.
14. **SEVERABILITY.** In the event that any provision of these Terms and Condition shall be found to be invalid or unenforceable, the remaining portions of these Terms and Conditions shall remain in full force and effect as if the invalid or unenforceable portion were not a part hereof. Should the severance of any portion of these Terms and Conditions affect a material right or obligation of a party, the party so affected may terminate this agreement.
15. **NO WAIVER.** The failure to enforce at any time any of the provisions, rights or elections provided in these Terms and Conditions, irrespective of any previous action or proceeding taken by it, shall in no way be considered (i) a waiver of those or any other provisions, right or elections (ii) to affect the validity of this Agreement, or (iii) to preclude or prejudice the exercise of the same or any other provision, right or election it may have hereunder.
16. **CONTRACT.** This order and these Terms and Conditions shall be a contract made and entered into in the State of Indiana and shall be governed by the laws of the State of Indiana; notwithstanding any state's choice of law rules to the contrary.