



# Southern Fasteners & Supply, LLC

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## TERMS AND CONDITIONS OF SALE

### 1. Orders and Acceptance

All orders for products and services are subject to Southern Fasteners & Supply, LLC's ("Seller") acceptance. Unless otherwise agreed to in writing by Seller and Buyer, all sales transactions are expressly limited to the terms and conditions set forth below. **ALL TERMS AND CONDITIONS (INCLUDING BUT NOT LIMITED TO ADDITIONAL AND/OR DIFFERENT TERMS AND CONDITIONS) CONTAINED IN ANY BUYER'S PURCHASE ORDERS OR OTHER DOCUMENTS SUBMITTED BY BUYER ARE EXPRESSLY REJECTED AND SHALL NOT BE BINDING ON SELLER. BUYER'S ACCEPTANCE OF SHIPMENT AND/OR PAYMENT FOR THE PRODUCTS CONSTITUTES ACCEPTANCE OF SELLER'S TERMS AND CONDITIONS. ALL SALES ARE FINAL AND PRODUCTS CANNOT BE RETURNED WITHOUT SELLER'S PRIOR WRITTEN CONSENT.**

### 2. Quotations and Prices

All quotations must be in writing and shall automatically expire on the expiration date noted or no later than thirty (30) days after issuance and are subject to withdrawal by notice within that period. Prices shown on published price lists and other literature issued by Seller are subject to change without notice. Seller's prices do not include shipping, installation, or final on-site adjustment. Prices are subject to adjustment by Seller due to changes in raw material prices or currency exchange fluctuations. Any tariffs or other surcharges imposed by Seller's supplier shall be added to the price of the products.

### 3. Prepayment

In the event that Seller deems Buyer's financial condition unsatisfactory, Seller may require full or partial payment in advance. Upon Buyer's failure to submit full or partial payment upon request, Seller may cancel or delay any or all orders.

### 4. Terms of Payment

Payment terms are net thirty (30) days from the date of Seller's invoice, unless otherwise expressly stated on Seller's invoice. Amounts past due are subject to a service charge of one and one half percent (1.5%) per month (or fraction thereof) or the maximum rate permitted by law.

### 5. Taxes

Seller's prices do not include federal, state, or local taxes. Seller shall bill as a separate invoice line item all such taxes, unless a tax-exempt number is provided.

### 6. Substitutions

Seller reserves the right to substitute the latest superseding design and manufactured equivalent product.

### 7. Order Changes

Requested changes to product orders are subject to Seller's approval and acceptance. Buyer shall reimburse Seller for all additional costs and expenses related to any such change(s), including, without limitation, the purchase of Seller's inventory of products in accordance with section 27 (Obsolete/Excess/MOQ/Long-Lead Time Inventory Obligation).

### 8. Order Cancellation

Orders for non-standard products and special items made to Buyer's prints or specifications are final and non-cancelable. Buyer's order for any standard, off-the-shelf product may only be canceled prior to shipment with the agreement of Seller and subject to the payment of a restocking fee of twenty percent (20%).

### 9. Shipping

Products shall be shipped to applicable Seller facility, unless otherwise agreed. Any extra or additional charges or services rendered in transit or at the destination will be the responsibility of the Buyer, including without limitation duties, subsidies, insurance, brokers fees, and surcharges. Title and risk of loss or damage to the products shall pass to the Buyer upon Seller's release of the products to a carrier.

### 10. Delivery

All delivery/performance dates indicated on Seller's documents are approximate and shall not be deemed to represent fixed or guaranteed delivery dates and are based upon the prompt receipt of all necessary information from Buyer regarding products and services ordered. If any shipment or delivery shall be delayed through any act or neglect of Buyer, the carrier or any other person, including subcontractors and suppliers, or by any other labor difficulties, shortages of, or inability to obtain shipping space or transportation, Seller shall not be responsible therefor. Seller will use reasonable efforts to meet the indicated delivery/performance dates but shall not be held responsible for its failure to do so. In the event of any delivery delay caused by Buyer, Seller will store and handle all products ordered at Buyer's risk and will invoice the Buyer for the unpaid portion of the contract price plus storage, insurance, and handling charges on or after the date on which the products are ready for delivery.



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**11. Services**

The Buyer grants to Seller and its subcontractors the authority to enter the property upon which Seller's services are to be performed. In the event that existing conditions attributable to the Buyer cause an increase in Seller's costs pertaining to the provision of services, then Buyer shall reimburse Seller for such increased costs.

**12. Security Interest**

Until such time as Seller is fully paid for product shipped, Buyer shall grant to Seller a purchase money security interest in the products. Buyer will assist Seller in taking necessary action to protect Seller's security interest.

**13. Default**

Buyer shall reimburse Seller for attorney's fees, court costs, and other expenses incurred by Seller to collect past due payments, repossess product, or otherwise enforce the terms and conditions stated herein.

**14. Warranty**

**THIS WARRANTY CONTAINS SELLER'S SOLE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDIES AND IS EXPRESSLY IN LIEU OF ALL OTHER REMEDIES BASED IN LAW OR IN EQUITY.**

(a) Products: Seller warrants to Buyer that products sold by Seller shall be free from defects in material and workmanship for a period of one (1) year from shipment date.

(b) Hydrogen Embrittlement: There is inherent risk of delayed failure involved in the use of electroplated fasteners as noted in ISO 4042 (for product with hardness equal to 360 HV and greater) and ASTM F1941 (for product with hardness over 39 HRC). Accordingly, Seller disclaims any warranty and shall not be liable if Buyer makes the decision to select and purchase parts whose properties, characteristics, and manufacturing processes result in a high susceptibility to hydrogen embrittlement. Supply of such parts shall be at Buyer's own risk and Seller will be excluded from responsibility for any indemnities and express or implied warranty including implied warranty for merchantability or fitness for a particular purpose.

(c) Services: Seller warrants to Buyer that services performed by Seller shall be performed in a good and workmanlike manner, consistent with industry standards.

(d) Buyer's Exclusive Remedy: If Seller's products or services fail to meet their respective warranty standard as set forth in this section, Seller will in its sole discretion either:

(1) refund the amount received by Seller for defective products or services;

(2) replace any defective product free of charge; or

(3) re-perform services of the type originally performed free of charge.

The foregoing is contingent upon Seller receiving Buyer's written notice no later than ten (10) days following the expiration of the warranty period and Buyer either returning defective products or making them available for inspection at Seller's discretion. In the event Seller determines the return of the product to be uneconomical, Seller will either dispatch a service technician to the site to repair the product or authorize the product to be discarded, as appropriate.

(e) Limitation of Warranties: **EXCEPT AS PROVIDED IN THIS SECTION, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY DISCLAIMED.** The warranty and remedy set forth herein does not extend to any product or service which has been misused, modified, repaired, improperly installed, or warranty claims that arise as a result of Buyer's design or improper application.

**15. Intellectual Property**

Seller shall not be liable for any damages or costs arising from an alleged infringement resulting from the use of product provided by Seller pursuant to prints, specifications, or drawings provided by Buyer or any third party.

**16. Indemnity**

Seller shall indemnify and hold harmless Buyer, its officers, directors, employees, agents, representatives, and customers from any and all third-party claims, damages, losses, or expenses, including reasonable attorney's fees and amounts paid in settlements of claims or suits for personal injury or death or property damages, to the extent such injury, death, or damage is directly caused by the defective product supplied by Seller. Buyer shall indemnify and hold harmless Seller, its affiliated companies and their respective officers, directors, employees, agents, representatives, subcontractors, and suppliers from any and all third-party claims, damages, losses, or expenses, including reasonable attorney's fees, and amounts paid in settlements of claims or suits, to the extent such injury, death, or damage is directly caused by Buyer's design of the products or any negligence or intentional misconduct of Buyer. Any suit arising hereunder must commence within one (1) year from the date of the cause of action.



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**17. Limitation of Liability**

**SELLER SHALL NOT BE LIABLE FOR ANY LOSS, CLAIM, EXPENSE, OR DAMAGE CAUSED BY, CONTRIBUTED TO, OR ARISING OUT OF THE ACTS OR OMISSIONS OF BUYER OR THIRD PARTIES, WHETHER NEGLIGENT OR OTHERWISE. IN NO EVENT SHALL SELLER'S LIABILITY FOR ANY CAUSE OF ACTION WHATSOEVER EXCEED THE COST OF THE PRODUCT GIVING RISE TO THE CLAIM, AND SELLER SHALL NOT BE LIABLE TO BUYER FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER ARISING OUT OF OR AS A RESULT OF BREACH OF CONTRACT, WARRANTY, INDEMNITY, OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY).**

**18. Insurance**

Buyer and Seller shall each maintain the following types and amounts of insurance coverage:

- (a) Workers' Compensation: statutory requirements;
- (b) Employer's Liability: One Million Dollars (\$1,000,000,000) per occurrence; and
- (c) Comprehensive Liability (personal injury and product liability): One Million Dollars (\$1,000,000,000) combined single limit per occurrence.

Each party shall provide a certificate of insurance to the other upon receiving a written request to do so. Insurance coverage shall not be canceled or materially modified without thirty (30) days prior written notice. Should any damage or loss occur for which a claim is made under Seller's insurance, the parties agree to allocate payment of the policy deductible in accordance with the respective degrees of fault, following standard comparative negligence principles.

**19. Force Majeure**

Seller shall not be liable for any delay or failure to perform any of its obligations, to the extent such failure is due to a force majeure event including but not limited to fire, flood, extreme weather or other natural disasters, explosion, war, terrorism, national emergency, riot, embargo, epidemic, pandemic or quarantine, compliance with any laws, regulations, orders, acts, or requirements from the government, civil or military authorities, acts of God or the public enemy, or any act or event of any nature reasonably beyond the control of and without the fault of Seller. The time for performance shall be extended by the duration of the force majeure event.

**20. Waiver**

No condoning, excusing, or waiver by any party of any default, breach, or nonobservance by any other party, at any time or times with respect to any covenants or conditions set forth herein shall operate as a waiver of that party's rights with respect to any continuing or subsequent default, breach, or nonobservance, and no waiver shall be inferred from or implied by any failure to exercise any rights by the party having those rights.

**21. Severability**

Should any provision of these terms and conditions be declared by any court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby, it being the intent of the parties that they would have executed the remaining portion without including any such part or portion which may for reason be declared invalid.

**22. Governing Law**

The interpretation and enforcement of these Terms and Conditions of Sale shall be governed by and construed in accordance with the laws of the State of North Carolina (excluding its conflict of laws provisions), including the provisions of the Uniform Commercial Code (UCC) in the State of North Carolina. Any proceeding pertaining to any such claim shall be venued in Winston-Salem, North Carolina. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

**23. Entire Agreement**

The terms and conditions set forth herein constitute the complete and exclusive agreement regarding the subject matter of Buyer's order and Seller's supply of products and services.

**24. Assignability**

Buyer shall not assign or transfer its rights, duties, or obligations under these Terms and Conditions of Sale without the prior written consent of Seller.

**25. Confidentiality**

As part of the business relationship between Buyer and Seller, either Buyer or Seller may come into possession of information or data that constitutes non-publicly known trade secrets, know-how, confidential information, or data otherwise considered confidential or proprietary by the other party including, without limitation, pricing, financial condition, delivery capabilities, and technologies ("Confidential Information"). Buyer and Seller each agrees to maintain such Confidential Information in the utmost of confidence, to use such Confidential Information solely in connection with such business relationship, and to take all measures necessary to protect such Confidential Information from disclosure to third parties. The obligations set forth herein shall survive termination or expiration of these Terms and Conditions of Sale. Each party shall be responsible for any breach of this provision by its officers, directors, affiliates, employees, agents, and representatives. Nothing in these Terms and Conditions of Sale shall operate to require the disclosure of any Confidential Information from one party to the other, including, without limitation, the



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identity of any of Seller's suppliers (who are not Buyer-directed suppliers) and any prints or drawings developed solely by Seller.

**26. Termination**

Either party may terminate the order to which these Terms and Conditions of Sale apply by one hundred eighty (180) days written notice to the other party. Upon termination of the order, or upon removal of any product from the order for any reason, Buyer shall be liable for the purchase of Seller's inventory of such product as set forth in section 27 (Obsolete/Excess/MOQ/Long-Lead Time Inventory Obligation).

**27. Obsolete/Excess/MOQ/Long-Lead Time Inventory Obligation**

Seller will have acquired products based on Buyer's forecasts, build/production rate projections, and/or historical usage. Buyer agrees to purchase products that become obsolete or any excess product during the term of an ongoing supply arrangement between Seller and Buyer, and in the event a product is removed from supply for any reason, and upon the expiration or termination of the supply relationship between Seller and Buyer. Obsolete Inventory is defined as products which are discontinued due to an engineering change, elimination of production line or plant closure, and/or have had no activity within the last six (6) months. Excess Inventory is defined as products which have experienced a significant reduction in usage over the prior six-month (6-month) period. Seller will provide Buyer periodically with lists identifying Obsolete and Excess Inventory. Buyer will purchase Obsolete and/or Excess Inventory that Seller has on-hand and on-order within sixty (60) days of review up to a maximum of ninety (90) days of domestic-sourced products and one hundred eighty (180) days of imported products, based on the estimated annual usage of the products at the time of the last purchase by Seller. Exceptions to the ninety/one hundred eighty (90/180) days requirement may include certain products that have Minimum Buy quantities or Long Lead-Times, which require special treatment. For products that are subject to a Long Lead-Time or a Minimum Buy commitment by Seller, to which Buyer has been notified, Buyer would be responsible for the balance of Seller's inventory. Seller agrees to play an active role in the investigating of all avenues of disposition through returning material to original manufacturer or finding other end users for such material before the final disposition is given to Buyer.

**28. Compliance with Laws**

Most products offered by Seller are obtained from multiple supply sources located throughout North America and internationally. Many countries, provinces, states, and localities have codes and regulations governing sales, construction, installation, and/or use of products for certain purposes, which may vary from those in neighboring areas. While Seller attempts to ensure that its products comply with such codes, it cannot guarantee compliance, and cannot be responsible for how products conform to territorial codes or regulations.