

## W-IE-NE-R PLEIN & BAUS CORP. - STANDARD TERMS AND CONDITIONS OF SALE

**Applicability:** These terms and conditions (these "Terms") govern the sale of goods by W-IE-NE-R Plein & Baus, Corp. (hereinafter "Seller") and Seller's proposal as set forth on the reverse side hereof is subject to these Terms. These Terms, Seller's proposal, and any permitted addenda or schedules shall together constitute an agreement of sale (hereinafter collectively referred to as the "Sales Contract") between Seller and Buyer. Acceptance of any offer made hereunder must be made on these exact terms. These Terms shall take precedence over Buyer's additional or different terms and conditions (including but not limited to terms and conditions contained in a purchase order) to which notice of Seller's objection is hereby given. These Terms control over Buyer's additional or different terms and conditions regardless of whether Seller has signed or agreed to any of Buyer's terms and conditions, even if Seller has been advised of such additional or different terms. Neither Seller's commencement of performance nor shipment by Seller nor delivery to Buyer shall be deemed or constituted as acceptance of such additional or different terms and conditions. Seller's additional written or typed terms and conditions for any particular sale take precedence over these printed Terms in the event of a conflict.

**Offer to Sell:** These Terms and any price quotation submitted herewith represent an offer to sell and not a preliminary negotiation or a solicitation of an offer to buy. Any purchase order received in response to Seller's offer shall constitute an acceptance of Seller's offer even though such purchase order may purport to be an offer which contemplates acceptance.

The price of the goods sold is that price specified on the front of these Terms and/or any exhibits or addenda attached hereto, F.O.B. Seller's facility. Any price quotations, unless otherwise stated, may be canceled or amended by Seller upon written notice to Buyer and shall automatically expire thirty (30) calendar days from the date of the quotation. After acceptance of an order by Seller, no order may be canceled by Buyer except upon Seller's written acceptance of such cancellation and upon Buyer's agreement to indemnify Seller against loss resulting from such cancellation.

**Production, Lead Time:** The price quoted by Seller for goods includes such production and design work that is normal and standard in the industry. In the event such goods require unforeseen or extraordinary work, or Buyer requests or requires additional work, then Seller, at its sole option and discretion, may cancel the sale or increase the price to be paid by Buyer.

**Lead time:** All items are made to order within a time period which is needed by the manufacturer to procure material, produce the item and ship it to the Seller. This lead time is estimated in the Seller's quote and will be updated to the Buyer on the Seller's order confirmation. If non-observance of the lead times set is due to force majeure such as mobilization, war, rebellion or similar events, e. g. strike or lockout, such time shall be extended accordingly. Lead time shall also be extended if the Seller's manufacturers do not receive their materials in due time or in due form and consequently cannot produce and ship the items to the Seller in due time or in due form.

**Reimbursement for Inventory:** Buyer shall reimburse Seller for the cost of purchasing, warehousing, and/or disposing of any and all goods and related inventory purchased by Seller based on Buyer's forecasts or resulting from any order(s) placed by Buyer, including but not limited to all orders cancelled by Buyer or component inventory and materials purchased in excess due to inaccurate Buyer forecasts. Buyer agrees to purchase or reimburse Seller for any and all unique inventory (i.e., inventory which cannot be used by any other customer of Seller) purchased by Seller as a result of Buyer's order(s) but which, for any reason, is not ultimately used by Seller.

**Payment:** Any payments due hereunder shall be made no later than thirty (30) days after Buyer is notified of the shipment of portions or all of the goods purchased by Buyer, unless otherwise specified by Seller. If, for any reason beyond the control of Seller, shipment cannot be made when the goods are ready for shipment, payment shall be made within thirty (30) days after Buyer is notified that the goods are ready for shipment. If the time for shipment is deferred or delayed at Buyer's request, Buyer shall, in addition to its other payment obligations hereunder, be obligated to pay additional charges for storage, handling, and insurance until delivery has been effected. Buyer's failure to pay any amount when due shall constitute a material breach by Buyer, and Seller shall thereafter not be obligated to perform its obligations under the Sales Contract and shall be relieved of all warranty and contractual obligations related to the sale, including but not limited to cessation of production, cancellation of future shipments, or return of shipments in transit, and may cease any other performance at its discretion, without liability and without prejudice to its other rights under these Terms. All amounts not paid when due shall be charged interest at the rate of one and one-half percent (1 1/2%) per month or the maximum rate allowable by law (whichever is less) computed on a daily basis from the due date until paid in full.

**Taxes:** All prices quoted are exclusive of all government taxes and any government tax shall not reduce the price paid by Buyer to Seller. All excise, privilege, occupation, sales, personal property, and other taxes (whether federal, state, or local) applicable to the sale, purchase, storage, erection, use, or ownership of any goods sold by Buyer and for the payment or collection of which Seller shall be liable shall be added to the selling prices of goods or services sold by Seller even if not specifically set forth as a line item in the prices quotes. Buyer agrees to pay any and all

taxes for which it is liable, to give Seller documentation of taxes paid and tax exemptions, and to indemnify Seller for any liability for tax hereunder, including any penalties and interest.

**Shipment from Seller:** All shipments shall be made on or about the time stated in the Sales Contract, although time of shipment shall not be deemed to be of the essence. The carrier(s) for all shipments made pursuant to the Sales Contract shall be selected by Seller unless otherwise agreed by the parties. In no event shall Seller be liable for any delay in delivery, nor shall the carrier be deemed an agent of Seller. For purposes of this Agreement, Seller's facility shall be 202 N Limestone Street, Suite 320, Springfield OH 45503, USA, unless otherwise specified by Seller. Seller shall have the right to ship all of the goods at one time or in portions from time to time, within the time for shipment provided in the Sales Contract. Partial deliveries are allowed, unless provided in writing that they are unreasonable to accept for the Buyer.

**Passage of Title and Risk of Loss:** Title to any goods sold hereunder shall pass to Buyer upon shipment from Seller. Notwithstanding transfer of title, Buyer remains obligated to pay any and all amounts due under the Sales Contract. Delivery shall be deemed complete, and risk of loss or damage to the equipment shall pass to the Buyer upon shipment, consistent with § 2-501 of the Uniform Commercial Code, for those shipments made from Seller. Any breach of these Terms shall have no effect with respect to such risk of loss and UCC § 2-501 shall have no effect with respect to any contract which incorporates these Terms.

**Acceptance by Buyer:** After Buyer has placed an order for purchase of goods which has been confirmed by Seller, Buyer shall accept the goods shipped under such order and shall have no right to reject them. Acceptance shall take place automatically upon tender of the goods to Buyer, and in the event Buyer refuses to receive the goods, Seller shall have no obligation to resell the goods for Buyer's benefit but may instead take whatever steps are necessary to preserve their maximum value and to recover the full purchase price from Buyer.

**Seller's Security Interest in Goods:** Seller retains a security interest in the goods sold, and any accessories, replacements, accessions, proceeds, and products relating thereto, and all proceeds thereof, including accounts receivable (collectively the "Collateral") to secure payment of any and all monies due to Seller. If Buyer fails to pay any amount when due, Seller shall have the right to repossess and remove all or any part of the Collateral from Buyer. Any repossession or removal shall be without prejudice to any other remedy of Seller, at law or in equity. Buyer agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by Seller to transfer, create, perfect, preserve, protect and enforce this security interest, and Buyer appoints Seller as Buyer's attorney-in-fact to take such acts and execute and deliver such documents on behalf of Buyer as may be necessary and proper for that purpose.

**Government Contracts, Harmonized Tariff System:** Seller shall not be required to conform to any regulations applicable to Seller's products' use by the United States government unless specifically advised in advance of such regulations and agreed to in writing between Seller and Buyer. Upon Buyer's request, Seller will provide Buyer with a country of origin and Harmonized Tariff System Code for all goods supplied to Buyer under the Sales Contract.

**Seller's Statement of Warranty:**

Seller warrants to Buyer that the goods manufactured and sold by Seller will be free from defects in material and workmanship, under normal use and service, for a period of one (1) year from date of shipment, provided that (i) the goods are inspected by Buyer promptly upon arrival, and (ii) the goods are installed, used, and/or operated under factory recommended procedures. Seller warrants that all goods sold by Seller will be designed and manufactured to perform the mechanical functions expressly stated in Seller's specifications provided the machinery and equipment are maintained and operated under proper conditions by competent trained personnel using such raw materials as may be specified. In case the original manufacturer warranty of the goods is longer than the standard one (1) year period the warranty period may be extended to match the manufacturers terms.

**General Terms Applicable to Warranty:** THE WARRANTIES STATED IN THIS PARAGRAPH ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES (WHETHER EXPRESSED, IMPLIED, OR STATUTORY). ANY IMPLIED WARRANTY OF MERCHANTABILITY IN RESPECTS OTHER THAN AS EXPRESSLY SET FORTH ABOVE AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. Seller neither assumes nor authorizes any person to assume for it any other warranty liability whatsoever other than as set forth in this statement. Goods sold but not manufactured by Seller are subject only to the manufacturer's warranty, if any. Buyer is solely responsible to enforce any warranty by others and Seller shall have no obligation to enforce the warranty of any other manufacturer. Seller does not warrant the amount or quality of production by Buyer. If any goods are found by Buyer within the warranty period to have been defective and notification of such defect and claim has been reported to Seller in accordance with these Terms, then Seller will replace or repair (at its option), F.O.B. Seller's facility, such goods as are defective, provided that Buyer returns to Seller, upon Seller's request, the original goods to Seller's plant, charges prepaid, and further provided that inspection of such goods by Seller establishes Buyer's claim. Goods repaired or replaced under this warranty continue under warranty only for the remainder of the original warranty period. All damage claims of Buyer beyond repair or replacement of whatever nature, including without limitation Buyer's labor costs, are excluded and not covered under this warranty. Correction by Seller of non-conformities, whether obvious or latent, in the manner and for the period of time provided above, shall constitute

fulfillment of all liabilities of Seller for such non-conformance, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, with respect to or arising out of the sale or use of such goods. If Buyer makes any repairs, replacements, or modifications to goods sold under the Sales Contract without Seller's prior written consent, or uses any spare part not manufactured or sold to the Buyer by the Seller which causes or contributes to a defect, then Seller shall be relieved of its warranty obligations. Seller shall not be liable to Buyer for the cost of repairs, alterations, or replacements, or any other expenses related thereto, made or incurred by the Buyer or any of its employees or agents, except where previously authorized by Seller in writing. Failure on the part of the Buyer to comply fully with the terms of payment shall relieve the Seller of any obligation under this warranty. Any advertising material, submitted with the Sales Contract or separately, is intended exclusively for the purpose of illustrating Seller's products and shall not be deemed part of the specifications or these Terms unless expressly stated in writing.

**Warranty Claims, Limitation on Remedy:** Buyer's remedies under the Sales Contract and for breach of warranty shall, at the sole option of the Seller, be limited to repair or replacement of the defective goods provided that any claim for breach of warranty be filed within the above defined warranty period, that any such defective goods be returned to Seller with transportation charges prepaid within the timeframe provided for under these Terms, and that Seller's examination shall disclose to its satisfaction that such goods are indeed defective. Seller shall not be liable for any other damages or costs, including freight or transportation costs, loss of time, inconvenience, lost profits, loss of use, or for any claimed incidental or consequential damages (as those terms are understood under UCC § 2-715). All goods returned to Seller shall become property of Seller. Buyer agrees that the exclusion of consequential damages for breach of this sales contract is reasonable. Notwithstanding the foregoing, any claims for errors, omissions, damages, or defective materials, or shortages on any order, must be made in writing and sent to Seller within five (5) days after the arrival of goods. Any claim for shortage must be accompanied by a sworn affidavit by an employee of Buyer with knowledge of the shortage. If claims are made by Buyer which require Seller's investigation prior to any settlement of such claims, Buyer shall be responsible for any and all reasonable costs relating to such inspection if Buyer's claims are found to be unwarranted or if the claim is denied by Seller for valid reasons. No goods may be returned to Seller for any reason without prior written authorization from Seller. Any claim for defect(s) in the goods sold under the Sales Contract, or for breach of any warranty contained herein, must be presented to Seller in writing within five (5) days after discovery of such defect(s) or breach and be accompanied by satisfactory proof of such claim.

**Indemnity:** Buyer agrees to indemnify, hold harmless, and defend Seller, its shareholders, directors, officers, agents, and employees from and against all liabilities, claims, damages, losses, costs, and expenses, including attorneys' fees, arising out of any claim for injuries to persons, deaths of persons, or damage to any property arising directly or indirectly out of or in connection with Buyer's use of goods sold by Seller under the Sales Contract.

**Confidential Information:** Seller's "Confidential Information" includes any price quotation, trade secrets, and any and all information not publicly available and which provides a competitive advantage in the industry, including, but not limited to, technical specifications, designs, plans, know how, instruction manuals, financial information, costs, pricing information, and Seller's ideas that are reasonably related to the business of the Seller that have not been previously publicly disclosed. Buyer, or other recipient of Seller's Confidential Information, will treat the Confidential Information as secret and confidential to the same reasonable extent the Buyer or other recipient protects its own valuable proprietary confidential information. Buyer, or other recipient of Seller's Confidential Information, shall not divulge, directly or indirectly, Seller's Confidential Information to any other person for any purpose whatsoever and shall not make use of Seller's Confidential Information without the prior written consent of the Seller.

**Prohibition Against Reverse Engineering:** The goods furnished to Buyer by Seller may contain or embody valuable trade secrets, technical knowhow and/or confidential subject matter owned by Seller, and Buyer agrees that Buyer and any of its employees, agents, officers, or representatives shall not reverse engineer, disassemble, copy, distribute, or otherwise deconstruct any of the goods (including but not limited to specifications, drawings, samples, or other descriptions) furnished to Buyer by Seller, shall not attempt to do so, and shall not permit any other party to do so.

**Intellectual Property:** The sale of equipment to Buyer in no way constitutes a license or authorization to Buyer under Seller's patents, trademarks, or trade names. Such sale shall only entitle Buyer to use the equipment, machinery, or part sold, and any unauthorized use shall constitute an infringement by Buyer. If any goods are manufactured or sold by Seller to Buyer's specifications or requirements and are not a part of Seller's standard line of products offered by it to the trade generally and in the usual course of Seller's business, Buyer agrees to defend, indemnify, and hold Seller harmless from and against any and all suits at law or in equity and from all damages, expenses, claims, and demands for actual or alleged infringement of any United States or foreign patent, trademark, copyright, unfair competition, or other claims relating to third party intellectual property asserted with respect to the goods and to defend any and all suits or actions which may be brought against Seller for any infringement resulting from the manufacture or sale of such goods to Buyer.

**Tools and Equipment:** Unless otherwise agreed in writing between Seller and Buyer, any equipment (including tools, dies, and jigs) which Seller may acquire or contract specifically for use on Buyer's behalf and for purposes of completing Buyer's order (collectively, the "Equipment") shall be and remain the property of Seller, to always remain

in its possession and control, and Seller shall be entitled to charge Buyer for the reasonable costs of acquiring, storing, and maintaining the Equipment. When, for a period of one (1) year, no orders have been accepted from Buyer for the manufacture of products utilizing the Equipment, Seller shall have the right to dispose of the Equipment as it may determine in its sole discretion, without liability to Buyer whatsoever. In the event that Buyer shall furnish Seller with any materials or equipment belonging to Buyer, Seller shall care for and store said materials or equipment as it would reasonably care for and store its own, but shall not be liable for loss or damage to such materials or equipment.

**Buyer's Bankruptcy or Insolvency:** Should Buyer become insolvent, or should Buyer file or have filed against it a petition in bankruptcy, or should a receiver be appointed for Buyer, then Seller may refuse further performance and may terminate the Sales Contract immediately and without prior notice.

**Limitations on Court Actions:** No action by Buyer may be brought at any time more than twelve (12) months after a cause of action accrues, and Buyer expressly acknowledges and agrees that the statute of limitations as to its claims shall be shortened to twelve (12) months.

**Dispute Resolution — Arbitration and Mediation:** Any controversy or claim arising out of, or relating to, the Sales Contract or the breach of any of the Terms shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Arbitration proceedings shall take place in Springfield, OH, U.S.A. in the English language. The arbitrator(s) shall have the discretion and authority to assess against the losing party, as part of the award, the cost and reasonable attorney's fees of the prevailing party. Judgment upon the award rendered by the arbitrator(s) may be entered in any federal or state court in the United States having jurisdiction. Within forty-five (45) days after the American Arbitration Association has received from Seller or Buyer a written demand for arbitration, representatives of both Seller and Buyer shall meet in Springfield, OH, U.S.A., with a mediator designated by the American Arbitration Association in an effort to reach a settlement of any dispute or claim by mediation, provided that arbitration proceedings shall continue and proceed in accordance with the rules of the American Arbitration Association regardless whether such a meeting and/or mediation has occurred. Notwithstanding the foregoing dispute resolution provisions, Seller shall have the right to seek interim injunctive relief from any court having jurisdiction with respect to any claim of use or disclosure by Buyer of Seller's Confidential Information or any claim of infringement by Buyer of Seller's patent, trademark, copyright, or trade secret rights.

**Prohibition Against Assignment:** Buyer may not assign its rights, duties, or obligations under this Sales Agreement without the express, written consent of Seller.

**Force Majeure:** In the event that Seller is prevented from delivering goods on account of any law or locally binding order, regulation, direction, or act of any government or any department, agency, or corporation having jurisdiction over such party, or on account of wars, strikes, or other labor disturbances, fires, floods, acts of God, acts of terror, or because of any causes beyond the control of Seller, Seller shall be excused from delivering the goods for the period that it is prevented from doing so by any of the foregoing, and any and all deliveries so suspended or delayed shall be made after such causes have ceased to exist and nothing herein shall be construed as lessening, in any event, the full amount of goods purchased by Buyer, but only as deferring delivery and payment in the event and to the extent provided for hereinabove.

**Entire Agreement:** The Sales Contract is intended to be the entire and final expression of the sales transaction and a complete and exclusive statement of the terms and conditions of the agreement by and between the parties. All addenda and exhibits must specifically reference the Sales Contract and/or the Terms (as applicable), and must be signed and dated by both Buyer and Seller. No course of prior dealings between Seller and Buyer and no usage of the trade shall be relevant to supplement or explain any term contained in the Sales Contract. Acceptance or acquiescence in a course of performance rendered hereunder shall not be relevant to determine the meaning of these Terms even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. These Terms shall not be modified or supplemented except by a written signed by Seller's authorized signatory. If any provision of these Terms is modified by statute or declared invalid, the remaining provisions shall nevertheless continue in full force and effect.

**Miscellaneous:** Headings have been inserted for convenience and reference only and shall not affect, modify, amend, or otherwise change the meaning of any of the expressed terms and provisions contained herein. The pronouns and relative terms used herein with reference to the Buyer are in the singular and neuter only, and if more than one party shall place an order as Buyer, or if Buyer shall be an individual rather than a business entity, such words shall be read as if written in the plural, masculine, or feminine, as appropriate. No course of dealing or failure of Seller to enforce any term, right, or condition of these Terms shall be construed as a waiver of that term, right, or condition. Buyer and Seller agree that jurisdiction is appropriate in the State of Ohio, that they are subject to the jurisdiction of the federal or state courts in Ohio, and that venue is proper in the federal or state courts in Ohio. The Sales Contract shall be governed by and construed in accordance with the laws of the State of Ohio. All notices required or permitted to be given to Buyer shall be in writing and mailed, by certified mail, return receipt requested, and addressed as follows:

**W-IE-NE-R Plein & Baus Corp. 202 N Limestone St., Suite 320, Springfield OH 45503**