

Controlling Provisions. This document, together with the sales quotation with respect to which this document is attached (collectively, this "Contract") constitutes an offer by Midwest Can Company ("Company") to provide the goods described in the Quotation (collectively, the "Products") to the party to whom the attached sales quotation is addressed ("Buyer"). If this Contract is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein. Buyer's acceptance of this Contract is limited to the terms, covenants and conditions contained in this Contract, and Company hereby objects to and rejects any additional, different or varying terms proposed by Buyer, unless Company expressly assents to such terms in writing. Such proposal of additional, different or varying terms by Buyer will not operate as a rejection of Company's offer, and Company's offer will be deemed accepted without such additional, different or varying terms. **This Contract constitutes the final expression of the terms between Company and Buyer regarding the Products and is the complete statement of those terms. Any terms, conditions, negotiations or understandings not contained in this Contract will have no force or effect unless made in writing and signed by Company and Buyer.**

2. **Acceptance.** Buyer will be deemed to have accepted this Contract upon the earliest of the following to occur: (a) Company's receipt of a copy of this Contract signed by Buyer; (b) Buyer's payment of any amounts due under this Contract; (c) Company's delivery of the Products; (d) failure by Buyer to notify Company otherwise within 10 days of its receipt of this Contract; or (e) any other event constituting acceptance under applicable law.

3. **Orders.** Buyer's order of any Products from Company will be subject to the provisions of this Contract. Buyer's order must be made in a form acceptable to Company. Current designs and specifications of Company will be used to fulfill any order unless Buyer requests otherwise in its order and Company specifically approves such request in writing. All designs and specifications of Company are subject to change by Company, in its sole discretion, without notice to Buyer. Company reserves the right to reject any orders, including, without limitation, blanket orders, for any reason in its sole discretion. Company reserves the right to correct clerical or similar errors relating to price or any other term shown on any invoice.

4. **Blanket Orders.** Company may, in its discretion, accept blanket orders for a maximum period of twelve (12) months, provided that all quantities, releases and scheduled shipment dates are declared at the time the order is placed and approved by Company. Each release under a blanket order must consist of at least ten percent (10%) of the total order and capable of completion, in Company's judgment, within one year. Quantities for special or custom Products may be adjusted only with the prior written approval of Company. Discounts are "locked" after first shipment, meaning an increase in quantity will not increase the discount after a shipment has been made.

5. **Changes, Cancellations and Returns.** Except as specifically set forth above in section 4 above with respect to blanket orders, Buyer may not change or cancel an order that has been accepted by Company, unless Company otherwise agrees in writing. Under no circumstances will shipment dates or quantities of Products be altered within ten-(10) days prior to the scheduled shipment date set forth on Company's sales quotation. Company reserves the right to change the price, terms of payment and shipment dates for any Products affected by any changes to any order which are requested by Buyer and approved by Company in writing. Company shall issue an adjusted invoice that reflects any permitted cancellation or changed or rescheduled order. When Company consents to the cancellation of any order, (a) Buyer shall be responsible for all expenses incurred by Company related to such cancelled order, and (b) Company reserves the right, in its sole discretion, to charge Buyer, and Buyer agrees to pay, a handling charge that shall not be less than thirty percent (30%) of the price of the cancelled order. Buyer may not return any Products to Company unless Buyer receives prior written authorization from Company, and Company issues a Return Goods Authorization ("RGA") number. Company shall accept returned Products only when returned with a properly issued RGA number. Buyer may not return any special, custom, obsolete and/or "set" Products. All Products returned to Company must be of current manufacture, unused, in resalable condition and shipped to Company without damage. When Company consents to any return, Company reserves the right, in its sole discretion, to charge Buyer, and Buyer agrees to pay, a handling charge that shall not be less than thirty percent (30%) of the amount invoiced to Buyer for such Products. Buyer will also prepay the costs of freight and pay the costs packaging, insurance and any other similar costs related to any such permitted return.

6. **Delivery.** Unless otherwise stated in this Contract, Company shall deliver the Products F.O.B. the loading dock at Company's facilities. All risk of loss, damage or delay, and title to the Products shall pass from Company to Buyer when the Products are moved from Company's dock into the delivery vehicle for transportation. All quoted shipment and/or delivery dates and/or periods are approximate. Delivery dates given by Company are based on prompt receipt of all necessary information regarding the order. Unless otherwise stated in this Contract, Company will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Company's failure to meet any shipment or delivery date does not constitute a cause for cancellation and/or for damages of any kind. Time for delivery shall not be of the essence. Method and route of shipment will be at the discretion of Company unless Company requests otherwise or unless Buyer specifies otherwise in writing, and any additional expense of the method or route of shipment so specified by Buyer will be borne by Buyer. Company reserves the right to make delivery in installments, unless otherwise expressly stated in this Contract, and all such installments, when separately invoiced, will be paid for when due per the invoice, without regard to subsequent deliveries. Delay in delivery of any installment will not relieve Buyer of its obligation to accept remaining deliveries. Claims for shortages or other errors must be made in writing to Company within thirty (30) days after Buyer's receipt of the shipment, and failure to give such notice will constitute unqualified acceptance and a waiver of all such claims by Buyer. Shipping specifications are approximate, and any change resulting from variations to such specifications is not subject to claim by Buyer. Buyer will comply with all laws applicable to the purchase, transport, use, storage, sale, lease and/or disposal of Products purchased hereunder.

7. **Delivery Delays.** Unless otherwise stated in this Contract, any delay in delivery due to causes beyond Company's reasonable control including those events listed in section 14 below, or due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the

length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (i) failure to supply adequate instructions; (ii) failure to arrange for pickup; (c) failure to supply or approve necessary data in a timely manner; (iii) requested and approved changes; or (iv) failure to provide documents required for Company to effect delivery, Company will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon Company's demand.

8. **Prices; Taxes; Permits.** Prices for the Products will be as stated in Company's invoice. Unless otherwise stated in this Contract, all prices are stated, and will be payable, in local currency of the shipping location. All quotations from Company for the Products will automatically expire **[thirty (30)]** days from the date of the quote unless the quote states otherwise or is withdrawn by Company. All prices are subject to change without notice. Buyer shall pay or reimburse Company, on demand, for all taxes, fees and costs including any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, broker fees, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between Company and Buyer, in addition to the prices quoted or invoiced. If Buyer is exempt from any taxes, Buyer will promptly furnish to Company an appropriate tax exemption certificate in a form acceptable to the applicable taxing authority. Unless otherwise indicated in this Contract, Buyer is solely responsible for obtaining and for all costs related to permits necessary for the installation, operation and use of the Products.

9. **Terms of Payment.** Terms of payment are as follows: net 30 days from the invoice date, unless otherwise specified in this Contract. Notwithstanding the foregoing, terms of payment on all orders are subject to the prior written approval of Company's credit department. If Buyer does not pay Company any amount due under this Contract or any other agreement when such amount is due or if Buyer defaults in the performance of this Contract, Company may, without liability to Buyer and without prejudice to Company's other lawful remedies (a) terminate Company's obligations under this Contract; (b) declare immediately due and payable all of Buyer's obligations to Company; (c) change credit terms with respect to any other orders of Products; (d) suspend or discontinue any further orders; and/or (e) enter Buyer's premises and repossess any Products for which Company has not received payment. Buyer agrees to reimburse Company for all costs and fees including attorneys' fees and repossession fees, incurred by Company in collecting any sums owed by Buyer to Company. Buyer agrees to pay a late payment charge equal to the lesser of 1.5% per month, or the maximum amount allowable by law, on all amounts not paid in full when due, payable on Company's demand. Buyer shall not set off amounts due to Company against Buyer's claims against Company.

10. **Limited Warranty; Damages Limitations.**

(a) If Company sells its standard Products to Buyer, Company warrants to Buyer that such Products will be free from material defects in workmanship and materials under normal use and service for a period of **[twelve months]** from the date of Company's shipment of Products from its facility (the "Warranty Period"). If Company sells custom Products produced according to specifications provided or approved by Buyer, Company warrants to Buyer that such custom Products will be free from material defects in workmanship and materials under normal use and service for a period of **[twelve months]** from the date of Company's shipment of Products from its facility (the "Warranty Period"). **THE WARRANTY SHALL NOT EXTEND** to (i) defects caused by any specifications or designs supplied by Buyer or by an unsuitable choice of material requested by Buyer or included in its specifications; or (ii) parts provided by Buyer. There is **NO WARRANTY** in cases of repairs or alterations of Products not authorized by Company in writing, damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental and natural elements, failure to follow Seller's instructions or improper installation, storage or maintenance. Company's **SOLE AND EXCLUSIVE** obligation under this warranty (and Buyer's sole and exclusive remedy) will be, upon prompt written notice by Buyer during the Warranty Period of any breach, to either, at Company's option: (x) repair or replace without charge any defective Product; or (y) credit to Buyer or refund the purchase price for such defective Product. This warranty covers only the replacement or repair of defective Products at Company's facility and does not include the cost of transportation of the Products to Company's facility. **COMPANY MAKES NO WARRANTIES ON PRODUCTS OR PARTS THAT ARE NOT MANUFACTURED BY COMPANY.** To the extent permissible, Company will assign to Buyer any warranty that the manufacturer may offer for such third-party Products or parts, but Company does not guarantee that the manufacturer will comply with any of the terms of its warranty. Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and cause the Products to be installed correctly, if not installed by Company. Buyer assumes all risk and liability whatsoever in connection therewith. Buyer agrees that Company has no post-sale duty to warn Buyer or any other party about any matter.

(b) **THE EXPRESS WARRANTIES IN SECTION 10(a) ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER EXPRESS AND IMPLIED WARRANTIES ARE HEREBY DISCLAIMED.** Any oral or written description of the Products is for the sole purpose of identifying the Products and will not be construed as an express warranty. **COMPANY WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION LOST PROFITS, WHETHER FOR BREACH OF WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OF THIS CONTRACT, OR FOR LIABILITY BASED ON NEGLIGENCE OR ANY OTHER THEORY. IN ORDER TO MAINTAIN COMPANY'S PRICING DESCRIBED IN THIS CONTRACT, COMPANY'S AGGREGATE LIABILITY WITH RESPECT TO THIS CONTRACT SHALL BE LIMITED TO THE AMOUNT OF MONEY PAID TO COMPANY BY BUYER FOR THE PRODUCTS.** Any assistance Company provides to or procures for Buyer outside the limitations of this section will not constitute a waiver of the limitations of this section.

11. **Buyer's Specifications.** Orders manufactured to specifications, drawings, designs or descriptions provided by or for Buyer are executed only with the understanding that Buyer hereby agrees to indemnify and hold Company and its affiliates harmless from any and all damages, including without limitation actual attorneys' fees, resulting from any action or threatened action against

Company for (a) infringement of patents or proprietary rights, or (b) injury to person or property, including death, relating to such specifications, drawings, designs or descriptions.

12. **Indemnification.** Buyer hereby releases and agrees to indemnify, defend and hold Company and its affiliates harmless from and against any and all direct and indirect claims, actions, causes of action, liabilities, losses, suits, demands, fines, penalties, judgments, damages or expenses, including without limitation actual attorneys' fees ("**Damages**") incurred by or against Company or its affiliates, shareholders, directors, officers, employees, representatives, agents, successors or assigns in connection with (a) misrepresentation or breach of this Contract or violation of law by Buyer or any of its shareholders, members, directors, officers, employees, affiliates, representatives, agents, successors or assigns ("**Buyer's Parties**"); or (b) any damage to or destruction of property, or injury to or death caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties; or (c) losses, damages or injuries caused by Buyer's products, Buyer's specifications, drawings, designs, descriptions, approvals or instructions provided to Company, or due to improper installation, application or use of the Products. Prior to settling any claim, Buyer will give Company an opportunity to participate in the defense and/or settlement. Buyer agrees not to settle any claim without Company's written consent. In the event of any recall affecting the Products, Company shall have the right to control the recall process, and Buyer agrees to fully cooperate with Company.

13. **Intellectual Property.** All engineering data, design information, trade secrets, tooling, plans, specifications, customer information, literature, samples, documents and shop drawings which may be disclosed to Buyer by Company and used in the completion of an order are and will remain Company's property and will be treated as "**Confidential Information**" of Company. Buyer will not copy, reproduce, distribute, publish or communicate to any third party any Confidential Information without the prior written permission of a properly authorized representative of Company. Nothing in this Contract will be construed to give Buyer any rights in any trademarks or other intellectual property of Company. Upon expiration or termination of this Contract for any reason, Buyer will, within fifteen (15) days, surrender to Company all Confidential Information in Buyer's possession or under its control. Nothing in this Contract will be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Company with broader protection than that provided herein. Company, in its manufacture and sale of the Products, will assume no liability as to possible infringements of patents where such infringement results from the use of Company's Products in combination with other elements or devices, and Buyer will indemnify and hold harmless Company from any and all such claims.

14. **Force Majeure.** Except with respect to payment obligations under this Contract, neither party will be responsible for any other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding available supply or any other cause beyond the party's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Company may, at its option and without liability, prorate its deliveries, cancel all or any portion of this Contract to the extent affected by the event of force majeure and/or extend any date upon which performance is due hereunder.

15. **Miscellaneous.** This Contract constitutes the entire agreement between the parties with respect to Buyer's purchase of the Products and supersedes all other agreements or communications, written or oral, which may be deemed to be inconsistent with it. This Contract may not be amended or altered except by a writing signed by Company. This Contract will be governed by and construed according to the laws of the State of [Illinois], USA. Neither this Contract nor sales hereunder will be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. If any provision of this Contract is held to be invalid or unenforceable for any reason, the parties acknowledge and agree that such invalidity or unenforceability (a) will not affect any other provision of this Agreement, (b) the remaining terms, covenants and conditions hereof will remain in full force and effect, and (c) any court of competent jurisdiction may so modify the objectionable provision as to make it valid and enforceable. The failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract will not be construed as a waiver or relinquishment of any right granted hereunder or the future performance of such term, covenant or condition. All of Company's remedies herein are cumulative and not exclusive of any other remedies available to Company at law, by contract or in equity.