



## **SALES TERMS AND CONDITIONS**

1. **ACCEPTANCE.** This quote is expressly limited to and made conditional upon Buyer's acceptance of the terms and conditions contained herein, if any, previously furnished to Buyer by Seller. Any of the Buyer's terms and conditions which are in addition to or different from those contained herein which are not separately agreed to in writing (except additional provisions specifying quantity, description of the products ordered and shipping instructions) are deemed material and are hereby objected to and rejected. Objection to any terms and conditions contained herein shall be deemed to have been waived if written notice of such objection is not received by Seller within ten days of the date of this acknowledgement. Buyer will in any event be deemed to have assented to all terms and conditions contained herein if any part of the products described herein is accepted.

Please note particularly the Limited Warranty, Limitation of Remedies and Limitations on Actions and Liability provisions set forth below. Buyer acknowledges that the prices stated are predicated on the enforceability of these terms and conditions, and on the Limited Warranty, Limitation of Remedies and Limitation of Actions and Liability provisions below, that the price would be substantially higher if Seller could not limit its liability as herein provided and that Buyer accepts these provisions in exchange for such lower prices.

2. **LIMITED WARRANTY.** All products manufactured by Seller are warranted to be free from defects in material and workmanship under normal use and service, when installed, used and serviced in the manner intended. THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
3. **LIMITATION OF REMEDIES.** Buyer's sole and extensive remedy against Seller will be limited, at Seller's option, to the repair or replacement by Seller of any nonconforming product for which claim is made by Buyer or to the issuance of a credit for such nonconforming product in accordance with these terms and conditions provided Buyer obtains a return material authorization from Seller and Seller is given a reasonable opportunity to inspect the product and confirm such nonconformity. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace the nonconforming product and, in any event, Seller's liability for any damages due Buyer shall be limited to the purchase price of the nonconforming products. THIS PARAGRAPH STATES BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OR WARRANTY.
4. **LIMITATIONS ON ACTIONS AND LIABILITY.** The statute of limitations applicable to all claims arising under this agreement shall be one year from the date the claim accrues. SELLER WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY RESULTING FROM DELAY IN DELIVERY OF THE PRODUCTS OR FOR ANY FAILURE TO PERFORM WHICH IS DUE TO CIRCUMSTANCES BEYOND ITS CONTROL. THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION CONTRACT DAMAGES AND DAMAGES FOR INJURIES TO PERSONS OR PROPERTY, WHETHER ARISING FROM SELLER'S BREACH OF THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT WITH RESPECT TO THE PRODUCTS, OR ANY SERVICES IN CONNECTION WITH THE PRODUCTS, IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PRICE OF THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS BUYER'S EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
5. **PRICES, TERMS AND SHIPMENT.** The prices for the products may be adjusted by Seller to prices in effect at the time of shipment. All prices are net 30, no cash discount is allowed unless otherwise specified by Seller, and no set offs or counterclaims are allowed unless agreed to in writing by Seller. Payment terms may be changed at any time by Seller with or without notice. In addition to the prices specified, Buyer agrees to pay any federal, state, or local excise, use, occupational, or similar tax now in force or to be enacted in the future, assessed against Seller or Buyer by reason of this transaction. All shipments under this order shall be made F.O.B. Seller's plant unless otherwise specified. Buyer shall assume freight charges and risks of transportation, including delay, damage, and loss, unless otherwise specified by Seller. In the absence of specific instructions Seller reserves the right to select a carrier and to specify the routing of all shipments.
6. **DELIVERY SCHEDULES.** The promised delivery date is the best estimate possible of when the products will be shipped. Seller shall not be liable for any loss, damage, incidental or consequential damages due to delays. In the case of deliveries scheduled to be made over an extended period, the price to be paid by Buyer shall be that price in effect at the time of the shipment.
7. **SHORTAGES.** Claims for shortages must be made by Buyer within 24 hours of its receipt of shipment. Seller will not be responsible for any claims for shortage not reported within that period.
8. **RETURNED GOODS.** Products may not be returned.
9. **PATENT OR TRADEMARK INFRINGEMENT.** If the goods sold hereunder are to be prepared for manufacture according to the Buyer's specifications, Buyer shall defend, hold harmless and indemnify Seller against any claims, liability, costs or attorneys fees incurred in relation to any claim for patent or trademark infringement. FORCE MAJEURE. Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or of suppliers to the Seller, including but not limited to failure or delay in transportation, acts of any government or any agency or subdivision thereof, judicial action, labor disputes, fire, accident, or acts of nature,

shortage of labor, fuel, raw material or machinery or technical failure. If any contingency occurs, Seller may allocate production and deliveries among Seller's customers.

10. **CONFIDENTIALITY.** In the event Buyer's personnel visit Seller's plant or Buyer otherwise receives any proprietary or confidential information from Seller, such information shall be retained as confidential by Buyer and not be used or disclosed to any third party without the written consent of Seller.
11. **CREDIT APPROVAL.** Shipment and delivery of goods and performance of work shall at all times be subject to the approval of Seller's credit department and Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to Seller.
12. **CANCELLATION.** Orders may only be cancelled with Seller's written approval. In the event of cancellation of an order, or any part hereof, incorporating special material, parts, components, etc., Buyer shall pay: (a) the contract price of all completed items; (b) that portion of the contract price that is equal to the degree of completion of products in process, effective on the date notice of cancellation is received; (c) the cost of any material and supplies which Seller shall have purchased to perform and which cannot be readily resold or used for other or similar purpose; and (d) charges for cancellation of tool orders or tool removal charges.
13. **DEFAULT.** Performance by Buyer may be terminated for Seller's default, wholly or in part, only if prior to receipt by Seller of notice of termination, Seller has received notice in writing specifying such default, and such default is not excusable under any provision hereof, and such default has not been remedied within thirty (30) days after receipt by Seller of such notice of default. Delivery of nonconforming products by Seller shall give Buyer the rights set forth in paragraph 3 hereof but shall not be deemed a default for purpose of termination. In the event of termination for default, Buyer shall be relieved of the obligation to pay for work not performed by Seller prior to the effective date of such termination. A default on Seller's part shall not subject Seller to liability, through payment by Seller, set off or otherwise, for any other damages, whether direct, consequential or incidental, and whether sought under theories of contract or tort.
14. **ASSIGNMENT.** No order or any claim against Seller arising directly or indirectly out of or in connection with an order shall be assignable by Buyer without the prior written consent of Seller.
15. **PATENTS, INVESTMENTS, TECHNICAL DATA.** Buyer does not and shall not acquire ownership or any rights in Seller's patents, inventions and/or technical data under any order, regardless of when such patents, inventions, and/or technical data may be or have been issued, conceived, generated or produced. All Seller patents, information and/or technical data are reserved by Seller, and the same shall not be reproduced or used by Buyer for any purpose whatsoever without Seller's written permission.
16. **REMEDIES.** The rights and remedies reserved to Seller shall be cumulative and additional to all other remedies provided by law or equity. Seller shall be entitled to recover costs and attorney fees in the enforcement or defense of any rights under any order.
17. **PAST-DUE ACCOUNTS.** Interest on all past-due accounts shall accrue and shall be payable by the Buyer to Seller at the maximum rate of interest allowed by law. Buyer further agrees that receipt of product implies receipt of invoice.
18. **GOVERNING LAW.** All orders shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Michigan.
19. **ENTIRE AGREEMENT.** This instrument contains the entire agreement of the parties relating to the subject matter hereof and may not be waived, changed, modified, extended or discharged orally but only by agreement in writing and signed by the party against whom enforcement of any such waiver, change, modification, extension or discharge is sought. Further this agreement cannot be superseded by any local agreement. If language is contradictory, this agreement, Sales, Terms and Conditions of Masco Cabinet Group, will prevail.

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