

These Terms and Conditions are incorporated by reference in all purchase orders and agreements issued and entered into by Circle Bolt & Nut Co. Inc., ("Company"). Acceptance of these Terms and Conditions is a condition precedent to a formation of an agreement between Company and the seller of goods ("Seller").

1. **AGREEMENT.** The purchase order (the "P.O.") constitutes an offer by Company to purchase the articles, materials, machinery, equipment, parts, supplies and work specified therein (the "Products") from the Seller upon the terms and conditions stated herein. The P.O. is not an acceptance of any offer by the Seller. Upon shipment of the Products to Company: (a) the Seller shall be deemed to have accepted the offer set forth in the P.O.; and (b) the agreement set forth in the P.O. and in these Terms and Conditions shall be binding upon the parties and shall constitute the sole and entire agreement between them regarding the Products. The date of shipment of the Products by the Company shall constitute the effective date of the agreement. This agreement shall not be altered, abridged or rescinded by any unilateral statement of the Seller unless specifically and explicitly agreed to by Company in writing. Company's acceptance of the shipment or signature on Seller's invoice or other papers that accompany the shipment of the Products shall not constitute a specific and explicit agreement by Company to such alteration, abridgement or rescission. To the extent that Seller's papers attempt to condition the sale and delivery of the Products on acceptance of terms that differ from those set forth herein, Seller hereby agrees that such terms are void ab initio and such papers are modified hereby to accept the terms hereof.

2. **SELLER WARRANTY.** Seller expressly represents, warrants and certifies that the Products will be merchantable, of the best grade and quality, free from defects of materials or workmanship, and fit for intended use or purpose and conform to the specifications, drawings, samples or other descriptions furnished by Company, and that it shall convey to Company, upon the earlier of payment for or delivery of the Products, good title to the Products, free from any liens, security interests or other title defects or other encumbrances. Seller agrees that, if any non-conformity with the above warranties are discovered (in addition to any other available remedy), Company will have the right to reject the non-conforming Products, to refuse payment, to return nonconforming Products to Seller at Seller's risk and expense, and/or to replace the non-conforming Products, at Seller's expense.

3. **COMPLIANCE WITH LAW.** Seller warrants that its operations and the Products provided to Company, including their manufacture, fabrication, construction, labeling, marking, registration, packaging (whether for sale to Company and/or resale by Company), transportation, import and export, and use shall fully comply with all laws, regulations and ordinances, including, without limitation, Executive Order 13496 (collectively, "Laws"). Seller shall promptly take, at its expense, all action reasonably necessary to ensure Products comply with all Laws after Seller receives from the applicable agency or from Company a notice that some violation exists with respect to the Products. If Seller fails to promptly take such action, Company may take all such action reasonably necessary to ensure conformity with such Laws at Seller's expense and may elect such remedies as it has available pursuant to Paragraph 2 above. Seller shall be liable for the payment of any penalties and/or fines imposed as a result of the failure of any Products provided by Seller hereunder to comply with all of the requirements of this Paragraph 3.

4. **SELLER INDEMNITY.** Seller shall indemnify, defend and hold Company and its affiliates, officers, directors, employees,

agents, licensees, sub-licensees and all their successors and assigns (collectively, the "Indemnitees") harmless from and against any and all losses, claims, demands, suits, damages, liabilities and related costs and expenses (including reasonable attorneys' fees and litigation expenses) incurred by or asserted against any Indemnitee arising out of or in any way connected with: (a) the performance of this Agreement; (b) breach of any provisions or warranties of this Agreement; (c) accidents, occurrences, injuries or losses to or of any person or property (whether arising before or after Company's acceptance of the Products) that are in any way related to or result from, in whole or in part, the preparation, manufacture, construction, completion and/or delivery of the Products by Seller or Seller's agents or employees, regardless of whether caused in part by an Indemnitee; and/or (d) any and all claims for infringement of any patent, copyright, trademark or trade secret by reason of manufacture, use or sale of Products. Seller's indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by the Seller or any subcontractor or supplier under worker or workmen's compensations acts, disability benefits acts, or other employee benefit acts. Upon Company's request, Seller shall furnish proof of insurance meeting the requirements set forth herein.

5. **LIENS.** Seller hereby waives to the fullest extent permitted by law its lien rights, including mechanic's lien rights, against Company and the property of Company and Seller agrees to promptly satisfy and discharge any claim or lien against Company or the property of Company that may arise out of or relate to, the P.O. and/or the Products. In the event Seller files any claim or lien against Company related to or arising out of the Products, or fails to discharge any such claims or liens asserted by third parties within seven (7) days after receiving notice thereof, Company may, at its option, discharge such claim or lien and all costs or expenses, including attorney's fees, shall be the responsibility of Seller. Company may, at any time, and from time to time, require that Seller execute further waivers of liens and claims prior to making payments due hereunder.

6. **DELIVERY.** The Seller shall deliver the Products to Company on the date(s) indicated in the Company's Purchase Order or Purchase Agreement. If Seller fails to make delivery of any part of the Products on the date(s) indicated, the Company may, upon notification to the Seller, and notwithstanding any express terms to the contrary, purchase merchandise from another seller in order to meet its requirements. The Seller agrees that it will be responsible for promptly remitting to the Company any difference in price which the Company had to pay as a result of the Seller's failure to meet its delivery requirements hereunder. All shipments shall be delivered to the destination designated by Company in its Purchase Order, with Seller paying all shipping costs unless otherwise provided in the Agreement, and risk of loss shall remain with Seller until the conforming Products in a completed state is accepted by Company, its agent or consignee. A packing slip must accompany each such shipment, and if a shipment is to a consignee or agent of Company, a copy of the packing slip shall be forwarded concurrently to Company. If no such packing slip is sent, the count or weight by Company or its agent or consignee is agreed to be final and binding. Company reserves the right to change the quantity, delivery date or delivery point on any of its Purchase Orders by providing reasonable written notice of such change to Seller.

7. **TERMINATION.** Company reserves the right to terminate this Agreement, in whole or in part, with ten (10) days' prior written notice to Seller. Upon receipt of such notice, Seller

shall stop all performance hereunder except as otherwise directed by Company. If Seller is not in default of any of its obligations hereunder at the time of such termination, Company shall pay to Seller, as Seller's sole and exclusive remedy, an amount equal to: (a) reasonable and documented costs incurred by Seller prior to termination solely in connection with the Products, plus (b) the reasonable cost, if any, incurred by Seller in winding up its work for Company, not to exceed five percent (5%) of the total Contract Price; provided, however, that the above amounts plus prior payments shall in no event exceed the Contract Price then in effect. If Seller is in material breach of any of its obligations hereunder or in default (as set forth in Paragraph 8 below), at the time of termination, Seller shall not be entitled to any such payments from Company.

8. **DEFAULT.** If the Seller: (a) becomes insolvent; (b) has a petition under any chapter of the bankruptcy laws filed by or against it; (c) makes an assignment for the benefit of its creditors; (d) has a receiver requested for or appointed to it; (e) fails to use properly skilled personnel in its performance under the Agreement; (f) fails to make prompt payment to any subcontractors it may have or for any material, labor, transportation, supplies, fuel, use of equipment or any other expense it incurs under the Agreement; or (g) fails to comply with any of its obligations under the Agreement, then Company may, in addition to its rights under Section 6 above, at its option either cure the default at Seller's expense or allow the Seller a reasonable period in which to cure (not to exceed 30 days). Company may immediately, or after the Seller cure period, as applicable, (in addition to any of its other rights and remedies): (i) take possession of the Products wherever it may be located and in whatever state of completion they may be, together with all drawings and other information necessary to enable Company to have the Products completed, installed, operated, maintained and/or repaired; (ii) pay to Seller any amount then due after taking full credit for any offsets to which Company may be entitled; (iii) contract with or employ any other party or parties to finish the Products; and (iv) collect from the Seller any additional expense, losses or damage that Company may suffer as a result of Seller's default. Company may make changes, additions, omissions or alterations in the

Products or change packing, destinations, specifications, drawings, designs or postpone the delivery schedule. If a change is made, an appropriate and reasonable adjustment in price or terms shall be made and agreed to in writing. Company has the right to cancel the P.O. if the order is not filled with a reasonable time or the order is subject to increased prices that are not acceptable to Company, in its unreviewable discretion.

9. **ENTIRE AGREEMENT.** This Agreement, together with the documents attached hereto or incorporated herein by reference, and any confidentiality or secrecy agreement executed by Company and Seller, shall constitute the entire agreement of the parties and may not be modified, except by a written change order issued by Company or a written amendment signed by both parties. No terms stated by Seller in its proposal or in accepting or acknowledging this Agreement shall be binding except as expressly agreed to by Company in writing, and Seller is hereby notified of Company's objection to and rejection of any additional or different terms in Seller's quotation, acknowledgement, invoice, or other forms. THIS AGREEMENT IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN AND CONTAINED IN OTHER DOCUMENTS THAT EXPRESSLY CONSTITUTE THE AGREEMENT, AS DEFINED HEREIN.

10. **SURVIVAL.** All indemnification, payment and other covenants and obligations of Seller and Company under this Agreement that could possibly imply the necessity for performance after the expiration or ~~sooner~~ termination of this Agreement shall ~~so survive~~ continue to apply in full force and effect after such expiration or termination, including but not limited to those contained in Paragraphs 2 through 6, and 8 of these Terms and Conditions.

11. **GOVERNING LAW.** The Agreement shall be construed and interpreted under, and all respective rights and duties of the parties shall be governed by, the substantive laws of the Commonwealth of Pennsylvania, without regard to its conflicts of law principles.