



# Resource Material Handling and Recycling Inc.

## *Sales Terms and Conditions*



- 1. AGREEMENT.** The terms and conditions set forth herein constitute the entire agreement between Resource Material Handling and Recycling Inc. or its affiliates and Purchaser in connection with any order submitted by or on behalf of Purchaser to Resource Material Handling and Recycling Inc. The terms and conditions set forth herein shall control over any terms or conditions in any order, and any and all terms contained in an order shall be deemed void and of no force or effect unless specifically agreed to and accepted by Resource Material Handling and Recycling Inc. in writing. Without limiting any other terms or conditions set forth herein, acceptance of the products shipped shall constitute assent to Resource Material Handling and Recycling Inc.'s terms and conditions of sale, except as otherwise specifically agreed to by Resource Material Handling and Recycling Inc. in writing. Purchaser may not assign these Terms and Conditions of Sale without the prior written consent of Resource Material Handling and Recycling Inc.
- 2. ACCEPTANCE AND APPROVAL OF ORDER.** An order will become binding on Resource Material Handling and Recycling Inc. only when accepted and approved by written acknowledgement by the Customer Service Department of Resource Material Handling and Recycling Inc. An order will become binding on Purchaser when (1) accepted and approved in writing by Resource Material Handling and Recycling Inc. or (2) at the time of Purchaser's acceptance of delivery of all or any part of the products described in the order, whichever event first occurs.
- 3. CREDIT.** Terms of payment must have the approval of Resource Material Handling and Recycling Inc.'s Finance Department and must be specified in writing on Resource Material Handling and Recycling Inc.'s invoice. If at any time Purchaser's financial responsibility becomes impaired, unsatisfactory to Resource Material Handling and Recycling Inc. or upon the happening of any of the events set forth in Section 26 herein, Resource Material Handling and Recycling Inc. reserves the right to stop shipment to Purchaser, and obtain surety with a demand for payment in advance or at time of delivery for future deliveries or to require other security satisfactory to Resource Material Handling and Recycling Inc, and in the absence thereof, to cancel the unfilled portion of the order. Resource Material Handling and Recycling Inc. will notify Purchaser in advance to the extent possible.
- 4. PAYMENT.** Unless otherwise agreed in a writing signed by Resource Material Handling and Recycling Inc. Payment is due 30 days from the date of receipt of an invoice from Resource Material Handling and Recycling Inc. Resource Material Handling and Recycling Inc. reserves the right to require Purchaser to pay in advance if and until Purchaser's account is made current.
- 5. INTEREST & COSTS.** All past due amounts will accrue interest at a rate equal to the lesser of 1.5% per month and the maximum rate permitted by applicable law, from due date until paid, plus Resource Material Handling and Recycling Inc.'s reasonable costs of collection, including court costs and attorney's fees. Resource Material Handling and Recycling Inc reserves all other rights granted to a seller under applicable law for Purchaser's failure to pay any amounts when due. Purchaser may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Resource Material Handling and Recycling Inc., regardless of whether relating to Resource Material Handling and Recycling Inc. 's breach, bankruptcy or otherwise.
- 6. TAXES.** All stated prices are exclusive of any federal, state or local taxes, fees, duties, charges and levies, however designated or imposed, including but not limited to value-added and withholding taxes. Any such taxes, fees, duties, charges and levies are the responsibility of Purchaser (excluding taxes based on Resource Material Handling and Recycling Inc.'s net income).
- 7. FORCE MAJEURE.** Resource Material Handling and Recycling Inc. shall make delivery in accordance with order documents or within a reasonable time in the absence of any commitment but Resource Material Handling and Recycling Inc shall not be liable for delays or defaults of delivery caused by acts of God or public enemies, civil war, delay of carriers, terrorism, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond Resource Material Handling and Recycling Inc's reasonable control. In the event that circumstances beyond Resource Material Handling and Recycling Inc's reasonable control cause delay in or prevent performance of this contract until a date beyond that contemplated for performance, and if Resource Material Handling and Recycling Inc. thereby incurs expenses, loss or damage, there shall be a reasonable increase in the contract price to cover such added expense, loss, or damage. Resource Material Handling and Recycling Inc. may, during any period of shortage due to any of the above contingencies, allocate its available supply of goods among itself and its customers in such manner as Resource Material Handling and Recycling Inc in its sole judgment, deems fair and equitable
- 8. CANCELLATION OR MODIFICATION.** Cancellation or modifications of all or part of any purchase order are subject to Resource Material Handling and Recycling Inc.'s prior written consent. If Resource Material Handling and Recycling Inc. consents to cancellation or modification, Purchaser agrees to pay to Resource Material Handling and Recycling Inc. all expenses incurred and damage sustained by Resource Material Handling and Recycling Inc. on account of the cancellation or modification, plus a reasonable profit.
- 9. CHANGES IN PRODUCT DESIGN OR MANUFACTURE.** Resource Material Handling and Recycling Inc. shall have the right to change, discontinue or modify the design and construction of any of its products and to substitute material equal to or superior to that originally specified.



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**10. PRICES.** Prices on accepted purchase orders are firm for a period of [90] days from the date of acceptance; provided that, if applicable, pricing adjustments will be made to the purchase order for any commodities underlying the product's pricing, as determined by Resource Material Handling and Recycling Inc.

**11. DELAYS.** All orders are accepted by Purchaser, subject to Resource Material Handling and Recycling Inc.'s ability to make delivery on time, and Resource Material Handling and Recycling Inc shall not be liable for damages for a partial or incomplete shipment of or any added expenses incurred by Resource Material Handling and Recycling Inc. because of Purchaser's delay furnishing requested information to Resource Material Handling and Recycling Inc., delay resulting from order changes by Purchaser.

**12. SHIPMENT AND DELIVERY.** Unless otherwise agreed by the parties in writing, all products will be shipped by Resource Material Handling and Recycling Inc at the Purchaser's cost. Resource Material Handling and Recycling Inc. may, in its sole discretion, without liability or penalty, (i) make partial shipments of products to Purchaser, and/or (ii) make shipments to Purchaser in quantities which are up to 5% more, or which are no more than 5% less, than a quantity specified in an order (each such shipment, a "varied shipment".) Each shipment will constitute a separate sale and Purchaser shall pay for the products shipped, in accordance with the payment terms specified in Section 4, whether such shipment is in whole or partial fulfillment of an order, or a varied shipment in excess of an order. Purchaser shall not be permitted to reject a partial shipment or a varied shipment on the basis that it does not meet the exact quantity specified in an order. If the parties agree that Purchaser will arrange for shipping of the products, then Resource MHR will notify the Purchaser when the products are ready for shipment and Purchaser must arrange for such products to be shipped within five days of such notice. If Purchaser does not arrange for shipment within five days of receiving notice from Resource MHR, Resource MHR may, in its sole discretion, (i) ship the Products to Purchaser at Purchaser's cost OR (ii) warehouse Purchaser's products at a cost to Purchaser of \$50 in, \$50 out, and \$100 per day. All products will be shipped F.O.B. Resource Material Handling and Recycling Inc's premises and may be so shipped in several lots. Resource Material Handling and Recycling Inc. will select the carrier and ship "Prepaid", but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of Resource Material Handling and Recycling Inc. Purchaser must provide its own insurance. Title and risk of loss or damage to all products sold hereunder shall pass from Resource Material Handling and Recycling Inc. to Purchaser upon delivery by Resource Material Handling and Recycling Inc. to the possession of the carrier, provided that Resource Material Handling and Recycling Inc. reserves a purchase money security interest in the products. Any claims for loss, damage or misdelivery thereafter shall be filed by Purchaser with the carrier. All products shall be deemed finally inspected and accepted within 10 days after delivery unless notice of rejection is given in writing to Resource Material Handling and Recycling Inc. within such period. Acceptance shall constitute acknowledgement of full performance by Resource Material Handling and Recycling Inc. of all obligations under the contract except as state in Section 15.

**13. CLAIMS.** Notice of claims against Resource Material Handling and Recycling Inc. hereunder for any reason, including breach of warranty, must be made to Resource Material Handling and Recycling Inc. in writing within 48 hours of discovery, but in no event more than 60 days after delivery of the products by Resource Material Handling and Recycling Inc. to afford Resource Material Handling and Recycling Inc. an opportunity to make a prompt investigation of surrounding facts and mitigate any damages which might ensue, should it be determined to be Resource Material Handling and Recycling Inc's responsibility. Failure to give such notice to Resource Material Handling and Recycling Inc. shall constitute a waiver by Purchaser of any right later to assert such a claim, and such failure shall constitute an irrevocable acceptance of the goods and an admission that they fully comply with all of the terms and conditions of the order.

**14. RETURNS.** Any return of products requires a return authorization and must be requested prior to 60 days after receipt of product. Upon return of any product, Resource Material Handling and Recycling Inc. shall inspect such product to determine whether Resource Material Handling and Recycling Inc. is at fault for a defect in material or workmanship. If Resource Material Handling and Recycling Inc. determines that it is at fault for such defect, Resource Material Handling and Recycling Inc. may, in its sole discretion, repair or replace the defective products or refund the appropriate amounts that Purchaser paid for such products. Returns that are made through no fault of Resource Material Handling and Recycling Inc. may be subject to restocking fees.

**15. WARRANTY.** Resource Material Handling and Recycling Inc. warrants that the products sold pursuant to these Terms and Conditions of Sale will be free from defects in material and workmanship at the time delivered in accordance with these Terms and Conditions of Sale. The foregoing limited warranty does not apply to (i) any defect in products not manufactured by Resource Material Handling and Recycling Inc. (ii) improper installation or maintenance of the products, (iii) any products manufactured according to Purchaser's specifications and (iv) normal wear and tear, negligent or improper use, handling and/or storage of the products. EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED HEREIN, THE PRODUCTS ARE PROVIDED "AS IS", AND TO THE FULLEST EXTENT PERMITTED BY LAW, Resource Material Handling and Recycling Inc. EXCLUDES ALL OTHER EXPRESS AND IMPLIED TERMS, CONDITIONS, WARRANTIES OR REPRESENTATIONS REGARDING THE PRODUCTS ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED TERMS OF MERCHANTABILITY, SATISFACTORY QUALITY, REASONABLE SKILL AND CARE AND FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES SET FORTH IN THIS SECTION 15 AND SECTION 14 ARE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES WHETHER IN TORT, OR OTHERWISE, ARISING FROM



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**DEFECTS IN PRODUCTS.** Resource Material Handling and Recycling Inc. WILL NOT BE LIABLE FOR INJURIES OR DAMAGES TO PERSONS OR PROPERTY RESULTING FROM ANY CAUSE WHATSOEVER. Resource Material Handling and Recycling Inc.'s sole obligation and Purchaser's exclusive remedy under this warranty shall be limited to one of the following, as selected by Resource Material Handling and Recycling Inc.: (a) repair or replacement of the product determined to be defective by Resource Material Handling and Recycling Inc. or (b) a refund for the appropriate amounts that Purchaser paid for such products.

**16. LIMITATIONS ON LIABILITY.** IN NO EVENT WILL Resource Material Handling and Recycling Inc. BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, REPUTATIONAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, PROFIT OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LINE STOPPAGE, AND PRODUCT RECALL REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF Resource Material Handling and Recycling Inc. HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES. Resource Material Handling and Recycling Inc.'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE PRODUCTS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE CLAIM.

**17. INTELLECTUAL PROPERTY.** [Josh Jones] retains ownership of any patent, know-how, trade secret, trademark, service mark, copyright, or other intellectual property right that is related to the products or is otherwise developed by or provided to Purchaser in connection with the supply of the products.

**18. WORK PRODUCT.** "Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, special tooling, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Resource Material Handling and Recycling Inc. alone or with others that result from or relate to the products. All Work Product shall at all times be and remain the sole and exclusive property of Resource Material Handling and Recycling Inc. Purchaser hereby agrees to irrevocably assign and transfer to Resource Material Handling and Recycling Inc. and does hereby assign and transfer to Resource Material Handling and Recycling Inc. all of its worldwide right, title and interest in and to the Work Product including all associated intellectual property rights. Purchaser hereby waives any and all moral and other rights in any Work Product or any other intellectual property created, developed or acquired in respect of the Products. Resource Material Handling and Recycling Inc. will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name or to follow any other person.

**19. INDEMNIFICATION.** Purchaser will defend, indemnify, and hold harmless Resource Material Handling and Recycling Inc., their respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, members, managers, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing y insurance providers) ("Claims") arising out of or occurring in connection with the negligence or willful misconduct of Purchaser or its employees or agents, including but not limited to: (i) any misuse or modification of the products sold hereto by Purchaser or its employees or agents, (ii) any act (or failure to act) by Purchaser or its employees or agents in contravention of any safety procedures or instructions that Resource Material Handling and Recycling Inc. provides to Purchaser or its employees or agents, or (iii) the failure to store, install, operate, or maintain the Products in accordance with the instructions.

**20. CONFIDENTIALITY.** (a) Purchaser may acquire knowledge of Resource Material Handling and Recycling Inc. Confidential Information (as defined below) in connection with products and/or its performance hereunder and agrees to keep Resource Material Handling and Recycling Inc. Confidential Information in confidence during and following termination or expiration of this Agreement. "Resource Material Handling and Recycling Inc. Confidential Information" includes but is not limited to all information, whether written or oral, in any form, including, without limitation, information relating to the research, development, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, Work Product, and other material or information considered proprietary by Resource Material Handling and Recycling Inc. relating to the current or anticipated business or affairs of Resource Material Handling and Recycling Inc. that is disclosed directly or indirectly to Purchaser. In addition, Resource Material Handling and Recycling Inc. Confidential Information means any third party's proprietary or confidential information disclosed to Purchaser in the course of providing Products to Purchaser. (b) Purchaser agrees not to copy, alter or directly or indirectly disclose any Resource Material Handling and Recycling Inc. Confidential Information. Additionally, Purchaser agrees to limit its internal distribution of Resource Material Handling and Recycling Inc. Confidential Information to Purchaser's employees who have a need to know, and to take steps to ensure that the dissemination is so limited. In no event will Purchaser use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Resource Material Handling and Recycling Inc. Confidential Information. Purchaser may disclose Resource Material Handling and Recycling Inc. Confidential Information that is required to be disclosed pursuant to a requirement of a government agency or law but only after Purchaser provides



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prompt notice to Resource Material Handling and Recycling Inc. of such requirement and gives Resource Material Handling and Recycling Inc. the opportunity to challenge or limit the scope of the disclosure. (c) Purchaser further agrees not to use Resource Material Handling and Recycling Inc. Confidential Information except in the course of performing hereunder and will not use such Resource Material Handling and Recycling Inc.'s written request, Purchaser shall return, transfer or assign to Resource Material Handling and Recycling Inc. all Resource Material Handling and Recycling Inc. Confidential Information, including all Work Product, and all copies containing Resource Material Handling and Recycling Inc. Confidential Information.

**21. PATENT INDEMNITY.** In the event any product is made in accordance with drawings, samples or manufacturing specifications designated by Purchaser, Purchaser agrees to indemnify, defend and hold Resource Material Handling and Recycling Inc. harmless from any and all damages, costs and expenses (including attorney's fees) relating to any claim arising from or relating to the design, distribution, manufacture, marketing, sale, or use of the Product or arising from or relating to a claim that such Product furnished to Purchaser by Resource Material Handling and Recycling Inc. or the use thereof, infringes any claim of any patent, foreign or domestic, and Purchaser agrees at its own expense to undertake the defense of any suit against Resource Material Handling and Recycling Inc. brought upon such claim or claims.

**22. COMPLIANCE WITH LAWS.** Purchaser shall comply with all laws and regulations applicable to products, including but not limited to all applicable import and export laws and regulations. Purchaser shall provide all information requested by Resource Material Handling and Recycling Inc. relating to Resource Material Handling and Recycling Inc.'s voluntary or mandatory compliance with any law or regulation, and Purchaser shall indemnify Resource Material Handling and Recycling Inc. for any losses incurred by Resource Material Handling and Recycling Inc. arising from Purchaser's failure to provide the information requested by Resource Material Handling and Recycling Inc.

**23. LAW; VENUE; PERSONAL SERVICE.** All matters arising out of or relating to this agreement are governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Ohio. Any legal suit, action or proceeding arising out of or relating to these Terms and Conditions of Sale will be instituted in the federal or State courts located in the City of Cleveland, Ohio. Each party irrevocably submits to the exclusive jurisdiction of such courts in any the suit, action or proceeding.

**24. SEVERABILITY.** If individual provisions of these Terms and Conditions of Sale become void in whole or in part, the remaining provisions shall remain in full force and effect. The parties agree that such void provision will be deemed amended to achieve as nearly as possible the same economic effect as the original terms.

**25. WAIVERS; AMENDMENTS.** Waiver by Resource Material Handling and Recycling Inc. of any breach of these Terms and Conditions of Sale, or of any contract of which these terms and conditions are a part of, shall not be construed as a waiver of any other such breach. Resource Material Handling and Recycling Inc. may amend or modify these terms and conditions upon written notice to Purchaser.

**26. BANKRUPTCY:** Purchaser shall notify Resource Material Handling and Recycling Inc. in writing (i) upon the institution by or against Purchaser of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of Purchaser's debts, (ii) upon Purchaser making an assignment for the benefit of creditors, or (iii) upon Purchaser's dissolution or ceasing to do business.

**27. INDEPENDENT CONTRACTOR:** Resource Material Handling and Recycling Inc. is acting as an independent contractor under these Terms and Conditions of Sale. Neither party is, or shall be deemed for any purpose to be, an employee or agent of the other and neither party shall have the power or authority to bind the other party to any contract or obligation. Resource Material Handling and Recycling Inc. retains the right to perform work for others during the term of these Terms and Conditions of Sale.