

CLEVELAND WIRE CLOTH

TERMS & CONDITIONS OF SALE

(CWC SELLER)

1. **Definitions.** As used herein, the following terms have the meanings indicated.
 - “Buyer” means any customer receiving a Quote for Products.
 - “Buyer’s Property” means any tools, patterns, plans, drawings, designs, specifications materials, equipment or information furnished by Buyer, or which are or become Buyer’s property.
 - “Confidential Information” means any technical, commercial, or other proprietary information of Seller, including, without limitation, pricing, technical drawings or prints and/or part lists, which has been or will be disclosed, delivered, or made available, whether directly or indirectly, to Buyer.
 - “Goods” means any tangible part, system or component to be supplied by Seller.
 - “Intellectual Property Rights” means any patents, trademarks, copyrights, trade dress, trade secrets or similar rights.
 - “Products” means the Goods, Services and/or Software as described in a Quote.
 - “Quote” means the offer or proposal made by Seller to Buyer for the supply of Products.
 - “Seller” means The Cleveland Wire Cloth Company (“CWC”), including all divisions, subsidiaries and businesses selling Products under these Terms.
 - “Services” means any services to be provided by Seller.
 - “Special Tooling” means equipment acquired by Seller or otherwise owned by Seller necessary to manufacture Goods, including but not limited to tools, jigs, and fixtures.
 - “Terms” means the terms and conditions of this Offer of Sale.
2. **Terms.** All sales of Products by Seller will be governed by, and are expressly conditioned upon Buyer’s assent to, these Terms. These Terms are incorporated into any Quote provided by Seller to Buyer. Buyer’s order for any Products whether communicated to Seller verbally, in writing, by electronic data interface or other electronic commerce, shall constitute acceptance of these Terms. Seller objects to any contrary or additional terms or conditions of Buyer. Reference in Seller’s order acknowledgement to Buyer’s purchase order or purchase order number shall in no way constitute an acceptance of any of Buyer’s terms or conditions of purchase. Any Quote made by Seller to Buyer shall be considered a firm and definite offer and shall not be deemed to be otherwise despite any language on the face of the Quote. Seller reserves all rights to accept or reject any purported acceptance by Buyer to Seller’s Quote if such purported acceptance attempts to vary the terms of the Quote. If Seller ships Products after Buyer issues an acceptance to the Quote, any additional or different terms proposed by Buyer will not become part of the parties’ business relationship unless agreed to in a writing that is signed by an authorized representative of Seller, excluding email correspondence. If the transaction proceeds without such agreement on the part of Seller, the business relationship will be governed solely by these Terms and the specific terms in Seller’s Quote.
3. **Prices and Taxes.** The Products set forth in the Quote are offered for sale at the prices indicated in the Quote. Unless otherwise specifically stated in the Quote, prices are valid for thirty (30) days, unless indicated otherwise on the Quote and do not include any sales, use, or other taxes or duties. Seller reserves the right to modify prices for any reason and at any time by giving five (5) days prior written notice. Unless otherwise specified by Seller, all prices are F.C.A. Seller’s facility (INCOTERMS 2020). Any taxes, if any, will be shown on the order Confirmation or invoice. This also applies to tax exemptions or other circumstances affecting the existence of tax applicable to Buyer’s Quote, which may change between the time of placement of Buyer’s Quote and shipment or pickup.
4. **Payment.** All sales shall be made in U.S. dollars, unless specified otherwise on the Quote. All Sales are contingent upon credit approval and full payment for all purchases is due thirty (30) days from the date of invoice (or such date as may be specified in the Quote). Under any circumstances, Buyer may not withhold or suspend payment of any amounts due and payable as a deduction, set-off or recoupment of any amount, claim or dispute with Seller. Unpaid invoices beyond the specified payment date incur interest at the rate of 18% per annum or the maximum allowable rate under applicable law. A surcharge as stated on the Quote will be added to all credit card transactions. Seller reserves the right to require advance payment or provision of securities for first and subsequent deliveries if there is any doubt, in Seller’s sole determination, regarding the Buyer’s creditworthiness or for other business reasons. If the requested advance payment or securities are not provided to Seller’s satisfaction, Seller reserves the right to suspend performance or reject the purchase order, in whole or in part, without prejudice to Seller’s other rights or remedies, including the right to full compensation. Seller may revoke or shorten any payment periods previously granted in Seller’s sole determination. The rights and remedies herein reserved to Seller are cumulative and in addition to any other or further rights and remedies available at law or in equity. No waiver by Seller of any breach by Buyer of any provision of these terms will constitute a waiver by Seller of any other breach of such provision.

5. **Shipment; Delivery; Title and Risk of Loss.** All delivery dates are approximate, and Seller is not responsible for damages or additional costs resulting from any delay. All deliveries are subject to our ability to procure materials from our suppliers. Regardless of the manner of shipment, delivery occurs and title and risk of loss or damage pass to Buyer, upon placement of the Products with the carrier at Seller's facility. Unless otherwise agreed prior to shipment and for domestic delivery locations only, Seller will select and arrange, at Buyer's sole expense, the carrier and means of delivery. When Seller selects and arranges the carrier and means of delivery, freight and insurance costs for shipment to the designated delivery location will be prepaid by Seller and added as a separate line item to the invoice. Buyer shall be responsible for any additional shipping charges incurred by Seller due to Buyer's acts or omissions. Buyer shall not return or repackage any Products without the prior written authorization from Seller, and any return shall be at the sole cost and expense of Buyer.
6. **No 'Wrap' Agreements/No Authority to Bind.** Seller's clicking any buttons or any similar action, such as clicking "I Agree" or "Confirm," to utilize Buyer's software or webpage for the placement of orders, is NOT an agreement to Buyer's Terms and Conditions. **NO EMPLOYEE, AGENT OR REPRESENTATIVE OF SELLER HAS THE AUTHORITY TO BIND SELLER BY THE ACT OF CLICKING ANY BUTTON OR SIMILAR ACTION ON BUYER'S WEBSITE OR PORTAL.**
7. **Warranty.** **ALL PRODUCTS ARE SOLD AS-IS, WITH NO WARRANTIES OF ANY KIND.** As permitted by applicable law, except for an express written limited warranty signed by an authorized representative of Seller, Seller makes no other warranties, either in writing or orally, including on the CWC website or in any marketing brochure or promotional literature. **SUBJECT TO APPLICABLE LAW, SELLER SPECIFICALLY DISCLAIMS ALL OTHER IMPLIED WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THOSE RELATING TO DESIGN, NONINFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
8. **Claims; Commencement of Actions.** Buyer shall promptly inspect all Products upon receipt. No claims for shortages will be allowed unless reported to Seller within ten (10) days of delivery. Buyer shall notify Seller of any alleged breach of warranty within fifteen (15) days after the date the non-conformance is or should have been discovered by Buyer. Any claim or action against Seller based upon breach of contract or any other theory, including tort, negligence, or otherwise must be commenced within twelve (12) months from the date of the alleged breach or other alleged event, without regard to the date of discovery.
9. **LIMITATION OF LIABILITY.** **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANYONE CLAIMING THROUGH BUYER FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECULATIVE, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, LOSS OF PROFITS, LOSS OF USE, PENALTIES OR DEMURRAGE, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY, TORT OR ANY OTHER CAUSE OF ACTION, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S SOLE LIABILITY AND THE EXCLUSIVE REMEDY OF BUYER OR ANYONE CLAIMING THROUGH BUYER FOR ANY CAUSE OF ACTION ARISING IN CONNECTION WITH THE PRODUCTS, INCLUDING BUT NOT LIMITED TO, THE ADVICE OR RECOMMENDATION, PURCHASE, SHIPMENT, STORAGE, HANDLING, OR USE OF THE GOODS IS EXPRESSLY LIMITED TO, AT SELLER'S OPTION, REPAIR OR REPLACEMENT OF THE NON-CONFORMING PRODUCTS, RE-PERFORM THE SERVICES, OR REFUND THE PURCHASE PRICE PAID WITHIN A REASONABLE PERIOD OF TIME. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY BUYER EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCTS.**
10. **Service Disclaimer.** **BUYER ACKNOWLEDGES AND AGREES THAT ANY TECHNICAL OR OTHER ADVICE FURNISHED, OR RECOMMENDATIONS OR REFERRALS MADE, BY SELLER OR ITS REPRESENTATIVES ARE PROVIDED WITHOUT CHARGE AND ON AN "AS IS" BASIS. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING ANY SUCH RECOMMENDATIONS, REFERRALS, CONSULTATIONS OR ADVICE AND ACCEPTS NO LIABILITY ARISING THEREFROM, NOTWITHSTANDING ANY REPRESENTATIONS MADE BY SELLER OR ITS REPRESENTATIVES TO THE CONTRARY.**
11. **Confidential Information.** The Parties shall mutually maintain all non-public information relating to the goods and/or the purchase of goods from Seller in strict confidence and shall not disclose such information to any person, corporation, firm or entity except as required by law. The foregoing obligation shall be in addition to any confidentiality agreement executed by Buyer and Seller regarding the exchange of technical data or business information between the parties.

12. **Loss to Buyer's Property.** Buyer's Property will be considered obsolete and may be destroyed by Seller after two (2) consecutive years have elapsed without Buyer ordering the Products manufactured using Buyer's Property. Also, Seller shall not be responsible for any loss or damage to Buyer's Property while it is in Seller's possession or control.
13. **Special Tooling.** Seller may impose a tooling charge for any Special Tooling. Special Tooling shall be and remain Seller's property. In no event will Buyer acquire any interest in the Special Tooling, even if such Special Tooling has been specially converted or adapted for manufacture of Goods for Buyer and notwithstanding any charges paid by Buyer. Unless otherwise agreed, Seller has the right to alter, discard or otherwise dispose of any Special Tooling or other property owned by Seller in its sole determination at any time.
14. **Security Interest.** To secure payment of all sums due from Buyer, Seller retains a security interest in all Products delivered to Buyer and, Buyer's acceptance of these Terms is deemed to be a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect Seller's security interest.
15. **User Responsibility.** Buyer, through its own analysis and testing, is solely responsible for making the final selection of the Products and assuring that all performance, endurance, maintenance, safety and warning requirements of the application of the Products are met. Buyer must analyze all aspects of the application and follow applicable industry standards, specifications, and any technical information provided with the Quote or the Products. BUYER IS SOLELY RESPONSIBLE FOR THE DESIGN OF THE PRODUCTS AND DETERMINING THAT ANY SUCH DATA AND SPECIFICATIONS ARE SUITABLE AND SUFFICIENT FOR ALL APPLICATIONS AND REASONABLY FORESEEABLE USES OF THE PRODUCTS. In the event Buyer is not the end-user of the Products, Buyer will ensure such end-user complies with this paragraph.

16. Dispute Resolution.

- a) **Binding Arbitration.** Any and all disputes arising out of or related to Buyer's purchase or use of the Products, these Terms & Conditions, or the breach thereof other than intellectual property disputes ("**Non-IP Disputes**") shall be resolved exclusively by binding arbitration administered by the American Arbitration Association (AAA) except that Buyer may assert claims in small claims court in the county of Buyer's domicile or in Cleveland, Ohio. The AAA's Commercial Arbitration Rules and Mediation Procedures in effect at the time the arbitration is commenced shall govern such arbitrations, if Buyer is an individual consumer purchasing for non-commercial purposes, the AAA's Consumer Arbitration Rules, in effect at the time the arbitration is commenced shall govern such arbitrations. (A current version of these rules is available here: <https://www.adr.org/Rules> or by calling 1-800-778-7879. These rules may be amended from time to time.) Any dispute relating to the scope, applicability, validity, or enforceability of this arbitration agreement or the arbitrability of any dispute shall also be resolved by binding arbitration with the AAA. Buyer may initiate arbitration by utilizing the forms available on www.adr.org. As permitted by applicable law, Buyer and Seller are each giving up the right to have disputes resolved in court before a judge and/or jury (except as stated otherwise in this section).

Any arbitration hearing will be conducted in Cleveland, Ohio by a single arbitrator or as otherwise provided by the Commercial Arbitration Rules, if applicable. The award of the arbitrator will be final and binding on the parties, and judgment upon such award may be entered in any court of competent jurisdiction. More information about the arbitration process is available at www.adr.org. This provision constitutes Buyer and Seller's written agreement for resolving disputes, including the agreement to arbitrate Disputes under the Federal Arbitration Act ("**Dispute Agreement**"), and is governed by the Federal Arbitration Act. If Buyer is a consumer, the Consumer Arbitration Rules shall apply or Buyer may opt-out of mandatory arbitration for each applicable Product sale transaction by sending us written notice (as set forth in Section 18(e)) with a copy of the purchase confirmation and a request to opt-out of arbitration for that transaction within five (5) business days of receipt of the purchase confirmation.

- b) **Applicable Law in Arbitration.** Claims arising under federal law shall be determined in accordance with federal law. Claims arising under state law shall be decided in accordance with Ohio substantive laws, without regard to conflict-of-laws principles.
- c) **Confidentiality.** Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration without the prior written consent of both parties, unless to protect or pursue a legal right.

- d) Arbitration Fees and Costs. If Buyer, is a consumer and submits specific and individualized evidence that arbitration costs are unduly burdensome and the arbitrator determines that arbitration costs would be unduly burdensome to Buyer, Seller shall be responsible for the arbitrator's fees and arbitration expenses and any other costs unique to the arbitration hearing. The aforementioned provision shall to non-consumer Buyers. Each party shall pay its own deposition, witness, expert, and attorneys' fees and other expenses to the same extent as if the matter were being heard in court. However, if any party prevails on a statutory claim that affords the prevailing party attorneys' fees and costs, or if there is a written agreement providing for attorneys' fees and costs to be awarded to the prevailing party, the Arbitrator may award reasonable attorneys' fees in accordance with the applicable statute or written agreement. The Arbitrator shall resolve any dispute as to the reasonableness of any fees or costs awarded under this paragraph.
- e) Class Action Waiver. Notwithstanding any AAA rules to the contrary, the parties agree to arbitrate Non-IP Disputes solely on an individual basis. This agreement does not permit class arbitration. The arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding.
- f) Waiver of Jury Trial and Appellate Review. The parties understand and fully agree that by entering into this agreement to arbitrate, they are giving up their constitutional right to have a trial by jury in connection with any Non-IP Dispute, and they are giving up their normal rights of appeal following the rendering of the arbitrator's award, except as applicable law provides for judicial review of arbitration proceedings.
- g) Litigation of Intellectual Property Disputes. Buyer and Seller may seek injunctive or other relief in any state, federal, or national court of competent jurisdiction regarding any intellectual property dispute between the parties. Buyer hereby irrevocably consents to jurisdiction and venue of the State and Federal courts of the State of Ohio with respect to any such injunctive or other relief. The parties acknowledge that their respective rights in their intellectual property are of a special, unique, extraordinary character, giving those rights peculiar value, the unauthorized use, disclosure, or loss of which cannot be readily estimated and may not be adequately compensated for in monetary damages.

17. **Use of Products, Indemnity by Buyer.** Buyer shall indemnify, defend, and hold Seller harmless from any losses, claims, liabilities, damages, lawsuits, judgments and costs (including attorney fees and defense costs), whether for personal injury, property damage, intellectual property infringement or any other claim, arising out of or in connection with: (a) improper selection, design, specification, application, or any misuse of Products; (b) any act or omission, negligent or otherwise, of Buyer; (c) Seller's use of Buyer's Property; (d) damage to the Products from an external cause, repair or attempted repair by anyone other than Seller, failure to follow instructions, guides and specifications provided by Seller, use with goods not provided by Seller, or opening, modifying, deconstructing, tampering with or repackaging the Products; or (e) Buyer's failure to comply with these Terms, including any legal or administrative proceedings, collection efforts, or other actions arising from or relating to such failure to comply. Seller shall not indemnify Buyer under any circumstance except as otherwise provided in these Terms.

18. **Communications and Notices.**

- a. Customer Service and Notices. Customer Service can be contacted at sales@wirecloth.com or 1-800-31-3234. Legal notices must be delivered to Seller by Buyer as set forth in subsection (e) below and not to our customer service representatives. Seller may provide notice to Buyer under these Terms by any reasonable method, which Buyer agrees includes: (a) sending an email to Buyer or (b) with respect to any prospective changes to these Terms to CWC website.
- b. Telephone Communications. Buyer's telephone communications with Seller, including calls or online chat functionality with any of our other customer service providers or independent contractors, may be monitored and/or recorded. Buyer expressly consents, on behalf of itself and other users of Buyer's phone number, to being monitored or recorded. By providing Seller with a mobile or other phone number as part of Buyer's online activity with the CWC website or during a service call, Buyer expressly authorizes Seller to contact Buyer regarding its account for non-telemarketing communications, via text message or telephone, including the use of prerecorded or auto-dialed calls, using that number.
- c. Email Communications. Buyer agrees that Seller may send emails to Buyer using an e-mail address that Buyer supplied or was address used to receive a Quote or place an order for Products. Notices sent by e-mail will be effective when Seller sends the e-mail and notices Seller provides by posting will be effective upon posting. It is Buyer's responsibility to keep its e-mail address current. Seller assumes no responsibility for issues resulting from e-mail notification failures.

- d. Mail Delivery. Buyer may provide notice to Seller under these Terms by personal delivery, overnight courier or registered or certified mail to Controller, 3573 East 78th Street, Cleveland OH 44105. Seller may update the address for notices by posting a notice on the CWC Website. Notices provided by personal delivery will be effective upon receipt by us. Notices provided by overnight courier will be effective one business day after they are sent. Notices provided by registered or certified mail will be effective three business days after they are sent.
19. **Compliance With Laws.** Buyer agrees to comply with all applicable laws, rules and regulations, including, without limitation, all, laws, rules and regulations, including use and sales restrictions, in any way relating to Buyer's purchase, ownership, transportation, receipt, handling, storage, processing, alteration, use, application, and disposal of the Products once the Products have been shipped or picked up by Seller or Seller has otherwise accepted delivery of the Products.
20. **Cancellations.** Buyer may not cancel or modify, including but not limited to movement of delivery dates for the Products, any order for any reason except with Seller's written consent and upon terms that will indemnify, defend and hold Seller harmless against all direct, incidental and consequential loss or damage and any additional expense.
21. **Assignment.** Buyer may not assign its rights or obligations without the prior written consent of Seller.
22. **Government Contracts.** If the Products purchased by Buyer are to be used in the performance of a government contract or subcontract, no government requirements or regulations will be binding on Seller unless specifically agreed to by our authorized representative in writing.
23. **Force Majeure.** Seller is not liable for delay or failure to perform any of its obligations by reason of any events or circumstances beyond its reasonable control. Such circumstances include without limitation: accidents, labor disputes or stoppages, government acts or orders, acts of nature, pandemics, epidemics, other widespread illness, or public health emergency, cyber related disruptions, cyber-attacks, ransomware sabotage, delays or failures in delivery from carriers or suppliers, shortages of materials, sudden increases in the price of raw material or components, shutdowns or slowdowns affecting the supply of raw materials or components, or the transportation thereof, oil shortages or oil price increases, energy crisis, energy or fuel interruption, war (whether declared or not) or the serious threat of same, riots, rebellions, acts of terrorism, embargoes, fire or any reason whether similar to the foregoing or otherwise. Seller will resume performance as soon as practicable after the event of force majeure has been removed. All delivery dates affected by an event of force majeure shall be tolled for the duration of such event of force majeure and rescheduled for mutually agreed dates as soon as practicable after the event of force majeure ceases to exist. The right to allocate capacity is in the Seller's sole discretion. An event of force majeure shall not include financial distress, insolvency, bankruptcy, or other similar conditions affecting one of the parties, affiliates and/or subcontractors. An event of force majeure in the meaning of these Terms means any circumstances beyond Seller's control that permanently or temporarily hinders performance, even where that circumstance was already foreseen. Buyer shall not be entitled to cancel any orders following its claim of an event of force majeure.
24. **Waiver and Severability.** Failure to enforce any provision of these Terms will not invalidate that provision; nor will any such failure prejudice either party's right to enforce that provision in the future. Invalidation of any provision of these Terms shall not invalidate any other provision herein and, the remaining provisions will remain in full force and effect.
25. **Duration.** Unless otherwise stated in the Quote, any agreement governed by or arising from these Terms shall: (a) be for an initial duration of one (1) year; and (b) shall automatically renew for successive one-year terms unless terminated by Buyer with at least 180-days written notice to Seller or if Seller terminates the agreement pursuant to Section 20 of these Terms.
26. **Termination.** Seller may, without liability to Buyer, terminate any agreement governed by or arising from these Terms for any reason and at any time by giving Buyer thirty (30) days prior written notice. Seller may immediately terminate, in writing, if Buyer: (a) breaches any provision of these Terms, (b) becomes or is deemed insolvent, (c) appoints or has appointed a trustee, receiver or custodian for all or any part of Buyer's property, (d) files a petition for relief in bankruptcy on its own behalf, or one is filed against Buyer by a third party, (e) makes an assignment for the benefit of creditors; or (f) dissolves its business or liquidates all or a majority of its assets.
27. **Governing Law.** These Terms, the terms of any Quote, and the sale and delivery of all Products constitute a written agreement executed by both Buyer and Seller under applicable law. These Terms shall be governed by the laws of the State of Ohio, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this

Agreement to the substantive law of another jurisdiction. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

28. **Entire Agreement.** These Terms, along with the terms set forth in the Quote, forms the entire agreement between the Buyer and Seller and constitutes the final, complete and exclusive expression of the terms of sale and purchase. In the event of a conflict between any term set forth in the Quote and these Terms, the terms set forth in the Quote shall prevail. All prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter shall have no effect. No modification to these Terms will be binding on Seller unless agreed to in a writing that is signed by an authorized representative of Seller, excluding email correspondence, 'clickwrap' or other purported electronic assent to different or additional terms. Sections 2-28 of these Terms shall survive termination or cancellation of any agreement governed by or arising from these Terms.