



W.S. TYLER INDUSTRIAL GROUP

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale ("Terms and Conditions") of W.S. Tyler™, a Division of Haver Tyler, Inc. ("Seller") shall govern and apply to the sale of any of Seller's products to any buyer ("Buyer") described in any order, order form, electronic order, purchase order, order acknowledgement, invoice, agreement or contract (each, the "Order"), and shall be incorporated by reference into such Order.
2. Seller warrants solely to Buyer that at the time of shipment, the product covered by these Terms and Conditions meet Seller's published specifications, if any, or other agreed upon specifications. THE ABOVE WARRANTIES ARE GIVEN SOLELY TO BUYER AND ARE IN LIEU OF ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED. SELLER DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller's liability under the Order shall be limited to the obligation to repair or replace products proven to have failed to meet the specifications set forth in the Order or to have been defective in quality or workmanship at the time of delivery. Seller's total cumulative liability in any way arising from or pertaining to any product sold under the Order shall not in any case exceed the purchase price paid by the Buyer for such product. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, CLAIMS FOR LABOR, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT, ORDER, OR THESE TERMS AND CONDITIONS.
3. All amounts payable pursuant to the Order shall be paid in cash, or in negotiable paper collectable at its face value. In United States funds at the location indicated on Seller's invoice. Should Seller at any time determine not to ship on the terms of payment stated in the Order, Seller may change the terms of payment and/or require prepayment as a condition of shipment, and will so notify the Buyer.
4. If the present or future interpretation or the future imposition of any law, governmental decree, order, regulation, or ruling under any existing or future legislation shall prevent Seller from increasing the price or revising the price as provided to Buyer in the order, or shall nullify or reduce said price specified to Buyer in the Order, Seller and Buyer shall promptly meet to determine if mutually agreeable changes can be made to the price to cause it to conform with such law, decree, order, regulation, or ruling. If mutually agreeable changes can not be effected within thirty (30) days after such meeting. Seller thereupon shall have the right to terminate the Order by written notice of such termination to Buyer.
5. If Seller is required to pay federal, state, local or other taxes, excises or charges, or increases thereof upon the production, sale or transportation of the products sold pursuant to the Order not now included in the price specified therein, Buyer shall reimburse Seller for the same.
6. Title to and risk of loss of all product sold pursuant to the Order shall pass to Buyer upon Seller's delivery to carrier at point of shipment whether or not Seller pays all or any part of the freight, Buyer must give Seller written notice of any claim of breach of warranty within 10 days after the occurrence of the event upon which such claim is founded; the failure of Buyer to give such written notice shall be a waiver of all claims.
7. Buyer assumes all risks and liability for results arising out of unloading storage, handling and use of the product, or arising out of compliance or non-compliance with federal, state, municipal or local laws and regulations with reference thereto.
8. Unless product sold pursuant to the Order fails to meet the express warranties not, forth in paragraph two (2) above, Buyer shall indemnify, defend and hold Seller harmless from all costs, expenses, damages, judgments or other loss, including costs of investigation, litigation and reasonable attorney's fees, arising out of Buyer's selection, installation, use, sale and further processing of the product sold pursuant to the Order.
9. Either party shall be relieved from liability, hereunder for failure to perform any of the obligations herein imposed, except the obligation to pay for the product already delivered, for the time and to the extent of such failure to perform, if Buyer's failure to take, use or consume, or Seller's failure to make deliver or fulfill the Order, is occasioned by any cause or causes of any kind or character reasonable beyond the control of the party failing to perform (any such cause herein called "force majeure") including, without limitation: (!) Acts of God, fire, explosion, flood, hurricanes; (2) Strikes, lockouts or other industrial disturbances or riots; (3) War, declared or undeclared; (4) Compliance with any Federal, State, Municipal or Military law, regulation, order, or rule, foreign or domestic, including priority, rationing, allocation or pre-emption orders or regulations, or cancellation of Seller's or Buyer's license to operate its plant; (5) Shortage or breakdown or other failure of facilities used for manufacture or transportation, shortage of labor, power, fuel or raw materials; or (6) total or partial shutdown due to Seller's normal plant turnaround. In the event of either party being rendered unable by force majeure to carry out its obligations under the Order, other than to make payments due thereunder, such party shall give notice and full particulars including the expected duration of such force majeure in writing and upon the giving of such notice the obligations of the party giving such notice, so far as they are affected by such force majeure shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall be so far as possible remedied with all reasonable dispatch. Upon the cessation of the cause or causes for any such failure or delay, performance thereof shall be resumed, but such delay shall not, except by mutual agreement, operate to extend the term of any agreement or obligate the Seller to make up deliveries or Buyer to purchase quantities so missed. It is understood and agreed that the settlement of strikes or lockouts involving the parties hereto shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the employees involved, when such course is inadvisable in the discretion of the party having the difficulty.
10. Seller may distribute its supply of raw materials and/or finished goods among itself, for its own manufacturing uses, its customers and Buyer in such manner as Seller deems practicable. Buyer agrees to accept, as full and complete performance by Seller, deliveries in accordance with such determination as Seller may make. In no event shall Seller be required to purchase material or product from third persons in the event Seller invokes one of the above mentioned clauses, nor will Seller be liable for any cost increases suffered by Buyer in purchasing product from a third party.
11. The waiver by Seller of a breach of any provision of these Terms and Conditions by Buyer shall not operate or be construed as a waiver of any subsequent breach by Buyer. These Terms and Conditions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.
12. Any terms and conditions of any purchaser order or other instrument issued by Buyer in connection with the subject matter of any Order, which are in addition to or inconsistent with the Terms and Conditions expressed herein, will not be binding upon Seller in any manner whatsoever unless accepted by Seller in writing.
13. These Terms and Conditions shall be governed by, and construed and enforced in accordance with the laws of the State of Ohio. If any clause or provision of these Terms and Conditions shall be held in violation of applicable law, or otherwise invalid or unenforceable, these Terms and Conditions shall be interpreted as if such provisions were limited to the extent legally permitted or, if such a clause or provisions shall be prohibited in its entirety, it shall be null and void and these Terms and Conditions as so modified shall remain in full force and effect. Buyer and Seller specifically agree that any legal actions brought relating to the Order will be brought and tried in the federal or state courts located in Cuyahoga County, Ohio.

Quality • Service • Value

8570 Tyler Blvd. • Mentor Ohio 44060 • 800-321-6188 • 440-974-1047 • fax 440-974-0921 • www.wstyler.com