

## **THOGUS PRODUCTS COMPANY - TERMS AND CONDITIONS (FITTINGS)**

**I. Acceptance.** No terms and conditions other than the terms and conditions contained herein (the "Agreement") shall be binding upon Seller unless accepted by it in a writing signed by Seller. All terms and conditions contained in any other oral or written communication which are different from or in addition to the terms and conditions herein are hereby rejected and this document is the complete and exclusive statement of the terms, save for purchase orders submitted by Buyer for the purchase of the fittings contemplated by this Agreement (the "Products") which are consistent with this document and which are accepted by Seller (a "PO"). All sales of Products by Seller to Buyer are made expressly subject to these terms and conditions.

**II. Price and Payment.** Unless otherwise agreed to in writing by Seller, all orders of the Products are subject to a fifty dollar (\$50) minimum. Terms are C.O.D. unless otherwise noted. Seller reserves the right at any time to suspend, limit or otherwise modify the terms of such credit whenever, in Seller's opinion, Buyer's financial condition so warrants (including requiring Buyer to make cash payment or provide other security prior to or upon tender by Seller of delivery of Products). A monthly charge of one and one half percent (1.5%) (or the highest rate allowed under applicable law) on all sums outstanding will be added to each past due amount and Seller shall be entitled to all costs of collection (including reasonable attorneys' fees). Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties, and all taxes including, but not limited to, federal, state, provincial and local sales, excise value added goods and services taxes and any other taxes.

**III. Shipment/Inspection.** Subject to any contrary terms contained in a PO which are expressly accepted by Seller, all Products are shipped F.O.B. Seller's facility and Buyer shall be responsible for arranging for and paying the carrier. Delivery schedules stipulated in any quotation ("Quotation") are approximate only and shipment will be made within reasonable proximity thereto. Under no circumstances will the Seller be responsible for any damage whatsoever caused by delays in shipment, whether resulting from causes within or beyond the control of the Seller. Risk of loss and title shall pass to Buyer upon delivery to Buyer's carrier. The cost of any special packing or handling required by Buyer or the nature of the Products shall be borne by Buyer. Claims for damage, shortage or errors in shipping must be reported within two (2) days following delivery to Buyer. Buyer shall have ten (10) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such Products. After such ten (10) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the Products for any reason or to revoke acceptance. Buyer hereby agrees that such period is a reasonable amount of time for such inspection. Buyer shall have no right to order any change or modification to any PO or otherwise cancel any PO without Seller's written consent and payment to Seller of a restocking fee equal to twenty percent (20%) of the price of any returned Products and all charges, expenses and reasonable profits owed to or incurred by Seller. Buyer is responsible for the costs of packing, handling, and shipping any returned Products. Any returned Products that are not in their original unused and resalable condition will be disposed of with no credit issued, or returned to Buyer at its expense. Seller will not accept any returns of partial shipments. All refunds will be issued in the form of credit with Seller which shall expire one (1) year from issuance. Buyer agrees that Seller may overship Products in any delivery in an amount not to exceed five percent (5%) of the total order quantity without penalty and with the right to bill for the entirety of such order.

**IV. Representations.** Buyer represents and warrants that the marketing, sale, distribution and use of the Products by Buyer comply and will comply with applicable laws and regulations.

**V. Warranty.** Seller, as its exclusive warranty, hereby warrants that the Products shall conform to the Seller's standard specifications for the Products as they exist from time to time (the "Warranty"). Any claims that the Products fail to conform to the Warranty shall be made by Buyer to Seller in writing immediately upon discovery of such non-conformity, but no event longer than three (3) months after delivery, at which time the Warranty terminates. OTHER THAN THE WARRANTIES

EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCTS, AND BUYER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Warranty applies only to the extent that any nonconforming Products have been properly handled, used, installed and/or maintained. Seller recommends that Buyer independently test the Products to determine suitability for the intended use and of any materials used in the manufacture of the Products (and Buyer is not relying upon Seller to determine said suitability). Seller makes no representations or warranties as to pressure tolerances or the chemical resistance of any Product, except as expressly set forth in the specifications. Seller is not responsible for any damages or defects directly or indirectly resulting from the failure to use hose clamps.

**VI. Limitation of Liability.** In the event that it is determined that the Warranty has been breached, the liability of Seller and the remedies available to Buyer will be limited to the repair or replacement of the Product by Seller or the return of the purchase price of such Product, as determined by Seller in its sole discretion. SUBJECT TO THE FOREGOING LIMITATIONS, SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS OR ANY SERVICE PROVIDED BY IT TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT. IN ADDITION, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES AND/OR PRODUCT(S), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**VII. Indemnification.** Subject to the limitations on liability set forth in Section VI, the parties shall indemnify and hold each other and their respective affiliates, shareholders, members, directors, officers, employees and agents ("Indemnified Parties") harmless from and against any loss, liability, damage or expense, including reasonable attorneys' fees ("Losses"), such parties may incur as a result or, arising out of or by reason of any breach, misrepresentation or nonfulfillment on the part of such party of this Agreement. Buyer shall further hold Seller Indemnified Parties harmless from and against Losses resulting from or relating to Buyer's or its customers' use, marketing, distribution or sale of the Products.

**VIII. Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters, including, but not limited to, matters of validity, construction, effect and performance. The parties hereby irrevocably consent to the exclusive jurisdiction of the courts of the State of Ohio in Cuyahoga County, and the United States District Court for the Northern District of Ohio, Eastern Division, and waive any contention that any such court is an improper venue for enforceability of this Agreement. The failure of Seller to insist upon performance of any provision or to exercise any right or privilege granted to Seller in this Agreement shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions hereof shall not affect the validity of the remaining terms or provisions, and this Agreement shall be construed as if such invalid terms or provisions had been omitted. Neither party shall be in default of its obligations hereunder to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages.