



## Terms and Conditions

The following terms and conditions govern the sale of goods of Baerlocher Production USA, LLC ("Seller"), whether made pursuant to oral or written orders to its representatives or salesmen. Seller hereby gives notice of its objection to any different or additional terms or conditions except for any such terms and conditions as may be expressly accepted by Seller in writing. Unless different or additional terms and conditions are accepted in writing, the terms and conditions stated below shall apply, and such terms and conditions supersede any prior or contemporaneous agreement or correspondence between the parties.

**WARRANTY AND EXCLUSIVE REMEDY.** Upon receipt of shipment, Buyer shall immediately inspect the goods. Any claim for defects or for any reason whatsoever must be communicated to Seller in writing within 10 business days of receipt of shipment. Unless Buyer provides Baerlocher with such notice, goods shall be deemed finally inspected and accepted by Buyer. Buyer's sole and exclusive remedy against Seller for nonconforming goods will be for the furnishing of replacement goods (F.O.B. Seller) or for a refund of the purchase price attributable to the nonconforming goods. The choice of the particular remedy specified above will be at the sole discretion of Seller. THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE).

**LIMITATION OF LIABILITY.** SELLER SHALL NOT BE LIABLE TO THE BUYER, ITS EMPLOYEES, AGENTS, CUSTOMERS OR TO ANY THIRD PARTY FOR ANY CLAIM, LOSS OR DAMAGES, GENERAL OR SPECIAL, INCIDENTAL OR CONSEQUENTIAL, INCLUDING BUT NOT LIMITED TO DEATH, PERSONAL INJURY, PROPERTY DAMAGE, LOST SALES OR LOST PROFITS, WHICH IN ANY WAY ARISE OUT OF OR IN CONNECTION WITH THE SALE OF THE GOODS OR THE USE OR NONUSE OF SUCH GOODS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

**DELIVERY AND RISK OF LOSS.** Title and risk of loss or damage in transit shall pass from Seller to Buyer at delivery, and delivery shall be deemed to occur upon transfer of possession to the first common carrier or Buyer's representative at the delivery point whichever occurs first per applicable shipping terms.

### **PRODUCT QUALITY AND SPECIFICATIONS**

The quality of goods is exclusively determined by Baerlocher's product specifications. Any specifications required by Buyer going beyond Baerlocher's product specifications must be agreed to by both parties in writing.

**RETURN POLICY.** Seller reserves the right to impose a 25 percent restocking fee and all applicable freight charges for any goods returned by Buyer. Seller further reserves the right to inspect and approve any and all goods returned. No refunds or replacements shall be granted until alleged defects are established to Seller's reasonable satisfaction by tests and inspections to be promptly performed by Seller. All returns must be accompanied by the Buyer's copy of the original invoice.

**PRICES.** Published prices and quoted prices, unless otherwise specified, are subject to change without notice. Unless otherwise expressly stated, all price quotations and invoices are in U.S. Dollars. All price quotations refer to full pallet quantities. Orders of quantities which are less than full pallets will be subject to a minimum per pound price as set forth in a separate price quote from Seller. Prices quoted are firm for thirty (30) days from the date of order. If shipment of goods extends beyond thirty (30) days from the date of order, the prices will be adjusted to those in effect at the time of such shipment.

**TAXES.** The price does not include any federal, state, or local property, license, privilege, sales, use, excise, gross receipts, value added or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon, or with respect to the transaction, the goods, their sale, their value or their use or

any services performed in connection therewith. Such taxes are for the account of Buyer and Buyer agrees to pay or reimburse any such taxes which Seller, its contractors or suppliers are required to pay.

**TERMS OF PAYMENT.** Terms of payment are net thirty (30) days for all goods shipped to Buyer, or to some other party on behalf of Buyer. Any payments by Credit Card will be subject to a 3 percent convenience fee which will be added to the total invoice at time of payment.

**DELAYED PAYMENTS.** If payments are not made in accordance with these terms, a service charge will, without prejudice to the right of Seller to receive immediate payment, be added to the account of Buyer in the amount equal to the lower of 1.5% per month or a fraction thereof or the highest legal rate on the unpaid balance.

**LIEN RIGHTS.** Seller shall have the right and privilege to assert a lien against the specific goods subject to this order at any time after delivery and prior to the time Seller has received full payment for the goods, and Buyer covenants and warrants that Buyer shall not encumber said goods or suffer any lien by any other person until Seller has been fully paid.

**SHIPPING DATES.** Unless otherwise stated in writing by Seller, shipping dates are approximate and are based on prompt receipt of all necessary information and approvals from Seller. Unless Buyer stipulates on its order that an earlier shipment is not permissible, Seller reserves the right to ship prior to the contract shipping date.

**ASSIGNMENT - DELEGATION.** No right or interest in this order shall be assigned by Buyer without the written permission of Seller, and no delegation of any obligation owed, or of the performance of any obligation by Buyer shall be made without the written permission of Seller. Any attempted assignment or delegation by Buyer shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

**FORCE MAJEURE.** Seller shall not be liable for failure to perform or for delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority, riot, embargo, fuel or energy shortage, car shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities from usual sources, or due to any causes beyond its reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

**APPLICABLE LAW: JURISDICTION.** The agreement to which these terms and conditions are applicable shall be governed by the laws of the State of Ohio. Buyer and Seller hereby submit to jurisdiction in the State of Ohio in connection with any claim, action or proceeding arising pursuant to or relating to this agreement. Buyer and Seller hereby designate the Court of Common Pleas of Hamilton County, Ohio as the court of proper jurisdiction for any actions or proceedings relating to this agreement and all agreements executed pursuant hereto, hereby irrevocably consent to such designation, jurisdiction and venue and hereby waive any objections or defenses relating to jurisdiction or venue with respect to any action or proceedings initiated in the Court of Common Pleas of Hamilton County, Ohio.