

EXCLUSIVE TERMS AND CONDITIONS OF SALE

Products ("Product(s)") are offered by ProFusion Industries, LLC ("ProFusion") only on the following terms and conditions and only to those customers to whom ProFusion has directly mailed a Price List or quotation ("Customer"). POSSESSION OF A PRICE LIST OR QUOTATION BY OTHERS DOES NOT CONSTITUTE AN OFFER TO SELL PRODUCTS TO SUCH PARTIES. ALL PRODUCTS SOLD BY PROFUSION SHALL BE EXPRESSLY CONDITIONAL ON AND SUBJECT TO THE TERMS AND CONDITIONS SET FORTH HEREIN. TERMS IN ADDITION TO OR DIFFERENT FROM THOSE SET FORTH HEREIN ARE OBJECTED TO HEREBY AND SHALL NOT BE BINDING ON PROFUSION UNLESS SPECIFICALLY AND EXPRESSLY AGREED TO IN A SINGLE WRITING SIGNED BY THE PRESIDENT OF PROFUSION, OR BY THE GENERAL MANAGER OF THE DIVISION RESPONSIBLE FOR MANUFACTURE OF THE PRODUCTS, AND CUSTOMER. ALL SALES ARE SUBJECT TO PROFUSION'S MANAGEMENT'S REVIEW AND APPROVAL OF CREDIT AND FINANCE MATTERS. Any down payments or advances received from Customer are accepted by ProFusion subject to the foregoing rights and approvals, and any such down payments or advances will be refunded without interest if approval is not granted. Customer may cancel an order only upon notice in writing and payment to us of reasonable cancellation charges determined by us.

PAYMENT AND SHIPPING TERMS

All terms are net 30 days from date of shipment as indicated in ProFusion's invoice, F.O.B. shipping point. Title and risk of loss shall pass to Customer upon delivery to the common carrier. All shipments will be made to those locations specified in Customer's purchase order or telephone order. Delivery is subject to availability and lead times required by ProFusion's production schedule.

PRICES

All prices quoted on a Price List or Quotation are subject to change by ProFusion without notice. The prices quoted herein do not include any taxes or duties (including without limitation any sales taxes on the Product(s) or freight) or any handling, rigging, uncrating, storage, or other charges incidental to shipment, delivery, storage, or use of the Product(s). **ALL PRICES ARE SUBJECT TO ADJUSTMENT TO COMPENSATE FOR ANY INCREASE IN RAW MATERIAL COSTS OR ANY TAXES OR LEVIES EFFECTIVE THROUGH THE DATE OF SHIPMENT OF ANY PRODUCTS SOLD HEREUNDER.**

CREDIT TERMS

ProFusion may establish and change the credit and payment terms extended to Customer when in ProFusion's sole opinion Customer's financial or previous payment record warrants such action, and Customer's order of Products hereunder constitutes an agreement to honor the credit and payment terms so established or changed. Customer will provide promptly upon request such financial information as may be reasonably required by ProFusion to complete its credit review of Customer.

DEFAULT

Security interest and right of possession to the Products sold hereunder shall remain with ProFusion until all payments hereunder (including deferred payments whether evidenced by notes or otherwise) shall have been made in full in cash, and Customer agrees to do all acts necessary to perfect and maintain such security right and title in ProFusion. If Customer does not pay any amount when due or does not meet any other obligation hereunder, then (in addition to any other remedies available at law or in equity) ProFusion may accelerate any balance due and require immediate payment thereof, may enter Customer's premises peacefully and remove the Product(s), may repossess the Product(s), and may resell the Product(s). The net proceeds of any such resale, after ProFusion's cost of repossessing, removing, transporting, reconditioning, storing, and reselling the Product(s), and all other associated costs, will be applied to the unpaid balance owed by Customer. Customer will remain liable for any deficiency which remains after such resale, and ProFusion will return to Customer all net proceeds in excess of Customer's unpaid balance. With respect to any delinquent payment(s), Customer will pay a finance charge at the rate of one and one-half percent (1-1/2%) per month, or at the maximum applicable lawful monthly rate of interest permitted by the laws of the state to which the Product(s) are shipped, if lower, computed from the date each delinquent payment or accelerated balance shall have become due. Furthermore, in any action initiated to enforce the terms and conditions hereof following Customer's default, ProFusion shall recover as part of its damages all costs, expenses, and attorney fees incurred in connection with any actions taken on account of such default.

WARRANTY

ProFusion warrants to Customer that the Products sold by ProFusion will be free from defects in materials and workmanship. The warranty for any Product commences on the date it is shipped and expires 12 months after such date.

In the event ProFusion determines that any Product supplied by ProFusion does not meet any warranty, ProFusion will replace each such Product under the following conditions:

- Customer shall have notified ProFusion in writing prior to the warranty expiration date and shall have received a written Returned Goods Authorization (RGA) from ProFusion referencing the Product(s) covered by warranty; and
- Customer shall have returned such Product(s) to ProFusion, referencing Customer's RGA, freight collect via common carrier specified by ProFusion (or freight prepaid and returned via any other carrier), within 30 days of the issuance of such RGA.

If ProFusion determines that a returned Product is covered under ProFusion's warranty and if such Product is received by ProFusion within 14 months of the date of shipment, then ProFusion shall replace the same at no additional cost to Customer. CUSTOMER ACKNOWLEDGES AND AGREES THAT ITS FAILURE TO FOLLOW THE WARRANTY CLAIM PROCEDURE SET FORTH ABOVE, INCLUDING, WITHOUT LIMITATION, THE PROCESS BY WHICH IT REPORTS ANY ALLEGED DEFECTS IN MATERIALS OR WORKMANSHIP AND OBTAINS ITS RGA FROM PROFUSION, SHALL CONSTITUTE A RELEASE AND WAIVER OF ALL WARRANTY OBLIGATIONS OF PROFUSION HEREUNDER.

This warranty is subject to the condition that Customer notifies ProFusion immediately in the event any Product at any time demonstrates any defect in materials or workmanship. This warranty is subject to the further condition that Customer does not store the Product(s) at temperatures exceeding 140°F.

Warranty coverage does not include any defect or performance deficiency which is the direct or indirect result, in whole or in part, of accident, abuse, misuse, vandalism, or other damage or alteration of the Product(s) by persons other than ProFusion employees, combining incompatible products, fires, floods, and other similar and dissimilar natural causes, damage, neglect, alteration, or any impairment of the Product(s) resulting from causes or conditions

not associated with ordinary storage, handling, installation, maintenance, service, or use, maintenance or service by any party other than Customer, or any acts, omissions, causes, or events beyond the control of ProFusion. Furthermore, warranty coverage does not extend to dimensional changes directly or indirectly caused by storage, handling, or processing the Product(s) under environmental conditions exceeding those recommended by ProFusion or generally accepted by the industry for the Product(s) or for any storage, handling, manufacturing, or fabrication process used by Customer involving the Product(s).

THE WARRANTIES SET FORTH ABOVE ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, EVEN IF SUCH PURPOSE IS KNOWN TO PROFUSION, WHETHER ARISING BY OPERATION OF LAW, TRADE USAGE, OR COURSE OF DEALING, AND ARE IN LIEU OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF PROFUSION. PROFUSION NEITHER ASSUMES (NOR HAS AUTHORIZED ANYONE TO ASSUME FOR IT) ANY OTHER WARRANTY OR LIABILITY IN CONNECTION WITH ITS PRODUCTS.

LIMITATION OF LIABILITY

CUSTOMER'S SOLE REMEDIES RELATING TO THE PRODUCTS ARE SET FORTH HEREIN. PROFUSION WILL HAVE NO LIABILITY FOR ANY CONSEQUENTIAL INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE, OR ANY OTHER DAMAGES OR CLAIMS OF ANY KIND, INCLUDING DAMAGES BY REASON OF ANY ACT OF OMISSION ARISING OUT OF OR IN CONNECTION WITH ITS PRODUCTS, OR THE SALE, DELIVERY, INSTALLATION, MAINTENANCE, OPERATION, PERFORMANCE, OR USE OF ITS PRODUCTS, INCLUDING BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, DAMAGES, EXPENSES, OR LOSSES INCURRED BY REASON OF LOSS OF USE, LOST REVENUES, LOST PROFITS, DAMAGE TO ASSOCIATED EQUIPMENT OR TO FACILITIES, COSTS OF CAPITAL, COSTS OF REMOVAL OR REINSTALLATION OF PRODUCTS, ANY LABOR COSTS, COSTS OF SUBSTITUTE PRODUCTS OR FACILITIES, COSTS OF REPLACEMENT PRODUCTS, COSTS ASSOCIATED WITH DOWN TIME, AND ANY SIMILAR AND DISSIMILAR DAMAGES, EXPENSES, OR LOSSES, WHETHER ANY SUCH LIABILITY IS BASED ON CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE. IN NO EVENT SHALL PROFUSION'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT(S) IDENTIFIED OR INVOLVED IN ANY DISPUTE.

RETURN OF GOODS

In the event Customer wishes to return any Product(s) supplied by ProFusion because of overstock, etc., Customer shall first notify ProFusion in writing and shall have received a written Return Goods Authorization (RGA) from ProFusion. Any RGA shall be valid for 30 days from the date of issuance. Returned Product(s) must be received within that 30-day period or the RGA is void. ProFusion's issuance of the RGA shall be subject to ProFusion's inspection of the Product(s) for resellability. In the event that the Product(s) are returned to ProFusion, (i) a 25% restocking fee shall be charged to Customer; (ii) any quantity discount extended to Customer shall be recalculated and the increased cost charged to Customer; and (iii) Customer shall pay the cost of shipping the Product(s) to ProFusion, including ProFusion's shipping costs if ProFusion paid for the Product(s) to be delivered to the Customer.

MISCELLANEOUS

ProFusion may change the construction, design, or configuration of the Product(s) without notice to Customer as long as the general function of the Products is not thereby altered.

Customer shall defend and indemnify ProFusion, its successors and assigns and each of their respective directors, officers and employees against any and all losses, claims, damages or expenses (including attorney's fees) alleged by a third party to the extent caused by (i) Customer's misuse of the Product(s), including any misuse that causes patent infringement or (ii) any claim that the Product(s), as customized in accordance with Customers instructions and/or specifications, infringes on the intellectual property rights of any third party.

Nonassignment - Any assignment of this order, or of any rights or obligations hereunder, by the customer, without the written consent of ProFusion shall be void.

These terms and conditions are to be interpreted under the laws of the State of Ohio without regard to that state's choice of law principles.

The invalidity or unenforceability of any provision hereof will not affect any other provision and all terms and conditions will be construed in all respects as if any invalid or unenforceable provision(s) were omitted. The failure of Customer or ProFusion at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. The waiver of any remedy with respect to any default will not be taken as a waiver of any remedy for any succeeding default. Unless otherwise provided herein, no limitation or restriction on the remedies available to either party is intended by these terms and conditions. Clerical errors are subject to correction.

Course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary practice or interpretation in matters involving the Product(s) or the design, sale, delivery, installation, use or maintenance of the Product(s) or of similar or dissimilar goods shall not serve as references in interpreting the terms and conditions hereof.

Notwithstanding any other provisions, and in addition to all other conditions and exclusions set forth, ProFusion will not be liable for any delay or default in performance caused by events beyond its control, including by way of example and not by way of limitation any acts of God, any acts of third parties, acts of Customer or any of Customer's employees, agents, or representatives, acts of civil or military authorities, fires, floods, and other similar and dissimilar natural causes, riots, wars, sabotage, vandalism, embargoes, labor disputes, strikes, lockouts, lack or shortage of transportation, labor, materials, supplies, fuel, or power, delays in receiving any permits or licenses, delays caused by any laws, regulations, proclamations, ordinances, or any government action or inaction, delays caused by contractors and subcontractors, or any other cause or condition beyond ProFusion's control. In the event of any such delay or default, the time for performance of obligations of ProFusion will be extended for a commercially reasonable period of time.

ProFusion reserves the right to allocate its available supplies among its customers on such basis as ProFusion may deem fair and practical under the circumstances without liability for any resulting failure of performance.

Customer's obligations hereunder are independent of any other obligations Customer may have under any other contract or account with any division of ProFusion. Customer will not exercise any right of offset in connection with any balances due under the terms and conditions hereof or under any other contract or account with ProFusion.