

STANDARD TERMS AND CONDITIONS

By acceptance of delivery of goods purchased by buyer ("Buyer", "you" or "your") from RALPH W. EARL CO., INC. (the "Company"), Buyer agrees to the following terms and conditions.

1. **Sale.** The Company agrees to sell to Buyer the products (the "Products") pursuant to the terms and conditions set forth in this Agreement (or as may be amended by the Company from time to time and published at (<http://www.rwearl.com/>) and at the prices mutually agreed to by the parties. This document supersedes all prior communications between Company and Buyer.

2. **Effect of Orders and Payment Terms.** Orders received by the Company for the purchase of any of the Products shall not bind the Company until accepted by the Company. To the extent that any communication or other action by the Company could be deemed an acceptance of an offer by Buyer, any acceptance by the Company is conditional upon assent by Buyer to all terms and conditions set forth herein. To the extent these Terms and Conditions are deemed an offer to sell the Products, this document expressly limits any acceptance to the terms and conditions set forth herein. No terms or conditions presented at any time to the Company that are different or additional to the terms and conditions set forth herein are accepted by the Company, and any and all such different or additional terms are hereby expressly rejected by the Company. Buyer cannot modify or alter the terms set forth herein without the prior written consent of the Company. Acceptance by Buyer of delivery of any Product shall be deemed acceptance of these terms and conditions.

3. **Delivery Terms.** Unless otherwise set forth in this Agreement, the Company shall deliver to Buyer the Products ordered by Buyer, FOB Company's manufacturing facility or warehouse as designated by Company from time to time, or such other location as is established by the Company from time to time.

4. **Payment Terms.** Unless otherwise agreed upon by the parties, Buyer shall pay invoices sent by the Company within thirty (30) days after the date of the invoice. Buyer shall have ten (10) days from the date of the invoice to dispute, in writing, any invoice amount. If an invoice amount is disputed by Buyer, Buyer shall pay the undisputed amount of the invoice in accordance with this paragraph 4.

5. **Credit.** The Company may extend credit to Buyer in the Company's sole discretion. In the event

that the Company extends credit to Buyer, the Company reserves the right to revoke, suspend or reduce Buyer's credit at its sole discretion and without prior notification to Buyer. The Company reserves the right to reject purchase orders and suspend shipment of goods in the event that Buyer reaches the maximum limit of its credit. Buyer agrees that title to all Products with right of repossession for default shall remain with the Company until the purchase price is paid in full.

6. **Liability of the Company After delivery.** All claims made by Buyer for Product shortages shall be made in writing by Buyer within ninety (90) days of receipt thereof. Claims made by Buyer for defective Products shall be made in writing by Buyer within ninety (90) days of inspection by Buyer thereof.

7. **Taxes.** Buyer shall be solely liable for the payment of all federal, state and/or local sales tax, use, excise or other governmental charge incurred as a result of the sales of Products under this Agreement. If Buyer claims an exemption from sales or use tax, Buyer shall be responsible for providing adequate proof and all necessary documentation to support Buyer's claim for exemption.

8. **Force Majeure.** Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement (a) if and to the extent that the default or delay is due to causes beyond the non-performing Party's reasonable control, such as fires, floods, earthquakes, acts of God, wars, riots, civil disorders, rebellions or revolutions, terrorism, or any similar cause beyond the reasonable control of such Party (a "Force Majeure Event"), (b) provided that the non-performing Party is without fault or negligence and the default or delay could not have been prevented by reasonable precautions, and (c) provided in all cases that the Force Majeure is a proximate cause of the claimed delay associated with this Agreement. The term "Force Majeure Event" shall not, however, mean or include any delay arising from or as a result of Buyer's financial difficulties. Notwithstanding any other term or condition of this Section, Force Majeure shall not provide an excuse for failure to make a payment when due.

9. **Compliance with Laws.** Buyer covenants that it is in compliance with and warrants that it shall comply with all applicable Federal, State and local laws, rulings, and regulations of the United States of America, including the Foreign Corrupt Practices

Act, 15 U.S.C. § 78 et seq. (the "FCPA"), and all laws and regulations of Buyer's place of performance, throughout the term of this Agreement.

10. Limitation of Liability. In no event shall the Company be liable for any special, incidental, indirect or consequential damages in connection with this Agreement, whether based on action or claim in contract, equity, indemnity, tort (including negligence), intended conduct, strict liability or otherwise, even if such damages are foreseeable. The liability of the Company arising out of this Agreement or otherwise shall be limited to the amount paid or payable for Products under this Agreement. Notwithstanding anything to the contrary in this Agreement, neither party excludes or limits its liability in respect of death or personal injury caused by the negligence of that party, or liability for fraudulent misrepresentation or such other liability which cannot under applicable law be excluded or limited by agreement.

11. Express Warranty. (a) The parties understand that in most cases, the Products or a portion of the Products are manufactured by a third party or third parties and are being resold by the Company to the Buyer. The Products may include a manufacturer's limited warranty. **THE MANUFACTURER'S WARRANTY, IF ANY, IS THE SOLE WARRANTY WITH REGARD TO THE PRODUCTS, SUBJECT TO ALL DISCLAIMERS AND LIMITATIONS PROVIDED BY THE MANUFACTURER.** Buyer shall rely only on the manufacturer's warranty and related remedies provided by the manufacturer, if any, in the event of loss of or damage to the Products.

(b) The Company warrants its own assembly, fabrication, or manufacturing of the Products to be free from defects in material and workmanship under normal use and service for a period of one (1) year from the date of delivery. This limited warranty extends only to Buyer. This limited warranty does not extend to any product of another manufacturer or to any part, component, accessory or attachment not manufactured by the Company. In no event does the Company warrant that the operation of Products will not be interrupted or error free.

(c) This warranty does not cover field labor charges for parts removal and replacement, adjustments, repairs, or other work, corrosion, electrolysis, mineral deposits or normal deterioration, misapplication, modification, or change in original operating conditions. This warranty also does not apply if the Product (a) has been altered by the

Buyer, (b) has not been installed, operated, repaired or maintained in accordance with instructions supplied by the Company, (c) has been subjected to abnormal or physical or electrical stress, misuse, negligence or accident, or (d) is used in ultra-hazardous activities.

(d) Subject to the terms of Section 11(c), the exclusive remedy for Buyer under this warranty is limited to the servicing, the adjustment, the repair or the replacement, at the option of the Company, of any Product (or part or parts of any Product) which, within one (1) year from the date of delivery, shall have been returned to the offices of the Company at no expense to the Company, in either its original package or a similar package affording an equal or greater degree of protection of the Product.

12. Warranty Disclaimer. EXCEPT AS PROVIDED IN SECTION 11, THE COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL COMPANY OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY. IN NO EVENT SHALL COMPANY OR ITS SUPPLIERS' LIABILITY TO BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE PRICE PAID BY BUYER. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE ABOVE-STATED WARRANTY FAILS ITS ESSENTIAL PURPOSE.

13. Assignment. Buyer shall not assign this Agreement or any part thereof without the prior written consent of the Company. The Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective executors, administrators, successors and permitted assigns

14. Governing law and disputes. This Agreement shall be governed by the laws of the state of New York. Any and all disputes of whatever nature arising out of this Agreement referenced herein, and which are not resolved between the Parties themselves, shall be submitted to a competent court in the state of New York. Both parties consent

to exclusive personal jurisdiction, subject matter jurisdiction and venue in the state of New York in the state and federal courts sitting in the County of Onondaga.

15. Non-waiver. No waiver by any Party of any breach by any other Party of any of its covenants, obligations and agreements hereunder shall be a waiver of any subsequent breach of any other covenant, obligation or agreement, nor shall any forbearance to seek a remedy for any breach be a waiver of any rights and remedies with respect to such or any subsequent breach.

16. Unenforceability of provisions. It is agreed that should any clause, condition or term, or any part thereof, contained in the Agreement be

unenforceable or prohibited by law or by any present or future governmental legislation, then such clause, condition, term or part thereof, shall be amended, and is hereby amended, so as to be in compliance with the said legislation or law but, if such clause, condition or term, or part thereof cannot be amended so as to be in compliance with any such legislation or law then such clause, condition, term or part thereof is severable from this agreement, and all the rest of the clauses, terms and conditions or parts thereof contained in this agreement shall remain unimpaired.

17. Counterparts. This Agreement may be executed in counterparts, including by electronic counterparts sent by facsimile or e-mail, each of which shall be deemed to be an original, but which together shall constitute one and the same instrument.