

## **Bossard North America, Inc. General terms and conditions**

### **1. General**

- 1.1 The following terms and conditions are binding upon any sales of any products sold by BOSSARD NORTH AMERICA, INC. (herein Seller) to any Customer (herein Purchaser) and shall be the exclusive basis of seller's sales unless Purchaser requests other purchasing terms that are agreed to in writing by Seller, otherwise the full content of the following general terms of sales shall bind Seller and Purchaser.
- 1.2 This contract and any payments to be made hereunder shall not be assigned or transferred by Purchaser without prior written approval by Seller.
- 1.3 Purchaser's agreement with the terms hereof to the exclusion of all others hereto or hereafter issued by Seller or Purchaser shall be sufficiently evidenced by Seller's acknowledgement of Purchaser's order or by Purchaser's acceptance of any Products sold with these terms and conditions.
- 1.4 This writing is the complete and final expression by the parties of their agreement, and of the terms thereof. No agent, employee or representative of Seller had, has or will have apparent authority to bind Seller contrary to the terms herein stated unless duly authorized by Seller.
- 1.5 Nothing herein can be modified or changed except by a writing signed by both Seller and Purchaser.
- 1.6 Any notice provided for herein shall be given in writing. Written notice under this contract shall be deemed to have been duly served when delivered in person to an officer of Seller, or if sent by registered mail or telegram to Seller at the address shown on the face hereof, or to Purchaser at the address shown on the face hereof to the attention of Purchaser.

### **2. Pricing**

- 2.1 Prices are subject to change with 30 days notice due to currency exchange rate fluctuations or any other changes in the market place. All shipments shall be invoiced at prices prevailing on date of shipment.
- 2.2 In addition to the charges specified on the invoice, purchaser shall pay all Federal, state local and foreign taxes and other charges now or hereafter imposed on or in connection with the sale or use of Products.

### **3. Shipping**

- 3.1 Unless otherwise agreed, quantities shipped are industry standard packaging units
- 3.2 In the absence of specific shipping instructions, Seller shall use it's discretion regarding means and routing of shipments.
- 3.3 Seller shall not be responsible for in-transit damage (including but not limited to rust and corrosion) or damage due to mishandling.

## 4. Delivery Commitment

- 4.1 The delivery time given is approximate. A delivery time shall be reckoned from the date Seller's written acknowledgement of Purchaser's order is dispatched. Delivery shall be considered to have taken place on time if, within the time of delivery specified on the face hereof, the Products are either dispatched from Seller's warehouse or Seller notifies Purchaser that the Products are ready for dispatch or inspection. Delayed delivery shall entitle Purchaser to compensation only when the parties so agree in writing. Seller shall use its best efforts to notify Purchaser promptly of any delay in delivery time not caused by Purchaser, and shall assign a new delivery time. **In no event shall Seller be liable to Purchaser for any losses or damages due to late delivery or failure of delivery.**
- 4.2 Seller shall not be bound to ship product to Purchaser if agreed payment terms are not fulfilled to Seller's satisfaction by Purchaser.
- 4.3 Failure of delivery of any or all Products shall be excused due to: compliance with any law, order or regulation of any government of any country or any agency, instrumentality or subdivision thereof: any strike or other labor problem, fire, damage to or destruction in whole or in part of any merchandise or manufacturing plant: lack of or inability to obtain, for any reason whatsoever, raw materials, labor, fuel, supplies or equipment, war, riot, insurrection, civil commotion, flood, accident, storm, damage to or destruction of any carrier; any Act of God: or any other cause, contingency, event or circumstance beyond Seller's control, whether within or outside the United States.

## 5. Payment Terms

- 5.1 If no other terms are confirmed in writing: 30 days net / without discount.
- 5.2 If timely payment is not made, Seller, in addition to its other legal rights, shall be entitled to charge interest on all overdue payments at the rate of 2% over Citibank's published « prime rate » as in effect from time to time, but in no event less than 12% per annum. The interest charge, however, shall not exceed any applicable ceiling on interest which may be legally charged.
- 5.3 Seller shall have the right to withhold shipment of any Product if Purchaser fails to make payment when due for prior shipments, such action on the part of Seller shall not release Purchaser from its obligations to accept and pay for Products if and when shipped by Seller.

## 6. Special Manufactured Goods

- 6.1 Manufacturing quantity overruns of up to 10% are allowed with respect to any products made to Purchasers specifications unless Purchaser contracts with Seller for an exact quantity. Purchaser agrees to buy the total quantity of any products made to Purchasers specifications due to lead-time and minimum manufacturing quantity.
- 6.2 If Purchaser provides Seller with any special design or blueprint for product, the Purchaser shall indemnify the Seller for any and all cost, damage, or expenses or other liability caused Seller for manufacturing or providing Purchaser's specially designed product to Purchaser or any third party. Any and all cost shall include Seller's attorneys' fees and other costs of defense.

## 7. Title to Good and Risk of Loss

- 7.1 Title and right of possession shall remain with Seller, and Products shall remain personal property, until all payments hereunder shall have been made in full in cash. Purchaser shall do all things necessary including making all filings under Article 9 of the Uniform Commercial Code, to perfect and maintain title and right of possession as aforesaid.
- 7.2 Risk of loss shall pass to Purchaser upon due delivery of Product to a common or contract carrier (Seller's or Purchaser's) or upon tender of delivery to Purchaser, whichever first occurs.
- 7.3 Identification of Products to the contract shall not occur until delivery thereof shall be tendered to Purchaser at the agreed point of delivery.

## 8. Acceptance Standards, Special Applications, Warranty

- 8.1 If not otherwise agreed all products listed in this invoice are supplied per Purchaser's specifications, are general purpose fasteners and are manufactured according to the international standards, subject to all warnings and disclaimers contained in these terms and conditions. For acceptance inspection all delivered general purpose fasteners are subject to the acceptance plan as stated in the individual product standards. Where no specific acceptance plan is specified or has been agreed upon in writing, the acceptance plan per ISO 3269 is applicable. Unless otherwise specified or agreed upon in writing the applicable gauging standard is ISO 1502. Where no dimensional tolerances are specified or agreed upon in writing, the ISO standard for fastener tolerance ISO 4759 is pertinent. For surface discontinuities not specified or agreed upon in writing the ISO standard ISO 6157 shall apply. If not specified or agreed upon in writing the mechanical properties and testing procedures shall be in accordance with the appropriate standard from the ISO 898 series. (For stainless steel ISO 3506) More stringent acceptance inspection standards for special quality assurance plans have to be agreed upon at time of order in writing particularly if fasteners are destined for special applications such as:

- Fasteners for high volume machine assembly
- Fasteners for special purpose applications requiring in-process controls.
- Fasteners for highly specialized engineered applications produced consecutively from a single mill heat with an in process control and lot traceability.
- Fasteners for applications in circumstances known to Purchaser to pose a threat of bodily injury or property damage if special quality assurance is not required of the fasteners.

The Purchaser has the duty to warn the Seller in writing of any destined special applications of purchased fasteners at time of order. If failure of Purchaser to warn Seller of destined special application causes any direct or indirect Injury or damages to any person, property, business, right, franchise or the like and if any claim, demand, action or proceeding is made against Seller because of the failure of a fastener or fastener application due to lack of special quality assurance or other special application requirements, Purchaser shall indemnify Seller for any loss, cost, damage or expense which Seller may suffer or incur by reason of such claim,

demand action or proceedings including, but not limited to, all Seller's attorneys fees and other costs of defense and the amount of any judgment entered in any such action or proceeding.

- 8.2 No sale by description shall arise by reason of Seller's use of any drawing, advertising or descriptive matter, specification, illustrations, catalog, pamphlet or price list, and no sale by sample shall arise by reason of any use by Seller or any simulation of any Product, irrespective of any inspection thereof by Purchaser.

Unless otherwise agreed in writing, electroplated fastener parts provided shall comply with ISO 4042 standards.

## 9. Cancellation

- 9.1 Except as otherwise expressly provided herein, without Seller's prior written permission no product shall be returned or rejected, or acceptance thereof revoked and no contract for sale may be modified unless by written agreement signed by a duly authorized representative of Seller.

- 9.2 If not otherwise agreed in writing, Purchaser shall inspect each product as soon as it is received by Purchaser and, if Purchaser believes that a Product so inspected is defective, Purchaser shall give Seller prompt notice (no later than 90 days after inspection) of the details of any such claimed defect and Purchaser shall at its own expense return the Product to the Seller's plant from which it was shipped or, at Sellers option, allow Seller to inspect the Product at the place where it is located. This notice should include a Defect Report that clearly states the non-conformance and the specification under which the Product was ordered and checked to Purchaser should include a representative sample of the defective Product with the Defect Report. If a defect is demonstrated to Seller's satisfaction, Seller will within a reasonable time replace or rework the non-conforming Product or, at Sellers election, accept the return thereof and issue a credit to Purchaser in the amount of the price paid therefore by Purchaser, plus Purchasers cost of return, if any. These alternative remedies shall be the exclusive remedies of Purchaser against Seller for any defect in a Product and Seller shall not have or incur any other further liability or obligation whatsoever, including, but not limited to, incidental or consequential damages for lost profits, lost sale, injury to person or property, or any other incidental or consequential loss.

## 10. Exclusion of Warranty and Liability Disclaimer and Indemnity

- 10.1 **Exclusion of Warranties: the warranty described in Paragraph 8 (1)** shall be in lieu of any other warranty express or implied, Including but not limited to, any implied warranty of merchantability or fitness for a particular purpose, which warranties are excluded from this transaction and do not apply to the Products sold. No other warranty, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, as to any product shall arise at any time through any person by promise, affirmation of fact or by description or as a result of showing or delivery to Purchaser any sample or model. The selection and adaptation of any Product to or for a specific use or application is not the Seller's responsibility.

- 10.2 If Seller manufactures any Product pursuant to any design, drawing, specification or bill of material furnished to Seller by or on behalf of Purchaser, and if any claim,

demand action or proceeding is made or commenced against Seller for any purpose arising out of that design or which alleges that such manufacturer (or the use, sale or other disposition for any purpose of anything so manufactured) constitutes infringement or contributory infringement, of any patent or other intellectual property right, Purchaser shall indemnify Seller with respect to any and all loss, cost, damage or expense which Seller may suffer or incur by reason of such claim demand, action or proceeding including but not limited to, all Seller's attorneys fees and other costs of defense and the amount of any judgment entered in any such action or proceed.

- 10.3 If the misuse of any Product (whether or not defective) by or on behalf of Purchaser or any other person causes any direct or indirect injury or damage (consequential or otherwise) to any person property, business, right, franchise or the like, and if any claim, demand action or proceeding is made or commenced against Seller because of such misuse. Purchaser shall indemnify Seller with respect to any and all loss, cost damage or expense which Seller may suffer or incur by reason of such claim, demand, action or proceeding, including but not limited to, all Seller's attorneys' fees and other costs of defense and the amount of any judgment entered in any such action or proceeding.
- 10.4 Nothing herein or in any transaction provided for herein shall convey to Purchaser or any other person any express or implied license or immunity under any domestic or foreign patent or other intellectual property right owned or controlled at any time by Seller or any other person, and Seller does not warrant or guarantee that any Product (or its use, sale or other disposition for any purpose) will not infringe or contribute to the infringement of any domestic or foreign patent or other intellectual property right at any time owned or controlled by any other person.
- 10.5 Bossard's liability for products sold to Purchaser under these terms and conditions shall be limited solely to the price paid for the product. Bossard shall not be liable to purchaser for any other claims, liability, losses, or damages the purchaser may incur related to the product, including any repair or replacement costs.

## 11. Place of Jurisdiction and Arbitration

- 11.1 Any controversy or claim arising out of or relating to this contract or the breach thereof shall be finally settled by arbitration in Portsmouth, New Hampshire, in accordance with the then prevailing Rules of the American Arbitration Association Pending decision by the arbitrator or arbitrators. The parties to this contract agree to attempt in good faith to pursue nonbinding mediation for 90 days prior to instituting formal arbitration. Judgment upon an arbitration award hereunder may be rendered in any court having jurisdiction thereof or application may be made to any court for judicial acceptance of the award or an order of enforcement as the case may be.
- 11.2 Any transaction provided for herein shall be governed by the laws of the State of New Hampshire applicable to contracts made and to be performed in such State and the construction and interpretation hereof shall also be governed by such laws.

## 12. Warning

- 12.1 All indications of **Limited Use** of the products expressed in any standards, seller documentation or any other written or electronic communication constitute **Warnings** and should be carefully studied and tested in industrial or other field application before use.

12.2 **Operations that may impair the safe function of fasteners: Never alter a product and assume the product then has the capability indicated in our original order confirmation. Common DANGEROUS ALTERATIONS are:**

I. **Machining of the radius underneath the head.**

Inappropriate machining operations on the radius underneath the head may weaken the junction shank to the head and may thus cause head fractures and may cause failure of the fastener.

II. **Altering thread pitches bigger than standard pitches.**

Producing thread pitches bigger than standard thread pitch reduces the stress area (load bearing cross section) and thus the load capacity of the bolt and may cause failure of the fastener.

III. **Altering threads on cold headed austenitic stainless steel bolts and screws.**

Fasteners made from austenitic stainless steel, in particular the threads of fasteners, received their mechanical properties through work hardening. Cutting of the existing thread and adding a cut thread will reduce the fastener's load capacity and may cause failure of the fastener.

IV. **Fasteners and machine components with hardnesses > 31 HRC (32HRC).**

These types of fasteners and components are susceptible to hydrogen embrittlement. Hydrogen embrittlement is a phenomenon that occurs when parts are pickled and / or plated. It may cause parts to fail even at relatively low loads. Even with stress relief annealing (baking), the part cannot always be guaranteed to be free of hydrogen embrittlement and the part may fail at low loads.