



STANDARD TERMS AND CONDITIONS OF SALES

October 1st, 2010

- Acceptance** – Myers Industries, Inc. – Lawn and Garden Group (“MLGG”) provides these Terms and Conditions of Sale (“Terms and Conditions”), which apply to all quotations and sales made by MLGG. All purchases by customer, owner or its agent (“Buyer”) are expressly limited to and conditioned upon acceptance of all these Terms and Conditions, and no provision, written or otherwise, contained in any order, acceptance, confirmation or acknowledgement which is inconsistent with, different from, or in addition to any of the Terms and Conditions is accepted by MLGG unless agreed to in writing and executed by an authorized representative of MLGG. Delivery of the Terms and Conditions to Buyer constitutes notice of MLGG’s objection to any term or condition that varies from or conflicts with the Terms and Conditions. Acceptance of products, in whole or in part, or other assent by Buyer to the terms hereof shall constitute an agreement to all of the Terms and Conditions.
- Choice of Law** – This contract will be governed by Ohio law, without giving effect to its choice of law provisions.
- Payments** – Payment shall be made in accordance with the Terms of Sale as shown on the front of MLGG’s invoice. Product prices include the cost of delivery within the United States and Canada, except Hawaii and Alaska, by method, route and carrier selected by MLGG, if quoted minimum volumes are purchased. If extra shipping costs are incurred at the request of Buyer, Buyer shall reimburse MLGG for same. Each delivery is subject to credit arrangements or to cash receipt. If payment is not made in accordance with terms, or if at any time in MLGG’s judgment the Buyer’s credit standing has been impaired, MLGG may withhold delivery of any product ordered until satisfactory cash or credit arrangements have been established. Should Buyer fail to make payment in full within the time period set forth on MLGG’s invoice or within some other time agreed upon in writing between the parties, Buyer shall pay to MLGG interest compounded monthly on the unpaid amount at 12% per annum. If legal action is taken by MLGG to collect any amount due hereunder, Buyer shall pay all collection agency fees, court costs plus reasonable attorneys’ and expert witnesses’ fees incurred by or on behalf of MLGG in bringing such action.
- Credit** – Each delivery is subject to credit arrangements or to receipt of cash. If payment is not made in accordance with the terms hereof, MLGG may, acting reasonably, withhold delivery of any Product ordered until satisfactory cash or credit arrangements have been established.
- Representation and Warranty** – Buyer hereby represents and warrants that it is solvent, that it pays its obligations as they come due and that the fair market value of its assets exceeds its disputed and undisputed liabilities. This representation and warranty shall be deemed to be repeated in each Purchase Order issued by Buyer, and is incorporated therein by reference. Said representation and warranty shall be effectively remade each time a purchase obligation is undertaken unless Buyer notifies MLGG in writing to the contrary.
- Separate Sale** – Each product delivery shall stand as a separate sale and irregularity of any delivery shall not invalidate an order as to the remaining installments.
- Taxes and Tariffs** – Buyer will reimburse MLGG for any tax or government charge which MLGG may be required to pay upon sale, production or transportation of any product sold.
- Title and Risk of Loss** – Title to and risk of loss of product will pass to Buyer after MLGG delivers the product to the carrier at the shipping point unless other title and risk of loss terms are agreed to by the parties in writing executed by both parties. All tooling, dies, blueprints plans and specifications in connection with the products shall remain the sole property of Seller unless agreed to otherwise, in writing, by both parties.
- Force Majeure** – MLGG will be excused from its obligations to the extent that performance is delayed or prevented by any circumstances beyond its reasonable control including, but not limited to, floods, wars, fire, explosion, sabotage, accidents, mechanical breakdown, strikes or other labor disputes, plant shutdown, inability to obtain materials, unavailability to, or interference with, the usual means of transporting product, or compliance with any law, regulation, or request of any government authority (collectively, “Force Majeure”). The occurrence of an event of Force Majeure shall act to suspend the obligation to perform and either party may cancel its obligations to the other that are subject to the delay. However, Buyer’s duty to pay for product received is never suspended.
- Allocation** – If due to Force Majeure or any other cause, MLGG is unable to produce sufficient product to meet its internal needs and the requirement of its customers, MLGG shall be permitted, without liability to Buyer, to allocate its product (including any product to be sold and delivered to Buyer) in a manner it deems to be fair and reasonable considering MLGG’s internal needs, MLGG’s regular customers, and MLGG’s other contractual obligations.



15150 Madison Road • P.O. Box 738 • Middlefield, Ohio 44062-0738

Toll Free: 1-800-225-7712 • Tel: (440) 632-0230 • Fax: (440) 632-0235 • www.myerslawnandgarden.com

Part of the Myers Industries, Inc. Family of Brands



11. **Limited Warranty and Limitations of Liability** – MLGG warrants that the products sold hereunder shall conform to MLGG's specifications and that MLGG will convey good title thereto to Buyer. Specifications are subject to change without notice. Weights, capacities and other specifications are for information purposes only and their accuracy is not guaranteed. **THERE ARE NO WARRANTIES EXTENDING BEYOND THOSE IN THIS PARAGRAPH. MLGG DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NONE OF WHICH SHALL BE OF ANY FORCE OR EFFECT. BUYER AGREES THAT BUYERS' EXCLUSIVE REMEDY AND SELLERS' SOLE LIABILITY ON ANY CLAIM, WHETHER TORT, CONTRACT OR WARRANTY, SHALL BE LIMITED TO REIMBURSEMENT OF THE ORIGINAL PURCHASE PRICE. IN NO EVENT SHALL MLGG BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES FOR LOST PROFITS, LOST SALES, INJURY TO PERSON OR PROPERTY OR ANY OTHER INCIDENTAL LOSS OR DAMAGE RESULTING FROM THE SALE, DELIVERY, USE OR HANDLING OF THE PRODUCTS.**
12. **Remedies; Consent to Jurisdiction; Waiver of Jury Trial** – MLGG's liability and Buyer's exclusive remedy for any cause of action arising by reason of this transaction, whether based in negligence, strict liability, tort, breach of contract or warranty, is limited, on MLGG's election, to a maximum of the purchase price of the product shipped or replacement of product shipped not conforming to specifications. All claims involving orders and product specifications are waived unless made within 60 days from date of invoice. No product shall be returned to MLGG without MLGG's written permission. Buyer consents to personal jurisdiction of courts having jurisdiction over any actions arising in Middlefield, Ohio. **BUYER WAIVES ITS RIGHT TO JURY TRIAL ON ANY CLAIM ARISING FROM THIS SALE.**
13. **Technical Advice** – For the protection of both parties, technical advice for the handling and use of any product should be given in writing. MLGG will not be liable for any advice given by it or its agents unless such advice is given or confirmed in writing. Any advice given by MLGG for the use of its products is based upon tests or data believed to be reliable, but MLGG MAKES NO WARRANTIES AS TO THE RESULTS TO BE OBTAINED. Buyer assumes all risk and liability that may result from the use of any product whether used singly or in combination with other products.
14. **Assignment** – The rights and obligations in this contract may not be assigned by Buyer without the written consent of MLGG. MLGG may assign its rights and/or duties relating to this contract to a subsidiary, affiliate or to a successor-in-interest of all or a substantial portion of MLGG's business, upon notice to, but without the necessity of the consent of Buyer.
15. **Modification** – This document contains the entire agreement of the parties, and all proposals, negotiations and representations, if any, made prior to and concerning this contract are merged herein. Any subsequent modification to this contract must be in writing stating an intention to modify the agreement and signed by an authorized representative of MLGG.
16. **Shipment Quantities** – Shipping quantities may vary \pm 10% on MLGG standard stocking items and will be full batch yield quantities for non-standard and/or custom items.
17. **Buyer Pick-Up** – At some locations, Buyer pick-up of ordered products can be arranged. These arrangements must be made and confirmed at order placement time. If parts ordered are not picked up by Buyer within 5 days of notification that parts are ready, Seller reserves the right to ship product ordered via common carrier, consistent with current MLGG Freight Policy.
18. **Price Changes** – The prices quoted are subject to change by MLGG without notice. Revised prices will apply to shipments made on and after the effective date of a price change. Prices for orders placed with requested ship dates beyond 60 days of order acknowledgement dates are subject to price adjustment, based on significant fluctuations of raw material costs.
19. **Patents and Trademarks** – Buyer will indemnify and hold MLGG harmless against any expense or loss or damage resulting from alleged or actual infringement of patents or trademarks arising from MLGG compliance with any designs, specifications or other instructions of Buyer.
20. **Return of Good Product** – If Buyer desires to return product that meets product specifications, it may NOT do so unless the following conditions have been met: MLGG has authorized the return in writing; the product is unused and undamaged, and standard MLGG stock; the product is returned with all freight prepaid by Buyer; and Buyer pays a restocking fee of 15% of the original purchase price. If return is allowed, Seller must be notified within 30 days of invoice. All returned goods must be assigned a Return Authorization number, and that number must be displayed prominently upon each pallet, carton or case returned. Items made to a special color and/or particular specifications of Buyer are not subject to return.



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