

ROTHO BLAAS USA INC. **GENERAL TERMS AND CONDITIONS**

1. **Contract Terms.** These General Terms and Conditions ("Terms") are applicable to all customers (collectively, the "Customers" and, individually, the "Customer") of Rotho Blaas USA Inc. , a Delaware Limited Partnership with its principal address at 30 Wall Street, 8th Floor, New York, NY 10005 (the "Company"), distributing and otherwise dealing in tools and supplies for the construction industry and their related services, accessories and spare parts (collectively, the "Products" and, individually, the "Product"). These Terms shall apply to all orders submitted to the Company and supersede any different or additional terms in any purchase orders submitted by the Customer; any such different or additional terms are hereby rejected and are void unless Company has explicitly agreed in writing to such additional terms either by offering such additional or different terms in its purchase proposal or by explicitly acknowledging the different terms proposed by the Customer in writing signed by an officer of the Company. Failure by the Company specifically to object to provisions contained in the Customer's purchase order shall not in any way be deemed an alteration to or waiver of these Terms. In addition Customers are invited and encouraged to acquaint themselves with the Company's Code of Ethics (available online at <https://www.rothoblaas.com/company-rothoblaas>) in order to act in a consistent manner and comply with the rules of conduct that characterize the organization and business of Rotho Blaas.
2. **Prices.** All prices, unless otherwise specifically stated, are DAP (as per Incoterms 2020) carrier at the Company's shipping point. Risk of loss with respect to the Products delivered shall pass from Company to Customer in accordance with the agreed upon Incoterms. In addition to the quoted DAP price, the Customer shall be responsible for payment of all costs, expenses, fees or charges of any nature applicable to the Customer's purchase of the Products, including but not limited to freight, insurance, loading and unloading, handling and storage as well as sales or use taxes, excise taxes, and any other taxes, unless taxes are measured by the Company's income.
Purchase Price Increase Adjustment: In the event of an unforeseen price increase between the time of order confirmation and the time of delivery, the purchase price may be adjusted accordingly giving prior notice to the customer, that declares with proper argumentation the fairness and reasonableness of the price increase.
3. **Delivery Dates.** All delivery and shipment dates indicated are approximate and subject to the Company's availability schedule. They do not operate to bind the Company to ship or deliver the Products on the dates indicated unless specifically so stated in writing to be binding. Delivery dates are conditioned on the Customer's timely response to the Company's requests for information, material samples, etc. The Company will make reasonable efforts to meet the delivery date(s) quoted; provided, however, the Company does not assume liability, consequential, special or otherwise, because of any delay or failure to deliver all

or any part of any order for any reason. The Company reserves the right to allocate inventories in current production among its customers in such manner as it, in its sole discretion, determines. All delivery promises are predicated upon prompt and timely receipt from the Customer of all necessary information and documentation and should be reconfirmed at the time of order acknowledgment.

4. **Payment terms.** Prepayment for the first order, payment terms for future orders will be negotiated with the Customer. However, these terms are dependent on the approval of the Customer's credit rating and payment history and may be withdrawn or amended at any time at the Company's discretion. The Company reserves the right to change the credit terms provided herein, refuse shipment, or cancel unfilled orders at any time when, in its opinion, the financial condition or previous payment record of the Customer so warrants. Title to all of the Products shall remain with the Company until the Customer shall cooperate with the Company to execute such documents and to accomplish such filings as the Company may deem necessary for the protection of the Company's interests in the Products. Unless otherwise indicated by the Company in writing, the Customer agrees to remit payment in full to the address on the face of the Company's invoice for all shipments, including shipments of any portion of the Product, in accordance with the Company's payment terms and conditions. No cash discounts for early payment will be granted. When payment in full is not remitted according to the applicable terms, the Customer shall be delinquent. Interest shall accrue on delinquent invoices at the rate of 1.5 percent per month, subject to federal, state and local laws, on the amount of the unpaid balance from the original due date of the invoice. In the event the Company refers delinquencies to an attorney or an agent for collection, the Customer shall pay all costs of collection, including reasonable attorney's fees. Should the Customer become delinquent in the payment of any sum due hereunder, all contractual obligations of the Company to the Customer shall terminate.
5. **Security Interest.** The Customer agrees that the Company shall retain a security interest in the Products to secure any portion of the purchase price not paid, and the Customer will, on request, execute a security agreement and UCC Financing Statement in such form as is required by the Company, which, at the Company's option, may be filed with appropriate local and state authorities. The Company shall have all rights and remedies accorded by law or equity to a secured seller, including the right to enter upon the premises where the Products shall be located for purposes of removing same or rendering them inoperative, and all such rights and remedies shall be cumulative. The Customer shall maintain insurance against all risks to cover full replacement value of the Products until the Company shall have been paid in full.
6. **Taxes and Other Charges.** The Customer is responsible for the ultimate payment of all federal, state, local, foreign, or provincial taxes, fees, or charges which may be assessed or levied on or on account of Products sold to the Customer. Unless specifically stated on the face of the invoice, prices do not include such taxes, and will be added by the Company to the sales price where the

Company has a legal obligation to collect them. When the Customer claims that this transaction is not subject to any such tax, or that if Customer is exempt, or that the Company is not required to collect such tax, the Customer agrees to provide the Company with any documentation necessary to support such a claim and to allow the Company to document its decision not to collect such taxes. The Customer shall inform the Company about any change in its Tax Exemption Status.

7 Default in Acceptance. If the Customer refuses or fails to take or accept Delivery of the Products when they have been placed at his disposal at the agreed time of Delivery in accordance with the DAP INCOTERM (as per INCOTERMS 2000) or have been duly delivered in accordance with any other INCOTERM (as per INCOTERMS 2000) agreed between the Company and the Customer, the Customer is in default of its acceptance.

8 If acceptance of the Products is postponed at the request of the Customer or due to circumstances for which the Customer is responsible, the Products will be deemed to have been delivered and the Risk shall be transferred to the Customer as of the day the Company has tendered Delivery under the DAP INCOTERM or any other INCOTERM (as per INCOTERMS 2000) agreed between Company and Customer. Payment of any outstanding balance shall be due immediately.

9 If the Customer contrary to the agreed upon conditions does not take or accept Delivery of the Products or if the Customer requests delayed Delivery, then without limiting any other right or remedy available to the Company, the Company shall have the right to forward the Product to a storage facility or store it itself until actual Delivery or sale, and charge the Customer for all related costs and expenses including, without limitation, storage and insurance.

If the Customer does not accept Delivery after the expiration of a reasonable cure period to accept Delivery, the Company shall be entitled without prejudice to its other rights and remedies under the purchase agreement between the Company and the Customer (the "Purchase Agreement"), following written notice to the Customer, to sell the Products otherwise and shall have the right to be reimbursed for any expenses and lost profits in connection herewith.

10 Partial Shipments. The Company shall have the right to make partial shipments and to submit separate Invoices to the Customer for each shipment.

11 Inspection of the Products. The Customer shall be obligated to inspect the Products immediately upon Delivery to determine whether such Products are in compliance with the specifications and free from defects in materials and workmanship. The Customer is obligated to examine every delivery in every respect for any discoverable lack of conformity with the purchase order.

12 Notification. If the Customer does not notify the Company in writing within eight (8) days after receipt of the Products at the delivery point that the Products are defective or otherwise non-conforming with the purchase order, specifying the manner in which such items are non-conforming, defective or damaged, then the Products shall be deemed to have been accepted by the Customer and the Customer shall no longer have

the right to reject the Products in whole or in part for defects which could have been discovered during diligent inspection at the time of Delivery in accordance with these Terms.

If Products ship not in a "ROTHOBLAAS" or "HOLZTECHNIC" branded packaging or if the packaging is visibly damaged, Customer shall accept Products, note all damages on the Bill of Lading (BOL) or Proof of Delivery (POD), photo document the conditions of the shipment and inform Company about it, which will file a claim on behalf of the Customer.

13 EXCLUSIVE REMEDY. THE BUYER'S EXCLUSIVE REMEDY FOR BREACH OF CONTRACT FOR SALE OF PRODUCTS IS THE RETURN OF THE PRODUCT TO THE COMPANY AND RETURN OF THE PURCHASE PRICE TO THE BUYER. THE REMEDY PROVIDED HEREIN IS THE BUYER'S SOLE AND EXCLUSIVE REMEDY. THE COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT, OR OTHER LEGAL THEORY ARISING OUT OF THE SALE, SERVICE OR USE OF THE PRODUCTS, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSSES, AND IN NO EVENT SHALL THE LIABILITY OF THE COMPANY EXCEED THE UNIT PRICE OF THE PRODUCT. THE COMPANY NEITHER ASSUMES NOR AUTHORIZES ANY AGENT, EMPLOYEE, REPRESENTATIVE, OR ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE.

14 Limited Warranty. Company, warrants to the Buyer that the Products (the "Products") which it has manufactured and sold to Buyer (a) conform to Company's published specifications at the time of shipment to Buyer, and (b) are free from defects in materials and workmanship at the time of shipment to Buyer. Since the operating characteristics of the Products may change with age and use, Company does not warrant that the Products will continue to conform to such specifications throughout the Warranty Period. This warranty obligation (a) is undertaken only to customers purchasing the Products directly from Company, (b) is non-transferable, and (c) does not extend to any third party, nor create any rights in favor of any third party.

15 Warranty Period. The Warranty Period shall begin on the date of shipment of the Products to Buyer and shall expire 90 days from the date of shipment, unless specifically exempted herein. Company will only consider a warranty claim made by Buyer if Buyer duly notifies Company of the claim within 120 days from the date of shipment of the Products, in accordance with the terms set forth below.

16 Remedy. Buyer's sole and exclusive remedy under this Warranty shall be limited to the repair or replacement of any Products which, upon inspection by Company, does not conform to the Warranty provided herein by Company, and which Buyer ships prepaid to Company's place of business. Company may elect any method of repair or replacement, at its sole and exclusive option. The specific procedures for the determination of warranty claims, and the shipment and repair of Products, are provided above in Sections 11 et seq. If this remedy fails in its essential purpose, Company may elect, at any time, to fully discharge its warranty

obligation hereunder by accepting return of the Products and refunding the purchase price paid by Buyer. **COMPANY SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES RESULTING FROM BREACH OF ITS WARRANTY OBLIGATIONS EITHER UNDER THIS WARRANTY OR OTHERWISE IMPOSED BY LAW, EVEN IF COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSSES. HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSSES. HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH LOSSES.**

17 **Voidance of Warranty.** This Warranty will become null and void in the following circumstances: (a) improper disassembly, reassembly, repair or alteration of the Products which is not performed by Company's staff, (b) failure to maintain the Products as provided in the relevant Company operations manual(s), (c) accident, misuse or abuse of operation of the Products, (d) damages sustained during transportation of the Products (Buyer must inspect the Products upon delivery and submit shipping or transportation damage claims directly to the carrier), (e) repair or alteration made to the Products by any party except Company, and (f) Buyer's failure to pay the full purchase price for the Products, according to the payment terms of the contract for sale.

18 **Disclaimer.** **THIS WARRANTY IS EXPRESSLY IN LIEU OF, AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF KNOWN TO COMPANY'S EMPLOYEES OR AGENTS.**

19 **Products Return Procedure.** Within the Warranty Period, Buyer may submit warranty claims on Products to Company by e-mail. At the time of submission of the claim, Buyer must request and obtain authorization from Company, and then ship the Products at Buyer's expense (no COD or collect freight accepted) to Company for inspection. Products shipped without an authorization will not be processed hereunder. Upon receipt of properly returned Products, and following Company's examination, Company will promptly determine the warranty status of the Products.

20 **Warranty Determination of Returned Products.** If, upon Company's examination, it is determined that a "defect" exists which is covered by this Warranty, then the Products will be repaired or replaced at no charge and shipped, prepaid, back to Buyer. If, however, Buyer desires express or air freight return delivery, the Products will be shipped at Buyer's expense. Any warranty repairs or replacements made hereunder will not extend the original Warranty Period.

21 **Non-Warranty Determination of Returned Products.** If, upon Company's examination, it is determined that the "defect" or Products is not covered by this Warranty, Company shall inform Buyer of this determination, and the cost of making the necessary repair or replacement. In the event that Buyer instructs Company not to repair or replace the Products, Company will return the Products, "as is", at Buyer's expense. In the event that Buyer does desire for the repair or replacement to be made to the Products, Buyer shall be required to issue a valid purchase order to Company, in order to cover

the cost of the repair and freight charges. Failure to issue a purchase order or approval within thirty (30) days from the date Company notifies Buyer of the non-warranty status of the Products, shall result in the Products being returned to Buyer, "as is", at Buyer's expense. Products which is not claimed within thirty (30) days from the date of repair, or items which are non-repairable and not claimed within thirty (30) days from the date of notification, shall become the property of Company.

22 **LIMITATION OF LIABILITY.** **THE COMPANY SHALL NOT BE LIABLE FOR PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM THE IMPROPER HANDLING, MODIFICATION, MISUSE OF THE PRODUCTS BY THE CUSTOMER OR ANY OTHER PERSON FOLLOWING DELIVERY BY THE COMPANY. IN NO EVENT SHALL THE COMPANY BE LIABLE TO ANY PERSON FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR GOODWILL, LOSS-OF-USE DAMAGES OR ADDITIONAL EXPENSES INCURRED, WHETHER PURSUANT TO A CLAIM IN CONTRACT, TORT OR OTHERWISE AND WHETHER IN AN ACTION FOR BREACH OF WARRANTY OR OTHERWISE.**

23 THE CUSTOMER MAY NOT BRING ANY ACTION ARISING OUT OF OR IN CONNECTION WITH ANY TRANSACTION COVERED BY THESE TERMS UNLESS SUCH ACTION IS COMMENCED WITHIN SIX (6) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.

24 **Safety Standards:** The Customer shall comply with all laws, rules, regulations and industry standards existing with respect to the Products and the performance by the Customer of its obligations hereunder in the jurisdictions where the Customer carries on activities under these Terms and where Products are resold or distributed from time to time. The Customers shall not export the Products unless such export complies with any applicable export laws and regulations; resellers shall be obligated to obtain export authorization from the Company in writing prior to export.

25 **Proprietary Rights.** The Company retains for itself all proprietary rights in and to all designs, engineering details, and other data and materials pertaining to all Products supplied by the Company and to all discoveries, inventions, patents and other proprietary rights arising out of work done in connection with the Products. Sale of the Products to the Customer conveys no rights or licenses to the Customer under the Company's patents, copyrights, trademarks, trade names, know - how and domain names.

The Customer acknowledges and accepts that: (I) the Company is the exclusive owner of the Trade Marks and the other Intellectual Property Rights; (II) shall refrain from depositing and registering marks that are identical, similar and/or confusable with the Trade Marks; (III) shall use the Trade Marks and the other Intellectual Property Rights only with the express consent of the Company in compliance with the latter's instructions and exclusively for the purposes set forth in these Terms; (IV) undertakes not to modify, alter, remove, cancel or cover the Company's Marks or other distinctive signs affixed to the Products or to add other marks or distinctive signs to these; (V) undertakes not to register domain names that are identical, similar or

that incorporate the Company's Marks. Any violation of these provisions shall be prosecuted in accordance with the law. In the event that the Customer has registered or registers any exclusive right to the trademarks, names or other distinctive signs or any domain name of the Company and/or those relating to the Products in violation of the provisions of the clause above, such registrations shall be deemed to be automatically and rightfully transferred by the Purchaser to the Company; therefore, the Customer hereby undertakes to take all the necessary actions to perfect and make effective the transfer of said rights from the Customer to the Company, without the Customer being entitled either to consideration or to reimbursement of expenses and costs incurred.

The Customer understands that the Company's Products embody trade secrets ("information") which are valuable to the Company, and the Customer agrees that it will not attempt to appropriate such information for its use or the use of others by any means including, but not limited to, the disassembly or destruction of any Product. The Customer further agrees that it will not divulge, disclose, or in any way distribute or make use of such information, and that it will not manufacture or engage to have manufactured products which embody information gained by the Customer contrary to its obligations under these Terms and Conditions.

26 **Confidentiality.** The Customer acknowledges that the Company would be irrevocably damaged if the know-how, trade secrets, patentable and unpatentable designs, specifications and inventions, and other technical and manufacturing information and any information relating to the Company's customers, accounts, sales, business, operations and affairs pertaining to or in any way relating to the Products which are made available to the Customer by the Company (hereinafter called "Confidential Information") were disclosed to or utilized on behalf of any person, firm or business entity which competes or may compete with the Company. The Customer agrees that it will hold and use the Confidential Information in the same manner as it deals with its own confidential information and trade secrets, and that it will not divulge nor permit any of its employees, agents or authorized representatives to divulge any Confidential Information to any other person, firm or business entity, and the Customer shall further restrict circulation of the Confidential Information within its organization except to the extent necessary to fulfill the purposes of the Purchase Agreement. The Customer agrees that it will not use the Confidential Information in any way which is adverse to the interest of the Company or inconsistent with these Terms.

27 **Equitable or Injunctive Relief.** Whenever the Customer or any of its employees, agents or authorized representatives attempts to use or dispose of any Confidential Information or to manufacture or produce any of the Products or any products which incorporate or relate to the Confidential Information in a manner contrary to these Terms, or when such an attempt, act or breach appears imminent, the Company shall be entitled to equitable or injunctive relief to restrain the Customer, its employees, agents, authorized

representatives or any other person participating in such present or threatened attempt, act or breach, and shall be entitled to pursue any other remedies available at law or in equity for such present or threatened attempt, act or breach, including, without limitation, the recovery of damages.

28 **Indemnification.** The Customer shall indemnify and hold harmless the Company and the Company's officers, directors, employees, suppliers and agents (each a "Company Indemnified Person") against any losses, claims, damages, liabilities, penalties, actions, proceedings or judgments of any kind whatsoever (including all reasonable legal and attorneys' fees and expenses) to which a Company Indemnified Person may become subject out of claims by anyone including but not limited to the Customer's customers or any third party, related to or arising out of any damages sustained by such party which are not caused by any defects of the Products and any damages to the Company caused by tampering with its products while in possession of the Customer, including but not limited to unauthorized copying of the software or any other data contained in the Product or its parts.

29 **Modification/Controlling Terms of Contract.** Any modification of these Terms and Conditions must be expressly agreed to in writing and signed by an authorized representative of the Company. Any quotation supersedes all previous written or oral commitments, and specifically defines the Product(s) to be delivered under this quotation and constitutes the complete agreement between the Company and the Customer. These Terms may not be altered except by the Company. The Company shall notify the Customers in advance of any changes, revisions, amendments or modifications of these Terms and such changes shall become effective as of such date without any further action by any party. Any and all revisions made by the Company must be made in writing.

30 **Miscellaneous.**

(a) **Applicable Laws.** This contract shall be governed, construed, and enforced in accordance with the laws of the State of New York, U.S.A.

(b) If any provision of these Terms is held invalid or unenforceable, such provision shall thereupon be deemed modified only to the extent necessary to render the same valid or eliminated from these Terms, as the situation may require, and these Terms shall be enforced and construed as if such provision had been included herein as so modified or eliminated, as the case may be.

(c) **Force Majeure.** The Company shall not be responsible for any failure to perform the contract formed hereunder due to causes beyond its control, including, but not limited to, acts of God, labor disputes or shortages, effects of pandemics, acts of government, or judicial action, or inability or delay in securing parts or components, all whether foreseen or unforeseen.

(d) **Assignment.** None of the rights, duties, or obligations defined herein may be assigned, transferred, or delegated.

(e) **Non-Waiver.** The Company's failure to exercise any of its rights for any period shall not constitute or be deemed a waiver or forfeiture of such rights.

31 Privacy policy

In accordance with the GDPR the Customer is informed that his personal data (name of contact person/managing director/proprietor, address, email address, phone number, fax number) is required for performance of the contract and will for this purpose be transmitted to other companies of the Rotho Blaas Group (<https://www.rothoblaas.com/contacts>) and may also be transmitted to lawyers to assert contractual claims, credit institutions, accountants, Company management and administration professionals or service companies working on behalf of the Company.

The Company will store the data until expiration of the statutory retention and limitation periods. The data subject has the right to obtain information, rectification, erasure, the right to object, to restriction of processing and to data portability, and the right to lodge a complaint with the supervisory authority. For more detailed information please contact the privacy contact person at privacy@rothoblaas.com.