

**1. ENTIRE AGREEMENT.** Each party agrees that all sales of goods (“Goods”) by McWane, Inc. (“Seller”) to Buyer are governed by these Terms and Conditions of Sale (“Terms and Conditions of Sale”) which supersede any other terms of Buyer or Seller. Each party agrees that the Terms and Conditions of Sale will also govern all sales of Goods to Buyer by any McWane, Inc. subsidiary, affiliate, or division, in which case such subsidiary, affiliate, or division will be the “Seller” under this Agreement (unless otherwise agreed in writing by such subsidiary, affiliate, or division). Buyer acknowledges that these Terms and Conditions of Sale are subject to change from time to time and the parties agree that each sale of Goods will be governed by the version of Terms and Conditions of Sale available online at [www.mcwane.com](http://www.mcwane.com) at the time of acceptance by Seller of an order for such Goods. The Terms and Conditions of Sale and the order for Goods from Buyer and agreed by Seller (“Order”) or other contract documents to which they apply constitute the entire agreement between the parties with respect to Goods (“Agreement”). All references by Seller to Buyer’s specifications and similar requirements are only to describe Goods and work covered hereby and no warranties or other terms will have any force or effect. No other terms of Buyer, no modification, amendment, or waiver to this Agreement, and no cancellation, change, or return of any Order under this Agreement will be binding on either party until agreed in writing by such party’s authorized representative. Buyer may not rely on any representation, promise, or term not set forth herein and Seller expressly objects to and rejects all terms not contained in this Agreement. Seller’s acceptance of Orders, whether oral or written, and/or its delivery of Goods to Buyer is based on the express condition that Buyer agrees to all these Terms and Conditions of Sale.

**2. QUOTATIONS.** Where this Agreement is used by Seller to place a bid, Seller’s quotation is for prompt acceptance and Seller may change and/or withdraw without notice. Buyer’s prompt acceptance of the quotation is a material term of the bid and any subsequent agreement. In cases where freight allowance is included in the quotation, Buyer is liable for any rate increase and/or additional expense over the calculated allowance resulting from compliance with Buyer’s shipping instructions.

**3. DELIVERY.** Delivery terms (per Incoterms® 2020) are stated on each Order. All Orders must include Buyer’s or forwarder address and are assumed to authorize immediate release upon ready-to-ship status unless otherwise specified in writing. All shipping dates are approximate; production will not begin until receipt by Seller of complete manufacturing, shipping, and credit information. Tender of delivery is deemed to occur at the earliest of (A) acceptance of shipment by designated shipper, (B) allocation of Goods to Buyer at location other than Seller’s location, (C) delivery to Buyer’s representative or designee, or (D) mailing of an invoice to Buyer. Buyer agrees to provide Seller with defined shipping instructions within seven (7) business days following receipt of packing list provided by Seller. Title to Goods will pass to Buyer on tender of delivery, subject to Seller’s right to stop Goods in transit and to any interest of Seller reserved to secure Buyer’s payment or performance to Seller, even if freight is included or prepaid. If Seller holds Goods at Buyer’s instruction or because Buyer has failed to supply shipping instructions or because Seller, in its sole discretion, determines that any part of Goods should be held for Buyer’s account, Seller may invoice Buyer for the Goods, as well as for storage. Storage fees will be at Seller’s standard rates. Goods invoiced and held at any location for whatever reason will be at Buyer’s risk and Seller may charge for (but is not obligated to carry) insurance. If Buyer fails to provide shipping instructions, Seller may, at its option, ship the Goods to Buyer at the address specified in the applicable Order and invoice Buyer for the Goods. Buyer agrees to make payment of such invoice when due under this Agreement. Buyer will accept and pay for partial deliveries at the Agreement prices and terms. If Buyer declares or indicates an intention to not accept delivery, Seller may, at its option, give written notice to Buyer that Seller is ready and willing to deliver, and such notice will constitute a valid tender of delivery. Buyer must report any shortages in shipments within three (3) calendar days of receipt of the initial shipment. Buyer may not make any deduction from any payment due because of loss or damage to Goods in transit. If Buyer makes a written request, Seller, in its sole discretion, may agree as a service to Buyer to process Buyer’s claim against the freight vendor for any loss or damage in transit, so long as Seller receives the claim within five (5) calendar days of delivery of the Goods. All claims will be waived unless accompanied by a delivery receipt, signed by freight vendor’s agent at time of delivery, on which receipt the loss or damage has been noted.

**4. PRICES; PAYMENT.** Prices and payment terms are stated on the Order or invoice document. Seller may make partial shipments and payment for that portion will be due as indicated on the Order or invoice document based on time of shipment. Seller’s prices do not include sales, use, excise, or other similar taxes and Buyer agrees to pay the amount of any present or future such tax in addition to the price specified in each Order, unless Buyer, at the time of sale, provides Seller with all tax-exemption certificates required by taxing authorities. If Seller has any cause to question Buyer’s ability to perform, Seller may demand such assurances of Buyer’s performance as Seller deems necessary in its discretion, including payment in advance for all shipments. If (A) Buyer fails to provide Seller with such assurance within ten (10) calendar days of Seller’s demand, or (B) Buyer is declared bankrupt or insolvent or any proceeding is brought against Buyer, voluntarily or involuntarily, under any bankruptcy or insolvency laws, or (C) Buyer fails to make payment for Goods when due, Seller may suspend its performance, cancel any Order then outstanding, receive reimbursement for its reasonable and proper cancellation charges and collect any sums due and owing, its reasonable cancellation charges and all damages resulting from Buyer’s default. Additionally, if Buyer fails to make payment for Goods when due, Buyer’s account will be deemed delinquent and Buyer will be liable to Seller for a service charge of eighteen percent (18%) per annum or the maximum allowed by law, whichever is greater, on any unpaid amount. Buyer will be liable to Seller for all costs and expenses of collection, including court costs and reasonable attorneys’ fees.

**5. CANCELLATION, CHANGES AND RETURNS.** If Buyer properly requests a cancellation, change, or return, Seller may, at its option: (A) charge Buyer for any costs Seller incurred prior to or because of such cancellation, change, or return; (B) revise its prices and delivery dates to reflect such change; and/or (C) accept returned Goods for credit if, in Seller's sole discretion, it finds such Goods to be standard stock and in good condition. The credit will be, in Seller's sole discretion, either the invoice price less a percentage to be determined by Seller or the scrap value of the Goods, along with shipping and handling charges to be determined by Seller. All returned Goods must be securely packed by Buyer to ensure that returned material is not damaged during shipment.

**6. FORCE MAJEURE; DEFERRED DELIVERY.** Seller will not be liable for any expense, loss, or damage resulting from delay in delivery or prevention of performance caused by any event beyond Seller's reasonable control ("Force Majeure"), including but not limited to: fire; flood; storm; act of God; strike, labor dispute or labor shortage; lack of or inability to obtain materials, fuels, supplies, or equipment; civil unrest or riot; pandemic; accident; transportation delay or shortage; act or failure to act of Buyer or any government; or any other cause whatsoever, provided that such cause is beyond Seller's reasonable control. Seller will have such additional time for performance as reasonably necessary under the circumstances and may adjust the price to reflect increases caused by Force Majeure. Buyer's acceptance of any Goods will constitute Buyer's waiver of any claim for damages for delay in delivery of such Goods. If delivery is delayed or interrupted by Force Majeure, Seller may store the Goods at Buyer's expense and risk and charge Buyer a reasonable storage rate. If Seller is delayed because it is awaiting Buyer's approval or acceptance of designs, drawings, prints, or engineering or technical data, or is awaiting Buyer's approval or acceptance of Goods, Seller will be entitled to a price adjustment equal to increase in Seller's production costs and all other losses and expenses incurred by Seller because of such delays. If Buyer requests and Seller approves in writing a deferred delivery on any Order, Seller may charge Buyer for the completed portion of the Order and warehouse all completed Goods at Buyer's expense and risk of loss. As to any uncompleted portion of the Order, Seller may, at its option, cancel the uncompleted portion under Section 5 above or revise its prices and delivery schedules on the uncompleted portion to reflect its increased costs and expenses attributable to the delay.

**7. WARRANTY; PATENTS.** Seller warrants that Goods will be of the kind described in this Agreement and free from defects in material and workmanship under conditions of normal use. Seller reserves the right to make any modifications required by production conditions to information set forth in Seller's catalogues and advertising literature. Seller will not be liable or responsible for (A) any defects attributed to normal wear and tear, erosion or corrosion, improper storage, use, or maintenance, or use of Goods with incompatible products, or (B) defects in any part of Goods manufactured by others. If (B) above is applicable, Seller will, as an accommodation to Buyer, assign to Buyer any warranties given to it by any such other manufacturers; provided, however, that the foregoing will not extend Seller's warranty to any accessory products unless Seller specifically agrees in writing. All warranties are void if Goods are modified or used in conjunction with products or accessories not manufactured or approved by Seller or which are incompatible with Goods. This warranty does not cover failure of any part manufactured by others, failure of any part from external forces, including but not limited to corrosive soils, earthquake, installation, vandalism, vehicular or other impact, application of excessive torque to the operating mechanism, frost heave, or other Force Majeure. Any claim by Buyer with reference to Goods for any cause will be deemed waived by Buyer unless submitted to Seller in writing within ten (10) calendar days from the date Buyer discovered, or should have discovered, any claimed breach. Buyer will give Seller an opportunity to investigate. If Buyer furnishes prompt notice to Seller of any defect and an opportunity to inspect the alleged defect as provided above, Seller will, in its sole discretion, either: (i) repair the defective or nonconforming Goods; (ii) replace nonconforming Goods, or part thereof, which are sent to Seller by Buyer within sixty (60) calendar days after receipt of the Goods at Buyer's plant or storage facilities; or (iii) if Seller is unable or chooses not to repair or replace, return the purchase price paid and cancel any obligation to pay unpaid portions of the purchase price of nonconforming Goods. In no event will any obligation to pay or refund exceed the purchase price paid. Repair and/or replacement as provided above will be shipped EXW (Ex-Works) Seller's facility (Incoterms® 2020) unless otherwise agreed in writing by Seller. Buyer will prepay all transportation charges for return of all or part of Goods to Seller, unless otherwise agreed in writing by Seller. Seller will not be responsible for any labor, removal, or installation charges that may result from repair and/or replacement of any Goods. Buyer's exclusive remedy and Seller's sole liability for any loss, damage, injury, or expense of any kind arising from manufacture, delivery, sale, installation, use, or shipment of Goods will be, at Seller's option, the remedies described above, whether based on contract, warranty, tort, or any other basis of recovery. If any claim is made against Buyer based on a claim that any Goods constitute an infringement of any U.S. Letter Patent, Buyer will notify Seller immediately. Seller may, with Buyer's assistance, if required, but at Seller's expense, conduct settlement negotiations or defense of any litigation. If any Goods are held to infringe any U.S. Letter Patent, and their use is enjoined, or, if as a result of a settlement, Seller deems their continued use unadvisable and provided that Buyer has given Seller the immediate notice required above and has used Goods only in accordance with the provisions of this Agreement and has not altered or changed them in any material way, Seller will, at its option and expense, procure for Buyer the right to continue using Goods, modify Goods so that they become non-infringing, replace Goods with non-infringing Goods of substantially equal quality, or replace Goods and refund the purchase price, less reasonable depreciation. The above is intended as a complete allocation of risks between the parties, including without limitation liability for patent infringement. Buyer understands that it will not be able to recover consequential damages even though it may suffer such damages in substantial amounts. Because this Agreement and the price paid reflect such allocation, this limitation will not have failed of its essential purpose even if it operates to bar recovery for such consequential damages.

**8. LIMITATION OF LIABILITY.** THE WARRANTIES IN SECTION 7 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED BY LAW OR STATUTE OR ARISING FROM TRADE USAGE OR COURSE OF DEALING. THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, WILL SELLER BE LIABLE FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF USE OF GOODS OR OTHER PROPERTY OR EQUIPMENT, DAMAGE TO OTHER PROPERTY, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, DOWNTIME, OR CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE AFORESAID DAMAGES, EVEN IF BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER WILL NOT BE LIABLE, AND BUYER AGREES TO INDEMNIFY SELLER, FOR ALL PERSONAL INJURY, PROPERTY DAMAGE, AND OTHER LIABILITY RESULTING IN WHOLE OR PART FROM BUYER'S NEGLIGENCE OR WILLFUL MISCONDUCT. NO CLAIMS OF ANY KIND, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, MAY BE BROUGHT AGAINST SELLER MORE THAN TWENTY-FOUR (24) MONTHS AFTER DELIVERY OF GOODS TO BUYER. In any contract by Buyer for resale of Goods, Buyer will effectively disclaim, as against Seller, any implied warranty of merchantability and all liability for property damage or personal injury resulting from handling, possession, or use of Goods, and will exclude, as against Seller, any liability for special or consequential damages.

**9. CONTROLLING LAW; CONSENT TO VENUE; DISPUTE RESOLUTION.** This Agreement and all rights and obligations hereunder will be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to its conflicts of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All disputes, claims, and controversies ("Dispute") between the parties arising out of or relating to this Agreement, including but not limited to Disputes based on or arising from an alleged tort, will be resolved by binding arbitration in accordance with the Delaware Rapid Arbitration Act ("DRAA"). Disputes will be arbitrated in Wilmington, Delaware. The parties will select arbitrators in accordance with the DRAA. The parties may mutually agree on the rules governing such arbitration, provided that such rules, and any additional or different rules, are consistent with the DRAA. Defenses based on statutes of limitation and similar doctrines will be applicable in any such proceeding, and commencement of an arbitration proceeding under this Agreement will be deemed commencement of an action for such purposes. No Dispute will be arbitrated as a class action, representative or general public action, collective action, private attorney-general action, or otherwise be joined with claims of any other person ("Collective Proceedings"). If (A) this limitation on Collective Proceedings is held by an arbitrator or court of competent jurisdiction to be unenforceable or interpreted to not prevent a Collective Proceeding, and/or (B) any arbitrator or court renders a decision regarding the question of arbitrability under the DRAA such that the Dispute is not arbitrated in accordance with the DRAA, then such Dispute will proceed in a court of law as provided below and not arbitration. Notwithstanding the foregoing, Seller reserves the right to resolve or bring any Dispute in a court of competent jurisdiction in the state or federal courts of Delaware and the parties agree that, except when the Dispute is arbitrated, the exclusive venue for all Disputes between the parties will be the state and federal courts of Delaware, to which jurisdiction each party hereby irrevocably submits. Each party waives any objection or defense that it is not personally subject to jurisdiction of the state and federal courts of Delaware; that venue of the action is improper; and that the action, suit, or proceeding is brought in an inconvenient forum. In addition to any other mode of service of process authorized by law, each party consents to service of process by registered or certified mail. EACH PARTY EXPRESSLY WAIVES ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY.

**10. COMPLIANCE WITH LAWS.** Each party represents and warrants, in connection with transactions contemplated by this Agreement, and any other agreement contemplated by or entered into pursuant to this Agreement, that it will comply with all applicable federal, state and local laws, codes, regulations, orders, and ordinances, including but not limited to all applicable: (A) laws and regulations regarding export controls, economic sanctions, trade embargoes, anti-boycott restrictions and anti-corruption laws, including but not limited to the U.S. Foreign Corrupt Practices Act (as amended), and the United Kingdom Bribery Act ("Applicable International Trade and Anti-Corruption Laws"); (B) equal employment opportunity laws, regulations, and requirements, and laws and regulations prohibiting discrimination against any person because of veteran status, disability, race, creed, color, national origin, religion, age, or sex in any term or condition of employment; and (C) laws and regulations addressing human trafficking and slavery. Each party acknowledges and confirms that it and its officers, directors, employees, agents, contractors, designees, and/or any other party acting on its behalf ("Related Parties") are familiar with the provisions of Applicable International Trade and Anti-Corruption Laws. Each party agrees to indemnify, defend, and hold harmless the other party and its employees from and against all claims, demands, costs, penalties, and fines arising in connection with any alleged breach by the indemnifying party or any of its Related Parties of this Section. Seller may terminate this Agreement entirely, without liability to Buyer, if Seller believes in good faith that Buyer or any of its Related Parties has violated or intends to violate this Section.

**11. MISCELLANEOUS.**

- (A) No waiver of any provision, right or remedy contained in this Agreement, including the terms of this Section 11(A), is binding on or effective against a party unless expressly stated in writing and signed by such party's authorized representative. Each party agrees that no right or remedy provided for in this Agreement can be waived through course of dealing, course of performance or trade usage and that reliance on any waiver without the other party's written consent

**McWane, Inc. Terms and Conditions of Sale - US**

is unreasonable. Waiver by a party of any breach will be limited to the specific breach so waived and will not be construed as a waiver of any subsequent breach. A party's approval or consent to any action proposed by the other will not be considered an agreement to the propriety, fitness, or usefulness of the proposed action, and will not affect the proposing party's obligation to strictly comply with this Agreement and all related Orders.

- (B) Buyer may not assign this Agreement or any rights or obligations hereunder without Seller's prior written consent. Any attempted assignment in violation of this Section is void; however, this Agreement and the Terms and Conditions of Sale contained herein are enforceable against Buyer's successors and permitted assigns.
- (C) Seller's remedies in this Agreement are cumulative and in addition to any other remedies available to Seller, whether at law, equity, or otherwise.
- (D) If any provision or part of a provision contained in this Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Agreement will remain in full force and effect.
- (E) Each party is an independent contractor with respect to this Agreement and not an agent or employee of the other party.
- (F) Any notice, request, demand, or other communication from one party to the other required or permitted to be given under this Agreement will be sent to the address for each party indicated on the applicable Order and (i) delivered in person; (ii) sent by overnight service (signature required); or (iii) sent via email with confirmation of delivery. All notices will be effect on the date of receipt. Parties may change such notice addresses upon written notice to the other party. In the case of notice to Seller, please also send a copy to:

McWane, Inc.  
2900 Hwy 280 S Suite 250  
Birmingham, AL 35223  
Attn: General Counsel

- (G) No provision of this Agreement may be construed against either party as the drafting party. The English language version of this Agreement will govern over any translations.