



## TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE ("Agreement") apply to all purchase orders ("Orders") for Goods placed by buyer ("Buyer") with any division, subsidiary or affiliate within the FISHER BARTON family of companies, including Fisher Barton Inc.; Fisher Barton Blades Inc.; Fisher Barton Technology Center Inc.; Thermal Spray Technologies Inc.; Zenith Cutter Inc.; Accurate Specialties Inc.; and Fisher-Barton Specialty Products Inc. (the applicable division, subsidiary or affiliate shall be referred to hereinafter as the "Seller"). Seller's agreement to sell Goods is conditioned on Buyer's unqualified acceptance of this Agreement. **Unless otherwise agreed to in a written document executed by an authorized representative of Seller, any term or condition contained in any Order or other communication or document of Buyer that adds to or is inconsistent with this Agreement is expressly rejected.** If for any reason this Agreement or any quotation or Order acknowledgment issued by Seller is deemed to be an acceptance of a prior offer made by Buyer, such acceptance is expressly conditioned on Buyer's assent to only the terms and conditions contained in this Agreement.

- 1. Goods.** As used in this Agreement, "Good" individually means any, and "Goods" collectively mean all, items sold or to be sold by Seller to Buyer, whether finished goods, equipment, parts, materials, goods to be manufactured and/ or installed or any combination thereof.
- 2. Order Acceptance and Modifications.** Seller may accept or reject any Order in its sole discretion. Seller may accept an Order by confirming the Order in written or electronic confirmation or by delivering the Goods, whichever occurs first. No Order is binding on Seller unless accepted by Seller as provided in this Agreement. Buyer may not cancel or make any changes to an accepted Order without Seller's prior written authorization.
- 3. Price; Taxes.** Any price quoted by Seller on the face hereof or in any separate document is valid for thirty (30) days or such other time period stated in Seller's quote; provided, however, Seller reserves the right to adjust the price in any quote due to changes in the cost of raw materials. After such 30-day period or other time period stated in Seller's quote, the price for Goods shall be Seller's price in effect as of the date Seller accepts Buyer's Order. The price for Goods does not include any foreign, federal, state, or local sales, use, value-added, excise or other taxes or any tariffs, custom fees or duties or other charges imposed on or measured by the use or sale of the Goods (collectively, "Taxes"). Buyer shall pay, and reimburse Seller if it pays, any and all Taxes, except for those based on Seller's net income.
- 4. Payment.** Buyer shall pay each invoice, without deduction or setoff, within thirty (30) days of the invoice date. Interest may be added to all amounts outstanding more than thirty (30) days after the invoice date at the rate of 1.5% per month or the maximum rate of interest allowed by applicable law, whichever is lower. If Buyer is in default of this Agreement, Seller may: (a) defer or suspend further shipments of Goods; (b) cancel the unshipped or unperformed portion of any Order, in whole or part, and invoice Buyer for incurred costs and reasonable profit; or (c) pursue any other remedy available under this Agreement or at law or equity.
- 5. Delivery of Goods.** Seller reserves the right to ship up to ten percent (10%) over or under the quantity ordered. Further, partial shipments may be made by Seller as Goods are manufactured or provided. Seller shall deliver all Goods EXW (Ex Works as defined in INCOTERMS 2020) at the dock located Seller's facility. Title to and all risk of loss or damage to the Goods shall pass to Buyer upon delivery of the Goods to the carrier for shipment at the dock located Seller's facility. Unless Buyer provides shipping instructions, Seller is authorized to make shipping arrangements on Buyer's behalf and Buyer shall be responsible for all costs and expenses associated therewith. Seller will use commercially reasonable efforts to meet those delivery dates stated in accepted Orders but in no event shall Seller be liable for any losses or damages associated with Seller's failure or inability to meet any delivery date.
- 6. Samples.** Upon written request, Seller will submit samples to Buyer for new Goods before Seller commences normal production of such Goods. Any change in tooling because of modifications or blueprint revisions requested by Buyer during or after completion of tooling shall be at Buyer's expense.

7. **Acceptance of Goods.** Buyer shall be deemed to have accepted each shipment of Goods unless Buyer notifies Seller in writing within ten (10) days after receipt of such shipment that any of Goods are defective or nonconforming (“**Nonconforming Goods**”). If any shipment contains Nonconforming Goods, Seller shall, at its option, either (a) repair or replace such Nonconforming Goods; or (b) refund the amount paid by Buyer for such Nonconforming Goods. Buyer may not return any Goods without first receiving a return merchandise authorization (“**RMA**”) from Seller. If parts are not received within 60 days from the generation of this RMA, it will be closed. If the parts still need to be returned, a new RMA must be requested. If Seller exercises its option to replace Nonconforming Goods, Seller shall ship to Buyer, at Seller’s expense and risk of loss, the replacement Goods. Except as provided under this **Section 7** and in **Section 8** below, Buyer has no right to return Goods to Seller. SUBJECT TO BUYER’S WARRANTY RIGHTS UNDER **SECTION 8** BELOW, THE REMEDIES SET FORTH IN THIS **SECTION 7** ARE BUYER’S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS.

8. **Goods Warranty.** Seller warrants to Buyer that the Goods shall, for a period of 180 days from the date of their shipment, be free from defects in material and workmanship, and conform with those written specifications published or agreed to in writing by Seller for such Goods, provided that such Goods are used for their intended purpose and installed, activated, used, and maintained in accordance with any instructions or guidelines supplied by Seller. As a condition to making any warranty claim, Buyer must give written notice to Seller of any suspected defect or nonconformity prior to expiration of the above-referenced warranty period. Buyer may not return any Goods to Seller in connection with a warranty claim without first obtaining an RMA from Seller. If parts are not received within 60 days from the generation of this RMA, it will be closed. If the parts still need to be returned, a new RMA must be requested. **SELLER’S SOLE OBLIGATION, AND BUYER’S EXCLUSIVE REMEDY, FOR ANY BREACH OF THE WARRANTIES STATED IN THIS SECTION 8 SHALL BE FOR SELLER, AT ITS OPTION, TO REPAIR, REPLACE OR REFUND THE PURCHASE PRICE PAID BY BUYER FOR ANY GOOD OR PART THEREOF THAT IS DEFECTIVE OR NONCONFORMING.** Replacement Goods are warranted for 180 days from the date of shipment. Notwithstanding anything herein to the contrary, the warranties in this Section 8 shall not apply to, and Seller shall have no liability for: consumable parts; normal wear and tear; rust resulting from failure to protect the Goods from water, humidity, weather or other adverse conditions; abuse, neglect; improper use, handling, storage, testing, installation or maintenance; any unauthorized alteration or modification to the Goods; abnormal physical stress or abnormal environmental conditions; or any causes or conditions beyond Seller’s control. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS SECTION 8, SELLER MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND REGARDING THE GOODS OR OTHERWISE, AND HEREBY DISCLAIMS ALL OTHER EXPRESS, IMPLIED OR STATUTORY REPRESENTATIONS, WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF A THIRD PARTY’S RIGHTS, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

8.1 **Goods Warranty Specific to Friction and Braking Goods.** Seller warrants to Buyer that for a period of 24 months from the date of the shipment of Goods, Seller agrees to issue credit for any Goods exhibiting galvanic corrosion and/or workmanship-related defects on a prorated basis determined by the length of time from the date of shipment. Any alteration or modification to the Goods after the shipment of Goods voids the warranty. Also, any raw material(s) and/or subcomponent(s) supplied to Fisher Barton from the Buyer or an affiliate of the Buyer and used to manufacture a Good, voids the warranty.

Refer to the following table for the credit scale -

Days from Initial Shipment from Fisher Barton	Credit to be Issued
0 – 30 Days	100%
31 – 60 Days	95%
61 – 90 Days	92%
91 – 120 Days	88%
121 – 150 Days	83%
151 – 180 Days	79%
181 – 210 Days	75%
211 – 240 Days	71%
241 – 270 Days	67%
271 – 300 Days	63%
301 – 330 Days	58%
331 – 360 Days	54%
361 – 390 Days	50%
391 – 420 Days	46%
421 – 450 Days	42%
451 – 480 Days	38%
481 – 510 Days	33%
511 – 540 Days	29%
541 – 570 Days	25%
571 – 600 Days	21%
601 – 630 Days	17%
631 – 660 Days	13%
661 – 690 Days	8%
691 – 720 Days	4%
721 Days and greater	0%

## 9. Limitation of Liability.

(a) EXCEPT AS OTHERWISE PROVIDED IN **SECTION 9(b)** BELOW, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, ENHANCED, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES FOR LOST PROFITS OR REVENUE, DOWN TIME, BUSINESS INTERRUPTION, LOSS OF BUSINESS OPPORTUNITY, DIMINUTION IN VALUE OR OTHER ECONOMIC LOSSES), WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF SELLER HAS BEEN SPECIFICALLY ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES.

(b) EXCEPT AS OTHERWISE PROVIDED IN THIS **SECTION 9(b)**, IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE GOODS, WHETHER ARISING OUT OF OR RELATING TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID BY BUYER TO SELLER UNDER ORDERS IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, WHICHEVER IS LOWER. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS **SECTION 9** SHALL APPLY EVEN IF THE REMEDIES AFFORDED TO BUYER UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE; PROVIDED, HOWEVER, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS **SECTION 9** SHALL NOT APPLY TO LIABILITY CAUSED BY SELLER'S RECKLESSNESS OR WILLFUL MISCONDUCT.

## 10. Seller's Intellectual Property.

(a) "Intellectual Property" collectively means any and all of the following: patents and like statutory rights; inventions, improvements, trade secrets, know-how, confidential information, processes, formulas, formulations, technology, technical information, data, and all documentation relating to the foregoing; works of authorship, copyrights; designs, development tools, specifications, technical drawings; trademarks, trade names, trade dress, service marks, logos, designs and symbols; and all industrial and other intellectual property rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered, and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection under the laws of any jurisdiction throughout any part of the world.

(b) Buyer agrees that: (i) all Intellectual Property of Seller is and shall remain the sole and exclusive property of Seller and nothing in this Agreement shall constitute or be construed to be a transfer of or license of any kind with respect to Seller's Intellectual Property; (ii) if Buyer acquires any rights or interests in or relating to any Intellectual Property of Seller, by operation of law or otherwise, such rights and interests are hereby irrevocably assigned by Buyer to Seller, without further action or compensation by either party; and (iii) Buyer shall not use, have used, display, publish, practice or exploit any of Seller's Intellectual Property unless expressly authorized in a written document executed by an authorized representative of Seller.

(c) Buyer covenants that it shall not: (i) take any action or make any claim that interferes or may interfere with any Intellectual Property of Seller, including Seller's ownership or exercise thereof; (ii) challenge any right, title or interest of Seller in or to its Intellectual Property; (iii) relabel or repack any Goods for resale or distribution to any third party without Seller's prior written authorization; (iv) alter, obscure or remove any of Seller's trademarks, copyright notices, patent or patent pending notices, or any other proprietary rights notices or information placed on the Goods or their labels, packaging or containers; (v) apply for any patent anywhere in the world with respect to Seller's Intellectual Property; or (vi) alter, adapt, translate, decompile, disassemble, copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to work around or discover any part of the Intellectual Property of Seller.

(d) Buyer acknowledges that in the course of performing this Agreement, it may individually or jointly with Seller conceive of, originate, discover, develop or reduce to practice certain modifications, enhancements, inventions, innovations or improvements to Intellectual Property of Seller (collectively, "**Improved Intellectual Property**"). All Improved Intellectual Property shall belong to and be the exclusive property of Seller. Buyer shall have no rights whatsoever to use, have used, make, have made, display, practice, modify, copy, adapt, license, sublicense, sell, offer to sell, lease, make a derivative of, or otherwise exploit the Improved Intellectual Property unless such rights are expressly granted to Buyer in a written agreement executed by an authorized representative of Seller. Buyer shall execute and deliver and cause the inventors, authors or others associated with the development of Improved Intellectual Property to execute and deliver, without additional compensation, any document or instrument deemed necessary or desirable by Seller to prosecute patent or copyright applications or otherwise use or protect the Improved Intellectual Property. Buyer shall fully cooperate with and assist Seller to prosecute any patent or copyright applications or any infringement action or other enforcement procedure necessary to protect the Improved Intellectual Property, provided that Seller bears all costs and expenses associated therewith.

11. **Indemnification.** Buyer shall defend (with counsel reasonably acceptable to Seller), indemnify and hold harmless Seller and its owners, officers, directors, employees, agents, subsidiaries, affiliates, successors and assigns from and against any and all claims, demands, losses, damages, injuries, causes of action, suits, proceedings, liabilities and expenses of any kind (including, without limitation, actual attorneys' fees and other costs and expenses of litigation) resulting from or otherwise connected with: (a) any act or omission of Buyer or its employees, subcontractors or agents in connection with the Goods; (b) any design, drawing, requirement, specification, material or other component supplied or approved by Buyer and used by Seller for the design or manufacture of any Goods, including, without limitation, any actual or alleged infringement, misappropriation, or violation of any such design, requirement, specification, material or other component of the Intellectual Property or other proprietary or property rights of a third party; (c) any failure to comply with applicable laws, statutes, rules or regulations relating to the Goods; and (d) any breach of this Agreement by Buyer or its employees, subcontractors or agents. Buyer shall not consent to the entry of any judgment or enter into any settlement without the prior written consent of Seller.

**12. Confidentiality.** All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates (collectively, "**Confidential Information**") disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement, and may not be disclosed or copied by Buyer unless authorized in a written document executed by an authorized representative of Seller. Buyer shall safeguard and protect Seller's Confidential Information in the same manner that it protects the confidentiality of its own confidential information, but in no event shall Buyer exercise less than reasonable care in protecting Seller's Confidential Information. Seller shall remain the exclusive owner of its Confidential Information. No disclosure of Confidential Information by Seller shall be construed as an assignment, license or other transfer of any Confidential Information by Seller to Buyer or any other person or entity. Upon Seller's request, Buyer shall promptly return (or, if directed by Seller, destroy) all documents and other materials received from Seller that contain, are based on, or incorporate any Confidential Information of Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. In the event that Buyer is required by a court order, subpoena or similar legal process or authority (collectively, "**Legal Process**"), to disclose any Confidential Information of Seller: (i) Buyer shall provide prompt written notice of the Legal Process so that Seller may seek a protective order or other remedy limiting its disclosure; (ii) Buyer shall (at Seller's expense) provide reasonable assistance in opposing such disclosure or seeking a protective order. If, after providing such notice and assistance as required herein, Buyer remains subject to the Legal Process, Buyer (or other persons to whom such Legal Process is directed) shall disclose no more than that portion of the Confidential Information which, on the advice of Buyer's legal counsel, such Legal Process specifically requires Buyer to disclose and shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment. Seller's rights and Buyer's obligations under this **Section 12** shall apply during the performance of this Agreement and for a period of five (5) years thereafter; provided, however, that with respect to any Confidential Information that constitutes a trade secret under applicable law, Seller's rights and Buyer's obligations under this **Section 12** shall survive until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of the Buyer or its employees or agents.

**13. Excused Performance; Allocation.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term or condition of this Agreement, when and to the extent such failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): acts of God; flood, fire, explosion, natural disaster; epidemic, pandemic, viral or bacterial outbreaks; war, terrorist threats or acts, riots or other civil unrest; governmental orders, laws, emergency proclamations or restrictions; action by any governmental authority; shortage or unavailability of materials; shortage or unavailability of labor or other industrial disturbances; shortage or unavailability of adequate power or transportation facilities; and/or other events (whether or not foreseeable or similar in type or nature to the previously listed Force Majeure Events) beyond the control of Seller. During any Force Majeure Event, Seller may allocate its inventory of available Goods in such manner and to such persons as it may determine from time to time, in its sole discretion. Seller shall resume the performance of its affected obligations as soon as reasonably practicable after the removal of the cause of the Force Majeure Event. In the event Seller's failure or delay remains uncured for a period of sixty (60) consecutive days, then either party hereto may thereafter terminate this Agreement and any outstanding Orders upon fifteen (15) days' written notice to the other party.

**14. Governing Law/Venue.** This Agreement shall be construed and governed under the laws of the State of Wisconsin (excluding application of its conflicts of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended). All actions or counterclaims regarding the enforcement or interpretation of this Agreement shall be initiated and prosecuted exclusively in the state and federal courts located in Waukesha County, State of Wisconsin and those courts hearing direct appeals therefrom. Buyer and Seller both consent to the exclusive jurisdiction and venue of such courts and expressly waive objections based on the doctrines of personal jurisdiction or forum non conveniens. SELLER AND BUYER VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION RELATING TO THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY.

15. **Miscellaneous Terms.** **Sections 4, 6, 9 to 12, 13 and 14** of this Agreement, as well as any other provision that, in order to give proper effect to its intent, shall survive the performance or termination of this Agreement. No waiver of any provision of this Agreement is valid unless expressly agreed to in a writing signed by Seller. No waiver by Seller of any default under this Agreement is a waiver of any other or subsequent default. No modification of this Agreement is valid unless expressly agreed to in a writing executed by an authorized representative of Seller. The parties agree that their relationship is that of independent contractors and not partners, joint ventures, joint employers, or principal and agent. Neither party is authorized to assume or create any obligation or responsibility, including but not limited to, contractual obligations and obligations based on warranties or guarantees, on behalf of or in the name of the other party. Buyer may not assign or delegate any of its rights, duties or obligations under this Agreement without Seller's prior written consent. Each of the rights and remedies of Seller under this Agreement is cumulative and in addition to any other or further remedies provided under this Agreement or at law or in equity. Except for the rights of indemnified parties pursuant to **Section 11** above, no third parties are intended to benefit from this Agreement, and no third-party beneficiary rights shall be implied from anything contained in this Agreement. This Agreement and all Orders accepted hereunder by Seller constitute the entire agreement between the parties respecting the Goods and supersede any prior agreements, negotiations or understandings of the parties, whether written or oral, with respect thereto. In the event any action or proceeding is commenced to enforce or interpret the terms and conditions of this Agreement, the party determined by the applicable court to be in breach of this Agreement shall, upon demand, pay or reimburse the non-breaching party for all reasonable attorneys' fees and costs and expenses of litigation incurred by the non-breaching party.

