

# McLanahan Corporation

## DOMESTIC TERMS & CONDITIONS OF SALE

These terms and conditions cover all sales transactions to within the continental United States of America, Hawaii, Alaska, Provinces and Territories governed by USA law.

**1 PARTIES TO A LEGALLY BINDING AGREEMENT** - We, McLanahan Corporation, Hollidaysburg, PA, are extending an offer for sale of goods and/or services to you. The particular goods and/or services being offered are described in more detail in the attached quotation. The following terms and conditions explain certain details of our offer. If you accept our offer and these terms, we will both become parties to a legally binding agreement.

**2 OWNERSHIP OF MATERIALS WE MAY PROVIDE** - We may provide you with quotations, estimates, prints, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information, or data. Although we provide the materials and/or programs for your use, they remain our property. You promise that you will keep such materials and/or programs strictly confidential and that neither you, nor any of your employees, nor anyone else, will disclose the materials without our prior permission. If you choose not to accept our offer or if our agreement is cancelled for any reason, we may ask you to return any materials we previously provided to you. If we ask you to return the materials, you promise to promptly return them at your own expense.

**3 CANCELLATION OF THE AGREEMENT; TERMINATION COSTS** - If you accept this quotation and offer (so long as it has not previously been rescinded by us) it becomes a legally binding agreement between us. Neither of us may cancel this agreement unless we both agree in writing to cancel it. If you decide to cancel this agreement without first reaching a new written agreement with us, or if you fail to pay us any money you owe us under this agreement, or if you fail to fulfill any of your promises you made by accepting this agreement, we may treat the order as having been wrongfully terminated by you. If you terminate the order without reaching a new agreement with us first, you agree to pay us an amount to compensate us for the damages we incurred as a result of your having wrongfully terminated the order. You agree that our damages, for which you will be liable, will be calculated as the greater of:

(a) ten (10%) percent of the original price you agreed to pay us; or

(b) the total of all labor and material costs we incurred in fulfilling your order before it was terminated, plus an allowance for our overhead expenses and our lost profits resulting from your termination of the order.

If you refuse to pay us the damages for which you are liable, you agree that we may collect from you any incidental expenses we may incur in recovering the damages from you, including court costs, attorneys' fees, and any other incidental expenses authorized under Pennsylvania law. You agree that we may cancel any order or require full or partial payment in advance by you if you file for bankruptcy, if your solvency is in question, or if a trustee or receiver is appointed for you.

**4 PRICES AND TERMS OF PAYMENT** - Our prices are free carrier (FCA) at our facility unless stated otherwise in the attached quotation. Free carrier prices do not reflect any cost for delivering the item to your location. You will be responsible for any delivery costs if you need us to ship the goods to you. If we quoted you delivered prices, they are based on carrier rates in effect at the time of our quote for delivery to your delivery point. Should the carrier's rates be changed, you agree to be responsible for any increase. Any decrease in rates will be deducted from the delivered price we quoted. The prices we quoted in this offer will remain in affect for thirty (30) days unless we stated otherwise in the attached quotation. We reserve the right to increase or decrease prices at any time to allow for changes in our cost of labor, materials and/or other manufacturing costs after thirty (30) days have passed. If the prices we quoted are subject to any Sales or Excise taxes, use or Manufacturer's tax imposed by Federal, State, Municipal or other Government authorities upon the sale, use, and/or manufacture of the goods being offered, the amount of such taxes will be added to our quoted prices. Our quoted prices do not include any such taxes. If you accept this offer, you agree to pay such taxes even if the statute imposing the tax places the tax on us. We reserve the right to require a partial advance cash payment with any order. Our payment terms are "net cash 30 days" from the date we send you an invoice unless we agree otherwise in writing. "Net cash 30 days" means that you promise you will pay your bill within thirty (30) days of the

invoice date on your invoice. We reserve the right to require progress billing if the amount of your order exceeds \$50,000.00. If we require progress billing, you may be invoiced in separate installments for up to ninety (90%) percent of the total order price prior to your order being completed and shipped. The terms on such progress invoices will be "10 days net," meaning that you must pay your bill for a progress payment within 10 days of the invoice date on the invoice. A service charge of one (1%) percent per month, or the maximum amount allowed by law, whichever is less, will be added to your bill if you do not make payment before the net date of the invoice. If you fail to make any progress payment when due we may at our option suspend work on your order and treat your failure to pay as a wrongful termination of our agreement, in which case you may be required to pay us damages as described in section 3 above. If you offer as payment a check or other note, such offer will not be considered a payment unless and until we are able to convert your check or note into cash.

**5 RESERVATION OF TITLE; RIGHTS OF OWNERS OF LAND WHERE EQUIPMENT IS LOCATED; PROVISIONS FOR INSURANCE AND SECURITY INTEREST** - We retain title to any equipment, machinery and materials sold to you until you have made all payments in cash in accordance with the terms of our agreement and any other obligations arising out of our agreement have been settled. You agree to do all acts and execute all papers necessary including without limitation security agreements, financing statements, conditional sales, chattel mortgages, notes, and/or any other papers which may be required to preserve title with us. You agree not to sell any such equipment, machinery or materials, until title has passed to you. You also agree not to contest the validity or scope of our title or rights in such equipment, machinery or materials prior to the title passing to you. If the equipment we are selling to you will be located on land you do not own wholly in your own name with clear title, this sales agreement must also be signed by any other party or parties who own the land in whole or in part. You agree that prior to delivery of the equipment you ordered, at our request, you will provide us with a Landlord's Waiver (if you lease the land) and a Mortgagee's Waiver (if the land is mortgaged), if either is applicable. We will provide a form of Landlord's Waiver or Mortgagee's Waiver if applicable. If you fail to make a payment under this agreement or fail to fulfill any of your obligations under this agreement, we may at any time repossess the equipment, machinery and or materials covered by this agreement. We may do so by entering onto the premises where the equipment, machinery or materials are located. We may do so in person or may direct a third party to do so on our behalf. We may do so without obtaining a writ of replevin or undertaking any legal process whatsoever. You agree that we may not be held legally liable by you for repossessing the equipment, machinery or materials. You also agree that we will not be required to return any money that you have paid in part for the equipment, machinery or materials. You agree that the equipment, machinery, or material will not become a fixture by reason of its being attached to the real estate where it is located. It may be separated from the real estate, and we may reclaim and/or sell it in accordance with the terms of this agreement. So long as we safely remove the equipment, you agree that we will not be held legally liable for doing so. Neither you, nor the owner of the real estate where the equipment, machinery, or materials are located, nor the mortgagee of the real estate, nor anyone with a prior encumbrance of the real estate will have any right, title, claim or interest in the equipment, machinery, or materials whatsoever by virtue of its attachment to the real estate. While title remains with us, no one may remove the equipment, machinery, or materials from the real estate without our prior permission. While title remains with us for the equipment, machinery, or materials, you agree to fully insure it at your own expense with us as the named beneficiary. The insurance must cover all casualties and hazards including, but not necessarily limited to, fire, flood, tornado, collision, upset, riot, or other civil disturbance, vandalism, or act of terrorism. You agree that we have reserved title in the equipment, machinery, and materials for security purposes. By accepting this agreement, you irrevocably authorize us to execute and deliver in your name and on your behalf all documents necessary to identify, secure, and perfect our reservation of title and security interest, including a financing statement. You agree to inform us immediately in writing of any seizure or other act of intervention by third parties relating to the equipment, machinery, or materials that may affect our security interest in them.

**6 DELIVERY OF THE ORDER** - All equipment, machinery or materials sold free carrier (FCA) are considered delivered to you when they are loaded on to a carrier's truck at our facility. All equipment, machinery, or materials sold to you cost and insurance paid (CIP) are considered delivered to you after it arrives at the agreed upon point of delivery and after you have been notified of its arrival. Once delivery occurs, you are responsible for any claim for loss or damage, that is, the risk of loss or damage falls to you and not us. You will have to make and pursue any claim yourself against the freight carrier. If a shipment is short or in error, we will consider correcting the problem if you contact us in writing within ten (10) days after you received the shipment. If we agree that any equipment, machinery, or material will be sold cost and insurance paid (CIP), we will purchase a reasonable amount of insurance against damage in transit. The amount of the insurance will be sufficient to

repair and/or remanufacture the equipment, machinery, or materials and re-ship it to you. You agree to waive any claims for liquidated and/or consequential damages for delays in delivery resulting from damage or loss in transit, for any reason, including any act, error, omission, or negligence on our part, notwithstanding that the order is shipped cost and insurance paid (CIP). If delivery occurs but we are required to further handle or transport the equipment, machinery or materials, you agree that we are acting only as your agent. If you choose to delay the shipment for any reason, you assume all risks once we notify you that the equipment, machinery, or materials are ready for shipment. You will still be responsible for making all payments in accordance with the terms of this agreement regardless of when your order is shipped. If we incur any additional expenses because of a delay in shipment or changes to your order made when completing your order, you will be responsible for compensating us for such expenses.

**7 DELAYS BEYOND OUR CONTROL; ESTIMATED SHIPPING DATES** - You agree that we may not be held responsible for any loss or damages resulting from a delay or failure to make delivery due to damages to the equipment, machinery, or materials occurring in transit, whether or not it was within our control. You agree that we will not be held responsible for any loss or damages resulting in a delay or failure to make delivery because of priorities or other regulations or orders of any governmental authority, agency, or instrumentality. You agree that we will not be held responsible for any loss or damages resulting in a delay or failure to make delivery due to a failure to obtain labor, a labor dispute, riot, civil disturbance or insurrection, fire, act of God, act of a Public enemy, or any other cause outside our control. The same will be true whether any of the events just described affected us directly or affected one or more of our suppliers or freight carriers. You agree that we will not be held responsible if we cannot complete your order if events beyond our control occur that make it impossible or commercially unreasonable for us to complete your order, including acts of God or "force majeure events," or raw material shortages. Unless we agree otherwise, any shipment dates that we may provide to you before we actually ship your order are only best estimates based upon current shipping schedules and promises from our suppliers. You agree that any such shipment dates will not be considered fixed or guaranteed shipping dates.

## **8 PROVISIONS RELATING TO INTELLECTUAL PROPERTY AND THIRD PARTY CLAIMS**

We warrant that any products we sell you will be delivered free of any rightful claim of any third-party for infringement of any United States patent. If you notify us promptly in writing and give us the authority to act on your behalf, we will defend you if anyone brings a suit related to infringement of a United States patent from your use of the products we sell to you in violation of this warranty. We will only provide such a defense if you provide adequate information and assistance to us and agree not to take a position adverse to us in such a suit. At our option, we may settle any such suit at our expense. We will pay all damages and costs awarded against you in such a suit so long as you have promptly notified us in writing of such suit and have provided us with the assistance and information requested above and have not taken an adverse position to us in such suit. If any product or part of a product in such a suit is held to infringe a third party's United States patent in violation of our warranty to you, and you are no longer able to use the product as intended, we will, at our own expense and option, provide one of the following remedies to you:

- (1) purchase on your behalf the right to continue using the product or part, or
- (2) replace the product with a non-infringing product or part, or
- (3) modify the product so that it no longer infringes the third-party's United States patent, or
- (4) take back the product and refund your original purchase price (less an allowance for reasonable depreciation for the period you used the product and any transportation costs paid separately by you).

This section states our entire liability for patent infringement by any of the products or parts of products we sell to you. The warranty described in this section 8 does not apply to any product or part that was manufactured to your specifications or design. The warranty described in this section also does not apply if you use any product we sold you in conjunction with any other product in a combination not intended by us as a part of this transaction if the combined uses forms the basis for the infringement of a third-party's patent. We assume no liability whatsoever where the infringing product or part we sell to you was manufactured to your specifications or design. We also assume no liability whatsoever where you use our product in combination with other products in an infringing way. You agree that you will hold us harmless against any infringement claims arising under the circumstances described in this paragraph.

## **9 LIMITED WARRANTY**

We warrant that the equipment, machinery, or materials we sold to you will be free from defects in material and workmanship, and that they will perform in accordance with the statements as outlined in your order to the extent

we agreed to them in our acknowledgment of your order. However, we do not warrant component parts, which are subject to normal wear and tear or are designed to be replaced or renewed as part of the routine maintenance of the machinery. Our obligations under this Limited Warranty are limited, however, to replacing but not installing, free carrier (FCA) at our facility, the replacement part or parts in which substantial defects in material or workmanship shall appear under normal use and service within one (1) year of the date of shipment. Our obligations under this Limited Warranty only apply if the machinery is kept properly maintained and is operated in accordance with our instructions and established engineering practice. Also, if you wish to make a claim under this Limited Warranty, you must notify us in writing of the existence of a defect within ten (10) days after the defect appears. At our choice, any parts replaced under this Limited Warranty become our property, and you promise that you will follow our instructions regarding the disposition of any parts that are replaced, whether that includes returning such parts to us or discarding such parts.

If the order is specified to your design, we warrant only workmanship and materials, but we accept no responsibility for equipment design.

If the equipment, machinery or materials you purchased incorporate or include any software that is our proprietary software (as opposed to software created and owned by a third party), and we have not entered into a separate license agreement with respect to your use of such software, then the warranty above will not apply, and instead we warrant, for a period of ninety (90) days from the date of delivery of the equipment, machinery or materials, that such software will substantially conform to its published specifications and that the media on which the software resides (if the software is not embedded in the equipment, machinery or materials) will be free from defects in materials and workmanship. In addition, you promise that you will only use any such proprietary software in conjunction with the equipment, machinery or materials provided by us, and then only for your internal business purposes. We make no warranty with respect to any software that is not our proprietary software that was created by a third party. In the event we enter into a separate license agreement, then the terms of this paragraph will not apply, and that separate license agreement will govern your use of the software and any warranties relating to such software will be as stated in such agreement.

If you are unable to make the equipment perform as it should, you must immediately notify us by registered letter. Your letter should include a description of the difficulties you encountered with the equipment.

You promise to give us a reasonable amount of time to assist you in making the equipment work satisfactorily. You also promise to give us friendly assistance in order to make the equipment work satisfactorily. You agree that we will not be charged for, or held responsible for, any alterations or repairs made to the machinery unless you first obtained our written consent and approval in advance. If the equipment cannot be made to fulfill the warranty, we will reload the equipment on the carrier and pay the freight for returning the shipment. You promise not to hold us liable for any damages, expenses of unloading and reloading, or freight from our location to you.

**THIS LIMITED WARRANTY IS GIVEN ONLY TO YOU, AND DOES NOT EXTEND TO ANY SUBSEQUENT BUYER OR TRANSFEREE OF OUR PRODUCTS. YOU AGREE THAT UNDER NO CIRCUMSTANCES WILL WE BE LIABLE FOR ANY CONTINGENT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF TIME, LOSS OF GOOD WILL, LOSS OF PROFITS, ANY DAMAGE TO GOODS BEING PRODUCED, OR ANY OTHER COSTS OR EXPENSES OF ANY KIND OR NATURE RESULTING FROM A BREAKAGE, BREAKDOWN OR MALFUNCTIONING OF ANY OF THE PRODUCTS OR EQUIPMENT SOLD TO YOU BY US.**

#### **10 DISCLAIMER OF EXPRESS AND IMPLIED WARRANTY**

Except for the Limited Warranty set forth in section 9, we make no express or implied warranties of merchantability, fitness, or particular purpose or warranties by affirmation, promise, description, sample, or any other type of warranty except as described in this agreement. There are no warranties extending beyond the description set forth in this agreement.

#### **11 DESIGN CHANGES**

We reserve the right to make changes in the design of any of our products. If we elect to make such changes, we are not obligated to notify you or make any changes to products we previously sold to you.

#### **12 COMPLIANCE WITH THE LAW**

You promise to comply with all laws, assurances, codes and licensing requirements in connection with the purchase, export and use of any products we sell to you.

#### **13 SEVERABILITY**

If any provision of this agreement is deemed invalid, illegal, or unenforceable, the other provisions of this agreement will remain in force.

**14 ENTIRE AGREEMENT**

If you accept these terms and conditions, you agree that together with the quotation attached to these terms and conditions, these documents will constitute the entire agreement between us. Any prior oral or written agreements, representations, or understandings, express or implied, between us are excluded and are not a part of our agreement.

**15 ASSIGNMENT OF THIS AGREEMENT**

You agree that we may assign this agreement to a third party without your permission and without notifying you in advance. If we choose to assign this agreement to another party (an assignee), you agree that you will not consider us to be an agent of the assignee for any reason. If this agreement is assigned, you promise to make any future payments due under this agreement to the assignee. By accepting our offer, you waive any rights you now have or may have against us to make any defense, counterclaim, or cross complaint in the event the assignee brings legal action against you to recover for payments or to repossess the equipment, machinery, or materials. You also agree that any claims you may have against us will be independent of any action brought by the assignee against you. You may only assign this agreement if you first obtain our prior written consent.

**16 GOVERNING LAW; DISPUTE RESOLUTION; SUBMISSION TO JURISDICTION**

We agree that the law of the Commonwealth of Pennsylvania will govern this agreement. You promise that before you seek to bring a legal claim against us you will first attempt to negotiate in good faith a resolution to any dispute arising out of this agreement. We will have thirty (30) days to conduct such negotiations prior to you filing suit. If we fail to achieve resolution of your dispute after negotiating in good faith, and if you decide to bring a law suit against us, you agree that such a suit may only be brought in Blair County, Pennsylvania court. If we are required for any reason to bring legal action against you, you agree to submit to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania.