

THRUWAY FASTENERS, INC. - TERMS AND CONDITIONS OF SALE

- 1. Agreement.** These terms and conditions of sale (“Terms”) are the only terms which govern the sale of the goods (“Goods”) set forth on the reverse side of these Terms (the “Order”) by Thruway Fasteners, Inc. (“Thruway”) to the buyer named on the Order (“Buyer”). **The Order and these Terms (collectively, the “Agreement”) constitute the entire agreement between the parties regarding the subject matter contained in this Agreement, and supersede any and all prior or contemporaneous written or oral communications, understandings, and agreements of the parties. No additions or modifications of the Agreement shall be effective unless made in writing and signed by an authorized representative of both parties. Thruway’s delivery of Goods to Buyer and Buyer’s acceptance of the delivery of Goods shall constitute acceptance of the Agreement by the parties. The parties acknowledge and agree that the sale of Goods by Thruway to Buyer shall not be governed by any terms or conditions set forth on Buyer’s purchase order or any other document provided by Buyer.**
- 2. Delivery.** Thruway will use reasonable efforts to deliver the Goods in accordance with the time period(s) specified on the Order. Thruway shall not be liable for any delays, loss, or damage for Goods in transit. Thruway shall deliver the Goods to the delivery site set forth on the Order (“Delivery Point”) using Thruway’s standard methods for packaging and shipping such Goods. Unless otherwise specified on the Order, all prices are EXW (Delivery Point) Incoterms 2010. Thruway may, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's order.
- 3. Quantity.** Thruway may deliver to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth on the Order. Buyer shall not be entitled to reject any or all of the Goods as a result of such surplus or shortfall and shall pay for such Goods at the price set forth on the Order.
- 4. Title and Risk of Loss.** Title and risk of loss passes to Buyer upon delivery of the Goods to the Delivery Point.
- 5. Nonconforming Goods.** All Goods shall be deemed accepted by Buyer unless Buyer notifies Thruway in writing of its rejection of the Goods within 2 business days after receipt. Buyer may only reject Goods that are defective, damaged, or that do not conform to the specifications (“Nonconforming Goods”) and shall furnish to Thruway written evidence of the same. If Buyer timely notifies Thruway of Nonconforming Goods, Thruway shall, in its sole discretion, either (i) replace the Nonconforming Goods or (ii) credit or refund the price for such Nonconforming Goods. Buyer shall ship, at Buyer’s expense and risk of loss, the Nonconforming Goods to the location designated by Thruway. If Thruway exercises its option to replace the Nonconforming Goods, Thruway shall, after receiving the Nonconforming Goods, ship the replacement Goods to Buyer at the Delivery Point, at Buyer’s expense and risk of loss. Buyer acknowledges and agrees that the remedies set forth in this Section 5 are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided in Section 5, Buyer has no right to return the Goods.
- 6. Price and Taxes.** Buyer shall purchase the Goods at the price set forth on the Order. All prices are exclusive of all sales, use, and excise taxes, and other taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes. Notwithstanding the foregoing, Buyer shall not be responsible for taxes imposed on Thruway’s income.
- 7. Payment Terms.** Except as otherwise set forth on the Order, Buyer shall pay all invoiced amounts to Thruway within 15 days after the invoice date. Buyer shall make all payments **in cash** in U.S. dollars. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permitted by applicable law, calculated daily and compounded monthly. Buyer shall reimburse Thruway for all costs incurred in collecting any late payments including, without limitation, attorneys’ fees.
- 8. No Setoff.** Buyer shall not, and waives any right to, offset any amounts owed to Thruway against any other amount owed to Buyer by Thruway.

9. **Warranties.** For durable Goods, Thruway warrants to Buyer that, for a period of 1 year from the date the Goods are delivered (“Warranty Period”), such Goods shall materially conform to Thruway’s published specifications in effect as of such delivery date and will be free from material defects in materials and workmanship. **EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION 9, THE GOODS ARE SOLD “AS IS” AND “WITH ALL FAULTS,” AND THRUWAY MAKES NO OTHER REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE GOODS INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. THE WARRANTIES IN THIS SECTION 9 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE GOODS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.** Thruway shall not be liable for a warranty breach unless Buyer gives Thruway written notice of such breach within 5 days after Buyer’s discovery of the breach, and allows Thruway an opportunity to examine the Goods to verify the alleged breach. Thruway shall not be liable for a warranty breach if it arises because Buyer failed to follow industry standards as to the storage, installation, commissioning, use, or maintenance of the Goods, or if Buyer alters or repairs the Goods without Thruway’s written authorization. Subject to the foregoing, in the event of a warranty breach, Thruway shall (i) replace the affected Goods or (ii) credit or refund the price for such affected Goods. **THE REMEDIES SET FORTH IN THIS SECTION 9 SHALL BE BUYER’S SOLE AND EXCLUSIVE REMEDIES AND THRUWAY’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 9.**
10. **Limitation of Liability.** IN NO EVENT SHALL THRUWAY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES, LOSS OF OPPORTUNITY, LOSS OF GOODWILL, OR DIMINUTION OF VALUE, ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH ANY BREACH OF THE AGREEMENT, REGARDLESS OF: (I) WHETHER SUCH DAMAGES WERE FORESEEABLE, (II) WHETHER OR NOT THRUWAY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (III) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND (IV) THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL THRUWAY’S AGGREGATE LIABILITY ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THE AGREEMENT, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID FOR THE GOODS SOLD UNDER THE ORDER.
11. **Compliance with Law.** Buyer shall comply with all applicable laws, rules, regulations, orders, and ordinances.
12. **Confidentiality.** All of Thruway’s confidential or proprietary information including, without limitation, pricing, sourcing, or information regarding the Goods is and shall remain Thruway’s confidential or proprietary information. Buyer shall keep such information confidential and shall have no rights to use or disclose such information.
13. **Force Majeure.** Any delay or failure of Thruway to perform any of its obligations under the Agreement will be excused if such delay or failure is the result of a cause beyond Thruway’s reasonable control or if performance is commercially impracticable.
14. **General.** Thruway and Buyer are acting hereunder as independent contractors. The Agreement is not assignable by Buyer and any assignment made in violation of this Section 14 shall be null and void. No waiver shall be effective unless made in writing and signed by the waiving party. The Agreement shall be interpreted and enforced exclusively under the laws of the State of New York, without regard to any conflict of laws principles, and the parties irrevocably and unconditionally agree that each shall exercise any right or remedy under the Agreement exclusively in, and hereby consent to the exclusive jurisdiction of, the courts in Erie County, New York. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods, if and to the extent applicable. If any provision in the Agreement is found to be invalid, illegal, or unenforceable, then the remainder of the Agreement shall not be affected, and shall remain in full force and effect. Except for Buyer’s remedies under Sections 5 and 9 of these Terms, which are Buyer’s exclusive remedies for the events specified therein, all rights and remedies provided in the Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies. The Agreement is for the benefit of Thruway and Buyer and shall not confer any legal or equitable right, benefit, or remedy on any third party. The provisions in these Terms which by their nature should survive termination or expiration of the Agreement shall survive and remain in force and effect.