TERMS AND CONDITIONS

All sales, whether on credit or by cash, by Valley Fastener Group, LLC ("Seller") to Buyer are made subject to the following terms and conditions:

Controlling Provisions: No terms and conditions other than the terms and conditions contained herein shall be binding upon Seller unless accepted by it in a writing signed by a duly authorized representative of Seller. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer’s purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document. All prior proposals, negotiations and representations, if any, are merged herein. By placing an order with Seller, Buyer will be deemed to have assented to all terms and conditions contained herein.

Prices: Unless expressly stated otherwise in a price quote or Seller invoice, all prices are F.O.B. Seller’s premises and subject to these terms and conditions. All quotations, unless otherwise stated, are for immediate action and all prices quoted therein are subject to change without notice anytime.

Payment: Payment terms shall be as set forth in Seller’s price quote or invoice, or if not then 30 days net, with no cash discount. Buyer agrees to pay all invoices when due. No shipments will be made if Buyer has an unpaid balance over 45 days. A finance charge of 1.5% per month will be assessed on any past due balance. Buyer grants Seller a purchase money security interest in the products until such time as Seller is fully paid. Buyer will assist Seller in taking necessary action to perfect and protect Seller’s security interest. No products shall become a fixture by reason of being attached to real estate. Seller’s obligations to perform shall be contingent upon a satisfactory credit review of Buyer. Seller reserves the right to withdraw Buyer’s credit privileges and require advance payment or other alternative payment terms at any time and if Seller deems Buyer’s credit status is unsatisfactory. Buyer agrees to pay any collection costs, including reasonable attorneys’ fees incurred in collecting monies owed. Seller rejects any terms proposed by Buyer that would hold back any portion of the purchase price until a date later than due on the invoice.

Order Confirmation: Confirming orders should be marked CONFIRMATION, preferably across the face of the order. Confirming orders, not so marked, may be treated as new orders and duplicated. In such cases, Seller will not be responsible for expense and inconveniences incurred and a charge for restocking will be made. Telephone orders are accepted at the risk of the Buyer and shipments made before the receipt of the confirming order are for the special convenience of the Buyer.

Delivery: Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no backcharge for loss or damage due to delay or inability to delivery, whether or not such loss or damage was made known to Seller. It shall be the duty of the Buyer to inspect the merchandise immediately upon its receipt. Seller shall have no liability for Seller’s non-performance caused by acts of God, war, terrorism, or carriers, contractors or suppliers or any other causes of any kind whatever beyond the reasonable control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, or indirect damages, losses or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay. Seller accepts no risk of loss or damage to Buyer’s goods by deterioration or by fire, smoke, explosion, sprinkler leakage, windstorm, flood, hail, aircraft, riot, civil commotion, labor trouble, or any other casualty while in transit.

Returned Goods/Incorrect Items: No claims for shortage in weight or count will be entertained unless presented within five (5) business days after receipt of materials by Buyer. Buyer shall have five (5) business days from the date Buyer receives any material to inspect such material for defects and nonconformance which are not due to shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such material. After such five-day period, Buyer shall be deemed to have irrevocably accepted the material, if not previously accepted. After such acceptance, Buyer shall have no right to reject the material for any reason or to revoke acceptance. Buyer hereby agrees that such five business day period is a reasonable amount of time for such inspection. No material is to be returned without written authorization from Seller. If return is authorized a R.A. number will be issued and should be noted on Buyer’s packing slip. All transportation charges must be prepaid and goods returned for reasons other than being incorrect are subject to a minimum service charge of 15%
and a reconditioning charge if necessary. All material to be returned must be in new and resalable condition, subject to inspection and verification by Seller.

Liability/Warranty: It is recognized that even after employing all the scientific methods known to Seller, hazards still remain in cold formed and/or machined parts. THEREFORE, SELLER'S LIABILITY SHALL NOT EXCEED TWICE THE AMOUNT OF SELLER'S CHARGES FOR THE WORK DONE ON ANY MATERIAL (FIRST TO REIMBURSE FOR THE CHARGES AND SECOND TO COMPENSATE IN THE AMOUNT OF THE CHARGES), EXCEPT BY WRITTEN AGREEMENT SIGNED BY THE COLD FORMED PARTS MANUFACTURER.

THE BUYER, BY CONTRACTING FOR COLD FORMING AND/OR MACHINING, AGREES TO ACCEPT THE LIMITS OF LIABILITY AS EXPRESSED IN THIS STATEMENT TO THE EXCLUSION OF ANY AND ALL PROVISIONS AS TO LIABILITY ON THE BUYER'S OWN INVOICES, PURCHASE ORDERS OR OTHER DOCUMENTS. IF THE BUYER DESIRES ITS OWN PROVISIONS AS TO LIABILITY TO REMAIN IN FORCE AND EFFECT, SUCH PROVISIONS MUST BE AGREED TO IN WRITING SIGNED BY AN OFFICER OF THE SELLER. IN SUCH EVENT, A DIFFERENT CHARGE FOR SELLER'S SERVICES, REFLECTING THE HIGHER RISK TO SELLER, SHALL BE DETERMINED AND AGREED BY SELLER AND BUYER.

SELLER MAKES NO EXPRESSED OR IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OR AS TO THE PERFORMANCE OF CAPABILITIES OF THE MATERIAL AS FORMED, MACHINED OR FINISHED. THE AFOREMENTIONED LIMITATION OF LIABILITY STATED ABOVE IS SPECIFICALLY IN LIEU OF ANY EXPRESS OR IMPLIED WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, AND OF ANY OTHER SUCH OBLIGATION ON THE PART OF THE SELLER.

Whenever Seller is given material with detailed instructions as to cold forming or machining, Seller's responsibility shall end with the carrying out of those instructions. Failure by a Buyer to indicate plainly and correctly the kind of material to be cold formed or machined, shall cause an extra charge to be made to cover any additional expense incurred as a result thereof, but shall not change the limitation of liability stated above.

Buyer agrees there will be no liability on the part of the Seller in contract or tort for any special, indirect or consequential damages arising from any reason whatsoever, including but not limited to personal injury, property damages, loss of profits, loss of production, recall or any other losses, expenses or liabilities allegedly occasioned by the work performed on the part of the Seller.

SELLER'S LIABILITY TO BUYER SHALL CEASE ONCE ANY FURTHER PROCESSING HAS BEEN UNDERTAKEN ON SAID MATERIAL OR ONCE ANYONE OTHER THAN SELLER UNDERTAKES TO CHANGE THE CHARACTERISTICS OR THE FORM OF THE PRODUCT.

Indemnification: Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including without limitation, attorneys' fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer, whether caused by the concurrent and/or contributory negligence of Seller, or any of its agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

Non-waiver: Seller's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Seller's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver on the part of Seller of any term or condition hereunder shall be valid unless in writing and signed by an authorized representative of Seller. In the event that any one or more of these terms are held invalid, illegal or unenforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.
Choice of Law: These Terms and Conditions and any related transaction between Seller and Buyer shall be construed and interpreted according to the laws of the State of Illinois and the Uniform Commercial Code, as adopted by Illinois, without regard to conflict of laws principles. Buyer hereby submits to personal jurisdiction and exclusive venue to an appropriate court within the State of Illinois. It is expressly agreed that in the construction and interpretation of the terms of the Contract, the rule of construction that a document is to be construed most strictly against the party who prepared the same shall not apply.