



## Briggs & Stratton, LLC STANDARD CONDITIONS OF PURCHASE

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**Entire Agreement:** The Agreement Documents and Buyer's Supplier Manual, accessible at [www.thepowerportal.com](http://www.thepowerportal.com), contain the entire agreement of the parties and supersede any prior proposals, agreements, or negotiations, whether written or oral, and may only be modified in writing signed by both parties. Any terms on any Seller invoice or transfer documents will not modify this Agreement. E-mail and other electronic communication are valid writings and may be deemed acceptance, when applicable. If any provision of this Agreement is deemed void, the remaining parts of this Agreement will remain in full force and effect.

**Governing Law:** This Agreement shall be governed by the laws of the State of Wisconsin. The provisions of the United Nations Convention on the International Sale of Goods shall not apply to this Agreement.

**Assignments:** Seller may assign the purchase order to Seller's wholly owned subsidiaries, and any such subsidiaries shall be bound by this Agreement. Seller may not assign this Agreement, the purchase order, or the right to payment, to any third party without Buyer's consent.

**Buyer Subsidiary Purchases:** This Agreement applies to any Buyer subsidiary that purchases Products from Seller. Neither Buyer nor any of its subsidiaries shall be jointly and severally liable for any of the others' separate purchases. Buyer's and its subsidiaries' purchases shall be aggregated for any calculations that depend on Buyer's purchase levels.

**Independent Contractor:** Buyer and Seller are independent contractors, and neither party may obligate the other to any third party. Further, each party will indemnify the other for any damages and costs incurred as a result of a breach of this section.

### **Cancellation and Termination:**

- 1) **Cancel Purchase Order for Convenience:** Buyer may cancel any part of a purchase order for convenience upon written notice to Seller. Buyer will pay Seller for delivered Products and the reasonable work-in-process and inventory costs Seller incurred up to the date canceled, not to exceed the original order cost, which must be submitted within 30 days of the cancellation.
- 2) **Cancel Purchase Order for Default:** Buyer may cancel any part of a purchase order without liability if Seller is in default for more than 10 calendar days, even if default is caused beyond Seller's reasonable control. If Buyer cancels due to Seller's default, Seller will be liable for any costs and damages incurred by Buyer that are fully, or in part, attributable to Seller's default.
- 3) **Terminate Entire Agreement:** Buyer may terminate this Agreement for convenience upon written notice to Seller. Buyer will pay Seller for delivered Products, reasonable work-in-process, and inventory costs Seller incurred for open purchase orders up to the date of the termination. Buyer may negotiate with Seller to complete open purchase orders.

**Purchase Order Changes:** Buyer may change any purchase order. Buyer and Seller will negotiate any resulting price or delivery changes, which must be approved in writing by Buyer.

**Time is of the Essence:** Seller must meet the delivery schedule without making excess material or production commitments. Buyer may, at its discretion, require Seller to reimburse Buyer for the additional costs associated with late delivery or non-conforming deliveries.

**Transportation:** Unless otherwise agreed by the parties in writing, transportation of Products and risk of loss shall be governed by FCA – Seller's Dock for domestic shipments, and FOB – Port of Origin for international shipments (Incoterms® 2010). Unless otherwise agreed in writing, Seller will transport all Products via Buyer's designated carriers with the transportation charges collect or third party billing on drop shipments.



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**Title:** Title to the Products shall transfer when delivered to the first carrier if shipped FCA or FOB; title to the Products shall transfer when the Products are delivered to the Buyer's door under other transportation terms.

**Inspection / Returns:** Buyer has a reasonable period to inspect Products on delivery and may return any defective or nonconforming Products. Should Buyer elect to return any defective or nonconforming Products, Seller shall pay Buyer for all unpacking, examining, repacking, and reshipping costs, including Buyer's cost of sorting and reworking.

**Payment Terms:** Unless otherwise agreed in writing: (i) For invoices covering direct material used in manufacturing, Seller will provide Buyer a 1.25% discount if paid within 10 days from the date Buyer receives proof of shipment and a compliant invoice, or total invoice due in 60 days (1.25/10 net 60), and (ii) For invoices covering indirect material, Seller will provide Buyer a 2% discount if paid within 10 days from the date Buyer receives proof of shipment and a compliant invoice, or total invoice amount due in 30 days (2/10 net 30).

**Set-Off:** Buyer may set off any amount Seller or any affiliated company of Seller owes Buyer against any amount Buyer owes Seller under this Agreement.

**Buyer's Property:** Everything Buyer provides or pays for will be Buyer's property, including tools, dies, test equipment, material, inventions, trade secrets, and business information. Seller will mark Buyer's property "Property of Briggs & Stratton, LLC", keep it in good repair, segregate it from Seller's own property if commercially reasonable to do so, use it only for Buyer's Services or Products, and insure it at replacement cost, with loss payable to Buyer. At Buyer's request, Seller will return Buyer's property within 30 days at Seller's expense in the same condition originally received by Seller, reasonable wear excepted.

**Intellectual Property Infringement:** Seller will not use or incorporate any copyrighted, patented, or proprietary materials of others in its Products without authorization. If a Product is enjoined, Seller will, at its own expense, procure the right for Buyer to use the Product, replace it with a non-infringing equivalent, or, with Buyer's written approval, remove the Product and refund the purchase price and the transportation and installation costs.

**Indemnification:** Seller will indemnify and hold harmless Buyer and Buyer's directors, officers, employees, agents, distributors, dealers, and resale customers against all claims, losses, costs, and damages, including incidental and consequential damages and reasonable attorney fees, arising from:

- 1) **Injury or Damage on Buyer's Premises:** Any bodily injury, personal injury, death, or property damage due to any act or omission by Seller or Seller's agents or contractors while on Buyer's premises, except to the extent Buyer is determined to have been proportionately negligent in causing such injury, death, or property damage.
- 2) **Defects, Infringement, or Breach:** Any act or omission by Seller or Seller's agents or contractors that results in (i) any alleged or actual defects in the Products, whether latent or patent, due to design, warning, or manufacture; (ii) failure to conform with any applicable health and safety law requirements; (iii) any alleged or actual, direct or indirect, infringement of any patents, trade secrets, trademarks, or service marks by the use, sale, or lease of any Products; (iv) any breach of any representation or warranty contained herein or made by Seller, or Seller's failure to meet the required delivery timing of the Products.

**Insurance:** Seller shall, at its sole expense, obtain and maintain insurance coverage acceptable to Buyer with insurers that have an A- or better S&P rating, and the Workers Compensation coverage listed below. Upon request, Seller will provide Buyer a Certificate of Insurance naming Buyer and its subsidiaries as additional insureds under General Liability and include "vendor coverage." Seller will provide Buyer thirty (30) days' written notice prior to cancellation or material change to any policy.



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### **Workers Compensation and Employer's Liability:**

- Limit of Liability, Workers' Compensation: Statutory
- Employer's Liability, Per Person – Accident: \$1,000,000
- Employer's Liability, Per Person – Disease: \$1,000,000
- Employer's Liability, Policy Limit – Disease: \$1,000,000

### **Policy Must Provide:**

- All States Coverage
- Voluntary Compensation
- Stop Gap Liability – Where Applicable

**Publicity and Trademarks:** Seller will not use Buyer's products or its name in any promotional activity or publicly comment on the existence of this Agreement, in either case without Buyer's prior written consent. Buyer's and Seller's trademarks, service marks, trade names, and logos shall remain their exclusive property. Neither Buyer nor Seller may use the other's marks in any manner, including but not limited to public broadcast, advertisement, or document without the other's prior written consent.

**Confidentiality:** In addition to any other confidentiality agreement that may exist between them, Buyer and Seller shall keep all of each other party's information confidential and will not disclose or use it for any purpose other than manufacturing Buyer's Products. This excludes information: (i) publically available, (ii) already in Seller's possession, (iii) received from a party with no confidentiality obligation to Buyer, or (iv) independently developed by Seller. Nothing shall prohibit Seller from disclosing confidential information that is subject to protection under any foreign, federal, state, or local whistleblower law.

**Data Privacy:** Each of the parties acknowledges that business contact information of its employees that is shared by a party (the "provider") with the other party (the "recipient") may constitute protected personal data pursuant to the European Union General Data Protection Regulation or other applicable laws (collectively, "Privacy Laws"). The provider represents and warrants to the recipient that it has taken all actions necessary to permit the sharing thereof in accordance with applicable Privacy Laws and that use by the recipient of such information is necessary to serve the provider's legitimate interests, in furtherance of the parties' commercial relationship as described herein. The recipient of such information agrees that it will use such information solely in connection with the legitimate interests of that relationship.

**Audit Rights:** Buyer may inspect and copy, without charge, any documents Seller has relating to performing this Agreement, including records of application engineering and testing (where applicable).

**Dispute Resolution:** If a dispute is not resolved by general negotiation within 30 days, Buyer and Seller will participate in at least four hours of non-binding mediation before pursuing litigation or other legal remedies. Mediation will occur in Milwaukee, Wisconsin with a mutually-agreed mediator, with the parties splitting costs equally. Should the parties be unable to resolve a dispute through negotiation or mediation, the parties consent to the personal jurisdiction in, and the exclusive venue of, the courts in Milwaukee County, Wisconsin for any litigation.

## **REGULATORY COMPLIANCE REPRESENTATIONS AND WARRANTIES**

**Compliance with Law:** Seller represents and warrants that:

- 1) **Local and International Laws and Treaties:** All Products have been, or shall be, produced, packaged, labeled, shipped, and invoiced in accordance with the applicable requirements of federal, state, and local laws of the US and all other countries in which the Products are produced or delivered, including, but not limited to, the Forced Labour Convention of 1930, as amended, and the United Nations Convention on the Rights of the Child of 1989.
- 2) **Prices:** Prices charged and allowances made available to Buyer are in compliance with the Robinson-Patman Act.



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- 3) Fair Labor Standards Act: Seller and Seller's sub-suppliers will comply with all labor practices, including the Fair Labor Standards Act of 1938, as amended, and the Equal Pay Act of 1963, as amended.
- 4) Non-Discrimination: Seller will comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967 (ADEA), as amended, Sections 501 and 505 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990, as amended (ADA), the Civil Rights Act of 1991, and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), and all equivalent applicable state and local laws.

**Environmental, Health & Safety, and Certifications**: Seller represents and warrants the items below, and Seller will immediately notify Buyer by telephone, followed by written confirmation within 24 hours, of any Products that violate applicable health or safety rules or standards.

- 1) Chemicals: Each chemical substance listed or contained in a Product complies with applicable federal, state, and local environmental, health, and safety laws including the Toxic Substances Control Act, Occupational Safety and Health Act, and Federal Hazardous Substances Act, as amended, the European Union REACH and RoHS Directives, and Buyer's most current Supplier Manual at [www.thepowerportal.com](http://www.thepowerportal.com).
- 2) Compliance with Laws: The Products comply with applicable environmental, health and safety laws, including without limitation the US Consumer Product Safety Act, as amended, and applicable industry standards. Seller warrants it will maintain, as applicable, UL, IEC, CSA, ANSI, ASTM, PGMA, PWMA, and any other voluntary and required certifications.

**Conflict Minerals**: Seller will maintain a supply chain policy and records sufficient for Buyer to audit and determine if conflict minerals defined by the US SEC are part of any Products.

**Quality Warranty**: Seller warrants that the Products will be: (i) new, (ii) manufactured in compliance with the specifications and the most recently approved quality system, (iii) free from third party claims, and (iv) free from defects until the later of 24 months after delivery to Buyer, or 24 months after delivery to Buyer's retail customer. Seller will reimburse Buyer for the costs of repairing or replacing defective goods. Seller will not change vendors or any manufacturing processes which may adversely affect Product design, specification, quality, availability, part numbers, or prices without Buyer's prior written consent.

**Anti-Dumping, Foreign Purchases**: If Buyer is the importer of record, Seller warrants that all sales made under the Agreement Documents are at not less than fair value under US Anti-Dumping Laws. If Seller is the importer of record, Buyer will not be a party to the importing, Buyer's name will not appear as importer of record on any customs declaration, the purchase will be done after importation occurs, and Seller will give Buyer a properly executed Customs Form 7552 "Delivery Certificate" and Form FD 701 "Importers Entry Notice," if applicable.

**Country of Origin**: Seller warrants that its invoices for Products imported by Seller will correctly, conspicuously, and permanently state the "country of origin" (where the Product or parts were actually manufactured) and provide Buyer any related Certificate of Origin or NAFTA Certificate of Origin.

**Code of Conduct & Social Responsibility**: To ensure Seller conducts business in a socially responsible manner, Seller (a) must adhere to Buyer's Supplier Code of Conduct located at [www.thepowerportal.com](http://www.thepowerportal.com) and (b) shall be subject to a periodic on-site audit by Buyer or a designated third party to confirm Seller's compliance.