

# TERMS AND CONDITIONS OF OPEN ACCOUNT AGREEMENT

1. It is hereby agreed by and between CUSTOMER and The Cincinnati Group, LLC. (TCG) that all invoices provided by TCG to CUSTOMER pursuant to the terms of this Agreement are due and payable within thirty (30) days of the date of said invoice. If payment is not made when due, this agreement shall be deemed breached. Should any invoice not be paid within the time set forth herein, TCG will incur damages including but not limited to, administration costs for billing, accounting for and collecting past due payments as well as carrying charges on amounts past due from CUSTOMER. CUSTOMER agrees to pay TCG service charges on all amounts past due at the rate of 1 ½ % per month (18% per annum), until paid.

2. CUSTOMER hereby grants and transfers to TCG a security interest in any and all goods and materials and the proceeds thereof, as defined in the Pennsylvania Revised Code Rule 3190, in all goods sold by TCG to CUSTOMER (as described in TCG's invoices to CUSTOMER). Until all indebtedness of CUSTOMER to TCG is paid in full, TCG shall have all the rights of a secured party as provided in the Pennsylvania Revised Code, including the right to collect any deficiency. This is a purchase money security interest.

3. In the event any action at law or in equity is commenced to enforce or to interpret the terms of this Agreement, the prevailing party shall be entitled to actual attorney's fees and costs incurred.

4. It is hereby agreed by and between the parties hereto that this Agreement is being made and entered into in the City of Greensburg, County of Westmoreland, State of Pennsylvania and that this Agreement shall be governed by and construed according to the laws of the State of Pennsylvania. Any and all actions initiated to enforce or interpret this Agreement shall be brought in Westmoreland County, Pennsylvania.

5. It is hereby agreed by and between the parties hereto that this Agreement will be effective only after it has been accepted by TCG at its place of business in Greensburg, Pennsylvania and that notice of acceptance and approval of this Agreement by TCG is hereby waived.

6. The parties hereto acknowledge that this transaction, and all future transactions, is commercial in nature and not for personal, family or household purposes.

7. CUSTOMER hereby authorizes TCG to contact credit reporting organizations and any and all of the above financial institutions and businesses regarding CUSTOMER'S credit.

8. CUSTOMER hereby acknowledges and agrees that the information as set forth in this Application and Agreement as well as any tax returns and/or financial statements that may be given to TCG in connection with it, is true and correct as of the date presented to TCG and is made in order to induce TCG to provide credit to CUSTOMER.

9. LIQUIDATED DAMAGES: BECAUSE OF THE NATURE OF THE PROPERTY AND/OR SERVICES TO BE PROVIDED BY TCG PURSUANT TO THIS AGREEMENT, IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGES, IF ANY, WHICH MAY PROXIMATELY RESULT FROM TCG'S FAILURE TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR FROM THE FAILURE OF THE PROPERTY TO OPERATE PROPERLY. THEREFORE, IF THERE SHALL AT ANY TIME BE OR ARISE ANY LIABILITY ON THE PART OF TCG BY VIRTUE OF THIS AGREEMENT, WHETHER DUE TO THE NEGLIGENCE OF TCG OR OTHERWISE, SUCH LIABILITY SHALL BE LIMITED TO AN AGGREGATE AMOUNT OF FIVE HUNDRED DOLLARS (\$500.00). THIS SUM SHALL BE PAID AND RECEIVED AS LIQUIDATED DAMAGES AND NOT AS A PENALTY. THIS LIABILITY SHALL BE COMPLETE AND EXCLUSIVE.

10. CUSTOMER shall indemnify and hold TCG, its officers, directors, members, managers, employees, parents, affiliates, subsidiaries, successors, and assigns from and against harmless from all liability from all losses, claims, fines, penalties, assessments, costs (including attorneys' fees and costs), damages or injuries to persons or property (real or personal) resulting from the negligence, use or misuse of the property sold to CUSTOMER.

11. CUSTOMER acknowledges reading and understanding this Agreement, receiving a copy, and accepts all of its terms and conditions. If more than one person signs this Agreement, each of you understands that you are jointly and severally liable under this Agreement.

12. Delivery shall be subject to and contingent upon delays beyond Seller's reasonable control, and Seller shall not be liable for any loss or damage arising therefrom. The risk of loss of the goods shall pass to

CUSTOMER as soon as the goods are ready for delivery, and without regard to any notice that they are ready for delivery.

13. All orders are shipped F.O.B. point of shipment. TCG shall not be liable for any loss or damaged sustained in transit and CUSTOMER shall not be entitled to any offset or deduction for any such loss or damage. Claims for damage in transit must be asserted by CUSTOMER against the carrier within 24 hours of receipt of shipment.

14. Claims for shortage or damage not due to carrier shall be deemed waived unless made to TCG in writing within 72 hours after receipt of shipment.

15. Any objection that goods are defective or non-conforming in any manner shall be deemed waived if not made in writing and delivered to TCG within 72 hours of receipt of the goods. No claims will be allowed unless goods are held intact and subject to inspection by TCG.

16. Warranty: Seller expressly warrants that all materials covered by this Order will conform to the specifications, drawing, samples, or other descriptions furnished or specified by TCG or specifications of the Buyer approved in writing by an officer of TCG, and will be of good materials and workmanship and free from defect. This Warranty is limited solely to the cost of replacement parts or materials. If any product provided by TCG has been installed, altered or modified, TCG will not accept responsibility for such product including: any loss of profits or revenues from Buyer or others, costs associated with the removal of goods from service or with reinstallation, disassembly or reassembly associated with this order. This warranty is limited to a period of ninety (90) days from date of delivery and in lieu of all other warranties, implied, express, or statutory, including the implied warranty of merchantability. TCG is not responsible for any consequential or incidental damages resulting from the use of these products.

17. Without limiting any other remedy, TCG shall have the right, at any time, for credit reasons or because of Buyer's default, to withhold shipments, in whole or part, to recall goods in transit, retake the same and repossess all goods which may be stored with TCG for Buyer's account. TCG may at any time decline to make any shipment, delivery or perform any work except upon receipt of full cash payment.

18. Orders cannot be canceled except upon mutual agreement of the parties.

19. TCG does not include Federal, State or municipal sales, use, excise, or similar taxes. If any such tax is stated on the invoice, Buyer will promptly remit same to TCG or in lieu of provide a tax exemption certificate acceptable to the taxing authorities. All other sales or use taxes upon goods shall be paid by Buyer to the appropriate taxing authority.

20. All notices to TCG under this Agreement shall be made to the Credit Department at the following address: 305 South Maple Avenue, Greensburg, PA 15601 or [Scott.Gordon@TCGDuct.com](mailto:Scott.Gordon@TCGDuct.com).

21. This Agreement, including the Terms and Conditions of the Continuing Personal Guaranty set forth on page 3, is intended to represent the entire agreement of the parties with respect to its subject matter, and it supersedes and merges all prior and contemporaneous negotiations, agreements, promises and representations.

**22. THIS AGREEMENT MAY ONLY BE MODIFIED BY A WRITING SIGNED BY THE PARTIES TO BE CHARGED WITH THE MODIFICATION, AND IT MAY NOT BE MODIFIED OR AMENDED ORALLY. CUSTOMER ACKNOWLEDGES AND AGREES THAT TCG IS NOT BOUND BY ANY TERMS AND CONDITIONS SET FORTH IN ANY WRITING WHICH HAS NOT BEEN DULY SIGNED AND ACCEPTED BY A CORPORATE OFFICER OF TCG.**

23. If any term of this agreement is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the remainder of the contract terms shall remain in full force and effect.

24. In the event a dispute arises among the parties, CUSTOMER agrees to make payment on all goods not subject to said dispute, and hereby waives any and all rights to offset and will not offset sums due and payable on non-disputed sales against those sums involving separate transactions which remain disputed.

25. CUSTOMER agrees to pay the current service charge of \$40.00 for each returned check.

These Terms and Conditions are subject to change without notice. See our website for the most current version. [www.TCGDuct.com](http://www.TCGDuct.com).

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(Initials)

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(Initials)

## CONTINUING PERSONAL GUARANTY

I/We (GUARANTOR) personally, jointly and severally, guarantee payment of all indebtedness now due The Cincinnati Group, LLC. (TCG) and all future indebtedness due TCG by CUSTOMER and I/We unconditionally promise to pay said indebtedness to TCG immediately upon demand and agree to the terms, covenants and conditions contained in this Continuing Personal Guaranty agreement. Upon any default of the CUSTOMER, TCG may, at its option, proceed directly and at once, without notice, against the undersigned to collect and recover the full amount of the liability hereunder or any portion thereof, without proceeding against the CUSTOMER or any other person.

The undersigned assumes the responsibility for being and keeping themselves informed on the financial condition of the above applicant and of all other circumstances bearing upon the risk of non-payment of the indebtedness which diligent inquiry would reveal, and that absent a request for such information by the undersigned, TCG shall have no duty to advise the undersigned of information known to it regarding such condition or any such circumstance.

Guarantor's Address: \_\_\_\_\_

Guarantor's Phone No.( ) \_\_\_\_\_ Social Security No.: \_\_\_\_\_ Drivers License No.: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
\_\_\_\_\_ Type or Print Name \_\_\_\_\_ Signature of Guarantor

Guarantor's Address: \_\_\_\_\_

Guarantor's Phone No.( ) \_\_\_\_\_ Social Security No.: \_\_\_\_\_ Drivers License No.: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/\_\_\_\_  
\_\_\_\_\_ Type or Print Name \_\_\_\_\_ Signature of Guarantor

Approved and Accepted By TCG On: \_\_\_\_\_

## TERMS AND CONDITIONS OF CONTINUING PERSONAL GUARANTY

A. Paragraphs 3 through 6, inclusive, hereinabove, are incorporated by reference herein.

B. The word "indebtedness" is used herein in its most comprehensive and broadest sense and includes any and all advances, debts, obligations and liabilities of CUSTOMER heretofore, now, or hereafter made, incurred or created, whether voluntary or involuntary, and however arising whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether CUSTOMER may be liable individually or jointly with others, or whether recovery upon such indebtedness may be, or hereafter become barred by any statute of limitations or whether such indebtedness may be or hereafter become otherwise unenforceable.

C. The liability of GUARANTOR shall be unlimited. This guaranty shall not apply to any indebtedness created after actual receipt via Certified Mail by TCG's Credit Department of written notice of its revocation as to future transactions. Any payment by GUARANTOR shall not reduce the maximum obligation hereunder, unless written notice to that effect is actually received by TCG at or prior to the time of such payment.

D. GUARANTOR specifically authorizes TCG, without notice or demand, and without affecting GUARANTOR's liability hereunder, from time to time to: (a) renew, compromise, extend, accelerate or otherwise change from time-to-time the time for payment of the terms, including increase or decrease of the service charge thereon; (b) the taking and holding of security for the payment of this guaranty or the indebtedness guaranteed, and exchange, enforce, waive and release any such security; (c) apply such security and direct the order and manner of sale thereof as TCG, in its sole and exclusive discretion, may determine; (d) release or substitute any one or more of the GUARANTORS.

E. No exercise or non-exercise by TCG of any right given to TCG, no dealing by TCG with CUSTOMER or any GUARANTORS or endorsers and no change, impairment, or suspension or any right or remedy of TCG shall in any way affect any of GUARANTOR's obligations

hereunder or any security furnished by GUARANTOR or CUSTOMER or give GUARANTOR any recourse against TCG.

F. The obligations hereunder are joint and several, and independent of the obligations of CUSTOMER, and a separate action or actions may be brought and prosecuted against GUARANTOR whether an action is brought against CUSTOMER or whether CUSTOMER be joined in any such action or actions.

G. GUARANTOR specifically waives any right to require TCG to: (a) proceed against CUSTOMER; (b) proceed against or exhaust any security held from CUSTOMER; or (c) pursue any other remedy in ZEN's power whatsoever. GUARANTOR specifically waives any defense arising by reason of any disability or other defense of CUSTOMER or by reason of the cessation from any cause whatsoever of the liability of CUSTOMER. GUARANTOR specifically waives any presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor, and notices of acceptance of this guaranty and of the existence, creation or incurring of new or additional indebtedness.

H. Any indebtedness of CUSTOMER now or hereafter owed to GUARANTOR is hereby subordinated to the indebtedness of CUSTOMER to TCG; and such indebtedness of CUSTOMER to GUARANTOR, if TCG so requests, shall be collected, enforced, and received by GUARANTOR as trustee for TCG and be paid over to TCG on account of the indebtedness of CUSTOMER to TCG but without reducing or affecting in any manner the liability of GUARANTOR under the provisions of this guaranty.

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