

Terms and Conditions of Sale

1. **CONTRACT:** These Terms and Conditions of Sale (these "Terms and Conditions") apply to the sale of the goods (the "Products") and related services by the seller ("Seller") identified on the face of this Agreement or the quotation, order acknowledgement, invoice or other correspondence (the "Order Documentation") signed by Seller incorporating these Terms and Conditions (together referred to as this "Agreement"), which together form the agreement between Seller and the purchaser identified in the Order Documentation ("Buyer"). Any terms and conditions in the Order Documentation shall supersede those set forth in these Terms and Conditions. This Agreement sets forth the exclusive terms and conditions, in lieu of all other terms and conditions, appearing on Buyer's purchase order or elsewhere and apply to all quotations made and orders accepted by Seller, unless specifically stated to the contrary in the Order Documentation. Any terms and conditions, whether in a purchase order or Buyer's other documents, irrespective of their materiality, which are either different from or additional to these Seller's Terms and Conditions, are objected to and excluded unless expressly agreed to in Seller's acknowledgement. Any indication of Buyer's purchase order or purchase order number will be for reference purposes only and will not constitute acceptance of any provisions in Buyer's purchase order. This Agreement constitutes the entire agreement between the parties and cannot be modified except by a writing signed by both parties. There are no understandings, representations, or warranties of any kind not expressly set forth herein. If any provision contained herein is held by a court or governmental entity of competent jurisdiction to be unenforceable, such provision will be severed from this Agreement and the remainder of this Agreement will remain in full force and effect; and this Agreement will be interpreted and enforced consistent with such revision. The failure of Seller to insist upon strict performance of any of these Terms and Conditions stated herein will not be considered a continuing waiver of any such Term or Condition or any of Seller's rights.
2. **ACCEPTANCE:**
 - (a) **Manner of Acceptance:** All orders are subject to final approval and acceptance at the principal place of business of Seller. Acceptance of the Products will constitute acceptance of these Terms and Conditions.
 - (b) **Buyer's Objections to Terms and Conditions of Sale:** If Buyer objects to any of the terms or conditions herein contained, Buyer will give Seller prompt, conspicuous notice of such objection, specifying the clause to which objection is being made. Otherwise, these Terms and Conditions will be deemed accepted.
3. **PAYMENT:**
 - (a) Payments shall be due and invoiced by Seller as set forth in the Order Documentation.
 - (b) All payment terms are expressed in United States Dollars.
 - (c) All payments are due net 30 days after invoice unless otherwise set forth in the Order Documentation.
 - (d) If any payment is not made when due, Seller reserves the right, without prejudice, to charge a Buyer an amount calculated from the due date until the date of actual collection by Seller, calculated at the lesser of (i) one and one-half percent (1.5%) per month or (ii) the highest rate permitted by law, and Buyer acknowledges and agrees that such amount represents liquidated damages for late payment and is not a penalty but rather a genuine pre-estimate of damages suffered by Seller as a result of Buyer's failure to make payment when due. Such charges will be in addition to, and not in lieu of, Seller's other rights and remedies for Buyer's default or non-performance. The total amount required to be paid by Buyer under this Agreement will be paid regardless of any dispute or controversy relating to this Agreement or the Products or to any other agreement, transaction, products, or services.
4. **TAXES:** Sales, use, and other taxes and duties that are presently or may hereafter be imposed by any taxing authority are not included in the price of the products. If such taxes are separately stated and collected at the time of payment of sale price, Buyer will be responsible for payment of that amount and will indemnify and hold Seller harmless from payment thereof, and Buyer will indemnify and hold Seller harmless for any additional amounts due.
5. **LEAD-TIME:**
 - (a) If applicable, Seller's required lead-time is set forth in the Order Documentation.
 - (b) The lead-time is based on receipt of a formal order, Buyer's accompanying payment, and Buyer's specifications, technical data, samples, test items, or other materials necessary for design of the Products, as may be further specified in the Order Documentation.
6. **SHIPMENT:**
 - (a) **Shipment Date:** The shipment date specified in the Order Documentation, if any, is dependent upon the lead-time as discussed above and is, thus, approximate. Seller will endeavor to make shipment of orders as scheduled, but Seller reserves the right to adjust shipment dates.
 - (b) **Shipment Terms and Conditions:** Unless otherwise specified in the Order Documentation, delivery shall be ex works Seller's facility, where risk of loss or damage will pass to Buyer upon delivery. Absent Buyer's instructions regarding the carrier to be used, Seller reserves the right to choose any carrier; however, Seller does not retain the risk of loss or damage for the Products. Damage or loss of goods after leaving Seller's manufacturing location is Buyer's responsibility and will not relieve Buyer of its obligations under this Agreement.
 - (c) **Shipping Charges:** All prices are ex-works Seller's facility. Shipping and related charges are not included. Shipments on common carrier do not include crating, delivery to the carrier, insurance in transit, or taxes and duties.
 - (d) **Unavoidable Delays:** Neither party will be responsible for delays, failure, or omissions hereunder (except the payment of money) due to war, fire, flood, strikes or other labor disturbance, Act of God, governmental order or requirement, delays by carriers, or due to other cause or accident beyond its control.
 - (e) **Buyer's Delay or Suspension of Shipment:** If shipment is delayed or suspended by Buyer, Buyer will pay (1) Seller's invoice for the Products as per payment terms, (2) Seller's handling and storage charges then in effect, and (3) demurrage charges if loaded onto rail cars.
 - (f) **Shipping Via Seller's Truck:** If applicable, terms and conditions for shipping via Seller's own trucks are as set forth in the Order Documentation.
7. **INSTALLATION, PRODUCT ACCEPTANCE AND START-UP SERVICE:**
 - (a) If applicable, the terms and conditions of installation, product acceptance, acceptance testing and/or start-up service are set forth in the Order Documentation. Unless otherwise specified in the Order Documentation, Products shall be deemed to be accepted by Buyer unless Buyer notifies Seller otherwise within 10 days after delivery.
 - (b) Buyer will indemnify, defend and hold harmless Seller from personal injury, property damage, or damage to the Products caused by, arising from, or connected with the installation of the Products or start-up service unless such services are provided by Seller.
8. **WARRANTY:**

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- (a) **Products Manufactured by Other Parties:** Seller makes no warranty to Buyer with respect to equipment manufactured by others and resold by Seller hereunder. Instead, such equipment will carry only the manufacturer's warranty.
- (b) **Products Manufactured by Seller:** Seller warrants Products of its own manufacture to be free of defects in material and/or workmanship, subject to the following restrictions: Unless otherwise set forth in the Order Documentation, Seller's warranty is valid for a period of 180 days from the date of delivery to the original Buyer. As Buyer's sole remedy for any breach of this Agreement by Seller, Seller shall replace or repair any products found to be defective, at Seller's option, free of charge, exclusive of shipping and freight and labor incurred in removing or installing the defective Products. This warranty does not extend to Products damaged after date of shipment from Seller's plant where the damage is not directly due to a defect in material or workmanship. This warranty does not extend to Products altered or repaired by anyone other than Seller's authorized employees. This warranty does not extend to failure or damage due to negligence (other than that of Seller); accident; abuse; improper installation (other than installation made by Seller); improper operation or operation contrary to the specifications of the Products; use under abnormal conditions of temperature, moisture, dirt, or corrosion; or use with abrasive or corrosive materials. Seller will either examine the Products at Buyer's site, or issue shipping instructions for return to Seller (transportation costs pre-paid by Buyer). This warranty does not extend to expendable or consumable parts. This warranty does not apply to Products sold "as is." Any Products that Seller determines not to be defective as a result of faulty workmanship or material will be held subject to Buyer's disposition instructions upon payment by Buyer of the transportation and other charges, if any, advanced or to be advanced by Seller thereon.
- (c) **Limitations:** THE WARRANTIES SET FORTH IN THE FOREGOING PROVISIONS OF THIS SECTION ARE LIMITED TO THEIR PRECISE TERMS AND PROVIDE EXCLUSIVE REMEDIES, EXPRESSLY IN LIEU OF ALL OTHER REMEDIES. SELLER DISCLAIMS AND SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, OR LOST PROFITS OR LOST OPPORTUNITY, ARISING FROM OR RELATED TO THIS AGREEMENT, ANY ACTUAL OR ALLEGED BREACH HEREOF, OR THE PRODUCTS. SELLER MAKES OR ASSUMES NO OTHER WARRANTIES OR GUARANTEES WHATSOEVER, WHETHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER BUYER NOR ANY OTHER PERSON IS AUTHORIZED TO ASSUME FOR SELLER ANY OBLIGATION OR LIABILITY NOT STRICTLY IN ACCORDANCE WITH THE FOREGOING OR TO REPRESENT THAT SELLER MAKES ANY OTHER WARRANTIES OR GUARANTEES. SELLER'S ENTIRE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE PRODUCTS, INCLUDING WITHOUT LIMITATION SECTION 12 BELOW, SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS AND SERVICES COVERED HEREBY.
9. **RETURNS:** Products that are nonstandard or made to Buyer's specifications are not subject to return. Other Products manufactured by Seller may be returned for credit, if Seller, in its discretion, consents to such returns. Buyer's return must be made during the period of time established by Seller for accepting returns of such Products, which will be the shorter of the period of time set forth in the Order Documentation or within 180 days of delivery to Buyer. All transportation costs, incoming and outgoing, must first be paid by Buyer. A restocking charge, as established by Seller from time to time or as set forth in the Order Documentation, may be charged by Seller. The returned Products must be new and in unused condition.
10. **SECURITY INTEREST:**
- (a) **Security Interest:** Buyer hereby grants to Seller a security interest in and to the Products and any additions or improvements to the Products, pursuant to the Uniform Commercial Code or other similar statute, to secure payment of the purchase price and other amounts due to Seller under this Agreement. Buyer agrees to execute all additional documents that, at the discretion of Seller, may be necessary to perfect the security interest of Seller in the Products, wherever such Products may be located. Should Buyer default per the terms of this Agreement, Seller will have all rights allowed by applicable law to a secured party.
- (b) **Default and Seller's Remedies:** Buyer will be in default under this Agreement and all unpaid installments will, at Seller's option, become immediately due and payable upon the occurrence of any of the following: if any of Buyer's obligations to Seller are not paid promptly when due; or if Buyer becomes insolvent or ceases to do business as a going concern; or if a petition in bankruptcy or foreign arrangement or reorganization is filed by or against Buyer, and if such petition, if filed against Buyer, is not dismissed within 30 days; or if a receiver is appointed for Buyer; or if Buyer breaches any provision of this Agreement. Upon Buyer's default, Seller will have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to any deficiency remaining after disposition of the collateral for which Buyer agrees to remain fully liable. Seller may require Buyer to assemble the collateral and to return it to Seller at a place to be designated by Seller that is reasonably convenient to both parties. Seller will give Buyer reasonable notice of the time and place of any public sale of the collateral or of the time after which any private sale of the collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice will be met if such notice is mailed, postage prepaid, to the address of Buyer at least ten days before the sale or disposition. Expenses of retaking, holding, preparing for sale, and the like will include attorneys' fees and other legal expenses.
11. **CANCELLATION:** Unless otherwise provided in the Order Documentation, the following cancellation terms and conditions shall apply. This Agreement is binding upon Buyer and Seller and cannot be cancelled after the Product is completed and ready for shipment. This Agreement cannot be cancelled or modified after the Product is in process but not yet ready for shipment, except on terms to be agreed upon that will include protection of Seller against any loss, which may include, but is not limited to, lost profits. Seller may, at its option, cancel this Agreement if Buyer fails to make payment in accordance with the terms and conditions of this Agreement or any similar contract with Seller and Buyer hereby waives any cause of action and the right to any offset or counterclaim against Seller by reason of such cancellation.
12. **INTELLECTUAL PROPERTY:**
- (a) **Patent Indemnity and Conditions:** Seller agrees at its own expense to indemnify, defend and hold Buyer harmless in the event of any suits instituted against Buyer for an alleged infringement of any claim of any United States and other country patents covering solely the structure of the Products as originally manufactured by Seller per Seller's specifications, and without modification by Buyer, provided Buyer will (1) have given Seller immediate notice in writing of any such claim or institution or threat of such suit; and (2) have permitted Seller to defend or settle the same, and have given all needed information, assistance and authority to enable Seller to do so. In the event Seller elects to defend any such suit and the structure of the said Products is held to infringe any such patents and if Buyer's use thereof is enjoined, Seller will, at its expense and at its option: (i) obtain for Buyer the right to continue using the Products, or (ii) supply non-infringing Products for installation by Buyer, or (iii) modify the Products so as to be non-infringing, or (iv) refund the then market value of the Products. Buyer will indemnify, defend and hold Seller harmless against all expenses, costs and loss by

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reason of any real or alleged infringement by Seller's incorporating a design or modification requested by Buyer.

- (b) **Specifications:** Seller retains all rights to the Product specifications and other intellectual property in the Products, including, without limitation, any and all modifications requested by Buyer.

13. COMPLIANCE:

- (a) **Safety Compliance:** Use of all guards, interlocks, electrical devices, and other safety devices supplied on the Products, and the operation of the Products in accordance with Seller's operating instructions, is essential for the safe use of the Products. Buyer agrees that it will not alter, deface, obscure, or remove any warnings, labels, and instructions affixed to Products or parts by Seller. Buyer agrees that it will not remove or render inoperable any guards, interlocks, electrical devices, or other safety devices. Buyer agrees to operate the Products in accordance with Seller's operating instructions.
- (b) **FLSA Standards:** With respect to Products produced in the United States, Seller agrees that the Products shipped hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended, and when applicable, the Equal Opportunity Clause of Executive Order 11246, as amended, and other applicable federal, state, or local laws.
- (c) **Other National Standards:** With respect to Products produced in jurisdictions other than the United States, Seller agrees that the Products shipped hereunder will be produced in compliance with applicable worker, occupational or industrial health and safety laws.
- (d) **OSHA Standards:** With respect to Products used in the United States, Buyer is cautioned that all Products sold by Seller must be used in such manner as to meet the requirements of OSHA, the Occupational Safety and Health Act of 1970, and the regulations issued from time to time thereunder. Seller believes that its Products are capable of such complying use, but Seller does not represent, warrant, or agree to indemnify regarding OSHA matters or any other applicable occupational or industrial health and safety matters; and the only warranties Seller makes are those that are set forth and defined in the provision entitled "Warranty" above.
- (e) **General Compliance with Law:** Buyer shall comply with all applicable laws, including any U.S. laws and regulations, including, without limitation, U.S. export controls, U.S. economic sanctions, and anti-bribery laws (e.g., the U.S. Foreign Corrupt Practices Act, the UK Bribery Act). Buyer shall not take any actions that would cause Seller to be in violation of any of the above laws, including anti-bribery laws and U.S. export controls and economic sanctions.

14. GOVERNING LAW; LANGUAGE:

- (a) **Governing Law:** Any claim or controversy arising out of or relating to this Agreement or to matters of the place of contracting, interpretation, performance, breach, and obligations of the parties will be construed and adjudicated in accordance with the laws of the state or province in which Seller has its principal place of business (as indicated in the Order Documentation). The United Nations Convention on Agreements for the International Sale of Goods will not apply to this Agreement.
- (b) **Language:** The parties have expressly requested that this Agreement and all documents related thereto be written in English, and the English language version of this Agreement shall supersede any translation in any other language. *Les parties aux présentes ont expressément demandé que cette entente et tout document s'y rattachant soient rédigés en langue anglaise, et la version anglaise de cette entente et tels documents supplantera n'importe quelle traduction dans aucune autre langue.*

15. **FORUM SELECTION FOR DISPUTES:** Any action or legal proceeding of any kind arising out of or relating to this Agreement or a breach thereof will be brought exclusively in an appropriate court of competent jurisdiction (state, provincial, or federal) located in the city and state or province in which Seller has its principal place of business (as indicated in the Order Documentation).

16. **ASSIGNMENT:** This Agreement will be binding upon and inure to the benefit of the parties hereto and their representatives, successors, and assigns, except that no transfer or assignment by Buyer will bind Seller without Seller's prior written consent, and any attempt to do so will be void and invalid. However, Seller may assign this Agreement to the purchaser of all or substantially all of the assets and business to which this Agreement relates.

17. **VALIDITY OF QUOTATION:** Unless otherwise set forth in the Order Documentation, Seller's quotations are valid for 30 days from the date thereof.