

## STANDARD TERMS AND CONDITIONS OF SALES

### 1. QUOTATIONS

Seller may make quotations verbally or in writing. Verbal quotations shall expire automatically unless Seller receives Buyer's purchase order number on the day the quotation is made. Written quotations shall expire automatically unless Seller receives Buyer's written purchase order within 15 days after the date appearing on the quotation. No quotation is to operate as an offer to sell but only as a description of products. Accordingly, even prior to its expiration date, any quotation is subject to change by Seller at any time upon verbal or written notice to Buyer. All quotations are deemed to incorporate Seller's Standard Terms and Conditions of Sale.

### 2. ACCEPTANCE OF PURCHASE ORDERS

Notwithstanding any contrary language obtained in Buyer's purchase order, each purchase order shall be subject to acceptance by an authorized employee of Seller's plant, and each purchase and sale transaction shall be governed exclusively by these Standard Terms and Conditions of Sale. Seller reserves that right at any time before delivery and payment to correct clerical, stenographic or other errors in quotations, purchase orders or acknowledgments.

### 3. PRICE POLICY

Regardless of process set forth in quotations, acknowledgements or elsewhere, Buyer shall pay a purchase price as follows:

- (a) The prices of the Products are those prices specified on the front of the invoice. All orders are subject to acceptance by Seller and credit approval. Pricing for undelivered Products may be increased in the event of an increase in Seller's cost, change in market conditions or any other causes beyond the Seller's reasonable control.
- (b) If the Buyer initiates or in any way causes delays in shipment or provision of Services, the price of the Products or Services will be increased 1% per month or fraction thereof up to a maximum of 18 months from the date of the Buyer's order. For delays resulting in shipment or provision of Services beyond 18 months from the date of the Buyer's order, the price must be renegotiated.
- (c) Storage fees may be assessed for any customer initiated delays and will be billed at a minimum of \$750/month.

### 4. MINIMUM BILLING

The minimum billing for each purchase order shall be \$100.00 net

### 5. TAXES

Any and all sales, use, personal property or other excise taxes which the Seller may be required to pay or collect, including first destination taxes, will be added to each invoice and shall be payable by Buyer on the same terms as the purchase price

unless the Buyer has furnished the Seller a tax exemption certificate acceptable to the taxing authority.

### 6. PAYMENT TERMS

Payment terms shall be net 30 days with approved credit terms. All International orders are cash in advance. However, on orders of \$100,000 or more and having a delivery schedule of 6 months or longer from date of order, the payment terms shall be as specified by Seller at time of quotation.

### 7. SHIPPING TERMS

Except as otherwise agreed, Seller shall be entitled to select carrier and make delivery in more than one shipment, in which event Buyer shall pay separately for each partial shipment.

All shipments shall be made F.O.B. point of shipment. Seller shall prepay freight, which shall be billed to Buyer as a separate item on the product invoice at Seller's standard rates applicable to the destination, or at Buyer's option, shipment shall be made freight collect. All truck shipments shall be made freight collect, unless otherwise agreed.

### 8. PACKAGING

At no additional charge, all products shall be packaged for domestic shipment in accordance with Seller's standard specifications. Additional charge shall be made if Buyer specifies special domestic packaging, packaging in accordance with government or military standards, overseas packaging or other special packaging. Refer to Seller's plant, nearest sales office or representative for further information.

### 9. TITLE AND RISK OF LOSS

Risk of loss in transit shall be borne entirely by Buyer at all times after the products are delivered to the carrier for shipment. However, title to the products and right to stop delivery in transit shall remain with Seller until Seller receives payment in full.

### 10. DELAYS OR DEFAULT IN DELIVERY

Seller shall have no liability to Buyer, and Buyer shall not be entitled to cancel any purchase order, for Seller's delay or default in delivery due to strikes, secondary boycotts, riots, wars, accidents, fires, floods, explosions, vandalism, government embargoes, priorities or regulations, shortages or labor, fuel, materials, supplies, power or transportation facilities, or other similar or dissimilar causes beyond Seller's reasonable control. Under no circumstances shall Seller have any liability for penalties or consequential damages of any kind resulting in whole or in part from Seller's delay in delivering, or failure to deliver, any products ordered by Buyer.

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#### **11. CHANGES TO ORDERS IN PROCESS**

There shall be a charge for any and all changes in specifications after an order is in process, based on the status of the order at the time the change is made. The additional charge shall be a minimum of \$50 net per item when engineering has not been started or is not required and a minimum of \$100 net per item when re-engineering is required. The additional charge shall be in addition to any change in the price of the product resulting from the change in specification. The order "Issue Date" will be moved forward to the date of the change and shipment will be rescheduled in accordance with the then current lead times. Buyer shall pay escalation charges based on the new "Issue Date" and scheduled shipping date as defines in paragraph B.

#### **12. CANCELLATION**

After Seller accepts Buyer's purchase order by sending Seller's written acknowledgment, Buyer's cancellation of any order or portion thereof may be accomplished only upon (i) Seller's receipt of written cancellation notice at Seller's plant (cancellation notice by telephone will be deemed only as authorization for Seller temporarily to suspend performance on Buyer's order pending written confirmation of cancellation) and (ii) Buyer's payment of the following cancellation charges: Notwithstanding anything to the contrary contained herein, the minimum cancellation charges for products shall be 50% per line item or 50% per complete order. With respect to all costs and expenses described above, Seller shall provide such substantiating documentation as Buyer may reasonably request, and Seller's computations, thus documented, and shall be conclusive and binding between the parties. With respect to all canceled products, materials and supplies described above, Seller shall, upon payment of the applicable cancellation charges, make such disposition as Buyer may specify in writing within 30 calendar days after Seller notifies Buyer of the applicable cancellation charges. Buyer's failure to so specify within said 30-day period shall constitute Buyer's authorization for Seller to make such disposition as Seller chooses with no further obligation to Buyer.

#### **13. PATENT INFRINGEMENT**

With respect to all products manufactured to Buyer's design, Buyer shall indemnify and hold Seller harmless from and against any and all loss, cost, expense, claims, demands, suits and judgements resulting from actual or alleged patent infringements. With respect to all other products sold by Seller, Seller shall defend any suit or proceeding brought against Buyer on a claim that such a product, or any part thereof when employed in the manner intended by Seller, infringes any U.S. patent, provided that Seller is notified promptly in writing and given all necessary information, assistance and authority to defend same. Seller shall pay all damages and costs awarded against Buyer as a result thereof. If the court finds such an infringement, and the use of any product, in the manner intended by Seller is enjoined, Seller shall at its sole expense, at Buyer's option (a) procure for Buyer the right to continue using said product, (b) replace said product with a non-infringing product, (c) modify said

product so that it becomes non-infringing or (d) remove said product and refund its purchase price and transportation and installation costs. Seller shall have no further liability for actual or alleged patent infringement except as provided herein.

#### **14. PRODUCT WARRANTY AND DISCLAIMER**

Seller warrants to Buyer, subject to the limitations, conditions and disclaimers stated herein, that all new products manufactured by Seller shall be free from defect in material and workmanship and shall deliver their rated output as indicated on the nameplates for a period of one (1) year from the date of commissioning or 18 mo. from date of shipment to the Buyer, whichever occurs first. Buyer must notify Seller in writing of defect or failure to deliver rated output within the applicable warranty period and give Seller the opportunity to determine that the defect or failure exists. Buyer shall, at Buyer's expense, make each allegedly defective product available for Seller's inspection at Buyer's place of business or, at Seller's option, return each such product to Seller's plant or service center as designated by Seller, freight both ways to be paid by Buyer. No products shall be returned to Seller's plant or service center except in accordance with Seller's prior written instructions. Determination of any defect is made at Seller's sole discretion and Seller's decision is final. To remedy any defect, the Seller may at its option, repair, rebuild or replace the defective component or complete product, using new or re-manufactured components or complete product. In any case the repaired, rebuilt or replaced product shall be warranted hereunder for the then non-expired portion of the original warranty period. Seller's sole obligation to Buyer, and Buyer's sole remedy against Seller, for any breach of this warranty shall be Seller's obligation to repair or replace the product as provided herein or, at Sellers option, to repay, upon return of the defective product, the price paid for such product by Buyer. Any tampering, misuse, misapplication, and/or improper installation (including belt tensioning, where applicable) of the product by Buyer or Buyer's representatives will void warranty. Also, any failure to perform required maintenance as detailed in the product instruction manual will void warranty. Additionally, any service/repair work performed by any personnel not pre-authorized by Seller to perform the service/repair work will void warranty. Products sold by Seller, but not manufactured by Seller, shall be warranted as to defects in material and workmanship consistent with the warranty policy of the original manufacturer of the products. In no event shall Seller have any liability for incidental or consequential damages of any kind resulting from a breach of this warrant. THIS WARRANTY IS EXCLUSIVE AND IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY FOR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

#### **15. RETURNS**

No products shall be returned to Seller, whether for inspection, repair, replacement or any other reason, without prior written consent from Seller's plant, sales office or representative.