

# General terms of sale

## 1. Contract

Seller's specific and general terms and conditions of sale as set forth below shall constitute the contract. All equipment, goods and services ("Equipment") are sold and delivered only under this contract. Modifications are void unless in writing and signed by Seller's authorized representative. In case of conflict between specific terms and conditions on the face hereof or any attachment or exhibit hereto and these general terms and conditions, the specific shall prevail. In the event of conflict between the terms and conditions of this contract and any other forms, purchase orders, documents or instruments of Buyer, the provisions of this contract shall prevail. This contract is subject to acceptance by Seller at its home offices in Buffalo, New York. Seller reserves the right to correct typographic or stenographic errors on the face hereof or any attachment or exhibit hereto.

## 2. Prices

This contract supersedes all previous quotations and proposals. Unless otherwise specified, prices quoted do not include any applicable property, sales, use, privilege or other taxes, or any export or import taxes, customs duties, brokerage fees, freight, insurance, container packing or the like, all of which shall be for the account of and be paid by Buyer. Applicable taxes, if any, shall be paid by the Buyer either directly to the taxing authority or, if collected by the Seller, to the Seller upon receipt of Seller's invoice for the amount of the tax. In the case of controversy as to whether this transaction is taxable, Buyer agrees to remit the amount of the tax to the Seller pending a specific ruling from the taxing authority which assesses or collects the tax.

## 3. Payments

Terms of payment shall be as specified on the face hereof. If shipments are delayed by Buyer, invoices may be rendered on date(s) Seller is prepared to make shipment(s). If completion of manufacture or shipment is delayed by Buyer, invoices may be rendered when delay is ascertained, based upon percentage of completion. Goods held as a result of Buyer's inability or refusal to accept delivery are at the risk and expense of Buyer. Interest at the rate of one and one-half percent (1-1/2%) per month (not to exceed the maximum interest allowable by law) shall be paid on the unpaid balance of any invoice not paid in full by Buyer within twenty (20) days of the due date thereof. Such interest shall be in addition to the purchase price payable hereunder. In the event Seller commences a legal action or suit to collect the purchase price or any part thereof, Buyer shall, in addition to the full purchase price, be liable for all costs and expenses of such legal action or suit (including reasonable attorneys' fees).

## 4. Shipment

Shipment/delivery dates are approximate. Unless otherwise specified on the face hereof, all Equipment will be shipped F.O.B. point of shipment. Title and risk of loss shall pass to Buyer upon delivery to common carrier. If freight must be prepaid, payment will be made for the account of Buyer.

## 5. Damage Claims; Shortages

All claims for damaged or missing Equipment must be noted on the bill of lading at the time of receipt and Buyer must immediately thereafter file a claim with Seller and the freight carrier. Seller shall not have any liability for, nor any obligation to consider, any claim for damaged Equipment or Equipment shortages which are not received by Seller, in writing, within ten (10) days of Buyer's receipt of shipment. Claims so received by Seller within such ten-day period will be considered by Seller, but will only be allowed when justified in Seller's opinion.

## **6. Loss, Damage or Delay**

Seller shall not be liable for breach of covenant or condition, loss, injury, delay, damages or other casualty due to labor disturbances, embargoes, riots, storms, fires, explosions, acts of God, war, acts of hostility, inability to obtain necessary labor or raw materials from usual suppliers, breakdown of manufacturing facility, change in economic conditions, or any cause beyond Seller's control.

## **7. Limited Warranties; Disclaimers**

Seller guarantees material and workmanship of the mechanical parts of the Equipment furnished hereunder for a period of Twelve (12) months from the date of shipment provided that the Equipment has been properly cared for and operated under normal conditions and in accordance with Seller's specifications and provided the Buyer promptly notifies the Seller in writing of any warranty claim hereunder. Seller agrees to repair or shall procure replacement or repair by the manufacturer of defective parts according to the terms of the said manufacturer's warranty. Seller shall not be liable for any repairs or alterations made by the Buyer or others without the Seller's written consent. Equipment and accessories furnished by third parties are warranted only to the extent of the original manufacturer's guarantee to the Seller. EXCEPT FOR THESE EXPRESS WARRANTIES, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR DESIGN. Any sample or literature exhibited to Buyer was to illustrate the general type of goods and not an affirmation that the Equipment will conform. No employee or representative of Seller has authority to bind Seller to any representation, affirmation or warranty not specifically included herein.

## **8. Limitation of Liability**

All remedies of Buyer arising out of this transaction or with respect to the Equipment shall be limited exclusively and in lieu of any and all other remedies to those contained in these terms and conditions, whether based upon breach of warranty, contract, negligence, strict liability or any other theory. Seller's liability is limited to the repair or replacement of defective or nonconforming goods as hereunder described. IN NO EVENT WHATSOEVER SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OR LOSSES OF BUYER ARISING OUT OF THIS TRANSACTION OR THE USE OR THE MISUSE OF ANY EQUIPMENT OR ANY PART THEREOF, WHETHER BASED UPON BREACH OF WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY.

Any modification, misuse or attempted repair of Equipment made by Buyer or third parties without Seller's prior written consent voids any and all warranties with respect to such Equipment.

## **9. Confidential Information**

Technical information contained in plans, drawings, specifications, photographs and other documents disclosed or furnished by Seller constitutes confidential and proprietary property of Seller. Buyer, in the absence of express prior written permission of Seller, shall hold all such confidential and proprietary information in confidence and may not sell or dispose of any portion thereof.

## **10. Default**

If Buyer shall fail to pay all or any part of the sums due or to become due to Seller, keep and perform any of Buyer's obligations herein, become insolvent or become a party to any federal or state insolvency proceeding or receivership, or become a judgment debtor, any sum due or to become due may, at the option of the Seller, become immediately due and payable in full and concurrently, or in the alternative Seller may at its option terminate this contract and exercise any other remedies available under applicable law. Waiver of any default shall not be a waiver of any other subsequent default.

## **11. Indemnification**

Buyer shall indemnify and hold Seller harmless from all claims, liabilities, damages, costs and expenses incurred in connection with any action or proceeding commenced against Seller or to which Seller is made a party, relating in any manner to the Equipment, except only to the extent it is determined that Seller's acts or omissions has directly caused any damages to the party or parties seeking recovery for the same.

## **12. Cancellation**

This contract may be cancelled by Buyer only with the written consent of Seller and upon reimbursement for any and all expenses and other losses incurred as a result of such cancellation including Seller's actual out of pocket costs, overhead and anticipated profit.

## **13. Permits**

Buyer will secure and provide, at its own expense, any and all necessary licenses, permits and inspections necessary to permit the lawful purchase, installation and use of the Equipment.

## **14. Changes**

Seller reserves the right to make, at any time, such changes in Equipment design, selection or components, construction, arrangement or equivalent as shall in its judgment constitute an improvement over former practice. Changes in materials, supplies, labor and/or changes made at the request of Buyer shall be at the expense of Buyer. Buyer hereby agrees to pay for the same upon receipt of the Seller's invoice. Changes or alterations made by Buyer or made by Seller (over its recommendation against the same) shall be Buyer's risk and responsibility.

## **15. Retained Security Interest: Subordination Agreements**

Until such time as the entire purchase price of the Equipment has been paid, Buyer hereby grants to Seller a security interest in the Equipment to secure the payment of same. The rights and remedies of Seller, as a secured party with respect to the Equipment shall be governed by the Uniform Commercial Code, or equivalent statute(s) of the State in which the Equipment is located. Buyer authorizes Seller to execute and record on behalf of Buyer such financing statements and other instruments as Seller may deem necessary to perfect or protect its security interest in the Equipment. Upon demand, Buyer agrees to deliver to Seller subordination agreements from landlords, mortgagees or others on whose property the Equipment is located or installed by which any landlord lien, or mortgagee lien, or other interest or claim of such party shall be subordinated to Seller's security interest in the Equipment. Until Seller has been paid in full, Buyer shall maintain all risk insurance on the Equipment, protecting against any loss or damage thereto and Seller shall be named as loss payee thereof with respect to the Equipment. Buyer shall provide Seller proof of such insurance upon demand.

## **16. Notices**

Notices may be delivered by overnight courier or fax, with proof of delivery, or by United States mail, registered or certified mail, with postage prepaid, in each case addressed to the party being notified at such party's address referred to on the face of this contract, or at such other address as such party shall have notified the other party in writing.

## **17. Not Transferable**

This Contract is not transferable or assignable by Buyer without the prior written consent of Seller. Paragraph captions are for convenience only and shall not be construed to define or limit the operative provisions of this contract.

## **18. Amendments**

No amendment, change to or modification of this contract, or any of the schedules or attachment hereto, shall be valid unless the same shall be in writing and signed by the party or parties to be charged therewith.

## **19. Applicable Law**

This transaction shall be governed by the laws of the State of New York. Any and all actions and proceedings relating to or arising from this contract shall be commenced and shall remain in New York State Supreme Court, Erie County, or in the United States District Court for the Western District of New York.

## **20. Returns**

Equipment may be returned only with the Seller's prior written consent, and then only on such terms as the Seller may specify. All returns will be subject to a 45% handling charge, and freight must be prepaid by Buyer. No special enclosures, elements or enclosures with a powder-coated finish shall be returnable, except as may be permitted by Seller in accordance with Damage Claims; Shortages section on previous page.

