

TERMS OF SALE

1) **WARRANTY OF TITLE AND RISK OF LOSS:** Title to the Products and Services and Risk of Loss covered hereby and to all additions or accessions to and substitutions for the Products and Services, shall transfer to Buyer upon pickup at Seller's facility or upon delivery at Buyer's facility, depending on the specific delivery and freight arrangements agreed to between Buyer and Seller, except Seller shall retain all of its lien rights and security interests in the Products until the Buyer has completed payment of the purchase price. The equipment shall be insured by the Buyer at its own expense in an amount not less than the balance due to the Seller under this agreement, with loss, if any, payable to the Seller and the Buyer as their respective interests may appear. Seller warrants to the original purchaser that Seller has absolute title to and full right to dispose of the Products, free and clear of any third party liens, claims, or encumbrances of any kind.

2) **PROTECTION OF SELLER'S SECURITY INTEREST:** The Products and Services covered hereby shall remain strictly personal property, irrespective of the mode of its attachment to realty, the consequences of its being disturbed or removed, or the use made of it. So long as any portion of the purchase price or accrued interest or any other sums due Seller under these terms of sale remains unpaid, the Buyer shall maintain the equipment covered hereby in good condition and repair and not permit its value to be impaired, and the Buyer shall not sell, mortgage, pledge or otherwise deal in or encumber the equipment of any part of it or permit it to be removed from the place where first installed, without the Seller's prior written consent. The Seller is authorized to inspect the equipment wherever located at any reasonable time or times.

3) **SELLER'S REMEDIES:** In the event that the Buyer fails to make any payments when due, fails to comply with any of these terms and conditions of sale, or otherwise defaults in the performance of these terms and conditions, or if a receiver or trustee of the Buyer's property or business is appointed by any court, or if a proceeding in bankruptcy or insolvency is instituted by or against the Buyer (and not dismissed within sixty (60) days), or if the Buyer makes an assignment for the benefit of creditors, or if for any other reason the Seller deems itself to be insecure under this agreement, the unpaid balance of all sums which the Buyer is obligated to pay to the Seller under these terms shall become immediately due and payable. At the Seller's option, Seller may demand immediate payment of the unpaid balance. In addition, the Seller may, without incurring any liability to the Buyer for doing so, take immediate possession of the equipment (including all additions or accessions to and substitutions for the equipment), with a five (5) day notice, to Buyer by Seller. For the purpose of taking possession of the equipment, the Seller may enter upon any premises where the equipment may be. Upon notice by Seller to re-take the property, the Seller may also require assembling or dis-assembling the goods, and disconnecting the utilities to making them available to Seller at a place to be designated by Seller which is reasonably convenient to both parties. Seller will give Buyer reasonable notice of the time and place of any public sale or auction or of the time after which any private sale or other intended disposition is to be made. The requirements of reasonable notice shall be met if such notice is mailed, postage prepaid, addressed to Buyer at the address shown on the purchase order or Seller's Order Acknowledgment at least five (5) days before the time of such sale or disposition. Buyer shall be responsible for the additional expenses of retaking, holding, preparing for sale, selling or the like and shall include Seller's reasonable attorney's fees and legal expenses. No waiver by Seller of any default shall operate as a waiver of any other default or of the same default on a future occasion. The rights and remedies of Seller hereunder are not exclusive but are in addition to any other rights or remedies available to Seller under applicable law.

4) **INSPECTION / REJECTION.** In the event, the Products and Services do not operate in conformance with the Specifications outlined in Seller's Quotation and/or Seller's Order Acknowledgment, Buyer shall have the option to:

A. deliver a written notice of the non-conformance of the Products and/or Services to Seller (a "Notice of Non-Conformance") and request modifications listed on this Notice. Upon receipt of this Notice, Seller, at its cost and expense, shall take all steps necessary to modify the Products within a timeline agreeable to Buyer;

B. accept the Products and/or Services in its current state of performance by providing written notice to Seller (a "Notice of Provisional Acceptance") and state that Buyer accepts the Products as is. Buyer shall itemize those areas in which the Products have failed to perform acceptably. Seller shall acknowledge said list. Upon approval of Seller, Buyer shall have the right to withhold payment of any unpaid amounts of the Purchase Price due to Seller to offset any costs or expenses incurred by Buyer as a result of the Products not operating in conformance with the aforementioned Specifications. If Buyer accepts the Products as is, the amount of the payment withheld shall be agreed upon by Buyer and Seller and shall be reasonably commensurate with the reduced value of the Products.

5) **FORCE MAJEURE.** Neither Seller nor Buyer shall be liable for any delays or performance failures, other than Buyer's payment obligations, when due to an act of God, war, insurrection, riot, explosion, fire, flood, storm, earthquake, epidemic, act of terrorism, government action, shortage of raw materials, or due to any other unanticipated event beyond a party's reasonable control, whether affecting procurement, production, transportation or any other phase related to an Order. The Seller shall have the additional right, in the event of the happening of any of the above contingencies, at its option, to cancel its contract or any part thereof without any resulting liability.

6) **A. LIMITED WARRANTY.** Seller warrants to the original purchaser in the event the goods are new, that each item of Product, including replacement parts and Service, will conform in all material respects to Seller's written specifications for the item and Service and to the description in the Seller's Quotation and/or Seller's Order Acknowledgment, and will be free from defects in materials and workmanship subject to the tolerances and variations consistent with Seller's Quotation and/or Seller's Order Acknowledgment. The period of this limited warranty is eighteen (18) months from the shipment of each item of

Product or twelve (12) months from the date of installation by original purchaser, whichever comes first. The period of this limited warranty for service is ninety (90) days from the performance of such service. The period of this limited warranty for replacement parts is the longer of ninety (90) days or the unexpired portion of the original limited warranty twelve (12) month period. OEM Manufacturer's warranty for purchased parts and components will pass to Buyer and will be subject to the OEM Manufacturer's Warranty Terms, Seller's warranty will not apply to these Products and Services. Buyer shall promptly notify Seller in writing of any alleged defects in the Product or Service and specifically describe the problem. Seller shall have no obligations under this warranty regarding any defect unless it receives notice and a description of such defect. Upon receipt of such notice, Seller shall either advise Buyer that warranty service shall be at the location of the Product or shall instruct Buyer as to the part or parts of the Product that Buyer shall ship back to a Seller repair facility for repair or replacement. Charges for correcting defects will not be allowed, nor will returned goods be accepted for credit unless Seller is first notified in writing and the return is authorized by Seller in writing. The foregoing warranty shall not apply to any Products which have been (a) used or operated in a manner inconsistent with the specified application; (b) modified or repaired by anyone other than Seller's personnel or Seller's authorized service representatives; or (c) damaged because of accident, neglect, misuse, excessive deterioration, erosion, abuse, improper installation, failure or surge of electrical power, air conditioning, or humidity control, water damage, transportation, other causes other than ordinary use, or any use in violation of or contrary to Seller's instructions.

B. LIMITED REMEDY. If any Product or Service fails to conform to the limited warranty in this Section and if: (a) Buyer gives Seller prompt written notice specifying in detail the nonconformity, (b) within ten (10) days after written authorization from Seller, Buyer returns any defective Product to a Seller repair facility; (c) the inspectors at the Seller's repair facility determine the item is nonconforming or defective, and (d) Buyer has paid for the Products and Services; then Seller will, at its option, either repair, replace or re-perform the defective Product or Service or refund the purchase price for that Product or Service. Seller shall not be liable for consequential damages arising from any defect or other characteristic of any goods sold by Seller. The preceding remedy is Buyer's sole and exclusive remedy for breach of the terms or any loss or damage arising out of the products or the services or any order, whether in contract, tort or otherwise. This paragraph sets forth Seller's only warranty and the remedy herein provided shall be the exclusive remedy available to Buyer. There are no warranties which extend beyond the description on the face hereof.

For used goods, there are no warranties and the goods are sold "AS IS".

The foregoing warranty applies only to the original purchaser and is in lieu of all other warranties, whether statutory, express or implied, including the warranties of merchantability, fitness for a particular purpose or use, non-infringement, and warranties arising from course of dealing or usage of trade. This limited warranty may not be modified or expanded except in a writing signed by one of Seller's executive officers.

7) **LIMITATION OF REMEDY AND LIMITATION OF LIABILITY:** It is expressly understood that Seller's liability, including that for breach of contract, negligence, strict liability in tort, or otherwise, with respect to or arising out of Seller's products and Buyer's exclusive remedy is limited to the repair or replacement of parts in the manner and for the period of time provided above. In no event will: (a) either party have any obligation or be liable for any loss of use, revenue, income, or anticipated profits; loss of product, spoilage, materials, or property handled or processed with the use of the products, and damage to, loss or destruction of property use, or any incidental, consequential or special damages, (b) either party's liability exceed the price of the product or service giving rise to the claim, whether in contract, tort or otherwise. Arising in connection with the sale or use of, or inability to use, Seller's equipment or product for any purpose except as herein provided.

8) **OFFSETS.** Upon approval from Seller, Buyer shall have the right to withhold or set off any payments due and owing to Seller for amounts due to Buyer from Seller. .

9) **SAFETY DEVICES AND GUARDS:** Buyer shall use and require its employees to use all safety devices and guards required by applicable law and regulation and follow all safe operating procedures, including, but not limited to those safety devices and guards provided by Seller and to those installation, operation and maintenance procedures set forth in any manuals and instruction sheets furnished by Seller or as required by any OSHA regulations.

10) **INDEMNITY.** Buyer shall indemnify and save Seller harmless from any liability, claims, judgments, costs and expenses (including attorney's fees) for personal injury (including death) and property damage, arising out of the operation of the equipment or the Buyer's failure to discharge its obligation as set forth herein. Buyer agrees that: (a) Buyer shall indemnify, defend and hold Seller and Seller's successors and assigns harmless from and against all damages paid or payable to any third party other person, including attorney fees incurred prior to, at trial and on appeal, arising from or related to any of the following (each, a "Claim"): (i) if Buyer designed or furnished the specifications for that Product or any marking or branding applied at the request of Buyer, any product liability claim (except product liability claims caused solely by defects in the materials Seller supplied or solely by Seller's negligence) or any claim that the Product infringes any other person's intellectual property rights or defective; (ii) that Buyer breached the Terms; (iii) any improper alteration, installation, repair or maintenance including removal of guards or defeating of interlocks or other safety devices; (iv) any use contrary to the Documentation or applicable law, other than the purpose for which the Product was designed or any other misuse; and (v) any failure to provide, implement or enforce any Product notices. Buyer shall notify Seller promptly, and in any event within ten (10) days, of any accident or malfunction involving Seller's products which results in personal injury or property

damage and shall cooperate fully with Seller in all investigations to determine the cause of such accident or malfunction.

Seller agrees that: (b) Seller will indemnify, defend and hold Buyer harmless from and against any Claim: (i) that the Product as Seller designed it and when used as set forth in the Seller's Quotation and/or Seller's Order Acknowledgment infringes any other person's intellectual property rights; and (ii) that Seller breached the Terms. Seller and Buyer agree that: (c) The obligation of each party ("Indemnitor") to indemnify the other party is conditioned upon that other party (1) giving the Indemnitor prompt written notice, as stated above, of the Claim (except that any delay in giving notice will not limit the Indemnitor's obligations unless it has been prejudiced by the delay and then only to the extent of the prejudice); (2) tendering defense and settlement of the Claim to the Indemnitor; and (3) cooperating with the Indemnitor in the defense of that Claim.

To the extent necessary to indemnify and hold Seller harmless from any claims by any of Buyer's employees and to the extent permitted by law, Buyer expressly waives any immunity or exemption from liability for the personal injury or death of Buyer's employees that may exist under, or any right to receive contribution from Seller, created by, the workers' compensation laws of the state where the injury occurs or the employee is located.

11) **INSURANCE.** Seller shall secure and maintain at its own expense the following insurance with companies satisfactory and acceptable to Buyer, and shall furnish to Buyer certificates evidencing such insurance prior to commencing work under this Agreement and thereafter as required by Buyer. Seller shall notify Buyer in writing thirty (30) days prior to any cancellation or alteration of said policies, in which case Seller shall procure replacement insurance and provide Buyer with new certificates evidencing such replacement insurance. The following insurance coverage will be continuously maintained for the term of this Agreement.

A. **AUTOMOBILE LIABILITY INSURANCE** in the amount of One Million Dollars (\$1,000,000) combined single limit.

B. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE** covering Seller's employees, which shall fully comply with the statutory requirements of all state laws and any applicable federal laws.

C. **COMMERCIAL GENERAL LIABILITY AND PRODUCT LIABILITY INSURANCE** coverage at One Million Dollars (\$1,000,000) per occurrence with a general aggregate of Two Million Dollars (\$2,000,000).

D. **UMBRELLA LIABILITY INSURANCE** coverage with a maximum limit of Ten Million Dollars (\$10,000,000).

12) A. **WARRANTY AGAINST PATENT OR TRADEMARK INFRINGEMENT.** Seller warrants to the original purchaser that Seller is the exclusive owner of the Seller Intellectual Property and the Product shall be delivered free of the rightful claim of any person by way of patent or trademark infringement or the like. Seller reserves all rights regarding the Intellectual Property except those expressly granted to Buyer in these Terms and the Documentation. The Buyer agrees to defend and hold the Seller harmless against any claims or liabilities for, or by reason of, any alleged patent infringement arising from the manufacture or sale of any of the equipment which is manufactured in accordance with the specifications furnished by the Buyer. The purchase of the equipment does not entitle the Buyer to employ the same with any patented process.

B. **PROPRIETARY DOCUMENTS.** Documentation that the disclosing party may furnish shall be in the receiving party's possession pursuant only to a restrictive, nontransferable, nonexclusive license under which the receiving party may use such Documentation solely to operate, service and repair the Product and for no other purpose. The receiving party agrees to maintain the confidentiality of all Documentation and to instruct and obligate its employees and agents to do the same. Without limiting the generality of the foregoing, without the prior express written consent of the disclosing party, the receiving party may not reproduce or copy any Documentation or transfer, assign, sublicense, loan, disclose or otherwise make available all or any portion of such Documentation to any other person or entity. Title to and ownership of the Documentation shall at all times remain with the disclosing party.

C. **RETURN OF INFORMATION.** All such information, including all reproductions, shall be returned to the appropriate party immediately upon demand and otherwise upon completion of performance of this order or its termination for any reason. The foregoing technical information shall at all times be treated in a confidential manner, and both parties acknowledge and agree that disclosure of this information to the industry as a whole would injure their competitive advantage.

13) **PRICES; TAXES; DELIVERY:** Prices on the products specified herein are exclusive of all city, state, and federal excise taxes, unless specifically included. Wherever applicable, such tax or taxes shall be added to the invoice as a separate charge to be paid by the Buyer. Prices and payment terms are provided in the Seller's Quotation and Seller's Order Acknowledgment. All prices are from Seller's loading dock, and are exclusive of shipping and transportation charges, special packaging charges, insurance, tariffs, duties and sales, use, privilege, excise, value added and all other taxes, and other similar charges, unless stated otherwise in Seller's Quotation and/or Seller's Order Acknowledgment. Buyer agrees to pay and otherwise

be fully responsible for such taxes (except for tax based on the net income of Seller). Taxes assessed against the equipment while in possession of the Buyer shall be paid by the Buyer. Should any tax assessment become delinquent, the Buyer shall promptly so notify the Seller, and any payment made by the Seller to discharge such assessment shall become part of the unpaid purchase price and be secured hereunder.

14) **ADDITIONAL CHARGES:** If substitute, additional equipment or repair parts, are purchased by the Buyer from the Seller, these terms of sale shall be applicable to such substitute, additional equipment or repair parts as if the same had been originally purchased hereunder. At the Seller's option, any unpaid balance beyond the specific terms of sale

shall accrue interest at the rate of eighteen (18) percent per annum or the highest rate allowable by law.

15) **ACCEPTANCE AND AMENDMENT:** Any amendment to Seller's Quotation and/or Seller's Order Acknowledgment are subject to and expressly conditioned upon Seller's acceptance in writing of the Order.

If there is a Master Terms Agreement, then the Seller's Quotation and Seller's Order Acknowledgment, the Master Terms Agreement, and these Terms constitute the entire agreement between Seller and Buyer regarding the Products and Services to which the Order applies, with all prior discussions, proposals, understandings, agreements, express, implied, written or oral, regarding the Products and Services having been superseded. To the extent there are conflicts between the Master Terms Agreement, the Seller's Quotation or Seller's Order Acknowledgment, or these Terms, the Master Terms Agreement shall supersede and govern. If there is no Master Terms Agreement, then the Seller's Quotation and/or Seller's Order Acknowledgment and these Terms constitute the entire agreement between Seller and Buyer regarding the Products and Services to which the Order applies, with all prior discussions, proposals, understandings, agreements, express, implied, written or oral, regarding the Products and Services having been superseded. The Buyer's Purchase Order Terms and Conditions do not apply.

16) **INDEPENDENT CONTRACTORS.** Nothing contained in this Agreement shall be construed as creating a partnership or joint venture between Buyer and Seller, and Seller shall at all times during the term of this Agreement be deemed to be an independent contractor, solely responsible for the manner by and the form in which it fulfills this Agreement per any specific instructions from Buyer. Seller agrees to notify Buyer of any major third party Sub-Contractors used in the fulfillment of this order.

17) **CHANGES / NOTICES:** Because we are constantly improving our products the design dimensions and weights, while sufficiently accurate for most purposes, are subject to change. Buyer has the right to make changes within the general scope of this order in writing to the Seller. If any such change causes an increase or decrease in the cost of, or time required for, Seller's price and/or time required for approved changes shall be equitably adjusted as mutually agreed by the parties. Any claim for adjustment hereunder must be asserted in writing within thirty (30) days from the date the change is ordered and failure on the part of either party to assert its claim within the time provided shall operate as a waiver thereof. Change Notices and other Notices will be sent to the addresses for Buyer and Seller on file for this order and must be in writing.

18) **COMPLIANCE WITH LAWS:** Seller strives to comply with the provisions of all federal, state and local laws, standards and regulations for which liability may accrue to Buyer for violation thereof. However, Seller does not warrant that any equipment and features meet the requirements of any local, state or federal laws or regulations, including those issued under OSHA. After shipment of the Product, compliance with applicable laws, ordinances and regulations relating to environmental, public and user safety, training, Product use, maintenance and transportation become the sole responsibility of Buyer. Seller does not undertake or assume any responsibility or obligations of Buyer for the safety of the workplace where the product is used, whether that responsibility or those obligations are imposed by code, regulation, or judicial decision, and Seller makes no warranty or representations with respect thereto. The Products and Services described herein is provided only with the safety devices and features shown in the applicable specifications. Should the customer require any additional devices or features, they should be specifically identified and Seller will amend this quotation accordingly.

19) **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect the validity of the remaining provisions unless Buyer determines, in its discretion, that the court's determination causes this Agreement to fail in any of its essential purposes.

20) **EQUAL OPPORTUNITY EMPLOYER.** Seller hereby represents and warrants that it has been and is presently conducting business as an Equal Opportunity Employer and that Seller's employment decisions are based on business needs, job requirements and individual qualifications. Seller hereby represents and warrants that it has been and is presently conducting business in compliance with the Fair Labor Standards Act of 1938, as amended, and all other applicable federal, state and local governmental laws, rules, regulations and ordinances related to fair labor standards. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable. Seller shall abide by the requirements of 41 C.F.R. §§ 60-1.4, 60-300.5(a) and 41 C.F.R. § 60-741.5(a). These regulations prohibit discrimination against qualified minorities, women, protected veterans and qualified individuals on the basis of disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified minorities and women, protected veterans and qualified individuals with disabilities.

21) **APPLICABLE LAW:** These terms shall be governed by the Uniform Commercial Code and other applicable law which is in effect in the State of Wisconsin, Columbia County, on the date hereof. These terms shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. The invalidity, in whole or in part, or any of the provisions of these terms and conditions shall not affect the enforceability of any of the other provisions hereof.