

## TERMS AND CONDITIONS OF SALE

**Introduction.** The party selling the goods or services is herein referred to as "Seller" and the customer, person or entity purchasing goods or services (collectively referred to as "Goods") from Seller is herein referred to as "Buyer". Sale of Goods includes Seller granting to Buyer a license to use any software and/or firmware ("Software") which are preloaded, or to be loaded into such Goods. These Terms and Conditions, any price list or schedule, quotation, acknowledgment or invoice from Seller relevant to the sale of the Goods and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by Seller to Buyer. Buyer's acceptance of the Goods will manifest Buyer's assent to these terms and conditions without variation or addition. Any different or additional terms in Buyer's purchase order or other Buyer documents are hereby objected to. Seller reserves the right in its sole discretion to refuse orders.

**1. Prices.** Prices for Goods, whether specified in Seller's price list or schedule, acknowledgement or written quotation, are subject to change without notice and the prices invoiced will be those in effect at the time of shipment.

**2. Taxes.** Any current or future tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, delivery or shipment, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, storage, processing, use or consumption of Goods, other than taxes based on Seller's net income or profit, shall be for Buyer's account and if paid by or levied or assessed against Seller, shall either be added to the price of the Goods or billed to Buyer separately, at Seller's election.

**3. Terms of Payment.** Unless otherwise specified by Seller, terms are net thirty (30) days from the date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with the Buyer, which other agreements Buyer and Seller hereby amend accordingly, in the event Buyer fails to make any payment when due. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any amount owed to Seller is not paid when due, it shall bear interest at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial condition become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Goods theretofore delivered. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries. Buyer hereby grants Seller a security interest in all Goods sold to Buyer by Seller, which security interest shall continue until such Goods are fully paid for in cash, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

**4. Shipment, Delivery & Title.** While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods for which Buyer has not provided shipping instructions and other required information. If the shipment of the Goods is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. Risk of loss and legal title to the Goods shall transfer to Buyer for sales in which the end destination of the Goods is outside of the United States immediately after the Goods have passed beyond the territorial limits of the United States. For all other shipments, risk of loss for damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by carrier at Seller's shipping point. All shipments originating from Seller's Reynosa plant are made F.O.B. Seller's Shipping Dock and title shall transfer to Buyer at Seller's loading dock. All other shipments are made F.O.B. Seller's plant of origin. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery.

**5. Limited Warranty.** Subject to the limitations of Sections 6, 7 and 8, Seller warrants, to its direct purchasers and to no others, that the Goods manufactured by Seller will be free from defects in material and workmanship under normal use and regular service and maintenance, and that the Software will execute the programming instructions provided by Seller. This warranty only applies when such defect appears in Seller Goods within twelve (12) months from the date such Goods are placed in service and when they are returned to and received by Seller, within twenty (20) months from the date of manufacture by Seller. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents has supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void. If within thirty (30) days after Buyer's discovery of any warranty defects within the warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option and as Buyer's exclusive remedy, repair, correct or replace F.O.B. point of manufacture, or issue credit or refund the purchase price for, that portion of the Goods found by Seller to be defective. Failure by Buyer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components. Goods repaired or replaced pursuant to this warranty shall be warranted for the unexpired portion of the warranty applying to the original Goods. Products purchased by Seller from a third party for resale to Buyer shall carry only the warranty extended by the original manufacturer.

**6. SOLE WARRANTY. THE WARRANTIES IN SECTIONS 5 AND 9 CONSTITUTE SELLER'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO THE GOODS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

**7. LIMITATION OF REMEDY. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 9) SHALL BE LIMITED TO REPAIR, REPLACEMENT, CREDIT OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5.**

**8. LIMITATION OF LIABILITY. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS OR PORTION OF THE GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, AND BUYER SHALL INDEMNIFY AND HOLD HARMLESS SELLER FOR ANY DAMAGES INCURRED BY SELLER IN EXCESS THEREOF. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to capital or equipment. Buyer agrees that all instructions and warnings supplied by Seller will be passed on to those persons who use the Goods. Seller's Goods are to be used in their recommended applications and all warning labels adhered to the Goods by Seller are to be left intact. It is expressly understood that any technical advice furnished by Seller before or after delivery in regard to the use or application of the Goods is furnished without charge, and Seller assumes no obligation or liability for the advice given or results obtained, all advice being given and accepted at Buyer's sole risk.

**9. Patents and Copyrights.** Subject to the limitations set forth herein and in Sections 7 and 8, Seller warrants that the Goods sold, except those Goods made specifically for Buyer according to Buyer's drawings or specifications or otherwise at Buyer's direction, do not infringe any valid U.S. patent or copyright, as the case may be, in existence as of the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged, and that Buyer cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to use patents only applies to infringements arising solely out of the inherent operation, according to Seller's specifications and instructions, of such Goods. In the event such Goods are held to infringe upon a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise or settlement by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the

right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Buyer a credit for the purchase price less 20% for each year or fraction thereof since it was shipped to Buyer. In the event of the foregoing, Seller may also, at its option, cancel this agreement as to future deliveries of such Goods, without liability. Buyer agrees to indemnify and save Seller harmless from all expenses and damages resulting from any claim, suit or proceeding for alleged infringement of any patent or copyright based in whole or in part upon the manufacture, sale or use of any Goods or any part thereof, in combination or assembly with machinery or apparatus not furnished under this agreement.

**10. Excuse of Performance.** Seller shall not be liable for any nonperformance or any default or delay in performance if caused, directly or indirectly, by acts of God, acts of Buyer, war, fire, flood, weather, sabotage, riot, civil commotion, strikes, lock-outs, slow downs, picketing or other labor controversies, accidents, delay or default of or failure by carriers, shortages of labor, delay in obtaining or inability to obtain materials, equipment or parts from regular sources, action, request or regulation of or by any government or governmental authority, or any other happening or contingency beyond Seller's reasonable control, or without Seller's fault, whether similar or dissimilar to the foregoing. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of the foregoing, but the balance of this agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, or to obtain material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable due to causes set forth herein, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or materials) among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

**11. Cancellation.** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and to cover commitments made, by Seller and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive.

**12. Changes.** Buyer may request changes or additions to the Goods consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price(s) and date(s) of delivery. Seller reserves the right to change designs and specifications for the Goods without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods manufactured prior to the date of such change.

**13. Assignment.** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

**14. Examination – Claims – Inspection/Testing.** Buyer shall inspect Goods delivered to it by Seller immediately upon receipt, and, any course of dealing to the contrary notwithstanding, failure of Buyer to give Seller notice of any claim within 30 days after receipt of such Goods shall be an unqualified acceptance of such Goods. Buyer may not return Goods without first advising Seller of the reasons therefore, obtaining from Seller a material authorization number and observing such instructions as Seller may give in authorizing such return. Buyer, at its option and expense, may inspect and observe the testing by Seller of the Goods for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any alleged rejection of the Goods at Seller's plant must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods meet Seller's criteria for such procedures.

**15. Drawings.** Seller's prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this agreement are the property of Seller and Seller retains all rights, including, without limitation, exclusive rights of use, licensing and sale of same. Possession of such prints or drawings does not convey to Buyer any rights therein or license thereto. Upon termination of this agreement, or at any time upon Seller's request, all such prints and drawings, and any copies or duplications of same (in whatever medium), shall be immediately returned to Seller.

**16. Tooling.** Tool, die and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies and patterns do not convey to Buyer title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

**17. Software.** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

**18. Documentation.** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

**19. Export/Import:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods and Services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import or export, Goods in violation of such applicable laws, regulations, orders or requirements.

**20. Nuclear/Medical. GOODS AND SERVICES SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS.** Buyer accepts the Goods and services with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchaser or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that Seller's liability is based on negligence or strict liability.

**21. Flammable Refrigerant.** Buyer acknowledges that the Goods manufactured by Seller, as well as equipment manufactured by Buyer which incorporate Goods, are subject to certain rules and regulations for use with flammable refrigerants and/or flammable refrigerant applications. Buyer represents and warrants that it possesses the expertise to comply and will comply with any such rules and regulations as are applicable to its manufacturing activities. Furthermore, Buyer represents and warrants that it is Buyer's sole responsibility to ensure that Buyer has an appropriate field service program for its customers to address field service claims related to the use of the Goods and/or equipment for use with flammable refrigerants and/or flammable refrigerant applications.

**22. General Provisions.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon Seller unless made in writing and signed on its behalf by its duly authorized representative of Seller. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound. No modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgement or acceptance of Buyer's purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgement or publication are subject to correction. The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the State of Ohio, USA without regard to its conflict of law principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be deemed exclusively proper only in state court in Shelby County, Ohio or in the federal court for the Southern District of Ohio, Southwest Division and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract may be brought by either party more than two (2) years after the cause of action has accrued. Further, the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement or any transactions relating thereto.