

**MACHINERY TERMS AND CONDITIONS OF SALE**  
**VERSION #010707F**

**1. FORMATION OF CONTRACT; ACCEPTANCE OF ORDER**

These MACHINERY TERMS AND CONDITIONS OF SALE (hereinafter "Terms & Conditions"), that are published on seller's website and/or incorporated by attachment or by reference to seller's formal quotation or proposal, shall apply to all orders for stand-alone machinery, including orders placed pursuant to Seller's catalogs, or machinery lines, e.g. tube mills, duct lines, roll forming lines, etc. (collectively "Equipment"), between the purchaser (hereinafter "Buyer") and the seller of the Equipment (hereinafter "Seller"). the Terms & Conditions, together with the sales covenants, the general specifications, the technical specifications, and any addendum thereto, including any acknowledgment by Seller, comprise the proposal or quotation (collectively the "Quotation"), which upon acceptance by Buyer become the "Contract". Buyer shall be deemed to have accepted the Terms & Conditions through any of the following: (i) Buyer's signature of Quotation, (ii) issuance of a purchase order or a purchase order number to Seller, (iii) receipt and acceptance of Equipment, (iv) payment of Seller's invoice for the Equipment or any required initial deposit, (v) failing to provide Seller with written notice of rejection of Terms & Conditions within five (5) business days from the date of receipt of either the Equipment or Seller's order acknowledgment or (vi) any other written indication by Buyer of its acceptance of the Quotation or offer of Equipment. Any order for Equipment received by Seller shall be reviewed and upon acceptance, acknowledged by Seller by a formal order acknowledgment or other written indication of acceptance. The effective date of any Contract or order for Equipment shall be the date accepted by Seller and receipt by Seller of any required initial deposit ("Effective Date"). Any terms and conditions contained in any purchase order, correspondence or accompanying payment for delivery of the Equipment, which are different from or in addition to the Terms & Conditions shall not be binding on Seller, whether or not they would materially alter the Contract, and Seller hereby objects thereto without further notice. The scope of work under any Equipment sale offered by Seller does not include any installation or start-up and commissioning of Equipment or any other on-site work ("Services"), unless specifically set forth otherwise in the price and details of the Contract. In the event that Seller does offer Services, such Services shall be governed either by the Seller's service terms set forth in the Quotation or the Terms & Conditions in the absence of any other terms and conditions quoted by Seller.

Any Quotation made by Seller either directly or by a dealer or sales representative of Seller shall expire in thirty (30) days from date of issuance, unless a shorter validity period is set forth in the Quotation, and after such time will no longer be valid. If Buyer wishes to consider purchasing Equipment offered in an expired Quotation, Seller shall either issue a new Quotation or extend the validity of the original Quotation within three (3) business days of a written request.

**2. CONFIDENTIALITY**

All information, including quotations, specifications, drawings, prints, schematics, and any other engineering, technical or pricing data or information submitted by Seller to Buyer in a Quotation or the Contract are the confidential and proprietary information of Seller; and Buyer and its employees, agents or other parties for whom Buyer is responsible may not disclose Seller's confidential and proprietary information to any third party, or use Seller's confidential and proprietary information for its own account or that of any third party, except in the performance of the Contract. No transfer of ownership of any information provided by Seller to Buyer shall take place pursuant to fulfillment of the Contract.

**3. DRAWINGS AND DESIGNS; PERMISSIVE VARIATIONS**

Selection, application and design of machines, roller dies, tooling, accessories, options, and auxiliary equipment shall be based upon information furnished by Buyer. Buyer shall make available to Seller in a timely manner all information reasonably necessary for Seller to complete the work specified in the Contract, including drawings, diagrams, specifications of all electrical, mechanical and structural interfaces, and shall promptly answer in writing all inquiries for information that Seller deems necessary from time to time to perform Seller's obligations under the Contract. Buyer understands that Seller is relying upon this information.

All drawings submitted by Seller, if any, with the Contract are submitted only to indicate the general style and outline, suggested arrangement, and approximate overall dimensions of the Equipment quoted. Except as otherwise provided in the Contract for the approval of Buyer, no detailed shop or engineering drawings of any part of the Equipment will be furnished to Buyer. Notwithstanding the foregoing, Seller shall provide manuals, starter guides or other information for the safe operation and maintenance of the Equipment sold to Buyer under the Contract.

If the Equipment is to be procured, designed and/or manufactured in accordance with Buyer's specifications, Buyer represents that the drawings, prints and parts, if any, submitted in connection with its order reflect Buyer's latest revisions of such specifications. Any subsequent modification to Buyer's specifications may result in a change to the Contract and Seller reserves its rights set forth in Section 5 **CHANGE ORDERS** below. With respect to tolerance,

capacity, accuracy, production rates and the like, the terms set forth in the Quotation or Contract shall supersede Buyer's specifications.

Unless otherwise agreed to by Buyer and Seller in the Contract, the Equipment shall be manufactured in accordance with Seller's standard practices as they exist from time to time. Equipment and machinery ordered herein are of the stated capacity and range, designed and built for operation with good commercial accuracy for the forming of sheet metal. Capacity of the Equipment is set forth in the Contract with gauge references per the Standard Gauge for Sheet and Plate Iron and Steel, 15 U.S.C. §206. All product that is produced by Buyer using the Equipment sold under the Contract, including that produced to meet any specification of Buyer, shall be subject to dimensions, tolerances, and variations consistent with usages of the trade for "sheet metal" and regular industry practice.

No governmental or other specification other than the Seller's shall be incorporated by reference herein unless a copy of said specification is agreed by Seller and attached to the Contract. Any deviation in usage from the conditions as provided or as set forth in the Contract shall be at Buyer's risk.

#### **4. PRICE; PAYMENT TERMS; PURCHASE MONEY SECURITY INTEREST**

The price and payment terms for the Equipment shall be set forth by Seller at the time of a Quotation however such terms are subject to revision and re-quote prior to acceptance of any order received from Buyer. Seller may also confirm, or revise, quoted or re-quoted price or payment terms (if mutually agreed upon) in Seller's order acknowledgement to Buyer for Buyer's review and agreement. All payment terms and schedules are subject to Seller's credit approval as of the time of the order and prior to shipment. Unless otherwise set forth in the order acknowledgement, payments are due to Seller from Buyer no later than immediately upon Buyer's receipt of an invoice from Seller.

If Buyer requests that the Equipment availability date and/or scheduled date for shipment be extended or otherwise changed, such request shall be considered to be a Buyer-proposed Contract change and shall be addressed as set forth in Section 5. **CHANGE ORDERS.** Once the Equipment is near completion and/or is ready for preparation for either in-factory demonstration or shipment and either is delayed by any act or omission of Buyer beyond the scheduled date, Buyer shall pay any amounts that are due under the Contract upon Seller's notification to Buyer that the Equipment is ready for, and prior to, shipment, or any similarly worded language, within fourteen (14) days after the originally scheduled delivery date regardless of whether shipment has occurred. If the scope of work to be provided by Seller includes Services and such Services are delayed by any act or omission of Buyer beyond the scheduled date, then final payment of all amounts due from Buyer as set forth in the Contract shall be due thirty (30) days after the originally scheduled shipment date.

Time is of the essence with respect to all payments. Payments that are outstanding more than ten (10) days from their respective due date shall bear an interest rate of one and one-half percent (1 ½%) per month (eighteen percent (18%) annually) until fully paid, including any interest accruing thereon. If the rate of interest stated in the preceding sentence exceeds the maximum rate of interest that the applicable state law allows, then the rate of interest that will be accrued shall be at the applicable state maximum. In the event Buyer does not pay within the terms of the Contract, all collection costs incurred by Seller, including reasonable attorneys' fees will be paid by Buyer.

Payment for the sale of Equipment shall not be subject to offset, deduction, or back charges by Buyer. Any sums that have been deducted by Buyer in violation of this paragraph shall be considered overdue and are subject to the above interest charge and collection costs.

The price set forth in the Contract and all payments due to Seller from Buyer shall be in the lawful currency of the United States of America unless otherwise set forth in the Contract.

Unless otherwise set forth in the Contract the terms of payment for international transactions shall be as follows: A deposit in an amount specified by Seller shall be paid via wire-transfer upon placement of order ("Initial Deposit") and the balance of the total purchase price shall be paid upon Seller's notification to Buyer that the Equipment is being readied for international shipment. If a letter of credit is to be used to cover any payments, Buyer shall open, in favor of Seller, an irrevocable, documentary Letter of Credit in the amount equal to those payments in the specific form and format described in Seller's letter of credit instructions incorporated into the Contract by attachment or reference. The minimum requirements for any such letter of credit are that it (i) must be payable "at sight" at the counters of Seller's bank in the USA, (ii) allow for confirmation by Seller's bank, (iii) allow partial shipments and partial draws from any point of origin, (iv) allow trans-shipment, (v) specify the latest date of shipment for the Equipment to be at least sixty (60) days after the estimated delivery time indicated in the Contract, (vi) remain valid for at least sixty (60) days beyond the latest date of shipment, (vii) not require any documentation for collection other than those specified and agreed upon by the Seller and (viii) specify that bank charges in addition to those charges by Seller's bank shall be payable by the Buyer. If the letter of credit is advised or in any way processed by additional banks other than Buyer's original issuing bank and Seller's specified advising bank, Buyer shall be responsible for any fees charged by such additional banks. In the event that Buyer elects to use an issuing bank with which Seller's bank does not have a corresponding or SWIFT relationship, Seller reserves the right to require payment by electronic transfer in advance of shipment in lieu of acceptance of a letter of credit. The Buyer agrees to have its issuing bank forward a draft version of the letter of credit to Seller for its review and approval prior to issuance of the final version.

For domestic transactions, notwithstanding any passage of title, Seller reserves a Purchase Money Security Interest under the Uniform Commercial Code in the Equipment and in the proceeds derived from such Equipment. At any time upon request of Seller, Buyer shall execute and provide Seller with such documents as Seller may require, including, but not limited to, a Security Agreement, one or more Financing Statements, signed waivers and consents from land-owner(s) and mortgagee(s) and provide to Seller evidence of other actions necessary to perfect any such Purchase Money Security Interest.

## **5. CHANGE ORDERS**

Changes to the price, payment schedule, design, specifications, submittals, scope of supply, estimated delivery schedule, Equipment demonstration site, shipping instructions of the Equipment or any material term of the Contract, may only be made upon execution by Buyer and Seller in writing ("Change Order" or "Amendment"). Such Change Order shall state the parties' agreement on (i) change in the specifications, designs, scope of work, delivery schedule or shipping instructions for the Equipment, (ii) an adjustment to the purchase price, if any, and (iii) an adjustment in the indicated date of shipment of the Equipment and/or the period of performance. Both parties agree and acknowledge that unless a Change Order is agreed upon in writing by both parties, the Contract shall not be modified in any manner. In addition, Seller has the right to suspend its performance on the portion of the Order potentially affected by a proposed change without liability during the period while the change is being evaluated, negotiated, and agreed.

In the event Buyer has communicated proposed changes to Seller, Seller, at its sole discretion, shall either (a) accept the Change Order; (b) reject the Change Order and continue performance under the existing Contract; or (c) cancel the Contract. In the event that Seller elects (b) above, Buyer shall either (i) agree to continue performance (of Seller) pursuant to the Contract or (ii) cancel the Contract.

## **6. DEFAULT; CANCELLATION/REMEDIES**

If Buyer fails to perform any of its obligations hereunder, including without limitation, failure to make payments as provided in Section 4 or otherwise, or if Buyer fails to promptly give reasonable assurances of future performance when requested by Seller, then Seller may, upon five (5) days' written notice to Buyer, declare Buyer to be in default and Seller may suspend performance of its obligations hereunder without liability and retain all rights and remedies Seller may possess at law, in equity and/or as provided in the Terms & Conditions.

In addition to the remedies noted in Section 5 above, to the extent that (i) Seller declares a default under this Section 6 or (ii) if an order, or portion thereof, for Equipment that Seller considers to be standard Equipment is cancelled for any reason, other than (a) default by Seller or (b) Force Majeure, Buyer will make payment to Seller in an amount which shall equal all incurred costs (direct material, labor, burden, and application engineering) on the completed work plus thirty percent (30%) of the incurred costs net of any payments previously made by Buyer to Seller under the Contract. If an order, or portion thereof, for Equipment considered by Seller to be non-standard Equipment, i.e., built to Buyer specifications or otherwise customized, is cancelled for any reason, other than (a) default by Seller or (b) Force Majeure, then Seller reserves the right to charge Buyer up to 100% of the price of the cancelled non-standard Equipment.

## **7. TAXES, PERMITS, FEES, LAWS**

Unless expressly stated in Seller's invoice, Quotation or the Contract, the purchase price for the Equipment furnished hereunder excludes all governmental or brokerage taxes, duties, fees, charges, or assessments. Seller may elect to add any such taxes, duties, fees, charges, or assessments to the invoice amount payable to Seller by Buyer. Buyer must provide to Seller in advance of the shipment of the Equipment documentation in a form and substance acceptable to Seller of any exemptions claimed from taxes, duties, permits, fees, charges, or assessments. Except to the extent expressly assumed by Seller, Buyer shall secure and pay for all permits and fees necessary for the delivery and installation of the Equipment.

It is Buyer's duty to ascertain that the Equipment proposed by Seller and its subsequent installation and use is in accordance with applicable local laws, statutes, ordinances and building codes ("laws"). Seller shall not be responsible for compliance of the Equipment to such laws, but shall to the extent reasonably possible, promptly notify Buyer of any discrepancies that come to Seller's attention.

## **8. SELLER'S PERFORMANCE DATES; DELIVERY TERMS; TITLE; RISK OF LOSS;**

Seller shall use all commercially reasonable efforts to conduct factory demonstration (if required) and shipment of the Equipment or to perform Services (if included in the scope of supply) as soon as reasonably possible after the Effective Date of an order and timely receipt of any necessary information required for the manufacturer of the Equipment from Buyer however Seller is not responsible for any actual, indirect, incidental or consequential damages arising by reason of any delay in demonstration, shipment or provision of Services. The quoted dates for any in-factory demonstration, shipment or Services of the Equipment are estimates based on Seller's production loading, capacity, available resources and/or third-party manufacturer's estimates of material and component availability at the time of Quotation and

may be set forth as a range of weeks after the Effective Date of order. The time estimates are not intended to be exact dates but rather reasonable estimates for the time anticipated by Seller to prepare the Equipment for factory demonstration (if required) and to be subsequently prepared for shipment.

For certain orders, it will be necessary for Buyer to provide and/or confirm to Seller certain information regarding the Equipment before Seller can provide a reasonable estimate of completion of the manufacturing process. This information might include, but not be limited to, the floor space allocation for the Equipment, layout and location of existing equipment, building support columns and/or any other obstructions, Equipment layout, line direction, location of equipment controls, power and/or air drop locations, 'pass line' height, and/or electrical/voltage requirements, etc., ("Buyer-provided Info"). In such cases, Equipment availability may be estimated in a range of weeks from time Seller is in receipt of all final Buyer-provided Info. If Seller requires such Buyer-provided Info, Seller shall submit a request to Buyer, typically referred to as a 'Layout', 'Line' or 'Approval' drawing or similar form as soon as reasonably possible after the effective date of the Contract. Upon receipt of Buyer's approval and/or provision of the required information, Seller shall proceed with the manufacturing process. If the drawings submitted by Seller to Buyer require changes, Buyer shall submit such request for changes to Seller within seven (7) days of Buyer's receipt of Seller's original drawing(s) and/or request for information. Seller shall respond promptly and re-submit revised drawing(s) to Buyer for approval. Buyer shall then provide its approval within seven (7) days of receipt of the revised drawing(s). Delays in Seller's receipt of Buyer-provide Info, requests or Buyer approval for changes thereto may result in additional time being required for the Equipment to be available. The dates for completion of roll tooling and product profile designs (if applicable) are subject to revision based upon the results of preliminary design review and testing. Seller reserves the right to reschedule shipment of roll tooling and the associated equipment until the profile meets the agreed-upon specifications and dimensional requirements for the profile. Upon notification to Buyer from Seller that Equipment is ready for shipment, Buyer must promptly meet all of its obligations hereunder, including but not limited to making any required payments, shipping arrangements, site and installation preparations and requirements and/or all other obligations noted in the Contract and acknowledgment.

The term of delivery for all Equipment shall be "EXW (Ex Works) Seller's or manufacturer's factory" (Incoterms 2020 or current version), ("Delivery"), with freight routing at the discretion of the Buyer unless otherwise agreed between the parties and confirmed in writing. The term "Deliver", "Delivery" and/or "Delivered" shall refer to the transfer of Equipment to the Buyer as described in the Delivery term. Prices do not include transportation charges, or transit insurance all of which are the responsibility of Buyer. Seller may at its sole discretion, upon request by Buyer, provide Buyer with the services of arrangement and prepayment of transportation of the Equipment on behalf of Buyer provided that Buyer agrees to pay Seller for such services including reimbursement of all charges associated with the transportation (and storage) of Equipment to Buyer's designated location within the continental USA as well as reasonable service charges immediately upon Buyer's receipt of Seller's invoice. In the event that Seller arranges and prepays for the transportation of Equipment on Buyer's behalf, the Delivery term shall remain as EXW (EX Works Manufacturer's Factory, Incoterms 2020 or current version) and Buyer is responsible for the risk of loss or damage and to insure the Equipment during transit, at its sole cost. Buyer understands and agrees that the Contract price is based upon Seller shipping all Equipment when it is completed by Seller. If multiple or partial shipments are required by Buyer, Buyer must notify Seller at time of order placement of such requirement. If multiple or partial shipments are requested or are necessary because of acts or omissions on the part of Buyer, then Seller reserves the right to adjust the price to reflect any additional costs that Seller may incur as a result of such multiple or partial shipments.

Title and risk of loss to the Equipment for all purposes shall pass to Buyer upon the earlier of (i) acceptance of the Equipment by Buyer in Seller's factory as set forth in Section 13 or (ii) Delivery as defined above.

## **9. DELAYS, FORCE MAJEURE; SUSPENSIONS**

If Seller is delayed at any time by the acts or omissions of Buyer, Buyer's agents, subcontractors or material suppliers, Change Orders, or by any Force Majeure defined below then the period of performance shall automatically be extended to accommodate Seller's revised engineering and production schedules, material purchases and/or labor remobilization.

- (a) "Force Majeure" means circumstances beyond the respective party's reasonable control, including without limitation, acts of God, acts of public enemies, wars, other hostilities, blockades, insurrections, riots, epidemics, pandemics (whether officially declared by public health officials or not), quarantine restrictions in Seller's, manufacturer's or Buyer's or end-user's locations, floods, unavailability of components or supplies from any sources limited by engineering specifications or by similar Force Majeure events, lightning, fire, storms, earthquakes, severe weather, blizzard, washouts, arrests, restraints of rulers and people, civil disturbances, acts of any governmental or local authority, and any other acts and causes, not within the control of the party claiming excuse from performance, which by the exercise of due diligence and reasonable commercial effort, that party shall not have been able to foresee, avoid or overcome.
- (b) During the period of any Force Majeure condition, the parties shall cooperate to perform under the Contract to the best of the parties' abilities.
- (c) If either party in good faith is rendered wholly or partially unable by Force Majeure conditions to carry out its obligations under the Contract, or if Seller's supplier is unable to provide Equipment or materials, and if that

party gives prompt written notice and full particulars of such Force Majeure condition to the other party, that party shall be excused from performance of its obligations during the continuance of any such inability, but for no longer period. Such cause shall be remedied to the extent possible with all reasonable speed, and with all reasonable commercial efforts, and notice shall be given when the cause is remedied.

- (d) Notwithstanding the provisions of sub-part (c), if performance by a party is precluded or restrained by Force Majeure for more than one hundred-eighty (180) days from the onset of the underlying Force Majeure event, either party may terminate the Contract upon written notice to the other. In the event that Seller is delayed by the failure of Buyer to provide access to the site or furnished Equipment, information or services in accordance with the schedule and requirements set forth in the Contract, Seller shall receive an equitable adjustment to the delivery schedule, and Contract price.

Seller reserves the right to suspend, without any liability to or recourse from Buyer, all or part of the Services (if included) to be performed (including the commissioning and shipment of Equipment) during any period when, in the reasonable judgment of Seller, the health and/or safety of Seller and/or its subcontractors' personnel performing any such service could be jeopardized.

## 10. SOURCE OF EQUIPMENT

Seller reserves the right to manufacture the Equipment at any one or more of its world-wide facilities and the price of the Equipment shall not be affected by the source of the Equipment. The Seller's factory at which the Equipment demonstration will be conducted under Section 13 below will be communicated to Buyer in the Quotation or with Seller's order acknowledgment. Any request by Buyer for a change to that location of the Equipment demonstration or other testing will require the issuance of a Change Order, including a change in Contract price, in accordance with Section 5, above. Buyer shall notify Seller as soon as possible, but not later than five (5) business days of the date of Seller's order acknowledgement whether the source of the Equipment may conflict with Buyer's requirements for country of origin labeling, content restrictions, or duty or freight, and Buyer and Seller shall consult with each other on the possible impact of such requirements on the Contract price. Buyer's failure to notify Seller within the five (5) day notice period shall create an irrefutable presumption that the source(s) of the Equipment is(are) acceptable to Buyer and that Buyer will bear the costs and consequences thereof.

## 11. INSTALLATION

The scope of work does not include Services unless specifically set forth in the Contract and Buyer is responsible for the installation of the Equipment including, without limitation, all civil engineering work and foundations, unloading, unpacking and proper positioning of Equipment, pre-aligning and anchoring of Equipment, disposal of packing materials, filling of all fluid reservoirs and provision of and connecting all electrical wiring, electronic connections and utility services required for the Equipment and the costs of the foregoing. Seller's service department can make a service technician available for consultation on site to assist Buyer with the Buyer's responsibilities listed below. This service will be priced at Seller's usual and customary daily service rates plus reasonable expenses.

The Equipment may require special footings, foundations or floor surfaces depending upon the depth and condition of the existing concrete slab, foundation, or floor surface and other physical conditions all of which are the responsibility of Buyer. Upon written request, Seller will furnish a layout or foundation drawing to assist Buyer in the installation, which drawing shall be approved in writing by Buyer as set forth in Section 8. Such layout or foundation drawings are approximate and are submitted only to assist Buyer with respect to installation. Specifically, Buyer is responsible at its sole expense:

- for all site preparation, foundations, pits and government permits;
- to remove the Equipment from the shipping containers and place it in approximate position on the plant floor;
- to remove all packing materials and clean the Equipment;
- to provide and install all Equipment/foundation anchors according to instructions provided by Seller;
- to reconnect the inter-connect wiring per the electrical drawings provided;
- to provide air lines to all of the machines comprising the Equipment per the approved lay-out drawing;
- to connect appropriate power to the machine control console;
- for proper maintenance and safe operation of the Equipment;

If Services, and/or operator training are included in the price, unless otherwise expressly stated in the Contract, it shall be specified for a fixed number (depending upon the type of machinery) of eight (8) hour business days then Buyer is responsible at its sole expense:

- for economy or equivalent class air travel, hotel, meals, ground Transportation as well as any expenses incurred (i.e.; tolls, parking fees, parts requirements, etc.) for the Seller's service technician(s)'s visit
- to provide any lifting equipment as required by the Seller's service technician
- to provide sufficient quantities of conforming material for start-up and testing of the machine

- to provide one maintenance person full time to assist the Seller's service technician during the start-up and training
- to make all operators available on the first shift for training in start-up, operation and maintenance

Any additional Services over the included fixed number of business days set forth in the Contract are available at Seller's usual and customary daily service rates as announced from time to time plus reasonable expenses.

## **12. LAWS/SAFETY STANDARDS**

The Equipment furnished hereunder conforms to the applicable ANSI standards. However, the Buyer and authorized end user are the parties responsible under the terms of all applicable Federal, state, local, regional and international laws applicable to the sale and use of the Equipment including but not limited to UL, AMCA, AHRI, ASHRAE, CSA, ETL, NRCAN, NFPA-54, NFPA-31 and the Occupational Health and Safety Act of 1970 (collectively the "Standards"), or the industrial safety laws applicable to the facility where the Equipment is installed, to ensure the Equipment and any equipment into which the Equipment is installed meet such requirements, and Seller hereby disclaims any liability for any violations of the Standards or other applicable standard, regulation or law covering the safe operation of the Equipment and the equipment into which the Equipment is installed that may be imposed with respect to the Equipment furnished under any sale. Buyer shall (i) pass all applicable safety information to its authorized end-user, (ii) train, require and cause its employees to comply with directions set forth in maintenance, safety and operation instructions, manuals, drawings, safety notices and warnings and other instructions that might be furnished by Seller or labelled on Equipment; (iii) use reasonable care and install as recommended by Seller all safety equipment and applicable safety guards, presence sensing devices, light curtains, pressure relief valves and safety systems in the set-up, adjustment, operation and maintenance and repair of the Equipment and the equipment into which the Equipment is installed; (iii) not remove, or permit anyone to remove any safety equipment, safety feature, warning placards, labels or warning signs of any types from the Equipment and the equipment into which the Equipment is installed nor permanently remove, wire around, by-pass or disable any presence sensing devices, light curtains, guards or safety features; and (iv) assure that the Equipment and the equipment into which the Equipment is installed are used in accordance with all applicable laws, regulations, permits and customary standards in force.

IN ADDITION TO THE FOREGOING, SELLER MANUFACTURES AND SELLS ITS EQUIPMENT IN ACCORDANCE WITH AND NOT INFRINGING ON THE CUSTOMS, SPECIFICATIONS, PATENTS AND STANDARDS OF TRADE IN FORCE AND IN USE AND KNOWN TO SELLER IN THE UNITED STATES OF AMERICA. IT IS THE RESPONSIBILITY OF THE BUYER TO ASSURE THAT THE EQUIPMENT IS USED IN ACCORDANCE WITH AND NOT INFRINGING UPON THE CUSTOMS, SPECIFICATIONS, PATENTS AND STANDARDS OF TRADE IN FORCE AND IN USE IN THE COUNTRY OF INSTALLATION.

## **13. EQUIPMENT DEMONSTRATION AND ACCEPTANCE**

For certain Equipment, the Seller may determine that testing in Seller's factory in the presence of Buyer ("Demonstration") is required. If Seller does not require a Demonstration, Buyer may request a Demonstration however Buyer understands that unless Seller included a Demonstration in its Quotation, then Buyer's request for the addition of a Demonstration shall be considered as a request for a change to the Contract (reference Section 5). Buyer may also witness the standard final quality testing that Seller routinely performs prior to shipment from its factory at no additional charge. In the case of Demonstration, Seller will demonstrate the Equipment at its facility only to the extent that the Equipment can be appropriately demonstrated at such location. If material is to be part of the testing process, Buyer is responsible to furnish, freight prepaid, the required amount of material necessary for this purpose. Such material must be of acceptable quality and conform to the material properties as specified in the Contract.

The successful Demonstration of the Equipment shall constitute acceptance by Buyer of the Equipment and Buyer agrees to execute a certificate generated by Seller, in Seller's presence and prior to shipment of the Equipment so stating. Such certificate shall also constitute passage of title to Buyer and permission to ship the Equipment after completion of any checklist, tear down and packaging. Buyer further agrees to execute a "clean" certificate after the completion of the checklist upon Seller's request.

If Seller determines that a Demonstration is required, Buyer may request Seller to waive Buyer's requirement to attend the Demonstration and agrees to accept alternative confirmation of the successfully completed factory testing. If Seller agrees, then Seller shall provide Buyer with copies of data sheets, photographs or video of the Demonstration results at Seller's discretion, that accurately convey the results of the testing conducted by Seller in its factory in Buyer's absence ("Test Results"). In such cases, Buyer understands and agrees that Seller's provision of Test Results shall create an irrefutable presumption that the Equipment is accepted by Buyer. In such cases, if material is to be part of the testing process, Buyer is not relieved of its responsibility to furnish, freight prepaid, or reimburse Seller for the cost of the required amount of material necessary for this purpose.

In the absence of any Demonstration at Seller's facility, Buyer's receipt of the Equipment delivered hereunder shall be an unqualified acceptance of the Equipment and shall also constitute a waiver of any defect which reasonable inspection would have revealed unless Buyer gives Seller notice of rejection of the Equipment within thirty (30) days after such receipt. In the event that Buyer gives such notice of rejection, Buyer shall afford Seller (i) reasonable opportunities to inspect any alleged non-conforming Equipment and ii) a reasonable opportunity to make the Equipment conforming or provide substitute conforming Equipment. Buyer shall not return any Equipment without Seller's prior written consent.

#### **14. DISPUTE RESOLUTION/GOVERNING LAW**

All claims, disputes or controversies (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to: (a) the Terms & Conditions; (b) any advertisement, promotion, or proposal relating to the Terms & Conditions, or (c) the relationship which results from the Terms & Conditions (including relationships with third parties who are not party to the Terms & Conditions) (collectively "Claims") will be resolved, first, by a formal mediation conducted by an experienced mediator mutually agreed upon by Buyer and Seller, and, if mediation should fail to resolve the claim or dispute, secondly, by reference to and determination by binding arbitration governed by the Federal Arbitration Act and administered by the American Arbitration Association under its rules for the resolution of disputes, or under other mutually agreed procedures. Any such proceedings under mediation or arbitration shall be conducted in Springfield, Massachusetts in the United States of America, and the proceedings shall be conducted, and all submissions of the parties and rulings of the arbitrator(s) shall be in the English language. Notwithstanding the rules of the arbitral body, the parties agree that (a) any arbitration proceeding shall be presided over by a neutral arbitrator selected by the parties who shall be admitted to the practice of law and be in good standing or in retirement status in the jurisdiction where the proceeding is held, (b) guidelines for "discovery" of facts through document production and deposition of witnesses by the parties shall be delineated by the arbitrator in writing, conducted in an orderly manner, conducted over a fixed period not to exceed 90 days -- and failures to reasonably comply shall be subject to summary process in a court of law in the jurisdiction where the arbitration is being conducted, (c) the decision of the arbitrator shall be based on the relevant and credible facts as presented into evidence and (d) the arbitrator shall prepare a written memorandum of decision setting forth the findings of fact and conclusion of law. Because this method of dispute resolution is personal, individual and provides the exclusive method for resolving such disputes, Buyer further agrees, to the extent permitted by applicable laws, to waive any right to commence or participate in any class action or class-wide litigation or arbitration against Seller related to any Claim. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL.

Buyer agrees that in the event of any breach of the Contract by Buyer that may cause irreparable harm to Seller for which an award of money damages is insufficient relief, Seller may, in addition to any remedies which Seller may have available to it, pursue injunctive or other equitable relief in a court of competent jurisdiction to prevent or curtail any breach by Buyer of its obligations to be performed under the Contract. All remedies provided to Seller under the Contract are cumulative and may be exercised by Seller singularly or in conjunction with other available remedies, from time to time and at any time.

This provision shall survive the termination of the Contract.

The Governing law shall be the laws of the Commonwealth of Massachusetts. With respect to international transactions, the UN Convention on the international sale of goods is hereby excluded from application to the Contract.

#### **15. WARRANTY**

Unless Seller offers additional or an alternate warranty in the Quotation, website or other written correspondence applicable to an order, Seller warrants to the original purchaser that the Equipment provided under the Contract shall be free from defects in material or workmanship for a period of up to one (1) year, depending upon the specific machine, measured from the date of shipment. If the Equipment or scope of supply contains electrical controls, control upgrades and/or VFD motor(s), the effective period of warranty for such items may be shorter than one (1) year. Refer to the Quotation for details. The foregoing warranty will become void, and Seller will have no obligation whatsoever under this warranty, with respect to any of the following: Equipment that is (i) not used or maintained in a normal and proper manner, in accordance with any manuals or instructions that might be provided by Seller; (ii) Equipment that is modified, altered or repaired without the prior written approval of Seller; (iii) Buyer fails to make any payments when due under Section 4 or otherwise in the Contract or (iv) Equipment that is assigned, sold or transferred to an entity other than the Buyer unless Buyer is a financing entity, lessor, sales representative, dealer or authorized reseller and has notified Seller in advance at time of order that Buyer will not be the end-user of the Equipment in which case the Product warranty may, at Seller's option and discretion, be transferred to the end-user upon written request by Buyer. Seller will repair or replace at its option components which upon inspection it finds to be defective, based on claims made in writing to Seller within a reasonable time after discovery and within the warranty period. Components alleged to be defective must be returned to Seller for repair or replacement, freight prepaid, within thirty (30) days of Buyer's receipt of the Seller-issued return authorization number, which must be clearly marked on the outside of the return container. Replacement components shall be shipped from Seller upon Buyer's request and receipt of a valid purchase order number so the validity of the warranty can be determined. Unless otherwise

specified, replacement components shall be Delivered to Buyer "EXW (EX Works) Seller's factory or designated location" (Incoterms 2020 or current version). Any labor or equipment rental costs incurred at Buyer's site in the dismantling and reassembly of the Equipment shall be at Buyer's sole expense. Notwithstanding the foregoing, in addition to the 'repair/replace' remedy available to Buyer as set forth above, upon Buyer's notification to Seller of a defect that is materially impairing the operation of the Equipment, Seller shall provide technical support via telephone or other electronic means to assist Buyer in identifying the cause and make recommendations for repair. If, at any time during this process, Seller determines in its sole discretion that it is unreasonable to expect Buyer's personnel to be able to repair the defect without on-site assistance from Seller, Seller shall then travel to Buyer's site, as soon as reasonably possible, at no additional charge to Buyer, to evaluate the situation and effect a prompt repair. If the cause of the defect is unrelated to defects in Seller's workmanship or material, Buyer shall reimburse Seller for the expenses and Seller's labor associated with the visit to Buyer's site.

This warranty excludes equipment, materials and components furnished by the Seller but manufactured by another party, which may be incorporated in the Equipment. Such components and equipment shall bear no warranties other than the warranties extended by and enforceable against the manufacturer thereof at the time of Delivery to Buyer (which warranties Seller will furnish on Buyer's written request), for the period stated in that warranty. If the Equipment (machinery, controls or tooling) is or includes re-built machinery, the warranty does not extend to, include or cover any used machined parts, fabrications or components whether supplied or provided by Buyer or otherwise that are not replaced by Seller as part of the re-building process. If Equipment or components is deemed by Seller, or in the case of a component, the manufacturer of the component, to be obsolete, such Equipment or components shall bear no warranty.

THE WARRANTY STATED HEREIN IS PERSONAL TO BUYER AND SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE EQUIPMENT FURNISHED HEREUNDER AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ABOVE WARRANTY SHALL CONSTITUTE BUYER'S EXCLUSIVE REMEDY WITH RESPECT TO THE EQUIPMENT FURNISHED HEREUNDER.

If Buyer removes or permits anyone to remove or disable any safety equipment, presence sensing devices, light curtains, guards, safety feature, warning placards, labels or warning signs from the Equipment of any equipment into which the Equipment is installed, or fails to observe any condition in this Section 15, or if any injury or damage is caused, in whole or in part, by the end-user's failure to comply with applicable federal, state or local safety requirements or Seller's instructions as set forth in Section 12 above, Seller shall have no obligation to Buyer, and Buyer shall indemnify and hold Seller harmless against any claims, loss or expense for injury or damage arising from the improper use of the Equipment. Seller specifically disclaims any and all liability arising out of the operating of the Equipment other than the warranty liabilities to the original Buyer.

#### **16. LIMITATION OF LIABILITY**

BUYER UNDERSTANDS AND ACKNOWLEDGES THAT WITH RESPECT TO THE CONTRACT, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY KIND, OR LABOR, EXPENSES, LOST PROFITS, LOST OPPORTUNITIES, OR SIMILAR DAMAGES OF ANY KIND; AND REGARDLESS OF THE LEGAL THEORY OR CAUSES OF ACTION BY WHICH CLAIMS FOR ANY SUCH DAMAGES AS SET FORTH IN THE ENTIRETY OF THE CONTRACT ARE ADVANCED, WHETHER OR NOT SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

#### **17. INDEMNITY**

Buyer agrees to indemnify and hold harmless Seller and its vendors from any and all claims or liabilities asserted against Seller or its vendors in connection with the manufacture, sale, delivery, re-sale, or repair or use of any Equipment covered by or furnished under the Contract arising in whole or in part out of or by reason of the failure of Buyer, its agents, servants, employees or customers to follow directions, instructions, warnings or recommendations furnished by Seller or its vendors in connection with such Equipment, or by reason of the failure of Buyer, its agents, servants, employees or customers to comply with all federal, state or local laws and regulations applicable to such Equipment, including the Occupational Safety and Health Act of 1970, or by reason of the negligence of Buyer, its agents, servants, employees or customers.

#### **18. PATENT INDEMNITY**

Buyer represents and warrants that the methods, directives, specifications, or designs for Equipment or tooling that Buyer provides to Seller shall be the property of Buyer or at a minimum, shall be free of any claim by a third party as to ownership or license or any infringement on a patent, trademark or other intellectual property right. In the event that the Buyer provides methods, directions, specifications or designs for Equipment or tooling, Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, actions, lawsuits, proceedings, liabilities, losses, costs, expenses (including without limitation attorneys' fees) arising from or related to any actual or alleged infringement of any United States patents of any third party resulting from the methods, directions, specifications or design of the Equipment or tooling supplied or required by Buyer for the Equipment or the production of any parts or the processing



of any material on the Equipment. If a permanent injunction shall prohibit the use, sale or distribution of the Equipment or any part thereof by reason of any patent infringement covered by this indemnity, Buyer shall, at its own expense, either (a) procure for Seller a license for the right to continue using the Equipment or the part thereof found to be infringing; (b) replace or modify the Equipment or any part thereof found to be infringing so that the same becomes non-infringing, without any increase in the price of the Equipment, or (c) reimburse Seller for the purchase price of the Equipment. The provisions of this section shall survive the performance or termination of the Contract.

## **19. SOFTWARE LICENSE/IP LICENSE**

If any software programs are deliverable, Buyer shall have a temporary license to such software only, until full payment has been made whereupon Buyer shall receive a full license to the use of the software in accordance with the terms and conditions of that license and as set forth below. The temporary license can be suspended or terminated by Seller at any time without notice to Buyer after the period for payment by Buyer has expired. For the sake of clarification, Buyer understands and acknowledges that failure to pay for the Equipment in accordance with the Contract may result in the termination of the temporary software license and disruption of operation and service. In addition, such license of Seller, and any licenses procured by Seller on Buyer's behalf are not transferrable without notice to Seller and payment of the required transfer fee.

Upon Seller's receipt of full payment and subject to Buyer's compliance with all material obligations under the Contract, Seller hereby grants to Buyer a nonexclusive, perpetual, nontransferable right and license to use copies of software programs embedded in, or used in connection with, Equipment which Buyer has purchased hereunder, in Object Code only, for use by the Buyer only, in conjunction with the Equipment. No modification, download, transfer, or preparation of derivative works of such software whatsoever is permitted. Seller will not supply any Source Code under the Contract. Subject to Buyer's compliance with the terms of the Contract, Seller grants to Buyer a non-exclusive, limited license to use Seller's intellectual property that is incorporated in the Equipment for its own account for the purposes intended in operating the Equipment. Notwithstanding the foregoing, Seller is, and shall be, the exclusive owner of such intellectual property and retain all right, title and interest in such intellectual property.

## **20. EXPORT CONTROL, SUSPENSION/DEBARMENT AND TRADE RESTRICTIONS**

All transactions under the Contract shall at all times be subject to and conditioned upon compliance with all applicable export control laws and regulations and any amendments thereto. The parties hereby agree that they shall not, except as said applicable laws and regulations may expressly permit, make any disposition by way of transshipment, re export, diversion or otherwise, of any goods, technical data, or software, or the direct product thereof, furnished by either party in connection with the Contract. The obligations of the parties to comply with all applicable export control laws and regulations shall survive any termination or discharge of any other contract obligations. Buyer shall provide immediate notice to Seller in the event of Buyer, or in the case of re-sale of Equipment by Buyer any of Buyer's customers, being suspended, debarred, or declared ineligible by any government entity or upon receipt of a notice of proposed debarment from any such entity during the performance of the Contract. In the event that Buyer is suspended, debarred, or declared ineligible by any government entity, Seller may terminate the Contract immediately without liability to Buyer. Buyer also agrees that it will not resell or otherwise supply or export any Equipment sold to Buyer under the Contract to Buyer's customers that are (is): (i) a government of a country defined by the U.S. State Department as a "State Sponsor of Terrorism" or "SST"; or (ii) a company incorporated, formed or otherwise organized in a SST country or owned, in whole or in part, by the government of a SST country or a national of a SST country, regardless of where that company is located or doing business. Buyer understands and acknowledges that Buyer has an obligation to cooperate with Seller and to disclose the intended end-use, final destination of the Equipment and, if Buyer intends to resell or otherwise provide and export the Equipment purchased under the Contract, the identities of Buyer's customers, in order for Seller to determine the export eligibility of the sale of Equipment to Buyer. In addition, Seller may, from time to time and for business reasons, withdraw from and/or restrict its business dealings in certain foreign jurisdictions, regions, territories and/or countries and thus Seller may terminate the Contract immediately without liability to Buyer upon written notification to Buyer.

## **21. MISCELLANEOUS**

The Contract supersedes and replaces any and all prior or contemporaneous agreements, understandings, arrangements or representations, whether oral or written heretofore made between the parties and relating to the subject matter hereof and constitutes the entire understanding of the parties with respect to the subject matter of the Contract.

If Buyer intends to resell or otherwise transfer the Equipment, Buyer must advise its customer of the details of the Warranty, Limitation of Liability, Software and IP License and Export Control, Suspension/Debarment And Trade Restrictions contained in Sections 15, 16, 18, 19, and 20 respectively.

The language of the Contract and any related correspondence, including notices to either party shall be English. In the event that any translations of the Contract or portions thereof to another language are included in the Contract documentation, the parties understand and agree that such translations are for convenience and the English version shall

take precedence in the event of any conflict or inconsistency.

If either Party, at its option, agrees to a waiver of any of the terms and conditions recited herein, such waiver shall not for any purpose be construed as a waiver of any succeeding breach of the same or any other terms and conditions; nor shall such a waiver be deemed as a course of conduct.

If any provision or clause, or portion thereof, of the Contract, or application thereof to any person or circumstances is held invalid or unconscionable, such invalidity or unconscionability shall not affect other provisions, or portions thereof, or applications of the Contract which can be given effect without the invalid or unconscionable provision, or portion thereof, or application, and to this end the provisions of the Terms & Conditions are declared to be severable.

Captions and heading in the Contract are strictly for the purpose of convenience and general reference only and shall not affect the meaning or interpretation of any of the provisions of the Contract.

Except as required to obtain necessary licenses or governmental approvals, each party shall obtain the written approval (which approval shall not be unreasonably withheld) of the other in advance of the disclosure of any news releases, articles, brochures, advertisements, prepared speeches, and other information releases, concerning the Contract or the work performed or to be performed hereunder.

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