

# Sales and Ordering Information

**Terms:** Net 30 Days with approved credit. Deposits may be required on special or custom orders. C.O.D. orders accepted. Visa and MasterCard orders accepted.

**Freight:** F.O.B. Henrietta, New York, unless other arrangements have been made prior to shipment.

Past due accounts will be charged monthly the current maximum percentage allowed by law.

Telephone orders will be accepted Monday through Friday, 8:00 A.M. to 5:00 P.M. EST.

Fax system is on line 24 hours a day. The fax number is 585 292-5015.

## ***Terms and Conditions of Sale***

**1. Prices:** Prices are F.O.B. point of origin. Any taxes due are in addition to the prices, and may be invoiced at a later date.

**2. Shipping Schedule:** The shipping schedule is our current estimate of delivery dates. We agree to use reasonable efforts to comply with the schedule. Buyer's acceptance of delivery of our products from the carrier shall constitute a waiver of any claim for delay.

**3. Warranty:** (a) Any product or part thereof which, under normal operating conditions in the plant of the Buyer thereof proves defective in material or workmanship as determined by our inspection, within 12 months from the date of shipment, will be replaced or repaired free of charge. This warranty is contingent upon the following conditions: that we promptly receive notice of the defect, that Buyer establish that the product has been properly installed, maintained, and operated within the limits of related and normal usage as specified by us, and that, upon request, Buyer will return to us at our expense the defective product or part thereof.

(b) The terms of this warranty do not in any way extend to any product or part thereof which has a life, under normal usage, inherently shorter than 12 months, or to equipment, tooling, or machinery which was not manufactured by us, in which event we shall use reasonable efforts to pass on to Buyer the manufacturer's warranty.

(c) The conditions of actual production in each end user's plant vary considerably. Therefore, description of the production or performance capabilities of any product are estimates only, and are not warranted.

(d) Any service or parts provided by us which are outside the scope of the warranties shall be charged to Buyer at our applicable time and material rate and terms and conditions in effect at the time such service or parts are provided.

**4. Exclusions of Warranties:** The warranties to repair or replace defective products or parts as set forth in paragraph 3, and any additional warranty expressly stated to be a warranty and set forth in writing as part of these terms herein are in lieu of all other warranties, express or implied, including but not limited to any implied warranty of merchantability or fitness for a particular purpose.

**5. Limitation of Remedies and Liabilities:** The Buyer agrees that our liability and Buyer's sole and exclusive remedy pursuant to any claim of any kind, including but not limited to, a claim in contract, negligence, or strict liability, against us or any of our affiliates, shall be:

(a) The repair or replacement at our option of defective products or parts thereof, or

(b) A refund of the price which can be allocated to the defective product or part thereof. Claims of any kind include, but are not limited to, those for any loss or damage arising out of, connected with, or resulting from this Agreement, or from the performance or breach of the terms hereof, or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any product or part thereof covered by this Agreement. If, however, any warranty as expressly set forth in writing in accordance with Paragraph 4 above as part of these terms in addition to those set forth in Paragraph 4 above, our liability and the liability of any of our affiliates under such additional warranty shall terminate one year from the date of shipment by us.

Under no circumstances shall we or any affiliate of ours have any liability whatsoever for incidental or consequential damages, such as, but not limited to, loss of profit or revenue; loss of use of the product, part thereof, or software materials; cost of capital; cost of replacement equipment; or claims resulting from contracts between Buyer, its customers, and/or suppliers. Unless expressly provided for herein, in no event shall we or any affiliate of ours assume responsibility or liability for (a) penalties, penalty clauses or liquidated damages clauses of any description, (b) certifications or (c) indemnification of Buyer or others for costs, damages, or expenses arising out of or related to the product or part thereof.

**6. Cancellation:** Unless otherwise agreed, Buyer may cancel all or any part of the order by written notice received by us no later than 120 days before our completion of that part of the order. On receipt of such cancellation notice, all work on the order or part thereof canceled will be stopped as promptly as is reasonably possible. Buyer will then be invoiced for and will pay to us as liquidated damages a cancellation charge. For completed items, the charge will be equal to 120% of our full cost as determined by us in accordance with our standard accounting practices, plus a charge for any packing and storage, less a credit for the balance of the material as scrap. The full cost includes burden and overhead costs incurred by us or by any of our affiliates.

**7. Payment Terms:** Payment is due in accordance with any applicable progress, advance, or other agreed upon payment schedule, or, if no such schedule has been agreed to, upon Acceptance as specified in Paragraph 8, but in no event later than 30 days from the date of invoice. No cash discount is provided. If in our judgment, Buyer's financial condition changes, we may stop work until financial arrangements satisfactory to us are made.

**8. Acceptance of Product:** Before accepting any product covered by Buyer's order, Buyer shall have a final opportunity to inspect it immediately after delivery, installation, or any scheduled demonstration of the product by us, whichever is later. Each such product shall be deemed to be accepted 14 days thereafter, unless we receive written notification of rejection for cause from Buyer within the 14 days.

**9. Risk of Loss:** Possession and risk of loss of each item of equipment shall pass to Buyer upon our delivery of such items to Buyer's designated carrier, cosigned to Buyer as Buyer may direct.

**10. Title:** Title of each item of equipment passes to Buyer when it has been delivered to Buyer's designated carrier at our place of business in Henrietta, New York.

**11. Force Majeure:** We shall not be liable for any delay in performance or nonperformance which is due to war, fire, flood, acts of God, acts of third parties, acts of governmental authority or any agency or commission thereof, accident, breakdown of equipment, differences with employees or similar or dissimilar causes beyond our reasonable control, including but not limited to, those interfering with production, supply, or transportation of products, raw materials or components, or our ability to obtain, on terms we deem reasonable, material, labor, equipment, or transportation.

**12. Acceptance of Orders:** Buyer agrees that all orders, including any arising from our Proposal, shall include these terms and conditions only, notwithstanding any different or additional terms that may be embodied in Buyer's standard purchase order or other form of order. All orders are subject to acceptance by us in writing.

**13. Merger Clause:** This Agreement entirely supersedes any prior oral representations, correspondence, proposal, quotation, or agreement. This writing constitutes the final and total expression of such agreement between the parties, and it is a complete and exclusive statement of the terms of that agreement.

**14. Assignment:** Neither party may assign this Agreement without the written consent of the other party.

**15. Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

**16. Jurisdiction of Disputes:** The courts of the State of New York shall have sole and exclusive jurisdiction over any dispute(s) arising under this Agreement or with respect to product delivered pursuant to it.