



TERMS AND CONDITIONS

1. ENTIRE AGREEMENT. These Terms and Conditions of Sale (which include any document(s) attached hereto or referencing these Terms and Conditions of Sale) (the "terms") constitute the entire, complete, and exclusive agreement between the parties with respect to goods and/or services (a "deliverable" or the "deliverables") provided by Seller to Buyer as specified in these terms. **If these terms are different from, or contain terms and conditions in addition to, Buyer's purchase order or any other document provided by Buyer (including any modifications thereto) Seller expressly rejects such different or additional terms in Buyer's document, and Seller's provision of the deliverables is expressly conditioned upon Buyer's assent to these terms.** Notwithstanding any other acts or omissions of the parties, Buyer's acceptance of a deliverable constitutes Buyer's assent to all of these terms. These terms shall be given their ordinary meaning and shall not be explained or supplemented by course of dealing, usage of trade or course of performance.

2. FORM OF ACCEPTANCE. These terms are submitted for Buyer's prompt consideration and unless otherwise indicated in writing, must be accepted by the Buyer within thirty (30) days from its date or it is void. Seller reserves the right to revoke these terms any time before Buyer's valid acceptance thereof.

3. DELIVERABLES. Seller will provide such deliverables as may be specifically described in these terms, but shall have no obligation to provide any other deliverables unless agreed by Seller in writing. No installation or start up services are included unless specifically set forth in these terms. If installation and/or start up is included in these terms, Buyer takes full responsibility for the safety and suitability of the site of installation and all costs and expenses of rigging, hookups, special cranes or other means of transport prior to shipment.

4. PRICE AND TERMS OF PAYMENT. (a) Terms of payment are set forth in these terms or as otherwise agreed to by the parties in writing. Except to the extent Seller provides a signed quotation that states that it is a firm quote for a fixed period of time, all prices provided by Seller, are subject to change and revision by Seller at any time. All orders are deemed made at Seller's prices current at the time of order acceptance and may be accepted by Seller on those terms. The price specified in any quote for deliverables is exclusive of taxes and shipping related costs and is payable only in U.S. currency. Buyer shall pay Seller for all taxes, shipping related costs or other charges which Seller may be required to pay upon the sale, transportation or use of the deliverables. The opening and maintenance of a credit account with Seller is subject to Buyer providing satisfactory references and observing all of the terms on which credit is given. Seller reserves the right to refuse to extend credit at any time and for any reason.

(b) If Buyer fails to make payment when due, in addition to Seller's other rights and remedies, Buyer shall (i) pay Seller a late charge equal to the greater of 2%, per month and/or part of a month on the remaining unpaid balance due Seller or the highest lawful amount which may be charged to Buyer; and (ii) pay all expenses of collection of amounts due Seller from

Buyer, including reasonable attorneys' fees. Buyer shall not be entitled to make any deductions or set off of any amounts (including those for alleged damages) against payments due to Seller hereunder.

5. DELIVERY/INSPECTION. (a) Delivery terms are EXW (INCOTERMS 2000). Any dates quoted for delivery are approximate only. Buyer is responsible for obtaining all permits, licenses or other approvals necessary for Seller's receipt and/or use of a deliverable. Seller shall not be liable for loss, damage, or delay nor be deemed to be in default from causes beyond its reasonable control or from weather, natural disaster, fire, strike, labor difficulties, act or omission of any governmental authority or of Buyer, compliance with import or export regulations, war, terrorism, insurrection or riot, embargo, delays or shortages in transportation, failure of utilities, or inability to obtain necessary labor, materials or manufacturing facilities from usual sources, failure of supply or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery will be postponed by such length of time as may be reasonably necessary to compensate for the delay, without liability to Seller. In no event shall Seller be liable for any production losses due to late delivery or failure of any deliverable whether or not due to any of the foregoing enumerated causes. If shipments are delayed at Buyer's request, due to Buyer's acts or omissions, or due to circumstances that are not within Seller's control, payment shall be made by Buyer within seven (7) days after Buyer has been notified by Seller that a deliverable is ready for shipment. If shipment is delayed, in addition to any other remedy available to Seller, the deliverable may be stored by Seller at Buyer's risk and expense.

(b) Promptly upon delivery, but no later than fifteen (15) days after delivery or completion, Buyer shall (i) examine and inspect all deliverables; and (ii) notify Seller of any defect in material or workmanship or any other fact that causes the deliverables not to conform to the agreement between Buyer and Seller. Failure to so inspect and inform Seller of a defect within the foregoing time period or the use of a deliverable by Buyer at any time shall be conclusive evidence that Seller has satisfactorily tendered delivery and that Buyer has inspected and accepted the Deliverables. Buyer agrees that the foregoing time period provides Buyer with a reasonable time to inspect deliverables. Should Buyer properly notify Seller of any defects in Deliverables, in addition to any obligations Buyer may have to Seller, Buyer shall re-pack the deliverable into its original packaging and store that deliverable in an environment that will not be detrimental to the deliverable pending instructions from Seller.

6. MODIFICATION/ACCORD AND SATISFACTION.

No amendment or modification of these terms shall be effective unless set forth in writing signed by the party to be charged. The endorsement and cashing of any check containing an endorsement, or accompanied by a letter or other communication, indicating that any payment of less than the full invoiced amount shall not be deemed to be a

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written agreement for purposes of the foregoing sentence. Further, no payment by Buyer or receipt by Seller of an amount less than the amount invoiced by Seller shall be deemed to be other than on account of the invoiced amount, nor shall any action by Seller with respect to any check for lesser payment, whether or not containing any endorsement or accompanied by any letter or other communication be deemed an accord and satisfaction, but Seller may accept such lesser payment without prejudice to Seller's rights to collect the balance of such invoiced amount.

7. RETURNS/CANCELLATION/TERMINATION. (a) Returns will be accepted only upon such terms as Seller may agree, including but not limited to (i) the deliverable must be in new condition, suitable for resale and with all its original parts and in original undamaged packaging, (ii) the deliverable must not have been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged, (iii) Buyer must pay all costs and bear all risk of returning the deliverable to Seller's facility and pay a minimum restocking charge of 25% of the price, (iv) No returns will be accepted after 6 months from date of original shipment and (v) Returns will only be accepted for standard products, for Engineered or Custom Built Systems all sales are final.

(b) Orders accepted by Seller can be cancelled only with the written consent of Seller in Seller's sole discretion and only upon payment of a cancellation charge of 20% of the price or such greater amount as may be specified by Seller in its consent. Any improper cancellation by Buyer shall obligate Buyer to pay reasonable and proper termination charges, including but not limited to all costs identified to the order or contract incurred or committed up to the effective date of written notice of termination and all charges incurred by Seller in respect to the termination plus a fixed sum of 15% of such amounts for disruption in scheduling, production and other fixed costs.

(c) Seller may terminate these terms, and have no obligation to supply deliverables, immediately upon the bankruptcy or insolvency of Buyer or Buyer's breach of these terms. Buyer will pay the price for any deliverables delivered on or before the date of termination. Seller is not liable for any other costs, expenses, losses, damages or liabilities arising out of such termination. Termination or cancellation will not alter or terminate any of the parties' obligations under any section of the terms that by its nature extends beyond termination or cancellation.

8. INTELLECTUAL PROPERTY. (a) Seller agrees, at its expense to defend all suits or proceedings brought against the Buyer, and pay any amounts due from Buyer on account of any judgment issued or agreed settlement involving any such suits or proceedings, insofar as they result from a deliverable infringing a valid claim of a United States patent, provided that, (i) Buyer gives Seller immediate written notice of the institution of any suit or proceeding, (ii) permits Seller, through legal counsel of its choice to defend the same, and (iii) gives Seller all needed information, assistance, and authority to enable Seller defend such claim. Should the deliverable be held to infringe a valid claim of a United States

patent, and Buyer's use of the deliverable is enjoined, Seller will at its option and within a reasonable time, secure for Buyer at Seller's expense, the right to use such deliverable, or modify such deliverable to render it non-infringing or remove such enjoined deliverable and return the sums paid therefore prorated over the useful life of the deliverable. These provisions, however, shall not apply to any claim of infringement arising out of or related to any: (i) equipment or parts thereof or auxiliary apparatus therefor not manufactured by Seller, (ii) designs, specifications or instructions provided or furnished by Buyer, or (iii) repairs, alterations or modifications to deliverables made by any party other than Seller. Buyer warrants to Seller that Seller's compliance with any designs, specifications or instructions provided by Buyer will not infringe any third-party's intellectual property rights and Buyer shall indemnify, defend and hold Seller harmless from any losses, liabilities, claims, causes of action and expenses (including reasonable attorneys' fees) arising out of Seller's compliance with Buyer's designs, specifications or instructions.

(b) Seller is not transferring to Buyer any patent, copyright, trademark or other intellectual property right in or related to any deliverable, other than the limited license to use the deliverable for Buyer's internal business purposes. Buyer agrees not to, and not to permit others to, use, disclose, copy or replicate (through for example reverse engineering or other similar process) any deliverable and/or any documentation or information regarding any deliverable.

9. LIMITED WARRANTY. (a) Seller warrants to Buyer that deliverables will be free from defects in material and workmanship for a period of twelve (12) months after delivery or from Seller's notice to Buyer of completion.

No warranty is given on "refractory material" or "burner block." Such items are **AS-IS**.

(b) Seller's liability under this limited warranty is expressly limited to equipment manufactured by Seller. In the case of equipment not originally manufactured by Seller, such as blowers, fans, controls, etc., furnished by Seller with a deliverable or as a part thereof, Buyer's warranty, if any, is limited to such warranty as may be given by the manufacturer of such equipment.

(c) This limited warranty excludes damages due to (i) failure to install, operate or maintain deliverables as directed in any instruction manual provided or under applicable law or regulation, (ii) misuse, abuse, neglect or modification of a deliverable, in any way, (iii) improper service, use of replacement parts or accessories that are not specified by Seller, (iv) improper installation, or any relocation of a deliverable after initial installation, (v) accident, fire, flood, acts of God or other casualty, (vi) use of a deliverable other than its intended purpose and normal usage, (vii) use of a deliverable in a corrosive atmosphere or any atmosphere containing contaminants, (viii) shipment of a deliverable (Seller is not liable for damage that occurs during shipment all claims must be filed with carrier), (ix) use of a deliverable in the vicinity of combustible or explosive materials, (x) any

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defect in a deliverable arising from a drawing, design, or specification supplied by or on behalf of Buyer, (xi) failure of parts, components, services or hook-ups not supplied by Seller, or (xii) a deliverable not properly installed by a qualified contractor experienced in installing the deliverable. No warranty coverage is applicable if Buyer cannot prove original purchase date and required annual maintenance history, the data plate and/or serial number on any deliverable is removed, defaced, modified or altered in any way, or Seller is not permitted to inspect the damaged deliverable.

(c) This limited warranty is expressly in lieu of all other warranties by Seller, express, implied, and Seller neither assumes nor authorizes any person to make any other warranty in connection with the deliverables.

(d) Upon request, Seller may furnish such technical advice or assistance as it has available in reference to the use of deliverables. It is expressly understood, however, that all such technical advice or assistance is given **AS-IS** and the Seller assumes no obligation or liability for the advice or assistance given or results obtained.

(e) Except as set forth in these terms, Seller makes no representation or warranty of any type, express or implied, including any warranty of merchantability, fitness for a particular purpose, or non-infringement or any warranty arising from any course of dealing, course of performance or usage of trade.

10. LIABILITY. (a) In the event a deliverable fails to conform to the warranty, Buyer's remedy and Seller's liability shall be limited to the repair, rework or replacement f.o.b. Seller's factory of such defective or nonconforming deliverable; provided the Buyer immediately notifies Seller in writing of the defect or nonconformity.

(b) **Seller assumes no liability for consequential or incidental damages of any kind whatsoever (including fire or explosion in the starting, testing or subsequent operation of the equipment), even if Seller has been notified of the possibility of such damages, whether resulting from breach of warranty, negligence or any other legal or equitable theory of liability. Buyer hereby releases Seller from, and indemnifies Seller against all liability not expressly assumed by Seller hereunder.**

(c) **In no event will Seller's liability to Buyer under any legal or equitable theory of liability, including but not limited to contract, tort, warranty, negligence or strict liability, exceed the amounts actually received by Seller for any deliverable.**

(d) A remedy set forth herein shall not be deemed to have failed its essential purpose so long as Seller is willing and able to repair or replace a defective deliverable or parts thereof, or, at Seller's option, to refund the price received by Seller for the defective deliverable, within a reasonable time after Buyer demonstrates that a defect exists in accordance with the terms and limitations of the limited warranty.

11. LIMITATION ON ACTIONS. Any action against Seller arising out of the transaction contemplated by these terms shall be commenced within one (1) year from the date such cause of action has accrued, otherwise the same shall be barred.

12. SAFETY FEATURES/BUYER DESIGNS. In addition to any other provision in these terms regarding designs, specification or instructions provided by Buyer, if a deliverable is designed or manufactured pursuant to designs, directions or requirements of Buyer, Buyer assumes responsibility for specifying and ensuring that all deliverables contain all required safety features and comply with all federal, state and local laws, rules and regulations.

13. CONFIDENTIALITY. All information, data, designs, manuals and drawings furnished by the Seller in connection with the transaction contemplated by these terms shall remain the property of Seller and shall be maintained in confidence, and have been prepared for Buyer's use solely in considering this proposal and/or subsequent purchase of the equipment described herein. Buyer or its legal successors will not give, quote, sell, loan or exhibit to any person or entity any of Seller's information, data, designs, and drawings without prior written permission from Seller or unless the proposal so specifies.

14. WAIVER. A party's rights under these terms may not be waived, in whole or in part, unless set forth in a written agreement signed by the party to be charged. A party's waiver of any failure of a party to comply with these terms shall not be deemed a waiver of any other or subsequent failure to so comply. The failure or delay of a party to enforce any right under these terms in a particular instance shall not constitute a waiver of the same in that or any other instance.

15. GOVERNING LAW. These terms shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to its principles of conflicts of laws, and shall not be governed by the provisions of the United Nations Convention on Contracts for International Sales of Goods. The parties agree that all actions or proceedings between them shall be tried and litigated only in the state and federal courts located in the County of Portage, State of Ohio USA.