

# TERMS AND CONDITIONS OF SALE AND WARRANTY

**DATE OF LAST UPDATE:** 1/5/2024

## GENERAL

These terms and conditions of sale and warranty, and the Industrial Resource Group, LLC Quote or Order Acknowledgement to which they have been incorporated by reference (this "Agreement"), shall constitute the final, complete and exclusive statement of this contract and may not be modified or rescinded, except by a written instrument signed by the parties. As an offer, the Industrial Resource Group, LLC Quote or Order Acknowledgement expressly limits acceptance to these terms and conditions. As an acceptance of the Purchaser's offer, this acceptance is expressly conditioned on the Purchaser's assent to any additional or different terms contained herein. As a confirmation of an existing contract, the parties agree that the Industrial Resource Group, LLC Quote or Order Acknowledgement and these terms and conditions of sale and warranty constitute the final, complete and exclusive terms and conditions of the contract between the parties. Any varying, differing, or additional terms and conditions contained in the Purchaser's purchase order, request for quotation or elsewhere in any other document shall not be binding upon Industrial Resource Group, LLC (the "Seller").

In consideration of the mutual covenants and understandings contained herein, and for other good and valuable consideration the receipt, adequacy, and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows.

## DISCLAIMER OF WARRANTIES AND LIMITATIONS OF LIABILITY

(a) SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY & FITNESS FOR A PARTICULAR PURPOSE.

(b) Seller hereby assigns to Purchaser any rights it may have under any warranty extended by a third party covering a product or component sold by Seller to Purchaser. Seller makes no representation to Purchaser that any such warranty exists in regards to the transaction(s) contemplated by this Agreement. Materials manufactured by others and resold by Seller do not carry any additional warranty by Seller.

(c) Seller shall not be liable under any circumstances for consequential, incidental, indirect or remote damages. No claim by Purchaser hereunder, whether relating to goods delivered or for non-delivery, shall be greater than the purchase price of the goods in

respect to which such claim is made. Further, no claim by Purchaser hereunder relating to the provision of any services performed by or at the behest of Seller shall be greater than the price actually paid by Purchaser for such services.

(d) Any “custom conversion” or adaptation hereunder is pursuant to the Purchaser’s specific request, and the Seller shall bear no risk of loss resulting therefrom.

(e) Seller’s warranty shall not apply to any product or component which has been repaired, modified or altered outside of Seller’s locations in any manner or has been installed or used in a manner contrary to the original manufacturer’s printed instructions. In the event Purchaser modifies the goods sold hereunder without the express written consent of Seller, Purchaser agrees to indemnify and hold Seller harmless from any and all claims, demands, actions or causes of action or costs or expenses (including but not limited to, reasonable attorney’s fees) incurred thereby.

(f) Purchaser is solely responsible for the design, selection and application of fabricated equipment, products, components and materials purchased from Seller. Any drawings, specifications, or information prepared by or furnished by Seller are for reference purposes only, and Seller makes no warranty or representations concerning the accuracy of such materials or information. Seller has no responsibility for the design, selection and application of products, components and materials purchased by Purchaser.

(g) The foregoing limitations on Seller’s liability shall also be the absolute limit of Seller’s liability for negligence or defect in the manufacture, installation or other action with respect to the articles sold hereunder.

(h) Any fabricated product or fabricated part thereof covered by this quotation which, under normal operating conditions on the part of the Purchaser proves defective in material or workmanship within one (1) year from the date of shipment by Seller, as determined by an inspection by Seller, will be replaced or repaired, at Seller’s option, at Seller’s facility, free of charge provided that Purchaser promptly sends to Seller notice of the defect and establishes that the product has been properly installed, maintained and operated within the limit of rated and normal usage. This warranty, as it relates to electronic control units, only applies if the Purchaser has in its employ qualified maintenance personnel. If Purchaser ships or requests that Seller ship electronic control console units by other than air-ride common carrier truck, all warranties relating thereto shall be void. Components purchased by Seller are warranted by and in accordance with the individual manufacturer’s warranties, if any, not those of Seller. If an article is claimed to be defective in material or workmanship or not to conform to specifications, Seller, on written notice, shall at Seller’s option either examine the article at its site or issue authorization for return to Seller, at Seller’s sole discretion. In the event such article is returned to Seller, Purchaser shall be solely responsible for all costs and expenses associated with such shipment and Purchaser shall bear risks of loss or damage to goods while in transit.

## **PURCHASER'S USE AND OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)**

(a) It is Purchaser's responsibility to provide all proper dies, devices, tools and means that may be necessary to effectively protect all personnel from all bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Seller's products. If supplied or required, the operator's manual or machine manual, all applicable Safety Standards, OSHA regulations, other sources and other applicable regulations should be consulted to protect personnel.

(b) The proposed equipment or goods may not be used without all recommended or included safety devices.

## **SPECIFICATIONS**

Equipment quoted shall not be subject to any other specifications, which are not stated on the face of the quotation and in the manufacturer's catalog. Voltage, phase, frequency and power limitations must be specified by Purchaser.

## **FIELD ENGINEER SERVICES/INSTALLATION**

Unless otherwise specifically indicated, the quoted prices DO NOT include the services of Seller's field engineer to supervise the installation of equipment and instruct the operator in its proper use.

## **PROPERTY AND PATENT RIGHTS**

(a) Seller retains for itself any and all property rights, including but not limited to all patent, copyright, and trade secret rights, to all software and hardware materials and to all designs, engineering details, documentation, and other data pertaining to any equipment designed in connection herewith and to all right of discovery, invention or patent rights arising out of the work done in connection herewith. Purchaser expressly agrees that it will not assert any property rights herein, except to the extent explicitly permitted by the terms of this Agreement.

(b) Purchaser shall immediately notify Seller of any information which comes to its attention which indicates that there has been any loss of confidentiality of Seller's trade secret information.

## **DELAYS**

Seller shall not be liable for damages or delays in performance due to circumstances beyond its reasonable control, including without limiting the generality of the foregoing,

any priority system established by any agency of the United States Government, acts of God, accidents, strikes, insurrections, war, shortage of materials, lack of transportation and failure of performance of subcontractors or suppliers for similar reasons. Failure of Seller to perform for these reasons shall not be grounds for Purchaser's cancellation of its order but the delivery date shall be extended accordingly.

## **MISCELLANEOUS**

(a) This Agreement may not be assigned or otherwise transferred by Purchaser without the prior written consent of Seller, and any such prior written consent shall be null and void and of no force or effect whatsoever.

(b) Seller's failure to insist, in one or more instances, upon the performance of any term hereunder shall not be construed as a waiver or relinquishment of its right to such performance or the future performance of such term and Purchaser's obligation with respect thereto shall continue in full force and effect.

(c) Any notice or other communication required or permitted hereunder shall be sufficiently given if sent in writing by registered or certified mail, postage prepaid, to the other party thereto at its respective address either specified herein or commonly used by the party for receipt of business correspondence or as the party's principal office. Seller's address is 3110 W. 5th Ave. Gary, IN 46406. Any such notice, if so mailed, shall be deemed to have been received on the third business day following such mailing. Either party hereto may change its address for notice purposes by written notice to the other party.

(d) Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective, valid, and enforceable under applicable law. However, if a court of competent jurisdiction holds any provision of this Agreement to be invalid, unenforceable, or illegal, then (i) the provision will be severed from the Agreement, (ii) the parties shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by the provision, and (iii) all other provisions of the Agreement will remain in full force and effect.

(e) In the event that Purchaser breaches or threatens to breach this Agreement, Seller will be entitled, if Seller so elects, to institute and prosecute proceedings, at law or in equity, to obtain damages resulting from any breach of this Agreement by Purchaser, to enforce the specific performance by Purchaser of any provision hereof, and/or to obtain injunctive relief to enjoin the violation of this Agreement's terms by Purchaser without the need for Seller to post any bond or surety in connection therewith. In the event of any legal or equitable proceeding for enforcement of any term of this Agreement, or any alleged breach hereof, or in regards of any other proceeding arising from the transactions contemplated hereby (whether based in contract, tort, statute, common law, or otherwise), if Seller is the prevailing party, then Seller will be entitled to recover all its costs and expenses (including reasonable attorney's fees, other professional fees, paraprofessional fees, expert witness fees, discovery costs, deposition costs, travel expenses of Seller and Seller's legal counsel, and other direct and ancillary costs of

litigation) paid or incurred in good faith at the pre-trial, trial, and appellate levels, and in enforcing any award or judgment granted pursuant thereto, from Purchaser, the same being cumulative with all other relief that may be awarded to Seller. The parties expressly agree that any award, judgment, or order entered in any such proceeding in which Seller is the prevailing party will contain a specific provision providing for the recovery of reasonable attorney's fees and costs paid or incurred by Seller in connection with the enforcement or collection of such award, judgment, or order, including without limitation, post-award or post-judgment motions, contempt proceedings, proceedings supplemental, garnishment, levy, and debtor and third-party examinations, discovery, and bankruptcy litigation. All rights and remedies of Seller are cumulative of each other and of every other right or remedy Seller may otherwise have at law or in equity, and the exercise of one or more rights or remedies by Seller will not prejudice or impair the concurrent or subsequent exercise of other rights or remedies by Seller.

(f) Each party represents and warrants to the other party that it is duly organized, validly existing, and in good standing under the laws of the state of its incorporation, with all requisite corporate power and authority to bind itself and perform hereunder, and that this Agreement constitutes a legal, valid, and binding obligation of such party, enforceable in accordance with its terms.

(g) Subject to the terms of this Agreement, any provision of the Agreement (and any rights, remedies, obligations, and powers arising from such provision) that contemplates continued observance following the Agreement's expiration or termination will, following such expiration or termination, continue in full force and effect.

## **INDEMNIFICATION**

(a) Purchaser, for itself and its officers, agents and employees, agrees to defend, indemnify and hold harmless the Seller, its parent and affiliates, and their officers, agents and employees, against all claims, losses, expense (including but not limited to, reasonable attorney's fees) and causes of action of every kind, made or asserted by any third party arising out of, or in connection with this Agreement, the transactions contemplated hereby, or the article(s) sold hereunder, or related to any misrepresentation, breach of warranty, or breach of covenant under this Agreement by Purchaser.

(b) Purchaser agrees to indemnify and hold harmless Seller for all costs incurred by Seller, including but not limited to legal fees, reasonable attorney's fees, and court costs, and for any damages and judgments incurred by Seller, as a result of any claim brought against Seller arising from or related to Purchaser's conduct, including, but not limited to, Purchaser's misuse of the product or, for any custom-designed product, design decisions or product choices made by Purchaser.

## **WAIVERS**

(a) Purchaser hereby waives, for itself and for any and all persons who may assert a claim or lien in Purchaser's place or stead, whether by subrogation or otherwise, any and all liens or claims of lien against the Seller for payments made by Purchaser's Workman's Compensation insurance carrier to Purchaser's employees for injuries alleged to have been caused by any article sold hereunder.

(b) Purchaser hereby waives, for itself and for any and all persons who may assert a claim or lien in Purchaser's place or stead, whether by subrogation or otherwise, any and all claims against Seller for contribution or for indemnity, whether such claims arise under contract, statute, common law, or otherwise.

## **TAXES**

All applicable federal, state or local sales, use, occupational, excise, export, import or like taxes now in force or enacted in the future are the responsibility of the Purchaser and shall be in addition to the price or prices stated expressly by Seller. Unless otherwise specifically stated, Seller shall have the right to invoice separately any such tax as may be imposed at a later time. Applicable tax exemption certificates must accompany any order to which the same applies.

## **PAYMENT TERMS, UNLESS OTHERWISE STATED IN QUOTE OR ORDER ACKNOWLEDGEMENT**

(a) Payment terms shall be as determined by Seller's credit department.

(b) F.O.B. Shipping Point and Purchaser assumes all risk and liability for loss, damage, or destruction after delivery of the product to the carrier.

(c) For any payment made more than thirty (30) days past invoice date, Purchaser agrees to pay interest on the unpaid balance at the rate of 1.5% per month (18% per annum) or the maximum allowed by law if less than 1.5% per month (18% per annum), plus any costs of collection and any costs associated with the purchase money security interest, including filing fees, legal fees and court costs.

(d) NOTWITHSTANDING ANYTHING TO THE CONTRARY, PURCHASER EXPRESSLY CONSENTS AND AGREES THAT PRICES QUOTED BY SELLER PRIOR TO DELIVERY OF GOODS AND/OR PERFORMANCE OF SERVICES INVOLVE SELLER'S REASONABLE, GOOD FAITH ATTEMPTS TO ESTIMATE SELLER'S OWN COSTS, BUT THESE ESTIMATES MAY NOT BE PRECISE, AND THE FINAL PRICES INVOICED TO PURCHASER MAY VARY FROM ORIGINAL ESTIMATES, BASED ON SELLER'S ACCOUNTING OF ITS OWN COSTS (WITH ALLOWANCES FOR REASONABLE MARKUP AND PROFIT) DURING OR AFTER DELIVERY AND/OR PERFORMANCE, ALL AT SELLER'S SOLE, REASONABLE DISCRETION. PURCHASER MAY OPT OUT OF THE PRECEDING CLAUSE BY WRITTEN NOTICE DELIVERED TO SELLER ANY TIME PRIOR TO THE START OF SELLER'S PERFORMANCE, IN

WHICH CASE, THE PARTIES SHALL NEGOTIATE A FINAL PRICE IN WRITING; OTHERWISE, PURCHASER AGREES TO PAY THE FINAL PRICE QUOTED BY SELLER AT SELLER'S DISCRETION. ANY SUCH OPT-OUT NOTICE DELIVERED AT OR AFTER THE START OF SELLER'S PERFORMANCE IS VOID.

## **TITLE**

Title shall pass to Purchaser upon delivery of the product to the carrier. Purchaser assumes all risk and liability for loss, damage, or destruction after delivery of the product to the carrier.

## **RETURNS**

Return of any merchandise must be authorized in writing by Seller (with such authorization given or withheld at Seller's sole, reasonable discretion), have Seller's "authorized material return" Return Goods Authorization (RGA) number and be accompanied by a copy of original packing slip verifying shipment from Seller's plant or warehouse. Any request to return goods must be made within ten (10) days from the receipt of the goods by Purchaser. Returned goods must be in first class saleable condition, in their original container, shipment prepaid. Subject to the limitations of Seller's Warranty, if goods are returned because of an error acknowledged by Seller, Seller will remedy any such error without expense to the Purchaser. Notwithstanding anything to the contrary, Seller makes no warranty of its own (and hereby disclaims all warranties, whether express or implied, including without limitation all warranties of merchantability and fitness for a particular purpose) with respect to any goods manufactured by third parties and resold by Seller. Components, systems and other materials designed to meet Purchaser's unique requirements or specifications are not returnable. Nonstandard or used material shall not be subject to return. Unless otherwise expressly agreed, an order for equivalent value must accompany returned merchandise and all such merchandise is accepted for credit only after factory inspection. Purchaser returning merchandise must pay transportation charges and bear risks of loss or damage to goods while in transit.

## **RE-STOCKING CHARGES**

A minimum 15% of invoice shall be charged for all material returned to Seller.

## **CANCELLATION**

Notwithstanding Non-Cancellable and Non-Returnable items, in the event Seller (in its sole discretion) grants Purchaser cancellation of an order or any part thereof, cancellation charges shall be paid by Purchaser to Seller as follows:

(a) Any and all work that is complete or scheduled for completion within thirty (30) days of the date of cancellation granted by Seller shall be invoiced to Purchaser and paid in full.

(b) For work-in-process, other than covered by Item (a) above, and any materials and supplies procured, or for which definite commitments have been made by Seller in connection with Purchaser's order, the Purchaser shall pay the actual costs and overhead expenses determined in accordance with Seller's normal accounting practices, plus a minimum of fifteen (15%) percent, upon invoicing.

(c) All costs of storage, insurance, hauling, boxing or other costs in connection with material owned by Purchaser but on hand at Seller's premises on account of cancellation shall be borne by the Purchaser.

## **NON-CANCELLABLE AND NON-RETURNABLE ITEMS**

Non-Cancellable and Non-Returnable items may only be returned or cancelled upon the express written approval of Seller. If no such approval is granted, Purchaser remains responsible for payment of any and all invoices relating to such items. Any customized fabricated system sold to Purchaser shall be non-cancellable, non-returnable.

## **DRAWINGS**

Drawings will be provided by Seller only upon special request of Purchaser and subsequent approval of Seller.

(a) Seller may provide reproducible copies of specification sheets, which list all assemblies and components. Pertinent assembly drawings will be included in the instruction manual.

(b) Seller may provide original layout drawings, complete fixture drawings and lubrication diagrams with related information

(c) Seller hereby disclaims and excludes all warranties, whether express or implied, related to any drawings provided to Purchaser, including without limitation all warranties of merchantability, fitness for a particular purpose, non-infringement, and accuracy.

## **MACHINE FOUNDATIONS**

If standard foundation drawings are supplied, they may include plan and elevation views. Due to many variations in solid type, adjacent equipment, workmanship, etc. foundation depth is a suggestion only. The foundation is not guaranteed, and Seller shall not be responsible for any damage which may result from an inadequate or insufficient foundation.



## **COMPLETE AGREEMENT**

This Agreement, as defined in the first paragraph hereof, constitutes the final, entire, legally enforceable agreement between the parties and cancels and supersedes all previous agreements and price quotations, if any, between the parties. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument signed by Purchaser and Seller.

## **APPLICABLE LAW**

This Agreement, and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Indiana. THE JURISDICTION AND VENUE OF ANY LEGAL PROCEEDINGS FOR THE RESOLUTION OF DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY SALE BY SELLER TO PURCHASER SHALL BE IN THE FEDERAL OR STATE COURTS SITTING IN LAKE COUNTY, INDIANA. PURCHASER HEREBY SUBMITS TO THE JURISDICTION OF ALL SUCH FEDERAL AND STATE COURTS SITTING IN LAKE COUNTY, INDIANA.