

TERMS AND CONDITIONS

DEFINITIONS

"Seller" is defined as Midway Machining, Incorporated.

"Customer" is defined as person or entity purchasing goods or service from Seller.

"Agreement" is defined as Terms and Conditions contained herein.

"EXW" (Ex Works) refers to international shipments; is an international trade term that describes an agreement in which the seller is required to make goods ready for pickup at his or own place of business. Exact definition differs by jurisdiction.

"FOB" is defined as Freight on Board, shipping point.

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by reference, shall constitute the final, complete and exclusive statement of this contract and may not be modified or rescinded, except by a written instrument signed by the parties.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

DISCLAIMER OF WARRANTIES AND LIMITATIONS OF LIABILITY See Warranties and Limitations (Separate Document)

PRICES/TAXES

Prices quoted by Seller in the quotation are:

- Subject to change without notice.
- Exclusive of all Federal, State, Municipal or other Government Excise Sales Use, Occupational or like taxes now in force or to be enacted in the future.
- Subject to an increase equal in amount to any tax Seller may be required to collect to pay upon the sale of the items quoted.
- Quoted as EXW or FOB.

PRODUCTION ESTIMATES

- Production estimates are based on Seller's analysis and understanding of the work to be performed and assume various production factors including normal working conditions and the use of materials which conform to: (i) the specification contained herein, (ii) the specifications and supply of goods (iii) the standards of the industry. It is therefore EXPRESSLY UNDERSTOOD THAT PRODUCTION ESTIMATES ARE NOT GUARANTEED.
- Work tolerances, if any, to be obtained by the Goods are based on Seller's assumption that the material to be processed will have been properly processed through all previous operations, inspections and will be of quality standard, which will not impede achievement of the quoted tolerances.
- Seller's obligation with respect to production estimates shall be fully and completely satisfied when Customer has provided documentation of approval.

SHIPPING/DELIVERY ESTIMATES

- Any shipping date expressed is approximate and dependent upon prior sales and circumstances beyond Seller's control.
- The Shipping date will be computed from the date of receipt of all data required to enable complete engineering or acceptance of purchase order as provided in the Acceptance paragraph above, whichever is later.
- 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 Customer's cancellation of its order but the delivery date shall be extended accordingly and Seller will notify Customer of the causes of the anticipated delay. Customer's receipt of the Goods, upon their delivery, waives all of Customer's claims for delay. Damages under this section are limited to the terms of the Limitation of Liability section.
- Seller shall have the right to select the carrier unless the carrier is designated by Customer and upon delivery of the Goods by Seller to the carrier, the carrier shall be deemed to be the agent of Customer and thereafter risk of loss shall be on Customer.
 - Inspections/Acceptance – Customer shall be responsible for thoroughly inspecting each shipment of products upon receipt.
 - Partial shipments – Unless otherwise stated, Seller reserve the right to partial ship and bill accordingly.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY DELAYS WHETHER OR NOT SUCH DELAYS ARE BEYOND SELLER'S CONTROL.

PAYMENT/TERMS

- Customer, if credit terms have been established, agrees that invoices are due within the terms established at time of order.
- Customer, without credit terms established, agrees to pay invoice at time of purchase.
- Interest may be charged at the rate of two percent (2.0%) per month or the maximum rate allowed under state law, if it is a lesser number, on any payments which are not received by the due date. Any expenses of collection, including reasonable attorney's fees, shall be borne by Customer.
- International transaction payments shall be made via wire transfer, prior to shipment of product.
- Seller reserves the right to modify these terms for international business and special projects.

SPECIAL ORDERS

Customers that do not have credit terms with Seller, agree that Special Order parts are to be prepaid when order is placed and all shipping costs incurred with the order will be invoiced at delivery of said special order.

PROPERTY AND PATENT RIGHTS

- Seller retains for itself any and all property rights, including but not limited to all patent, copyright, and trade secret rights, to the Software 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. Customer expressly agrees that it will not assert any property rights herein, except the right for itself and subsequent owners to use the equipment.
- Seller grants Customer a nonexclusive and nontransferable license to use one copy of the Software Materials for its own internal purposes for a term of 99 years. Pursuant to such license, Customer shall have the right to copy the Software Materials solely for back-up and archival purposes. Customer expressly agrees that it will not assert any property rights herein, except the right for itself and subsequent owners to use the equipment.
- Customer acknowledges that the Software Materials constitute valuable trade secrets of Seller and are unpublished works on which Seller, or Seller's vendor, holds the sole and exclusive copyright. Customer agrees to maintain and protect the confidentiality of these trade secrets and agrees not to disclose them or use them for any purpose not contemplated by this Agreement. Customer agrees to formulate and adopt appropriate safeguards in light of its own operating activities, to insure protection of the confidentiality of these trade secrets. Customer 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.

DRAWINGS

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

- Seller may provide reproducible copies of specification sheets, which list all assemblies and components. Pertinent assembly drawings will be included in the instruction manual.
- Seller may provide original layout drawings, complete fixture drawings and lubrication diagrams with related information.

INSTALLATION/FIELD ENGINEER SERVICES

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.

CUSTOMER'S USE AND OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

- It is Customer's responsibility to provide anything 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.
- The proposed equipment or goods may not be used without all recommended or included safety devices.

RETURNS

Return of merchandise must be authorized in writing by Seller, have Seller's "Return Merchandise Authorization" (RMA) 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.

- All returns will be subject to inspection. Returns must be in original container and in a resalable condition; no signs of contamination or damage and with no visible signs of having been installed.
- Certain products purchased from Seller that has been removed from the original packaging may not be returnable.
- Special order parts are subject to vendor return policy and may not be returnable. There will be a 10% return fee on the part(s) in addition to any vendor return fees if the part is returnable. Return freight charges from Seller to manufacturer will be applied.
- There will be no returns on any parts after 30 Days from purchase.
- There will be no refunds on freight charges.

CANCELLATION

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, Customer remains responsible for payment of any and all invoices relating to such items. Any customized fabricated system sold to Customer shall be non-cancellable, non-returnable. In the event Seller grants Customer cancellation of an order or any part thereof, cancellation charges shall be paid by Customer to Seller as follows:

- 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 Customer and paid in full.
- 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 Customer's order, the Customer shall pay the actual costs and overhead expenses determined in accordance with Seller's normal accounting practices, plus a minimum of fifteen percent (15%), upon invoicing.
- All cost of storage, insurance, hauling, boxing or other costs in connection with material owned by Customer but on hand at Seller's premises on account of cancellation shall be borne by the Customer.

FOREIGN PRINCIPAL PARTY IN INTEREST; FREIGHT FORWARDER AND DOCUMENTATION (EX-WORKS)

It is specifically agreed that the Customer shall be the foreign principal party in interest and/or that its freight forwarder shall act as Customer's agent in such capacity for Export Administration Act or other applicable purposes; and Customer and freight forwarder shall assume responsibility for all export or routed transactions documentation. At Seller's request, Customer or its freight forwarder shall provide copies of any export, shipping, or import documentation prepared by Customer or its freight forwarder related to sales to them by Seller.

PERMITS, EXPORT, AND IMPORT LICENSES

Customer shall be responsible for obtaining any licenses or other official authorizations that may be required by the country of importation and/or under the Export Administration Regulations, International Traffic in Arms Regulations, Toxic Substances Control Act, or other applicable laws or regulations.

EXPORT CONTROLS AND RELATED REGULATIONS

Customer represents and warrants that it is not on, or associated with any organization on the United States Department of Commerce's Bureau of Industry and Security's Denied Persons List or Unverified List; or the United States Department of the Treasury's Office of Foreign Assets Control lists, Specially Designated Nationals, Specially Designated Global Terrorists, Specially Designated Narcotics Traffickers, Specially Designated Narcotic Traffickers-Kingpin, or Specially Designated Terrorists List; or the United States Department of State's Designated Foreign Terrorist Organizations, Embargoed Countries list, or Debarred Persons List; or is subject to a denial order issued by the United States Department of Commerce. Customer shall comply with all relevant laws and regulations of governmental bodies or agencies, including but not limited to all applicable export control laws of the United States or other governing agencies and their successors. CUSTOMER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

COUNTRY OF IMPORTATION AND ANTI-DIVERSION

Customer represents that it is purchasing products from the U.S. and importing them to the country specified in the Customer and Seller documentation. Customer agrees that the products will be shipped to the specified destination in compliance with the laws of such destination and the U.S., and that the products will not be directly or indirectly sold, exported, transferred, assigned, used, or otherwise disposed of in a manner which may result in any non-compliance with applicable U.S. laws and regulations relating to the product purchased by Customer. Any commodities, technology and software will be exported from the U.S. in accordance with the U.S. Export Administration Regulations and other applicable laws or regulations. Diversion contrary to U.S. law is prohibited. If requested by Seller, Customer shall provide documentation satisfactory to Seller verifying delivery at the designated country. Customer further agrees to inform Seller at the time of order of any North American Free Trade Agreement or other applicable documentation, packaging or product marking or labeling, but Seller shall not be responsible for providing any such documentation, packaging, marking or labeling other than such documents that are necessary under U.S. export laws and regulations for export, unless Seller expressly agrees, in writing, to do so.

INDEMNIFICATION

- Customer agrees to defend, indemnify and hold harmless the Seller, its parent and affiliates, and their officers, agents and employees, against all claims, losses, expense and causes of action of every kind, made or asserted by any third party arising out of, or in connection with this Agreement or the article(s) sold hereunder.
- Customer agrees to indemnify Seller for all costs incurred by Seller, including legal fees and court costs, as a result of any claim brought against Seller arising from Customer's conduct, including, but not limited to, Customer's misuse of the product or, for any custom-designed product, design decisions or product choices made by Customer.

WAIVERS

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

U.S. FOREIGN CORRUPT PRACTICES ACT

Customer states that it is an independent contractor, and represents, warrants, and covenants that it has not paid, offered or agreed to pay, authorized the giving of, or caused to be paid, directly or indirectly, money or anything of value to any foreign official (as defined in the U.S. Foreign Corrupt Practices Act, as amended), in connection with the purchase and resale of the products ordered from Seller.

APPLICABLE LAW

This agreement, and all the rights and obligations hereunder, shall be construed pursuant to the laws of the State of South Dakota.