

## **TERMS AND CONDITIONS OF SALE**

1. **ACCEPTANCE.** The following terms and conditions of sale ("Terms") shall apply for all sales by the affiliate of Cooper Industries, Ltd. set forth on the face of the [quotation/acknowledgment/invoice] ("Cooper") to a purchaser ("Buyer") or Cooper's acceptance of a Buyer's order for the services, goods, articles, materials, supplies, components, drawings, data or other property described herein ("Products"). The Terms are effective regardless of the format in which an order is received, including EDI transmissions. Any different or additional terms and conditions proposed by Buyer in its purchase order, or otherwise, are hereby rejected by Cooper and shall not be incorporated into these Terms. Buyer's assent to these Terms shall be conclusively presumed from Buyer's acceptance of all or part of the Products ordered. These Terms represent the entire agreement of the parties and all proposals, negotiations, representations or agreements made or entered into prior to or contemporaneously with these Terms, whether verbal or written, are excluded. Where these Terms are found to be an acknowledgment, if such acknowledgment constitutes an acceptance of an offer, such acceptance is expressly made conditional upon Buyer's assent solely to the terms of such acknowledgment, and acceptance of any part of Products delivered by Cooper shall be deemed to constitute such assent by Buyer. If these Terms constitute an offer, Buyer's acceptance of such offer is subject to these Terms.

2. **PRICES.** All prices represent those in effect at the time of shipment and are subject to change without notice. Unless prices are bid or quoted as "firm", Cooper reserves the right to invoice at prices in effect at the date of shipment, regardless of any prior bid and whether notice was received by Buyer. Prices are F.O.B. Cooper's plant of manufacture, unless otherwise specified. Prices are stated in United States dollars, are exclusive of sales, use, excise or similar taxes and are subject to any price adjustment necessitated by Cooper's compliance with any act of government. Any sales, use, gross receipts, excise, import duty, tariff or other tax or governmental charge (including interest and penalties) upon the production, sale, shipment or use of the Products which Cooper is required to pay or collect from Buyer shall be paid by Buyer to Cooper unless Buyer furnishes Cooper with a tax exemption certificate acceptable to the appropriate taxing authority. Export packaging or any other special handling requested by Buyer will be at its expense.

3. **PAYMENT.** All payment terms are subject to approval by Cooper's credit manager. Unless otherwise specified in the "Special Terms" Section of these Terms, payment terms are net 30 days after delivery or date of invoice, whichever first occurs, in United States currency. Cooper reserves the right to modify or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance of the amount of credit involved, or payment in advance of shipment of Products. If Buyer fails to fulfill the terms of payment of any order, Cooper may defer further shipment to Buyer or, at its option, cancel the unshipped portion of Buyer's order. Buyer agrees to pay interest on all past due invoices at 1.5% per month or the highest contractual rate allowable under applicable law, whichever is less. Until full payment of all obligations of the Buyer hereunder, Cooper reserves the title (but not the risk of loss) to all Products furnished hereunder. If the Buyer defaults in payment or performance or becomes subject to insolvency, receivership or bankruptcy proceedings or makes an assignment for the benefit of creditors, or without the consent of Cooper voluntarily or involuntarily sells, transfers or leases the Products, or permits any lien or attachment on the Products, Cooper may treat all amounts then or thereafter owing by Buyer to be immediately due and payable (subject only to credits required by law) and Cooper at its election may repossess said Products. In the event of repossession of Products under this section or under the section entitled "Security Interest," Buyer agrees that Cooper may enter the premises where the Products may be located and remove the same therefrom without notice, without being liable to Buyer for such repossession regardless of the cause of action, including claims of conversion or trespass.

4. **TERMS OF SHIPMENT – ACCEPTANCE.** The shipment of Products shall be F.O.B. Cooper's plant. Buyer will assume the risk of loss of Products upon Cooper's delivery of Products to the carrier at point of shipment. Shipping dates are approximate. Cooper will, in good faith, endeavor to ship by the estimated shipping date but shall not be responsible for any delay or any damage arising therefrom. It is agreed that time is not of the essence. Cooper will ship in accordance with instructions supplied by Buyer, and as specified on the face hereof. If Buyer fails to furnish such instructions, Cooper will select what is, in its opinion, the most satisfactory routing for the shipment. The Products shall be packed and packaged in accordance with reasonable commercial practices. Acceptance shall occur, if not before, when Buyer fails to reject within ten (10) days after delivery of the Products. Claims for defective material, shortages, delays, failures in shipment or delivery, or for any other cause, shall be deemed waived and released by Buyer unless made in writing within ten (10) days after delivery of the Products. Buyer may rightfully reject only where a reasonable inspection shows that the Products fail to conform substantially to Cooper's specifications. It is the intent of the parties that Buyer's remedies for any nonconformity detected after acceptance be limited to those expressly provided herein for breach of warranty. Buyer shall defend, indemnify, and

hold harmless Cooper from any claims, demands or causes or action for damage, loss or destruction of Products once the risk of loss has passed to Buyer.

5. **SPECIFICATIONS.** Cooper shall not be responsible for quotations of prices or specifications concerning non-catalogued Products unless Cooper confirms this to Buyer in writing. Dimensions of products are subject to change without notice. Unless specifically agreed by Cooper in writing, Cooper does not warrant compliance of Products with individual project specifications.

6. **CANCELLATION – RETURN.** Orders shall not be subject to cancellation or modification either in whole or in part without Cooper's written consent and then only with terms that will reimburse Cooper for all applicable costs incurred by virtue of the sale, including costs of purchased materials, engineering costs and a reasonable allowance for profit in accordance with Cooper's cancellation policy in effect on the date of cancellation. If special Products are ordered from Cooper, the order is not subject to cancellation by Buyer under any circumstances. No Products may be returned by Buyer without prior written authorization in the form of a Return Materials Authorization (RMA) which has been issued by Cooper expressly for the Products to be returned. This RMA will be issued at the sole discretion of Cooper. Except with respect to defective items, returned Products must be in its original sealed cartons. No special Products, custom-made Products, or outdated or modified versions of cataloged factory stocking items may be returned by Buyer. Returns will not be allowed for discontinued or obsolete Products. No returns will be accepted during October, November or December. Except for Products considered by Cooper to be defective in workmanship or materials, all returns will be subject to a minimum 25% handling and factory inspection charge, and a deduction will be made for the freight expense of the original shipment. Products accepted for return must be shipped prepaid to the factory or other destination specified by Cooper.

7. **FORCE MAJEURE.** Cooper shall not be liable for any failure to perform or delay in performing its obligations under these Terms resulting directly or indirectly from or contributed to by any acts of God, acts of Buyer, acts of government or other civil or military authorities, strikes, or other labor disputes, fires, accidents, floods, epidemics, war, riot, embargoes, delays in transportation, lack of or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond Cooper's reasonable control.

8. **LIMITED PRODUCT WARRANTY. THE FOLLOWING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** Cooper warrants to each original Buyer of Products manufactured by the Cooper that such Products are, at the time of delivery to the Buyer, free of material and workmanship defects, provided that no warranty is made with respect to: (a) any Product which has been repaired or altered in such a way, in Cooper's judgment, as to affect the Product adversely; (b) any Product which has, in Cooper's judgment, been subject to negligence, accident or improper storage; (c) any Product which has not been operated and maintained in accordance with normal practice and in conformity with recommendations and published specifications of Cooper; and (d) any products, component parts or accessories manufactured by others but supplied by Cooper (because these items are not manufactured by Cooper, any claims should be submitted directly to the manufacturer thereof.). Cooper's obligation under this warranty is limited to using reasonable efforts to repair or, at its option, replace, during normal business hours at any authorized service facility of Cooper, any Product which in its judgment proved not to be as warranted within the applicable warranty period. All costs of transportation of any Product claimed not to be as warranted and of any repaired or replacement Product to or from such service facility shall be borne by Buyer. Cooper may require the return of any Product claimed not to be as warranted to one of its facilities as designated by Cooper, transportation prepaid by Buyer, to establish a claim under this warranty. Replacement parts provided under the terms of this warranty are warranted for the remainder of the warranty period of the Products into which they are installed to the same extent as if such parts were original components thereof. Except as otherwise provided in the "Special Terms" Section of these Terms, the warranty period for the Products is twelve (12) months from date of shipment.

9. **EXCLUSIVITY OF REMEDY - LIMITATION OF LIABILITY.** Cooper's entire liability and Buyer's exclusive remedy shall be as follows: In the event Buyer claims that Cooper has breached any of its obligations under these Terms, whether of warranty or for any cause whatsoever, whether in contract or in tort including negligence, Cooper may request the return of the Products and tender to Buyer the purchase price theretofore paid by Buyer and, in such event, Cooper shall have no further obligation under these Terms except to refund such purchase price upon redelivery of the Products. If Cooper so requests the return of the Products, the Products shall be redelivered to Cooper in accordance with Cooper's instructions at

Cooper's expense. **THE REMEDIES PROVIDED FOR IN THESE TERMS SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST COOPER FOR BREACH OF ANY OF COOPER'S OBLIGATIONS UNDER THESE TERMS WITH BUYER, WHETHER THE CLAIM IS MADE IN TORT OR IN CONTRACT, INCLUDING CLAIMS BASED ON WARRANTY, NEGLIGENCE, STRICT LIABILITY, DECEIT, FRAUD, MISREPRESENTATION, OR OTHERWISE. IN NO EVENT SHALL COOPER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (REGARDLESS OF THE FORM OF ACTION, WHETHER IN STRICT LIABILITY, CONTRACT OR IN TORT INCLUDING NEGLIGENCE) NOR FOR LOST PROFITS, NOR SHALL COOPER'S LIABILITY FOR ANY CLAIMS OR DAMAGE ARISING OUT OF OR CONNECTED WITH THESE TERMS OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS EXCEED THE PURCHASE PRICE OF THE PRODUCTS.**

10. **CHANGES IN PRODUCT DESIGN.** Cooper reserves the right to change, discontinue or modify the design and construction of any of its products and to substitute material equal to or superior to that originally specified.

11. **GOVERNING LAW - VENUE - LIMITATION OF ACTIONS.** These Terms shall be performable in County and State of the Cooper location as set forth on the face of the [quotation/acknowledgment/invoice] and shall be governed by the laws of the State of the Cooper location as set forth on the face of the [quotation/acknowledgment/invoice]. Wherever a term defined by the state's Uniform Commercial Code is used herein, the definition contained in the Uniform Commercial Code is to control. In addition, no action or claim based upon any tort theory, for breach of these Terms, or any covenant or warranty arising therefrom, shall be brought more than one year after the cause of action has accrued.

12. **SECURITY INTEREST.** Buyer grants Cooper a security interest in Products ordered hereunder as security for performance by Buyer of all of its obligations hereunder (including all Products acquired hereafter from Cooper, and all future advances, accessions, substitutions, replacements, and additions, and any proceeds from sale or disposition of such Products). Buyer agrees to execute such documents to evidence and perfect this security interest as Cooper may reasonably require.

13. **INDEMNITY.** Buyer agrees to defend, indemnify and hold Cooper, its subsidiaries, affiliated companies, divisions, joint ventures and their agents, officers, and employees, directors, servants and insurers, harmless from and against any and all losses, claims, demands, liabilities or causes of action of every kind and character, whether in contract or in tort, including claims of negligence, or strict liability (including any action brought by any employee, agent or subcontractor of Buyer for Buyer's failure to comply with Cooper's published instructions and specifications concerning the operation, use and maintenance of Products) in favor of any person or party, for injury to or illness or death of any person or party, or for any property damage (including loss of income, profits, sales or "down time") arising out of or incident to the Products, except any loss, claim, demand or liability proven to be the direct result of the negligence of Cooper and not contributed to by the negligence of Buyer, its agents, employees, officers or directors or other third parties.

14. **PROTECTION AGAINST INFRINGEMENT.** In the event any equipment manufactured by Cooper is made in accordance with drawings, samples or specifications designated by Buyer, Buyer will defend, indemnify and hold Cooper harmless, at its own expense, from any and all damages, costs and expenses (including attorney's fees) relating to any claim that such equipment, or the use thereof, infringes any patents, foreign or domestic. In the event any equipment is designed by Cooper, and the equipment has not been modified by Buyer or its customers, Cooper agrees to hold Buyer and its customers harmless against any damages awarded by a court of final jurisdiction in any suit for the infringement of any United States patent by reason of the sale or use of such equipment, provided that Cooper is notified promptly in writing of any claim or suit and is permitted to assume the full control of the defense against any such claim and Buyer provides assistance (at Cooper's expense) for such defense. In case any judgment rendered in such suit becomes final (beyond right of appeal), and where Buyer has complied with the foregoing provisions to Cooper's satisfaction, Cooper agrees to pay all damages awarded against Buyer. Subject to the above limitations, if Cooper agrees to a settlement or is otherwise enjoined from manufacture, use or sale of the equipment (or any part thereof), in a suit in which the equipment is held to infringe (beyond right of appeal), then Cooper may, at its own expense, either: (a) procure for Buyer rights to the patent; or (b) modify or replace said equipment with non-infringing equipment accomplishing the same purposes; or (c) withdraw such equipment and refund to Buyer the purchase price thereof. Buyer's remedies for damages resulting from the infringement or claimed infringement of any patent by the equipment are exclusively limited to the provisions of this paragraph.

15. SPECIAL TERMS. To the extent of a conflict between the special terms set forth in this Section (“Special Terms”) and any of the general terms set forth above, these Special Terms shall control. The following Special Terms shall apply:

[Payment terms]

[Special Containers]

[Shipping minimums]

[Full package requirements]

[Broken carton charge]

[Drop shipments]

[Minimum or emergency order charge]

[Volume orders]

[Special warranties]

[Return limitations]