



General Terms and Conditions of Sale
Rev 06/2019

1. Order

The Seller's acceptance (Seller being Arbortech) of any order is expressly subject to Buyer's assent to each and all of the terms and conditions set forth below. Any additional or different terms and conditions submitted by Buyer shall be deemed objected to by Seller and shall be of no effect nor in any circumstances binding upon Seller unless accepted by Seller in writing. If Buyer objects to any of the terms and conditions said objections must be specifically brought to the attention of Seller by Buyer by a written instrument separate from any purchase order or other printed form of Buyer. Said objections shall be deemed proposals for different terms and conditions and may be accepted only by a writing executed by an authorized representative of Seller at its offices in Wooster, Ohio, U.S.A.

2. Prices & Transportation

Seller's published prices, quoted prices, terms of payment, including discounts, and transportation terms shall apply.

3. Taxes

Liability for all present or future Federal, State, Municipal or other sales, property, use or excise taxes, license fees or other fees imposed by or payable to any governmental authority, including any department, agency or subdivision thereof, upon the production, sale, shipment and/or use of the equipment, material or services covered hereby shall be assumed and paid for by Buyer and Buyer shall indemnify the Seller against any such liability. Applicable sales and/or use taxes will be billed by the Seller unless suitable exemption certificate is furnished by Buyer at time of placing order.

4. Shipment, Risk of Loss and Delivery

Shipment of the equipment and material shall be made F.O.B. Seller's facility, and title and risk of loss of the equipment and material shall pass to Buyer at F.O.B. Seller's facility, unless otherwise expressly indicated in a writing signed by Seller. Unless Buyer specifies in writing the desired method of transportation (air express, motor freight, etc.), within a reasonable period of time before the date scheduled for shipment, Seller will use its judgment in selecting the carrier and route. Delivery schedules are estimated, and Seller assumes no responsibility for delays. If Buyer delays delivery of any items, Seller may invoice Buyer for said items, and hold them at Buyer's risk and expense pending instructions from Buyer. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer.

5. Performance of Services

Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only. With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

6. Terms of Payment

Invoices shall be due and payable within thirty (30) days of the invoice date, unless noted otherwise on written separate instrument. Payments not made within thirty (30) days are subject to a finance charge of 1-1/2% of the outstanding balance each month or part thereof until paid.

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7. Financial Responsibility of Buyer

If at any time before shipment the financial responsibility of Buyer becomes impaired, or unsatisfactory to the Seller, cash payment or satisfactory security may be required by the Seller before shipment. Buyer will cooperate with the Seller in complying with any applicable conditional sale or security law and will furnish the Seller such other assurances, including financing statements, as the Seller may reasonably request. If Buyer shall fail to make payments in accordance with the terms herein specified, Seller, in addition to its other rights and remedies, may at its option terminate shipment. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, the Seller shall be entitled to cancel any order then outstanding and shall receive reasonable and proper cancellation charges.

8. Cancellations & Changes

Orders may not be cancelled by the Buyer without the prior written consent of the Seller. Buyer may request a change in (a) the specifications, including drawings and data; (b) method of packing and shipment; (c) date for performance. Any request needs approval from the Seller. If such changes would result in increased costs or time to complete the performance of the contract, Seller shall submit a proposal identifying the price and schedule for which the change can be implemented. Buyer may accept said proposal at any time within the acceptance period specified therein, and the contract shall be modified accordingly.

9. Buyer's Acts or Omissions

If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

10. Returned Goods

Seller will guarantee acceptance of returned goods if Seller shipped a defective or incorrect product. Seller will only accept returns accompanied by a Returned Goods Authorization (RGA) number. RGA numbers are issued by Seller's RGA Coordinator. The RGA number must be clearly marked on the outside of the packaging, and a copy of the RGA form must be included with the returned item. RGA numbers are valid for 30 days from date of issue – no credit will be issued after 30 days. Seller will accept the return of standard "like new" products within 30 days of invoicing with prior approval and authorization. A 25% restocking charge will be applied to all returned items. RGA numbers can be requested from Seller's RGA Coordinator by contacting Sales (or Parts) for assistance. Freight is the responsibility of the buyer/distributor. Credit amount, if any, will be determined based on Seller's inspection of returned items. Seller will not accept returns of special, obsolete, or damaged items.

11. Catalog and Illustrations

The illustrations and descriptions in Seller's catalogs and specification sheets are intended to show general features of the equipment, however, Seller reserves the right to supply equipment of the latest design and construction.

12. Termination

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

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13. Warranty

See applicable warranty supplied by Seller under Seller's General Warranty Terms or specific to the equipment purchased by Buyer. No warranty other than that supplied by Seller, whether express or implied, including any warranty of merchantability or fitness for a particular purpose, or that the same are free from infringement or the like, shall exist in connection with the services provided, design, manufacture, distribution, sales and/or use of any equipment or any component thereof.

14. Limitation of Liability

Notwithstanding anything to the contrary herein or in any other understanding or agreement between Seller and Buyer, under no circumstances shall Seller be liable for any incidental, consequential, punitive, speculative or indirect losses or damages whatsoever arising out of or in any way related to any of the equipment or services sold or agreed to be sold by Seller to Buyer.

15. Disclaimer of Damages

Notwithstanding any other provision of the contract, in no event shall the Seller or its subcontractors or suppliers be liable, whether arising under contract, tort (including negligence), strict liability or otherwise, for loss of anticipated profits, claims of Buyer's customers, cost of money, loss of use of capital or revenue, cost of substitute products, or for any special, incidental or consequential loss or damage of any nature arising at any time or from any cause whatsoever.

16. Assignment

Neither Seller nor Buyer shall have the right to assign any right or interest in any contract between Seller and Buyer unless such assignment is in connection with the transfer of all or substantially all of the assignor's business, or upon written consent of the other party.

17. Tender

In the event of failure or refusal of Buyer to accept delivery, no physical tender of the equipment or material by the Seller shall be necessary, but written notice of the Seller's readiness and willingness to deliver any quantity of the equipment or material at any time specified shall be equivalent to physical tender thereof.

18. Proprietary Data

Unless otherwise specifically agreed in a writing signed by an authorized officer of the Seller, neither buyer nor any representative of Buyer, nor any other person, shall be entitled to, or have control over, any engineering or production prints, drawings or technical data which the Seller, in its sole discretion, may consider so be, in whole or in part, proprietary. Any such prints, drawings, data and other information transmitted to Buyer in connection with any order are the property of Seller and are disclosed in confidence on the condition that they are not to be reproduced, copied or used for any purpose detrimental to the interest of Seller.

19. Assistance

Seller may, but shall have no obligation to furnish Buyer with recommendations, engineering and technical information and advice and other assistance. All such assistance is furnished without charge solely as an accommodation to Buyer and the Seller shall have no liability for inaccurate, incomplete or faulty recommendations, information, advice and assistance, whether or not negligent.

20. Force Majeure

The Seller shall not be liable for any expense, loss or damage resulting from delay or prevention of performance caused by fires, floods, acts of God, strikes, labor disputes, labor shortages, lack of or reasonable inability to obtain materials, fuel, supplies, or other equipment, riots, thefts, accidents, transportation delays, acts or failure to act of

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government or Buyer, delay in obtaining licenses or required permits, unusually severe weather, or any other cause whatsoever, whether similar or dissimilar so those enumerated above, beyond the reasonable control of the Seller. In the event of any delay arising by reason of the foregoing, the time for performance shall be extended by a period of time equal to the time lost by reason of such delay.

21. Non-Waiver

The failure or delay by Seller in exercising any right, power or privilege hereunder shall not operate as a waiver thereof, preclude any other or further exercise thereof, nor preclude the exercise of any right, power or privilege hereunder.

22. Governing Law

The rights and obligations of Seller and Buyer with respect to any contract between Seller and Buyer shall be governed by the laws of the State of Ohio.

23. Terms & Conditions of Sale Export Sale Addendum Taxes

Liability for all present or future taxes, license or other fees imposed by or payable so any country other than the U.S.A., including any department, agency or subdivision thereof, upon the production, sale, shipment and/or use of equipment, material or services shall be assumed and paid for by Buyer and Buyer shall indemnify the Seller against any such liability.

24. Governmental Limitations & Licenses

This contract is subject in part so applicable governmental laws, regulations and rules of the Government of the United States, including departments, agencies and subdivisions thereof, and of the country in which the equipment, material and/or services so be sold will be installed, used, or performed. Should any governmental authority prohibit the performance of this contract, in whole or in part, or if the exportation or importation of the equipment and material which are the subject of this contract be precluded because of the inability, within a reasonable time, to obtain an export or import license therefore, as appropriate, then the Seller's obligations under this contract shall be expunged, as the Seller's option, and the Seller shall be entitled so reasonable termination charges for the cancellation of this contract. It shall be the Buyer's responsibility to provide any required applications, documentation, or other similar action which may be necessary on the part of the Buyer so obtain any required license(s) so export from the United States or import into the Buyer's country. These documents as applicable may include but not necessarily be limited to, U.S. Government Form ITA629, International Import Certificate, Country End User Certificate and Import License.

25. Governing Law; Arbitration

Regardless of the place of contracting, place of performance or otherwise, the rights and obligations of Seller and Buyer with respect so this contract and all amendments, modifications, alterations or supplements thereto, shall be governed by the laws of the State of Ohio, U.S.A., excluding any such law(s) which direct the application of the laws of any other jurisdiction. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, which cannot be settled within ninety (90) days of first arising shall be finally settled by binding arbitration in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association before three (3) arbitrators appointed in accordance with said rules. Arbitration shall be held in Cleveland, Ohio, U.S.A. and shall be conducted in the English language. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof or application may be made to such court for judicial acceptance thereof and an order for enforcement, as the case may be.

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