

Standard Terms and Conditions of Sale

1. ACCEPTANCE

This purchase acknowledgement ("Purchase Acknowledgment" and "Agreement") constitutes Seller's acceptance to Buyer of Buyer's purchase order ("Purchase Order") of Products and/or Services. Conditional upon assent by Buyer to all terms and conditions contained herein. Buyer's assent to all terms and conditions contained herein will be assumed unless Buyer notifies Seller, in writing, to the contrary within five (5) days after receipt of this Purchase Acknowledgment. No term, condition, amendment or revision stated by Buyer in Buyer's Purchase Order shall be binding upon Seller if it is in conflict with, inconsistent with or in addition to the terms and conditions contained herein unless accepted by Seller in writing.

2. DELIVERY

Unless otherwise agreed to by Seller in writing, Seller will deliver all products to Buyer F.O.B. Seller's factory. Seller reserves the right to make partial deliveries and to ship products as they become available. Initial orders of new product may require additional lead time to ramp-up production. Delivery dates are approximate and will be calculated from the date that Seller has received all information necessary to permit Seller to proceed with work immediately and without interruption. It is hereby agreed that time is not of the essence unless otherwise agreed to by Seller.

If any or all products are not delivered when ready due to the request of Buyer, Seller reserves the right to invoice Buyer at any time thereafter and to place such products in storage. In such event, (1) Seller's delivery obligations will be deemed fulfilled and title and all risk of loss or damage will thereupon pass to Buyer (2) any amount otherwise payable to Seller upon delivery will be due and payable upon presentation of Seller's invoices and its certification as to such cause, and (3) all expenses incurred by Seller such as for preparation and placement into storage, handling, inspection, preservation, and insurance will be due and payable by Buyer upon submission of Seller's invoice.

If Buyer wishes to pick up products from Seller's designated manufacturing facility, such pickup must be made within three (3) working days after Buyer has received notice from Seller that such Products are ready to be picked up. If Buyer fails to pick up the products within the three (3) day period after receiving the notice from Seller, Seller may deliver the products to Buyer at Buyer's expense.

3. PRICES

The sales price(s) for Products will be the list or posted price(s) of Seller in effect at the time of delivery, subject to applicable Seller discounts, if any. The sales price(s) for Services are subject to quotation. All prices are subject to change without notice and may be subject to any increase, which may be in effect on the date of shipment. Where applicable, quoted quantity break pricing shall be offered and subject to change if Buyer's order volume is not consistent with Seller's quote. Unless otherwise agreed to by Seller and Buyer in writing, prices applied to this order are firm for the duration of the order.

4. TAXES

All prices are exclusive of any applicable federal, state or local sales, use excise or other similar taxes. All such taxes will be for Buyer's account and will be paid by Buyer to Seller upon submission of Seller's invoices. If Buyer is exempt from any applicable sales tax but fails to notify Seller of such exemption or fails to furnish its Sales Tax Exemption Certificate to Seller in a timely manner and Seller is required to pay such tax, the amount of any such payment made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices. Any taxes (including income, stamp and turnover taxes), duties, fees, charges, or assessments of any nature levied by any governmental authority other than of the U.S.A. in connection with this transaction, whether levied against Buyer, against Seller or its employees, or against any of Seller's subcontractors or their employees, or otherwise, will be for Buyer's account and will be paid directly by Buyer to the governmental authority concerned. If Seller is required by law or otherwise to pay any such levy and/or fines, penalties, or assessments in the first instance, or as a result of Buyer's failure to comply with any applicable laws or regulations governing the payment of such levies by Buyer, the amount of any payments so made by Seller will be reimbursed by Buyer to Seller upon submission of Seller's invoices.

5. SPECIAL TOOLING, DRAWINGS

Notwithstanding any tool, die or pattern changes, all tooling and related items are and remain the property of Seller. Seller's documentation, prints and drawings ("Documents"), including, without limitation, the underlying technology furnished by Seller to Buyer in connection with the Agreement, are the property of Seller and Seller retains all rights, including, without limitation, exclusive rights of use, licensing and sale. Notwithstanding the foregoing, Buyer may use the Documents only in connection with the Seller's Products.

6. RISK OF LOSS AND TITLE

For non-export sales, risk of loss and title to products will pass to Buyer upon delivery of the products to a common carrier at the Seller's factory. Buyer will pay, or reimburse Seller for, all freight and in-transit insurance costs from time of delivery.

For export sales, Seller reserves the right to request that the Buyer agree that title to, beneficial ownership of, right of possession to, risk of loss on, and all property rights in products will remain with Seller and pass to Buyer at the port of entry of the ultimate country of destination (but prior to unloading or customs inspection at such port) specified on Buyer's order and/or declared as a country of ultimate destination on Seller's invoices.

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Whether to, or to the order of, the Buyer or its agent, will in any way limit or modify the rights of Seller, as the owner of the products, to have control over and the right to possession of the products until the title thereto passes to Buyer as provided for above. The term "Free on Board" (F.O.B.) or other commercial abbreviations, if used on any documents related to the transaction contemplated herein, will not be deemed to relate to the time when or the place where the ownership of and responsibility for the products is transferred from Seller to Buyer. Until payment is received in full, Seller is granted and will retain a security interest in the Products, including any additions to or replacements thereof, and Buyer authorizes Seller to file a financing statement to perfect Seller's security interest under the applicable filing provisions of the Uniform Commercial Code. Buyer will execute and deliver to Seller any documents and instruments, and perform all other acts that Seller deems necessary or advisable to maintain, protect, continue and perfect the security interest created. Buyer expressly authorizes Seller to execute and file any of the documents on Buyer's behalf and hereby designates Seller its attorney-in-fact for such limited purpose.

7. FORCE MAJEURE

Seller is not responsible for loss or damage resulting from delay or failure of delivery or performance due to accident, equipment breakdown or equipment malfunction; strike, differences with workmen, lockout or any labor shortage or difficulty; fire, flood, accident, quarantine restrictions, earthquake, tornado, epidemic, or other casualty or act of God; war, riot, terrorism, civil disobedience or other emergency, or acts of civil or military authorities; compliance with orders, priorities or requests of any government agencies or courts or arbitrators; embargoes; failure of suppliers of Seller to meet delivery schedules, or any shortages of raw materials however caused; inability or delay in obtaining labor or materials; inability or delay in obtaining cars, trucks, fuel or machinery necessary for transportation; or any cause, condition, or contingency beyond the reasonable control of Seller, whether similar to those enumerated or not. In the event of any of the foregoing, Seller may apportion its production and all stock material among its customers in such manner as it may consider equitable. If Buyer is unable to receive the Products when tendered, Buyer is liable to Seller for any loss, damage or additional expense incurred or suffered by Seller as a result thereof.

8. PAYMENT

The prices and quantities are set forth in the attached acknowledgement, quotation or invoice of Seller. The price is payable on the terms set forth herein without deduction, set-offs, counterclaims, back-charges, or any charges or claims of whatsoever nature by Buyer, and the obligations of Buyer to Seller will remain unimpaired regardless of disputes which may arise between Buyer, Seller and/or third parties. Unless Buyer and Seller otherwise agree in writing to terms other than those specified herein, payment will be made in U.S. Dollars to Windurance, 2099 Hill City Road, Seneca, Pennsylvania, U.S.A. 16346 as follows:

- i. On orders by shipment to countries other than the U.S.A., payment on all sales will be made through credit card, wire transfer or the medium of a Letter of Credit, to be established by the Buyer (at its expense including any bank confirmation charges to a U.S. bank as directed by the Seller). All Letters of Credit will be in favor of and acceptable to Seller, will be maintained in sufficient amounts for the period necessary to meet all payment obligations, will be irrevocable and issued, or confirmed, by Seller's bank satisfactory to Seller within fifteen (15) days after acceptance of any order, will permit partial deliveries and will provide for pro-rata payments upon presentation of Seller's invoices and Seller's certificate of delivery F.O.B. Seller's factory, or of delivery into storage with certification of cause therefore, and for payment of any termination charges.
- ii. Unless otherwise agreed to in writing by Seller, payment will be made within thirty (30) days of the actual date of Seller's invoice(s).

If Buyer fails to fulfill any condition of the Sale, Seller may suspend performance and any costs incurred by Seller as a result thereof will be paid by Buyer. If such non-fulfillment is not rectified by Buyer promptly upon notice, thereof, Seller may terminate performance and Buyer will pay Seller for its termination charges upon submission of Seller's invoices.

9. INSPECTION

Buyer acknowledges that ten (10) days provides Buyer with a reasonable amount of time to inspect the Articles. Therefore, the Articles shall be subject to final inspection and acceptance by Buyer within ten (10) days after receipt by Buyer and all expenses in connection with such inspection shall be borne solely by Buyer. Buyer's failure to inspect within said time shall constitute a waiver of Buyer's rights of inspection and rejection. Upon inspection of the Articles within said ten (10) days, Buyer shall immediately notify Seller in writing as to any Articles that Buyer intends to reject and particularize in detail all defects therein. If upon inspection, Buyer fails to immediately notify Seller as to which Articles it intends to reject, such failure to notify shall be deemed an acceptance of the Articles by Buyer. Upon Seller's receipt from Buyer of a timely notice to reject, Seller may, at its option, cure within a reasonable amount of time. Any article property rejected by Buyer shall be returned to Seller upon written approval of Seller and at Buyer's risk and expense plus applicable transportation charges. All Articles not properly rejected hereunder shall be deemed conforming.

10. RETURN POLICY

Prior approval must be obtained from Seller to return any Product. Seller will assign a return material authorization number and record the reason for the return. Seller will examine returned Product to determine the actual cause, if any, leading to Buyer's return and applicability of Seller's Limited Warranty.

11. CANCELLATION/CHANGE ORDERS

For any reason, Buyer may terminate the performance of the work under an order at any time, or from time to time, in whole or in part, immediately upon sixty (60) days' notice to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with the performance of the order and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to this order. Seller will promptly advise Buyer of the quantities of applicable work and materials on hand or purchased specifically for this order prior to termination, and of the most favorable disposition that Seller can make thereof. Buyer shall then make Seller whole for the lesser of the costs incurred or terminated order value.

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12. INTELLECTUAL PROPERTY:

Definitions

- **“Buyer Improvement”** – Any invention, innovation, idea, improvement or other intellectual property right of any kind that:
 - a) is made, conceived, developed, or reduced to practice prior to or during the term of sale by the buyer;
 - b) is made by or on behalf of either Party, either independently or jointly with any other person (including the Seller); and
 - c) incorporates or embodies any Buyer Technology, directly or indirectly.
- **“Seller Improvement”** – Any invention, innovation, idea, improvement or other intellectual property right of any kind that:
 - a) is made, conceived, developed, or reduced to practice prior to or during the term of sale by the seller;
 - b) is made by or on behalf of either Party, either independently or jointly with any other person (including the Seller); and
 - c) incorporates or embodies any Seller Technology, directly or indirectly.
- **“Products”** – Any product that:
 - a) is manufactured or made by or for the Buyer by Seller; and
 - b) incorporates or embodies or is made through the use of the Buyer, Technology/Seller Technology, in whole or in part.
- **“Technology”** – Any intellectual property rights, patents, or improvements contained in the product.

Ownership

- **“Ownership of Buyer Improvements”**
 - a) All Buyer Improvements will be owned by the Buyer.
 - b) Seller will have the right to use the Buyer Technology to the extent necessary to design and manufacture the Products.
- **Ownership of Seller Improvements**
 - a) All Seller Improvements will be owned by the Seller.
 - b) Seller will have the right to use the Seller Technology to the extent necessary to design and manufacture the Products.
- **Technology Owned or Developed Prior to Execution of the Agreement** – Each Party shall own any of its Technology which it owned or developed prior to execution of the Agreement.

Representations/Warranties – Each Party will represent and warrant to the other Party as follows:

- **“Representations/Warranties”**
 - a) It is the sole and exclusive owner of all right, title, and interest in its Technology, free and clear of all liens and encumbrances of any kind.
 - b) It has the right to use its Technology which use does not conflict with any agreement to which it is a party.
- **“Infringement”** – It does not have any actual notice that its Technology:
 - a) infringes or conflicts with any patent, patent application, license, trade secret, know-how, trademark or any other intellectual property right of any person or any applicable law; or
 - b) constitutes any wrongful use of any confidential or proprietary information of any person; and
 - c) no such claim is pending or threatened against it.
- **“Infringement by Others”** – It has no actual knowledge that its Technology is being infringed or is otherwise being used or available for use by any person.
- **“Transferability”** – Seller shall have the right to sell or transfer ownership of Seller’s Improvements to the Buyer upon payment agreed to by the parties for such transfer. Upon such payment, Buyer shall have all rights and title for such Improvements and Intellectual Property. Buyer will indemnify and hold harmless the Seller with respect to all Claims against the Product arising out of:
 - Any breach of or default in the observance or performance of any agreement made by Buyer in the use of the Product or Buyer’s failure to fulfill any other obligation which it is required to perform or observe in the use of the product;
 - Any breach of, or false or fraudulent, representation or warranty made by Buyer in use of the Product;
 - Any product liability claim with respect to any Product manufactured, made, marketed, sold, distributed or otherwise disposed of by or for the Buyer;
 - Any product or service warranties, indemnities or guarantees with respect to any Product manufactured, made, marketed, sold, distributed or otherwise disposed of by or for Company;
 - The assembly of any Product by the Buyer;
 - The packaging or labeling of any Product by the buyer;
 - The preparation of any instructions or other end user manuals of any Product by the buyer; or

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The investigation or defense of any claim which is made or brought against Seller related to any of the foregoing.

"No Consequential Damages" - Neither Party will have any liability to the other Party for any special, incidental, consequential, punitive or other indirect losses or damages.

"Infringement by Third Parties" - Each Party will prosecute infringement of its Technology.

13. LIMITED WARRANTY

Seller warrants that new products manufactured by Seller, when properly installed, used and maintained, will be free from defects in material and workmanship for a period of two (2) year from date of delivery of the products to a common carrier at the Seller's factory. Seller further warrants that products serviced by Seller for a charge, when properly installed, used and maintained, will be free from defects in workmanship for a period of 180 calendar days from the date of invoice. Unless otherwise agreed to by Seller in writing, such warranty runs only to Buyer and is non-transferable and non-assignable either directly, indirectly or by operation of law, and any such purported or attempted transfer or assignment is null and void. During the warranty period, if a defect is detected, the Buyer must give the Seller prompt notice of such defect or failure and satisfactory proof thereof, and the product must be returned with prepaid shipping to the Seller. Buyer's sole and exclusive remedy and Seller's liability in the event of a defect is expressly limited to correction of the defect by adjustment, repair or replacement at Seller's option and expense. Seller will deliver repaired product or replacement for defective products, at its option, to Buyer freight prepaid to the destination provided for in the original order.

Products returned to the Seller under this warranty become property of the Seller. With respect to any product or part thereof not manufactured by Seller, only the warranty, if any, given by the manufacturer thereof, will apply. Seller's obligation under this warranty will not apply to any product, which (1) is normally consumed in operation, or (2) has a normal life inherently shorter than the warranty period stated herein. Seller warrants high wear elements such as batteries and motor brushes sold by Seller, when properly installed, used and maintained, will be free from defects in material workmanship for a period one (1) year from date of delivery of the products to a common carrier at the Seller's factory. Seller's warranty does not cover, and seller is not responsible for damage caused by misuse or abuse, neglect, fire, unauthorized modification or alteration, or damage resulting from Buyer's interconnection of these Products with hardware or programs other than that intended or unsuitable power sources or environmental conditions located on Buyer's property or site at the time of sale, delivery or otherwise.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WILL NOT APPLY. SELLER'S WARRANTY OBLIGATIONS AND BUYER'S REMEDIES HEREUNDER ARE SOLELY AND EXCLUSIVELY AS STATED HEREIN. IN NO EVENT, SHALL SELLER BE LIABLE FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY BREACH OF THIS WARRANTY OR OTHERWISE, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, CONTRIBUTION, INDEMNITY, INFRINGEMENT, STATUTE OR OTHERWISE. ALL SELLER OPERATING SYSTEMS OR APPLICATION PROGRAMS ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY.

After the warranty period, Seller may repair Buyer's Product for a bench evaluation fee plus parts and labor. Seller reserves the right to refuse service and repair of any Product that has been abused, altered or damaged beyond our reasonable ability to repair, or where service parts are obsolete or unavailable.

14. LIMITATIONS OF LIABILITY

Subject to any generally applicable law, Seller shall not be liable to Buyer for any damages, expenses, liabilities or losses of any kind whatsoever (including, without limitation, attorneys' fees, costs and expenses in connection therewith) on account or by reason of damage to property or injury to or death of a person whatsoever, or loss of or damage to any property whatsoever caused by, arising from, or related to the performance under this Purchase Acknowledgement of Seller, its agents, representatives, employees or independent contractors, or the act or failure to act, of Seller, its agents, representatives, employees or independent contractors. Subject to any generally applicable law, Seller shall not be liable to Buyer for any damages, expenses, liabilities or losses of any kind whatsoever (including, without limitation, attorneys' fees, costs and expenses in connection therewith) on account or by reason of damage to property or injury to or death of any person whatsoever, or loss of or damage to any property whatsoever caused by, arising from, or related to the Articles. In no event will the liability of the Seller exceed the purchase price of the Products and/or Services.

15. IDEMNIFICATION

Buyer will indemnify, defend and hold harmless Seller from and against any liability, damage, loss, expense (including, without limitation, reasonable attorneys' fees and costs), claim or judgment arising from injury (including death) to any person (whether an employee of Buyer or any other person) or damage to any property, however caused, whether by Seller's sole or concurrent negligence or otherwise, arising from the sale, resale, replacement or use of any products delivered by Seller to Buyer.

If requested by Seller, Buyer, at its own expense, will defend any claim, suit or action which is brought against Seller and is within the indemnification set out in the preceding paragraph provided that Seller promptly gives Buyer notice of such claim, suit or action, furnished a copy of all documents and instruments served upon Seller in connection therewith and reasonably cooperates with Buyer in such defense. Seller, at its own expense, will have the right to be represented in such defense by advisory counsel of Seller's selection. If Seller does not request Buyer to defend any such claim, suit or action, Seller, at its own expense, will undertake the defense thereof and Buyer, at its own expense, will have the right to be represented in such defense by advisory counsel of Buyer's selection.

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16. APPLICABLE LAW

This Agreement excludes the application of the United Nations Convention on Contracts for the International Sale of Goods. This Agreement will be governed by and construed under the substantive law of the Commonwealth of Pennsylvania, without application of its conflict of laws rules.

17. JURISDICTION

Unless otherwise agreed to by Seller in writing, any claims, suits, actions or controversies arising out of this Agreement may be brought by the parties only in the Court of Common Pleas of Allegheny County, or the United States District Court for the Western District of Pennsylvania, Pittsburgh Division. The parties waive any protest to personal service of process, venue and choice of law and consent to jurisdiction in Pennsylvania for purposes of a party seeking or securing any legal and/or equitable relief.

18. PRODUCT SUITABILITY

Products designed by Seller were designed to meet stated U.S. safety standards and regulations. Because local safety standards and regulations vary significantly, Seller cannot guarantee that the Products sold meet all applicable requirements in each locality. Buyer assumes responsibility for compliance with such safety standards and regulations in the localities in which the Products will be shipped, sold and used. Before purchase and use of any of the Products, Buyer should review the product application, and national and local codes and regulations, and verify that the use and installation of the Products will be in compliance.

19. EXPORT CONTROLS/AVAILABILITY

Certain Products may be subject to export controls under the laws, regulations and/or directives of the United States and various other countries. Buyer must comply with such laws and regulations and not export, re-export or transfer such Product without first obtaining all required authorizations or licenses or to any country to which such export, re-export or transfer is forbidden.

Seller reserves the right, with respect to any and all goods purchased for export pursuant to these Standard Conditions of Sale, from time to time, to request and obtain from Buyer a written statement or statements certifying that such goods were in fact exported within one (1) year of the date of Seller's invoice (s) therefore.

20. GENERAL PROVISIONS

These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment or waiver of these Terms and Conditions is binding upon the Seller unless made in writing and signed on Seller's behalf by a duly authorized representative of Seller. No waiver by Seller with respect to any breach or default or of any right or remedy, and no course of dealing, is deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is expressed in writing and signed by Seller. This Agreement is intended solely for the direct benefit of Seller and Buyer. Nothing in this Agreement contains any rights in any third parties. Any attempt by Buyer to assign its rights or to delegate its obligations under this Agreement without the prior written consent of Seller is null and void. Subject to the foregoing, this Agreement is binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. All typographical or clerical errors made by Seller in any quotation, acknowledgement or publication are subject to correction. No action, regardless of form, arising out of transactions relating to this Agreement may be brought by either party more than two years after the cause of action has accrued.

21. CERTIFICATION OF COMPLIANCE

Prior to the delivery of any products, Seller performs applicable inspections and tests to such products. Buyer will be deemed to have accepted products ten (10) days after receipt, and title hereto will pass to buyer in accordance with the terms of Article 6 hereof. It is hereby certified that products manufactured or serviced by Seller are done so in compliance with all contractual requirements.