

FISHER ENGINEERING TERMS OF SALE

1. Governing Provisions.

These Terms of Sale apply to all sales by Fisher, LLC (hereinafter, "Seller"), and constitute the entire agreement between Seller and any buyer with respect to the purchase and sale of whole goods, accessories and parts supplied by Seller (collectively, "Products"). Seller's acceptance of any order is conditional upon the buyer's assent to these Terms of Sale. No additional or different terms or conditions, including any such terms or conditions contained in any of the buyer's request for quotation, purchase order, acknowledgement, or other form or correspondence will be of any force or effect; and Seller objects to any such additional or different terms or conditions. **The sale of the Products, and the relationship between Seller and any buyer purchasing Products for resale, will be governed by and construed in accordance with the laws of the State of Wisconsin, without reference to its principles of conflicts of laws. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WILL NOT APPLY TO ANY SUCH SALE OF PRODUCTS BY SELLER OR TO ANY SUCH RELATIONSHIP.**

2. Returns.

No Products shipped by Seller may be returned without Seller's prior written approval.

3. Prices and Payment.

The price(s) for the Products will be those published by Seller from time to time. Except as otherwise agreed in writing by Seller, all published prices exclude shipping costs, insurance, freight, taxes, fees and duties, all of which (other than taxes imposed upon the net income of Seller) will be payable by the buyer in addition to the published prices. The buyer may not cancel, modify, suspend or delay any order without Seller's prior written consent. Except as otherwise agreed to in writing by Seller, payments will be made in full within thirty (30) days of the date of invoice. Past due invoices will be subject to a late fee equal to the lesser of 1.5% per month or the maximum contract interest rate allowable under applicable law. Additional payment terms are contained in Seller's Credit Policy, a copy of which has been provided to the buyer. The terms of that Credit Policy, as revised by Seller from time to time upon notice to the buyer, are incorporated into these Terms of Sale.

4. Order Acceptance.

All Product orders are subject to Seller's acceptance, in Seller's sole discretion.

5. Delivery, Claims, and Force Majeure.

Delivery of Products to a carrier at Seller's plant or other loading point constitutes delivery to the buyer. Regardless of shipping terms or freight payment, all risk of loss or damage in transit will be borne by the buyer. Seller may make delivery in installments; all such installments shall be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries.

Claims for shortages or other errors in delivery must be made within five (5) business days after arrival of a shipment at destination. Failure to give such notice will constitute unqualified acceptance and a waiver of all such claims by the buyer. Claims for loss or damage to goods in transit must be made against the carrier, and not against Seller.

All delivery dates are approximate. Seller will not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including but not limited to any act of God, act of the buyer, embargo or other government act, regulation or request, fire, accident, strike, slowdown, war, act of terrorism, riot, delay in transportation, or delays by Seller's suppliers.

6. **Changes.**

Seller may, without notice or other obligation to the buyer, at any time make such changes in design and construction of Products as Seller deems appropriate. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers. Seller may also at any time, upon notice but otherwise without obligation to the buyer, discontinue manufacture of any Product.

7. **Warranties.**

Products are warranted by Seller directly to the end-user, on the terms of Seller's written warranty in effect from time to time, as published by Seller in its Warranty Manual, a copy of which has been provided to the buyer, or is available to the buyer upon request. If the buyer is purchasing Products for resale, the buyer agrees to deliver the applicable written warranty to each end-user. Performance of the remedy provided in that written warranty will be Seller's sole obligation and the buyer's exclusive remedy with respect to defective Products.

THAT WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE IS EXPRESSLY EXCLUDED. SELLER MAKES NO WARRANTY (EXCEPT OF TITLE) TO ANY DISTRIBUTOR, DEALER OR OTHER INTERMEDIARY PURCHASER.

8. **Infringement Claims.**

Seller will, at its own expense, defend any suits that may be instituted by anyone against the buyer for alleged infringement of any United States patent, trademark, or copyright relating to any Products, provided the buyer has made all payments then due hereunder and gives Seller immediate notice in writing of any such suit, transmits to Seller immediately upon receipt all processes and papers served upon the buyer, and permits Seller, through its counsel, either in the name of the buyer or in the name of Seller, to control the defense of the same. If Products are in such suit held in and of themselves to infringe any valid United States patent, trademark, or copyright, then: (a) Seller will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use or resale of Products by the buyer is permanently enjoined by reason of such infringement, Seller will, at its own expense (i) modify the Products to render them non-infringing, (ii) replace the

Products with non-infringing goods or, at Seller's sole option (iii) refund the purchase price and the transportation costs paid by the buyer for the Products.

Notwithstanding the foregoing, Seller will not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of Products in combination with other goods or materials not furnished by Seller. The foregoing states the entire liability of Seller for infringement.

9. **Consequential Damages and Other Liability.**

Seller's liability with respect to the quality and conformity of Products to representations therefor will be limited to the warranty remedies of end-users referred to in section 7 above, and with respect to other performance of this contract shall be limited to the contract price.

SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, OR CONTINGENT DAMAGES WHATSOEVER, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS, OR OMISSIONS RELATING THERETO.

Without limiting the generality of the foregoing, Seller will have no liability for property or personal injury damages, penalties, special or punitive damages, damage for lost profits or revenues, loss of use of Products or any associated equipment, down-time, cost of capital, cost of substitute goods, facilities or services, or for any other types of loss of economic advantage expected from the purchase of the Products, or for claims of the buyer's customers or any other third party for any such damages.

10. **Indemnity.**

The buyer agrees to indemnify, defend and hold Seller and its officers, directors, employees, shareholders, affiliates, agents, representatives, successors and assigns harmless from and against any and all claims, actions, demands, legal proceedings, judgments, settlements, sums, costs, liabilities, losses, obligations, damages, penalties, fines, costs and other expenses (including but not limited to reasonable attorneys' fees) relating to, arising out of or resulting from (i) the buyer's, and/or the buyer's customers' use, misuse, or alteration of any Product, including without limitation, any third-party claims for personal injury or property damage resulting from the buyer's, and/or the buyer's customers', negligence or willful misconduct; or (ii) the buyer's breach of these Terms of Sale.

11. **Purchases for Resale.**

Any sale of Products by Seller for resale by the buyer is subject to the following additional conditions, which the buyer accepts by placing any order for Products that the buyer intends to resell:

- a. The buyer's right to resell Products is non-exclusive and subject to termination by Seller at any time, without cause, upon at least thirty (30) days prior written notice by Seller to the buyer.

- b. The buyer is acting as an independent contractor, not as an agent, employee, partner, franchisee or joint venturer of Seller. The buyer has no authority to assume or create any obligation or liability, including but not limited to obligations based on warranties or guarantees, on behalf or in the name of Seller.
- c. For so long as Seller is selling Products to the buyer, the buyer is authorized to use Seller's trade name, and Seller's trademarks associated with the Products only in connection with the resale and servicing of the Products, and only in accordance with any policies relating to such use that is from time to time communicated by Seller to the buyer. The buyer will not use Seller's trade name or any of Seller's trademarks as part of buyer's trade or business name or in any other way that Seller considers to be misleading or objectionable.
- d. Neither the buyer nor Seller will be entitled to any compensation or reimbursement for the inability to recoup any investment made in connection with the buyer's periodic purchases of Products from Seller for resale, loss of prospective profits or anticipated sales or other losses occasioned by termination of the relationship between the buyer and Supplier pursuant to subsection 11.a. above.
- e. These Terms of Sale are the entire agreement between the buyer and Seller, superseding all prior oral or written agreements, policies, understandings, representations, warranties and negotiations, on the subject of the continuing relationship between the buyer and Seller, and there are no conditions to that agreement that are not set forth in, or incorporated by reference into, these Terms of Sale.
- f. The buyer's right to purchase Products from Seller for resale may not be assigned by the buyer without Seller's prior, written consent; any assignment in violation of this subsection f. will be void.