

West Salem Machinery Company

Terms and Conditions of Purchase

Sale and Purchase These Terms and Conditions apply to and govern each and every contract, agreement, or purchase order ("Purchase Order") under which West Salem Machinery Company ("Buyer") agrees to purchase from the seller identified in the Purchase Order ("Seller"), and Seller agrees to produce, provide, sell, and deliver to Buyer, the goods, services, or both, (such goods, services, or both, are referred to as the "Products," and shall include the singular or the plural of that term as the context may require) ordered by Buyer under a Purchase Order. These Terms and Conditions shall be deemed incorporated into and made a part of each Purchases Order. Buyer will only pay for maximum quantities ordered and for conforming Products. Overshipments and nonconforming Products will be held at Seller's risk and expense for a reasonable time awaiting shipping instructions. Return shipping charges for nonconforming Products or excess quantities will be at Seller's expense.

Exclusive Terms ALL PURCHASE ORDERS ARE EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS HEREIN. BUYER OBJECTS TO ANY ADDITIONAL OR DIFFERENT TERMS THAT MAY BE CONTAINED IN SELLER'S SALE AGREEMENT, CONFIRMATION OF PURCHASE ORDER, OR OTHER DOCUMENTATION. THE SALE BY SELLER OF PRODUCTS ORDERED BY BUYER UNDER ALL PURCHASE ORDERS BETWEEN SELLER AND BUYER SHALL BE CONCLUSIVELY DEEMED TO BE SUBJECT TO THE TERMS AND CONDITIONS HEREOF, EVEN THOUGH SELLER'S ACKNOWLEDGMENT, CONFIRMATION, OR OTHER DOCUMENTATION PURPORTS TO CONDITION ACCEPTANCE UPON BUYER'S ACCEPTANCE OF SELLER'S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS. If Seller has made or makes an offer to Buyer with respect to Products, the Buyer's Purchase Order shall not operate as an acceptance of Seller's offer, but rather be deemed a counteroffer.

Acceptance Buyer shall not be deemed to have accepted the Products until such time as the Products have been delivered and are inspected, tested (at Buyer's option), and approved by Buyer, in no event later than 90 days following delivery of the Products at Buyer's specified destination. This right of inspection, whether exercised or not, will not affect Buyer's right to revoke acceptance or pursue other remedies notwithstanding the fact that defects or nonconformities could have been discovered upon inspection. If Buyer rejects (or revokes acceptance of) any Products, in whole or in part, Seller shall refund the purchase price, or any portion thereof paid by Buyer, arrange for return shipment of the Products, and Buyer shall prepare the Products for shipping, all at Seller's expense. Buyer may, but is not required to, provisionally reject the Products by giving notice to Seller of any reasons for rejection and giving Seller an opportunity to cure the defects and, in such event, the time for final acceptance or rejection shall be extended until Seller either cures the defects or Buyer gives notice of rejection. All such rejected or provisionally rejected Products shall be stored by Buyer at Seller's sole risk and expense.

Title and Risk Title to the Products and risk of loss or damage shall pass to Buyer at the delivery point. Passage of title shall not be deemed to be acceptance of the Products.

Changes The Buyer may at any time, by written order, make changes within the general scope of a Purchase Order, in any one or more of the following: (a) applicable drawing, drawings, designs, or specification; (b) method of shipping or packing; (c) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this order, an equitable adjustment shall be made in the order price or delivery schedule, or both, and the Purchase Order shall be modified in writing accordingly. Any claim by the Seller for adjustment hereunder must be asserted within five (5) days from the date of receipt by the Seller of the notification of change, provided, however, that such period may be extended upon the written approval of Buyer. Nothing in this Section shall excuse the Seller from proceeding with the Purchase Order as changed or modified. In the event of any claim or dispute under a Purchase Order, Buyer shall have the right to audit Seller's books and records prepared or kept in connection with the Purchase Order at all reasonable times and places.

Cancellation Buyer may cancel or terminate for convenience, or direct suspension of manufacture, in whole or in part, at which time Seller may negotiate reasonable termination charges equal to the out of pocket cost of materials purchased and delivered to Seller (or the reasonable cancellation charges for materials ordered but not delivered to Seller) or parts fabricated by Seller which materials or parts are not useable for any purpose other than the particular goods ordered under Buyer's Purchase Order. In no event shall the amount payable upon cancellation exceed either the actual accrued costs or the total purchase price prorated by that portion of the purchase price properly and timely completed as of the date of cancellation. The amount payable on cancellation shall not include costs which could have been mitigated by Seller and shall not include overhead or profit. BUYER SHALL NOT BE LIABLE FOR ANY OTHER DAMAGES FOR CANCELLATION, WHETHER IN CONTRACT OR TORT, NOR SHALL BUYER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS EVEN IF BUYER HAS BEEN ADVISED AS TO THE POTENTIAL EXISTENCE OF SUCH DAMAGES.

Termination for Default Buyer may terminate all or any part of this order, without liability to the Seller, by written notice of default if Seller fails to perform its obligations under this order as specified, or so fails to make progress as to endanger performance under this order and in accordance with its terms. Buyer is the sole judge in such circumstances. In the event of Seller's default or potential inability to perform this order, Seller agrees upon demand by Buyer to deliver to Buyer the raw materials and work in process acquired to perform under this order, and Buyer may then complete the work deducting the cost of such completion from price in the Purchase Order, or in the alternative, pay to Seller the cost of such raw materials and work in process.

Delivery Except to the extent that contrary terms are noted on the applicable Purchase Order, Seller shall arrange for delivery on the agreed upon delivery date of all Products sold to Buyer under a Purchase Order to Buyer's destination identified in the applicable Purchase Order (if no destination is identified, then to Buyer's factory in Salem, Oregon); all Products will be shipped FOB destination; and Seller shall pay for all freight and insurance charges for Products sold and delivered by Seller in accordance with the terms of a Purchase Order. Seller shall comply with Buyer's additional

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administrative policies, as modified from time to time, including without limiting the generality of the foregoing, policies relating to accounting office procedures, packaging, case labeling, routing, returns, logistics, delivery and unloading, form of acceptable certificates of insurance, and other matters.

Delays Time is of the essence. Delivery shall be made in accordance with the schedule or time specified in the Purchase Order. If Seller suffers delay in performance due to any cause beyond its control such as an act of God, war, act or failure to act of government, act or omission of Buyer, fire, flood, or sabotage, the time of performance may, in Buyer's discretion, be extended by a period of time equal to the period of the delay and its consequences, without liability to Buyer, provided that Seller notifies Buyer of the cause of the delay and the expected duration of the delay within 24 hours of the event giving rise to the delay.

Warranty In addition to specifications, drawings, samples or other descriptions furnished or specified by Seller or other warranties made by Seller, written or oral, in literature, brochures, correspondence, sales calls and otherwise, Seller represents, warrants, covenants and agrees that: (1) it has good title to the Products free from encumbrances or restrictions on transfer to Buyer and that Seller's performance under the applicable Purchase Order will vest good title to the Products in Buyer, free and clear of any claims, liens, or liabilities of Seller or third parties including without limitation claims of infringement of copyright, trademark, patent, or trade secrets; (2) the Products are or will be as described in the applicable Purchase Order; (3) the Products are or will be free of defects in material and workmanship or, as applicable to services, professional quality; (4) the Products will conform to and will meet or exceed all of the specifications, drawings, samples, or other descriptions furnished or specified by Buyer, will be produced, provided, or manufactured in accordance with the Seller's specifications, shall be fit and sufficient for the purposes for which the Products were designed, and shall be provided, produced, or manufactured from new materials; (5) the Products will conform to all specifications contained in Seller's sales literature; (6) the Products will meet or exceed all performance specifications contained in the Seller's sales literature; (7) will be of good, merchantable quality; (8) will have been produced, provided, and delivered in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended; and (9) all certifications and assurances required to be made by Seller to Buyer shall at all times be true and correct in all respects. Seller agrees that all the foregoing representations, warranties, covenants, and agreements shall survive acceptance of and payment for the Products. Seller shall defend, indemnify, and hold Buyer and its members, officers, directors, employees, customers, and consumers harmless against all claims, demands, obligations or liabilities of any nature whatsoever, including attorney fees, arising from or out of or relating in any way to the breach of any of the foregoing representations, warranties, covenants, and agreements.

Taxes All duties, and any sales, use, excise, value added, or other taxes or charges imposed by any federal, state, or local government authorities are the responsibility of Seller and shall be separately stated on every invoice.

Safety All Products furnished shall conform to those provisions and regulations of the Occupational Safety and Health Act of 1970, as amended and in effect on date of the applicable Purchase Order, and to those provisions and regulations of the safety and health legislation of the State of Oregon as may be applicable to the Products. Products furnished that are subject to such health and safety regulations shall be constructed with precautions taken for the protection of operating and maintenance personnel.

On-Site Performance In the event that Seller's performance under a Purchase Order requires work within premises owned, occupied, or controlled by Buyer ("Buyer's Facility"), Seller shall become familiar with and comply with Buyer's rules and procedures relating to safety. Seller and its employees shall comply with all rules and regulations which may be in effect at the Buyer's Facility including, but not limited to passes, badges, parking, entrance gates, conduct on the property, safety, and security. Seller shall remove from the Buyer's Facility any employee not complying with such rules and regulations. The Seller shall take such steps as may be reasonably necessary to prevent personal injury or property damage during any work hereunder that may be performed by any employees or agents or subcontractors of the Seller at the Buyer's Facility, and the Seller shall defend, indemnify and hold Buyer harmless from and against all loss, liability, and damages arising from or caused solely by any act or omission of such agents, employees, or subcontractors of the Seller. If any part of Seller's work depends, for proper execution or results, upon the work of any other contractor, the Seller shall inspect and promptly report to Buyer in writing the existence of defects in such work rendering it unsuitable for proper results. Should such a defect exist, Seller shall not do work affected thereby until instructed by the Buyer in writing to proceed. In addition to the other insurance required to be maintained by Seller under the applicable Purchase Order, Seller shall maintain Builder's Risk and Employee's Liability Insurance as will protect the Products and the Buyer's property against any losses or damages and protect Buyer against any claims under occupational disease acts or Employer's Liability laws.

Access In the event that the Products are comprised of goods manufactured, processed, or packaged by Seller, Buyer shall have the right to access Seller's premises, with reasonable advance notice, to monitor the production, provision, manufacture, processing, or packaging of the Products, and to inspect and test all Products produced, provided, sold, or delivered under any Purchase Order, for the purpose of protecting and maintaining the standards of quality maintained by Buyer for the Products and for Buyer's goods, reputation, goodwill, and trademarks.

Storage For Products that are owned by Buyer and are in the possession or control of Seller pursuant to the terms of a Purchase Order, this section shall apply. Until delivery to Buyer, Seller shall store all Products in a safe and secure manner. Upon request by Buyer, Seller will provide Buyer with an inventory of all Products in its custody or control. In the event of damage to any Products for any reason rendering the contents unfit for use or otherwise unsalable, Seller shall promptly notify Buyer of those facts. Seller shall be responsible for all damages caused to or suffered by Buyer by reason of such loss of such Products, and Seller shall not distribute or sell such Products to any person or dispose of such Products except as instructed in writing by Buyer.

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Insurance Seller shall keep the Products fully insured against loss from fire, theft, or other casualty until the risk of loss passes to Buyer and shall keep the Product and components of unfinished Product fully insured against loss from fire, theft, or another casualty. Seller agrees that while providing any Products to Buyer, and for a period of five years after Seller ceases to provide any Products to Buyer, it will maintain in effect a policy of general liability insurance, including coverage for product liability, in an amount (including excess policies) of not less than \$5,000,000 with a company having an A.M. Best Co. rating of "A-" or better. Such policies will include coverage for Seller's indemnification obligations. Buyer shall be named as an additional insured under such liability policies with cross liability endorsement and shall be named as an additional insured under such casualty policies. Seller agrees to provide Buyer with evidence of such insurance in a form reasonably acceptable to Buyer. Seller shall maintain such Worker's Compensation insurance as will protect the Buyer against any claims under any Workers Compensation laws. All insurance policies required to be maintained by Seller hereunder shall contain a provision or endorsement that the coverage will not be cancelled without at least 30 days prior written notice to Buyer, shall be primary and shall not be excess or contributory with any other policy. Seller will give Buyer at least 30 days prior written notice in the event of any reduction in coverage. Seller shall provide to Buyer certificate(s) of insurance evidencing the coverages set forth herein and Seller shall, at least 14 days prior to the expiration of such policies, furnish Buyer with renewal certificates of insurance or renewal binders.

Intellectual Property With respect to Products or Product packaging, labels, labeling, or advertising prepared or produced by Seller or its subcontractors that is or may be protected or protectable under copyright laws or under trademark laws (the "IP"), (but excluding off the shelf software that is mass produced and available at retail), Buyer is acquiring from Seller or its subcontractors the exclusive worldwide rights, all copyrights and trade dress, registrations and the exclusive right to secure copyright and trade dress registrations and renewals, to the IP in the form of art on disk, camera ready art or film negatives, and the final archived computer file (if any). Seller hereby and continuously hereafter irrevocably transfers, assigns, delivers and conveys to Buyer, without the requirement of further documentation, all right, title and interest in the IP created by Seller or its subcontractors, including all copyrights therein and thereto together with any and all other rights, claims and demands that Seller or its subcontractors then had or to which any of them might be entitled or that it thereafter could or might secure with respect to the IP, including the right to reproduce, distribute, publicly display, produce translations and produce derivative works. Seller agrees to execute and deliver such further instruments and documents as may be reasonably requested by Buyer to carry out the intent of this paragraph. Seller represents and confirms that: (a) Seller has not and will not in the future damage or harm the rights of the Buyer in the IP; (b) the IP will be an original creative work; (c) the IP does not infringe on the title or copyright of any other work or the on the statutory or common law rights of any person (including right of privacy), firm, or entity; (d) immediately prior to the assignment, Seller was the sole owner of the IP and all rights therein; and (e) at the time of such assignment, Seller has the full right, power and authority to make the assignment of IP to Buyer and has acquired all necessary IP rights from its subcontractors in order to assign such rights to Buyer, at no additional cost to Buyer.

Custom Work, Patents If customized or special designs, processes, trade secrets or other similar customized techniques, business practices or procedures, or special tooling or equipment ("Custom Work") are developed by Seller in connection with the manufacture, production, distribution, or sale of the Product to Buyer, title to such Custom Work shall vest in the Buyer, at the option of Buyer. Such Custom Work is to be used only in the performance of Buyer's Purchase Orders unless otherwise approved by Buyer. Seller agrees that it will follow normal business practice in the identification and maintenance of confidentiality and property control records on all such Custom Work and will make such records and documents available for inspection by Buyer at reasonable times. Upon the request of Buyer, Seller shall furnish a list of such Custom Work in the form requested and shall make such Custom Work available for disposition by Buyer, if applicable, upon completion of a Purchase Order. Seller, as consideration for a Purchase Order and without further cost to Buyer, hereby grants and agrees to grant to the Buyer an irrevocable, exclusive, royalty-free right and license to use, sell, manufacture and cause to be manufactured, products, business practices, or technology embodying all Custom Work. Seller shall defend (with counsel acceptable to Buyer), indemnify and hold Buyer harmless from and against all claims, demands, damages, liabilities, or obligations arising out of or relating to a claim that the Custom Work infringes the patent, copyright, trade secret, confidential information or other protected know how of a third person (except infringement occurring due to incorporating a design or modification, at Buyer's request). If Seller's performance under a Purchase Order includes the fabrication of any equipment for the Buyer that has been patented by the Buyer, the Seller shall affix to the equipment a metal stamped tag of size and dimension specified by the Buyer, and which is stamped with the patent number and any other information as directed by the Buyer.

Trademarks Seller acknowledges the substantial value of the publicity, reputation, and goodwill associated with the Buyer's name, reputation, goodwill, and trademarks ("Trademarks") and that the Trademarks have acquired a secondary meaning and have an established identity in the mind of the public. Seller also acknowledges that the goodwill associated with the Trademarks belongs to Buyer. Buyer expressly reserves the sole and exclusive ownership of the Trademarks, trade names, and goodwill associated with its Trademarks and trade names. Buyer reserves all rights in Buyer's Trademarks, except only to the extent that the parties have entered into a separate license agreement relating to use of the Trademarks. Nothing contained in any Purchase Order shall be construed to grant or assign to Seller any additional right, title, or interest in the Trademarks and trade names.

Indemnity Seller shall indemnify, defend and hold Buyer harmless from, and reimburse Buyer for, any and all claims, demands, suits, causes of action, damages, losses, liabilities, costs, attorneys' fees, and other expenses of any nature whatsoever, including without limitation, claims for all damages (whether direct, indirect, consequential, incidental, liquidated, special, or other), costs, losses, expenses, property damage or loss of use, personal injury and death, loss of use of money and assets which may be brought or charged against Buyer or which Buyer may incur or suffer in any manner, which arise from or in any way relate to Seller's act, omission, failure to perform, breach, or failure to comply with a Purchase Order. Seller shall

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defend, indemnify and hold Buyer and its employees, agents, officers, directors and members harmless against any and all claims, demands, damages, expense, liability or obligation including, without limitation, purchase price paid, packaging, distribution, recall and disposal expenses: (a) arising out of or relating in any way to the processing of Products by Seller, excepting claims, demands, liability or obligations solely arising from or relating to the actions or omissions of Buyer; (b) arising out of or relating in any way to the acts, errors, or omissions of Seller, its employees, agents, or independent contractors; or (c) arising out of or relating in any way to the breach of any representation, warranty or agreement of Seller under a Purchase Order, which indemnity shall include, without limitation, the purchase price paid by Buyer and the packaging, distribution, recall, disposal and all other expenses incurred by Buyer with respect to any and all affected Products.

Remedies Without in any way limiting any other remedy available to Buyer, at law or in equity, the following remedies shall be available to Buyer. Remedies shall be cumulative and not election of remedies shall be required until judgment is entered. Seller shall pay for any damage resulting from faulty workmanship or negligence. In addition to any special or longer warranties required by the Buyer's specifications, if, within one year (or, in the case of items as to which a longer warranty period is set forth in the specifications, within such longer period) after the date of final delivery of the Products or designated portion thereof, any of the Products is found to be defective or not in accordance with the specifications, the Seller shall correct it promptly after receipt of a written notice from the Buyer to do so unless the Buyer has previously given the Seller a written acceptance of such condition or deviation from the specifications. This one-year warranty obligation shall survive completion of the performance of the applicable Purchase Order and acceptance of the Products by Buyer. All Products rejected as defective or as failing to conform to the requirements of a Purchase Order whether observed before or after completed shall be promptly corrected by the Seller. The Seller shall be responsible for all costs of correcting such defective and nonconforming Products, including but not limited to the compensation for the additional services of Buyer's other contractors made necessary thereby, if any. If the Seller fails to correct defective or nonconforming work the Buyer may correct it at the expense of the Seller. If in the reasonable belief of the Buyer the Seller is not performing in accordance with the requirements of a Purchase Order, is failing to correct any such failure, is otherwise failing to carry out its obligations in accordance with a Purchase Order, or is otherwise not in compliance with any of the requirements of a Purchase Order, then the Buyer may serve a written notice upon the Seller that the Seller is to stop all performance under that and any other Purchase Orders, or any portion thereof described in the notice, until such time as the cause for such stop order has been eliminated. In no event shall the Buyer's right to stop the Seller's performance under a Purchase Order obligate the Buyer to do so for the benefit of the Seller or any other entity or person and the Seller shall have no claim for damage by reason thereof. If the Seller should fail to perform in accordance with the requirements of a Purchase Order (including the failure to supply materials or labor, or both, due to labor disputes of any type) or fail to perform any provision of a Purchase Order, including unauthorized schedule delay, Buyer, after three days written notice to the Seller without correction, may, without prejudice to any other rights or remedy it may have, have such deficiencies corrected or performed by others, and may deduct the cost thereof from the payment then or thereafter due to the Seller. In the case of an emergency which, in Buyer's reasonable judgment, requires immediate action, prior written notice to the Seller shall not be required before Buyer causes such deficiencies to be corrected.

Confidentiality Except with the express prior written consent of Buyer, Seller agrees not to disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to (a) any officer, director, agent, employee, or contractor of Seller except on a strict "need to know" basis, or (b) any third person. Seller agrees that neither it nor its officers, directors, agents, employees, or contractors will use, apply, copy, transmit, reproduce, summarize, quote, or make any commercial or other use whatsoever of Confidential Information, except as may be necessary to perform Seller's obligations for Buyer under a Purchase Order. As used herein, the term Confidential Information means (1) proprietary information of Buyer; (2) information marked or designated by Buyer as confidential; (3) trade secrets; (4) information, whether or not in written form, which is marked by Buyer as confidential (in the case of written information) or is subsequently reduced to writing that is marked confidential and delivered to Seller within 30 days after disclosure to Seller (in the case of oral information); and (5) information provided to Buyer by third parties which Buyer is obligated to keep confidential. Confidential Information includes, but is not limited to, processes, procedures, concepts, methods, techniques, systems, discoveries, ideas, designs, specifications, documentation, know-how, data, contractual relationships and contractual information, customer lists, marketing plans, and financial and technical information. Confidential Information does not include any information (a) which was voluntarily disseminated by Buyer to the general public; (b) which otherwise becomes part of the public domain through lawful means; (c) which Seller can establish by contemporaneously created documents was already known to Seller or had been independently developed by Seller at the time of the receipt thereof from Buyer; (d) which was at the time of disclosure by Buyer to Seller patented or otherwise a matter of public knowledge through no violation of a Purchase Order by Seller; or (e) which was or is rightfully obtained by Seller from another source. Seller acknowledges that all Confidential Information is and shall, at all times, be the exclusive property of Buyer, whether disclosed or entrusted to Seller in connection with Seller's work for Buyer. The provisions of this Section shall survive the termination, completion, or expiration of any Purchase Order and for as long as Seller possesses Confidential Information.

General Seller consents to exclusive personal jurisdiction and venue in Marion County Circuit Court, Oregon. The laws of the state of Oregon, excluding conflict of laws rules, excluding INCOTERMS, and excluding the U.N. Convention on Contracts for the International Sale of Goods, shall apply to and bind the parties in all questions arising hereunder. No action, failure of action, or delay by either party will constitute a waiver of any of its rights or remedies. The waiver of a breach of any provision does not constitute a waiver of a subsequent breach of the same or different provision. Headings are for reference only.

Modification These terms and conditions may be modified by Buyer and such modifications shall be effective when communicated to Seller by any means. The terms and conditions as modified shall apply to transactions occurring after communication of the modified terms and conditions to Seller.