

WEST SALEM MACHINERY CO. - TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE** - Company objects to any additional or different terms that may be contained in Purchaser's purchase order. The terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the Company and the Purchaser. Company shall not be deemed to accept any additional or modified terms or conditions except by a writing signed by Company. Company's action or failure to act shall not be deemed acceptance of any additional or modified term or condition. Purchaser's retention of this agreement, without notification of any error or non-acceptance within one (1) working day following Purchaser's receipt, shall constitute Purchaser's acceptance of the terms and conditions herein.
2. **WARRANTY** - Subject to the notice requirements in paragraph 3 below, the following warranties are made by Company: (a) Company warrants that it has good title to the product(s); (b) on the date of shipment, the product(s) are as described herein, except as to items not manufactured by Company; (c) on the date of shipment, the product(s) are free of defects in workmanship and material, except as to items not manufactured by Company.
THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY.
3. **EXCLUSIVE REMEDY** - If, within six (6) months or 1,000 hours of operation, whichever occurs first, from date of shipment by Company, Purchaser discovers that the item was not as warranted and notifies Company in writing within 20 days thereafter specifying the defect, Company shall, at Company's option, adjust, repair or replace the item or any affected part of the product. Company shall bear reasonable expense of any parts and Company's labor in connection with the foregoing remedies. Purchaser shall be responsible for all other expenses including expenses for removal, reinstallation and freight in connection with the foregoing remedies. Replacement parts may be, at Company's option, new or repaired parts and Company shall have the right to keep any parts replaced by it. The adjustment, repair or replacement shall be subject to the same warranties set forth above for a period of 30 days or the remaining warranty period on the original item, whichever is longer.
THE REMEDIES SET FORTH IN THIS PARAGRAPH CONTAIN PURCHASER'S EXCLUSIVE REMEDIES AGAINST COMPANY AND ITS SUPPLIERS RELATING TO THE PRODUCT, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM ANY CAUSE. NEITHER COMPANY NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COST OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF SIMILAR TYPE, OR FOR CLAIMS BY PURCHASER FOR DAMAGES OF PURCHASER'S CUSTOMERS. Company and its suppliers shall have no obligation as to any product which has been improperly stored or handled, which has not been installed, operated or maintained according to instructions in Company or supplier furnished manuals, has been modified, as to which non-OEM or unapproved replacement parts have been used, for ordinary wear and tear, or for wear parts. Company and its suppliers shall not be liable for the fault, negligence or wrongful acts of Purchaser or Purchaser's employees, or Purchaser's other contractors or suppliers.
4. **PATENTS** - Company shall pay costs and damages finally awarded in any suit against Purchaser or its vendees to the extent based upon a finding that the design or construction of the product(s) as furnished infringes a United States patent (except infringement occurring as a result of incorporating a design or modification at Purchaser's request) provided that Purchaser notifies Company of any claim or allegation of such infringement within 30 days after discovery and Company is given the right at its expense to settle such charge and to defend or control the defense of any suit based upon such charge. **THIS PARAGRAPH SETS FORTH COMPANY'S EXCLUSIVE LIABILITY WITH RESPECT TO PATENTS.**
5. **PURCHASER DATA** - Timely performance by Company is contingent upon Purchaser's supplying to Company, when needed, all required technical information, including drawing approval, payments when due, and all required commercial documentation.
6. **NONCANCELLATION** - Purchaser may not cancel or terminate for convenience, or direct suspension of manufacture unless Company agrees in writing, at which time Company may negotiate mutually agreeable termination charges.
7. **DELAYS** - If Company suffers delay in performance due to any cause beyond its control, including but not limited to act of God, war, act or failure to act of government, act or omission of Purchaser, fire, flood, strike or labor trouble, sabotage, or delay in obtaining from others suitable services, materials, components, equipment of transportation, the time of performance shall be extended a period of time equal to the period of the delay and its consequences. Company will give the Purchaser reasonable notice within a reasonable time after Company becomes aware of any such delay.
8. **STORAGE** - Any item of the product(s) on which manufacture is delayed by causes within Purchaser's control may be placed in storage by Company at Purchaser's expense and risk. Any product(s) not shipped within 2 weeks after completion may be placed in storage by Company at Purchaser's expense and risk at which time standard storage and handling charges will accrue, provided that delay in shipment due to fault of Company is not counted.
9. **SHIPMENT** - F.O.B. Salem, Oregon, factory, unless other arrangements are made.
10. **TITLE AND INSURANCE** - Title to the product(s) and risk of loss or damage shall pass to Purchaser at the f.o.b. point, except that a security interest in the product(s) and proceeds and any replacement shall remain in Company, regardless of mode of attachment to realty or other property, until the full price has been paid in cash. Purchaser agrees to do all acts necessary to perfect and maintain said security interest, and to protect Company's interest by adequately insuring the product(s) against loss or damage from any external cause with Company named as insured or co-insured. Purchaser hereby irrevocably constitutes and appoints Company as its attorney in fact to execute any financing statements or other instruments or documents reasonably necessary or desirable to perfect and maintain said security interest in the products and proceeds.
11. **PRICE POLICY** - All prices quoted are firm for the stated shipping date, unless specifically noted on the proposal form. Proposals automatically expire after 30 days unless otherwise stated or excepted prior to the expiration date.
12. **TAXES** - Taxes are the responsibility of Purchaser. The prices quoted do not include any duties or sales use, excise, value-added, or other taxes or charges, unless specifically noted on the proposal form.
13. **GENERAL** - In the event Company places this agreement in the hands of an attorney for collection of the purchase price or other sums owing to Company from Purchaser, Purchaser agrees to pay Company's reasonable costs and expenses of collection, including attorney's fees, whether or not any suit or action is filed and any additional costs, expenses and attorneys' fees incurred at trial or on appeal. Purchaser consents to personal jurisdiction in Oregon and venue in Marion County Circuit Court. Statements about the product(s) may have been made to Purchaser by representatives of Company. Such statements do not constitute warranties and shall not be relied on by Purchaser and are not part of this agreement. The entire agreement is embodied in this writing. **THIS WRITING CONSTITUTES THE FINAL EXPRESSION OF THE PARTIES AGREEMENT AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS OF THE AGREEMENT.** Company will comply with all laws applicable to Company. Compliance with OSHA or similar federal, state or local laws during any operation or use of the product(s) is the sole responsibility of Purchaser. Assignment may be made only with written consent of both parties.
14. **DAMAGES** - Notwithstanding any other provision of this agreement, the Company's liability to Purchaser for damages arising out of or relating to this agreement shall not exceed the purchase price for the product(s).