

ALL SALES MADE BY FLEXOMATION, LLC ("FLEXOMATION", "SELLER") ARE MADE ON THE FOLLOWING

TERMS AND CONDITIONS:

THESE TERMS OF SALE ARE AN INTEGRAL PART OF ALL TRANSACTIONS CARRIED OUT BY FLEXOMATION AND ARE SUBJECT TO CHANGE BY FLEXOMATION. THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL CONSTITUTE THE ONLY TERMS AND CONDITIONS APPLICABLE TO THE SALE OF GOODS, ACCESSORIES, OPTIONS, AND OTHER PRODUCTS BY FLEXOMATION. INCONSISTENT OR ADDITIONAL TERMS, INCLUDING INACCURATE PRICES IN BUYER'S ORDER, IMPOSE NO OBLIGATION ON FLEXOMATION. ANY AGREEMENT IMPOSING ADDITIONAL OR DIFFERENT OBLIGATIONS ON FLEXOMATION MUST BE IN WRITING AND SIGNED BY AN OFFICER OF FLEXOMATION. NO ORDER SHALL BE BINDING ON FLEXOMATION UNTIL AND UNLESS ACCEPTED BY FLEXOMATION IN WRITING. FLEXOMATION MAY REFUSE TO ACCEPT ANY ORDER FOR ANY CAUSE WHICH FLEXOMATION DEEMS SUFFICIENT AND SHALL NOT BE LIABLE FOR ANY CLAIMS OF ANY NATURE BECAUSE OF FAILURE TO ACCEPT.

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| <p>1. Contract
No contract shall be deemed to exist and no order shall be deemed valid unless and until acceptance shall have been confirmed by SELLER in writing or by conclusive action (e.g. the immediate delivery of the goods ordered).</p> <p>2. Extent of delivery
SELLER's confirmation of order and/or invoice shall determine the extent of the order and performance of delivery.

In the interest of Buyer, SELLER hereby reserves the right to make any modifications which result from technical development or design changes. Information and illustrations in publications and technical documents such as specifications, drawings, illustrations, brochures etc. are not binding and are subject to change without notice.</p> <p>3. Technical documents
All technical documents shall remain SELLER's copyright and be returned to SELLER on demand. They shall not be copied in any form nor made available to third parties without SELLER's prior written agreement. They shall not be used for the manufacture of products, equipment or spare parts by third parties. They shall be used for purposes of erection, maintenance and operation only in so far as they shall have been designated therefor by SELLER.</p> <p>4. Installation and Safety Compliance
Buyer assumes full responsibility for all aspects of installation including compliance to all applicable safety standards. SELLER assumes no responsibility for safety compliance.</p> <p>5. Software
For the use of programs delivered or subsequently supplied for computers, microprocessors and other data processing and control equipment (software), Buyer is hereby granted an irrevocable non-exclusive license for which the conditions of SELLER's software license agreement shall apply. These programs remain SELLER's property and shall be used only with SELLER's equipment; they shall not be copied or otherwise duplicated without SELLER's prior written agreement.</p> <p>6. Prices and Taxes
6.1 Prices are exclusive of all national, federal, state, municipal, local or any other governmental, excise, sales, use, occupational, or like taxes or duties now in force or enacted in the future. Any such tax, fee, or charge of any nature whatsoever imposed by any governmental authority on, or measured by, the transaction between FLEXOMATION and the Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced. In the event FLEXOMATION is required to pay any such tax, fee, or a charge, at the time of sale, or at any time thereafter, the Buyer shall reimburse FLEXOMATION therefor.
6.2 Any cost increases due to changes in the general price situation caused by circumstances beyond SELLER's control shall entitle SELLER to invoice and receive payment for the goods at the prices applicable at the time of delivery.</p> <p>7. Conditions of payment
7.1 Payment shall be made in accordance with the conditions stated in SELLER's quotation(s) and/or confirmation(s) of order. Unless otherwise agreed, payment shall be made 25% due at submission of purchase order and 75% due 30 days after delivery.
7.2 Payment shall be made by Buyer without any deduction (e.g. discounts, expenses, taxes, fees) in USD currency or in the currency agreed upon.
7.3 The date(s) for payment shall be binding, even if transport, delivery, erection, commissioning or acceptance of the goods shall be delayed or made impossible by circumstances beyond SELLER's control and not attributable to SELLER. Deductions from payments due or any retention or delay in effecting payment shall not be permissible on the grounds of complaints or claims made by Buyer, nor on account of any counterclaim(s) made by Buyer and not accepted in writing by SELLER. Payment shall be effected punctually even if consequential work shall be found necessary to any of the goods delivered.
7.4 Past due accounts will be subject to a monthly charge at the rate of one and one half percent (1.5 percent) per month (or, if less, the maximum allowable under applicable law) to cover the costs of servicing these accounts. The payment of such interest shall not modify Buyer's contractual obligations regarding payment of the principal.
7.5 In the event that Buyer shall fall in arrear with regard to any payment or that other circumstances shall come to SELLER's knowledge which shall make Buyer's creditworthiness questionable, all and any payments shall become immediately due. At the same time, any credit facilities which may have been accorded to Buyer for any current orders shall become null and void. In such cases, SELLER shall have the right to withhold delivery and/or to rescind the contract.
7.6 For products and equipment manufactured in accordance with Buyer's requirements, advance payment(s) shall be made and/or installments paid in accordance with special conditions agreed between the parties.</p> | <p>8. Delivery period and delivery
8.1 The stated delivery period is valid for delivery ex works and starts after acceptance of the contract respectively on the date of receipt of the down payment if such a deposit is stipulated in the contract and provided that all formalities shall have been completed, import and exchange control permits obtained by Buyer and all technical questions clarified.

The delivery period shall be extended in any of the following events:
a) If any event of force majeure including fire and/or explosion and/or strike etc. and/or other unforeseen circumstances shall arise affecting SELLER or SELLER's suppliers. In such an event SELLER reserves the right, under exclusion of any claims by Buyer, to extend the delivery period or to withdraw from the contract.
b) If Buyer shall fall in arrear in fulfilling his contractual obligations, in particular if Buyer shall fail to conform punctually to the conditions of payment. Where payment is to be made by letter of credit, such payment shall, as a rule, be received by SELLER at least one month before delivery shall be due to be effected.
c) If Buyer shall inform SELLER subsequently to SELLER's confirmation and acceptance of Buyer's order of modifications required by Buyer, and if these can be accepted by SELLER only subject to an extended delivery period.</p> <p>8.2 The delivery period shall be deemed to have been met if the goods are ready for dispatch but cannot be dispatched for reasons beyond SELLER's control and not attributable to SELLER.</p> <p>8.3 Delayed delivery shall not constitute a valid claim by Buyer for any penalty, liquidated and ascertained damages or for rescinding the contract.</p> <p>8.4 SELLER reserves the right to effect partial delivery except where otherwise specifically agreed to the contrary at the time of ordering.</p> <p>9. Retention of title / grant of security interest
9.1 The goods shall remain SELLER's property until the full purchase price and all other charges shall have been paid, including any costs which may arise in respect of letters of credit, bills of exchange or cheques etc. Where no retention of title shall be legally possible, Buyer hereby grants to SELLER a security interest in the goods, all additions, alterations, parts, accessories, attachments and accessions thereto and, in the event that the goods shall be inventory in the hands of the Buyer, a security interest in all Buyer's accounts receivable from sales or other disposal of the goods.
9.2 Until full payment shall have been received by SELLER, the goods shall not be pledged, sold, mortgaged or given as security and/or otherwise charged with the rights of any third parties except that, automatically upon the sale in the normal course of business, Buyer hereby assigns to SELLER Buyer's rights to the proceeds thereof to the full amount of SELLER's outstanding claim. Until full payment shall have been received by SELLER, Buyer hereby agrees to segregate and/or otherwise conspicuously identify the goods as SELLER's property or subject to SELLER's security interest.
9.3 While SELLER retains title or is granted a security interest in the goods delivered, Buyer shall maintain the same at Buyer's expense and shall insure them adequately against theft, loss, destruction or damage and shall render proof on demand of such insurance. Buyer shall name SELLER as insured or additional assured and shall assign to SELLER his rights against the insurer. Buyer shall assist and cooperate with SELLER in all and any measures necessary to protect and secure SELLER's property in particular in signing financial statements and otherwise completing the formalities which may be required to secure and file the retention of title and security interest.
9.4 In the event of Buyer's delay in payment or of nonpayment, of his failure to perform any obligation hereunder, bankruptcy, reorganization, insolvency, assignment for the benefit of creditors or if SELLER in good faith shall believe that SELLER's security is inadequate or the prospect for repayment is insecure, all amounts owed to SELLER shall become immediately due and payable and SELLER shall have all the proprietary rights of owner or secured party (as the case may be), including the right to terminate this contract, to enter Buyer's premises and repossess and resell the goods, and if applicable, to even contact account debtors and request that payment be made directly to SELLER.</p> <p>10. Packing materials
Packing materials are returnable FOB at SELLER's request.</p> <p>11. Possession and risk
11.1 Possession and use of the goods and risk for the same shall pass to Buyer not later than at the time of dispatch from the factory even if delivery shall be free, CIF, FOB, or similar, or if the order shall include erection. If delivery is delayed or made impossible for reasons not attributable to SELLER, Buyer shall be notified and the goods stored at Buyer's risk and charge.</p> |
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- 11.2 Unless expressly otherwise agreed, dispatch shall be at Buyer's charge. In the absence of any specific instructions to the contrary, SELLER shall at SELLER's sole discretion choose the means of transport and route which appear to SELLER as the most favourable.
- 12. **Shipment**
In the absence of specific shipping instructions, FLEXOMATION will ship by the method it deems most advantageous. Transportation charges will be collected, or if prepaid, will be subsequently invoiced to Buyer. Unless otherwise indicated, Buyer is obligated to obtain insurance against damage to the material being shipped. Unless otherwise specified, products shall be shipped in standard commercial packaging. When special or export packaging is requested or, in the opinion of FLEXOMATION, required under the circumstances, the cost of the same, if not set forth on the invoice, will be separately invoiced.
- 13. **Complaints regarding defects and acceptance of delivery**
13.1 Prior to any productive use, acceptance of the delivery shall be given in writing by the Buyer. In case of productive use, the delivery shall be deemed accepted.
13.2 Buyer shall notify SELLER in writing of any defect within reasonable time of receipt of goods. Failure to do so shall signify acceptance of the consignment. If the consignment shall be found on acceptance not to be in accordance with the contract, Buyer shall immediately give SELLER the opportunity to make good the defects within a reasonable time. Buyer shall have no valid claim whatsoever on account of defective goods, and in particular for compensation and/or recession of the contract.
13.3 No complaints on account of wrong delivery or wrong quantities shall be considered unless made in writing immediately upon discovery.
- 14. **Warranty**
No alteration or addition shall be made without SELLER's written approval to the following warranty provisions.
14.1 At Buyer's written request during the warranty period, SELLER shall eliminate malfunctions within a reasonable time, insofar as these malfunctions shall be ascertainable due to poor materials or defective construction or workmanship. Defective parts and/or components which shall have become unserviceable shall be repaired or replaced at SELLER's sole discretion. Buyer's remedies for defective goods shall be limited solely to the supply of replacement parts as described in clause 14.2. Any parts replaced shall become SELLER's property.
14.2 The warranty shall cover only the replacement of defective material including return shipment, packing and insurance.
14.3 The warranty period shall take effect on the date of delivery.
14.4 SELLER shall not be liable for damage due to normal wear and tear, improper use, inadequate maintenance, disregard of operating instructions, subject to excessive stresses and other causes beyond SELLER's control and not attributable to SELLER. Moreover, SELLER's liability shall lapse if Buyer or any other unauthorized third party carry out repairs or modifications without SELLER's prior agreement in writing.
14.5 Transport damage and defective nondurable items such as fuses, etc. and subsequent adjustment made in accordance with the instruction manuals shall not fall within the scope of the warranty.
14.6 Where parts, components or equipment shall be supplied to SELLER by others and provided that Buyer shall be informed accordingly, either the enduser shall conclude a service contract with the SELLER's supplier or SELLER shall accept liability only to the extent of the warranties provided to SELLER by SELLER's supplier and the same shall be in lieu of all warranties specified herein with respect to all parts, components or equipment supplied by others.
14.7 SELLER shall not be responsible for performing any service under warranty while Buyer shall be in arrear in fulfilling his contractual obligations.
14.8 The place of performance for work under warranty is the site of the supplier or his subsidiaries.
14.9 No warranties are granted, either expressed or implied, except for the express warranty set forth above. The goods shall not be deemed to be subject to any claims resulting from direct or indirect damages. Furthermore, all other claims by Buyer on the grounds of inadequate delivery, repair or replacement in accordance with clause 14.1, and in particular for compensation and/or cancellation of contract, are hereby expressly excluded.
- 15. **Returns**
15.1 Buyer shall give prior written notice of any intended return of goods and such return shall be subject to SELLER's decision regarding acceptance. The mere acceptance of returned goods shall not signify the recognition of any obligation by SELLER to accept the same. Goods returned to SELLER without SELLER's prior agreement shall be liable to be returned to Buyer who shall bear all costs arising therefrom.
15.2 The acceptance of goods returned for reasons other than formal commitments or the exercise of rights shall at all times be excluded in the case of goods manufactured at Buyer's request and not in conformity with standard production. The same shall apply to goods that have been modified, that are no longer in a brand-new condition or have been delivered ex works more than four months prior to such return.

- 16. **Repairs**
The prices for repairs and modifications shall apply ex works excluding the cost of packing, carriage, insurance etc. In all other respects, the present General Conditions of Sale and Delivery shall apply mutatis mutandis.
- 17. **Rights of Cancellation**
This contract may be cancelled by Buyer only upon written agreement of SELLER and the payment of cancellation charges, which shall include but not be limited to the initial payment and any additional expenses already incurred for labor and material costs, overhead, commitments made by SELLER, and a reasonable profit.

In the event of cancellation, Buyer will have no rights in partially completed goods.

In the event of unauthorized sale of the goods to others, suspension of payment, initiation of the judicial processes for accommodation with creditors or bankruptcy, or in the event of voluntary or forced liquidation or the transfer of Buyer's business, and without affecting any more extensive rights of the SELLER, SELLER shall be entitled to cease and desist from any further deliveries without regard to any orders still due, current or pending with SELLER.
- 18. **Place of performance**
The place of performance for executing delivery shall be our commercial domicile.
- 19. **Limitation of liability**
SELLER shall be responsible for delivery according to contract only within the limits of his obligations under warranty and as otherwise expressly set forth herein. Any liability for direct or indirect loss or damage (notably but not exclusively loss of profits and claims by third parties) which may arise as a result of the nonfulfillment of SELLER's contractual obligations and/or cessation of production of any product(s) and/or component(s) to be supplied by SELLER is hereby expressly excluded. In no event shall SELLER be liable for incidental or consequential damages, even if SELLER shall have been given notice of the possibility of such damages being claimed.
- 20. **Applicable law and jurisdiction**
The contract between the parties is made, governed by, and shall be construed in accordance with the laws of the State of Ohio.
- 21. **Validity**
21.1 The above General Conditions of Sale and Delivery shall apply exclusively even if Buyer shall not specifically refer to them or if Buyer shall draw attention to his own Conditions of Purchase. Any declaration, agreement and/or acceptance of any kind at variance with these General Conditions of Sale and Delivery shall be binding upon SELLER only if and inasmuch as they shall have been expressly confirmed by SELLER in writing. These General Conditions of Sale and Delivery shall be deemed to be the final expression of agreement between the parties and to constitute the complete and exclusive statement of the terms of such agreement.
21.2 In the event that the present Conditions of Sale and Delivery shall prove to be wholly or partly invalid and/or unenforceable, or be made wholly or partly invalid and/or unenforceable or their observation prejudiced or restricted under any existing or future law(s), decree(s) and/or measure(s) by government or other authorities, or by any changes or amendments thereto, the parties shall notify each other immediately and consider together how the spirit and intent of these conditions can be satisfied in the light of the new circumstances.
21.3 The parties hereby undertake to replace any provisions hereof which may be or become invalid by others which shall correspond to the requirements of the law in force at the time and whose economic effect shall be as nearly as possible the same as that of the provision(s) they replace.
21.4 The invalidity or unenforceability of any provision(s) of these General Conditions of Sale and Delivery shall not in any event affect the validity of these Conditions as a whole.
- 21. **Errors**
Stenographic and clerical errors are subject to corrections.
- 22. **Attorney's Fees**
Reasonable attorney's fees and costs shall be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of this agreement or any request for shipment release issued and accepted under the terms and conditions of this agreement.