

## Terms and conditions of sale and delivery

All sales are subject to the following terms and conditions and those contained on the face hereof.

1. **Taxes.** Prices on the specified machine(s) and any other goods are exclusive of all local, state, and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by the Buyer.
2. **Terms of Payment.** Unless otherwise agreed, Thirty percent (30%) upon Buyer's signing this Order Confirmation, Forty percent (40%) upon Seller's notice to Buyer of completion of manufacture of the machine(s), and Thirty percent (30%) upon delivery EXW, Newburyport, MA, the full purchase price to be fully paid at or prior to such delivery. Any additional tools, fixtures, and fitting-up charges: net cash 30 days. Buyer may not withhold any sum due to Seller because of any claim or setoff alleged by Buyer.
3. **Security Interest.** In the event the Terms of Payment are varied by the Seller and Buyer resulting in the delivery of machines or any other Goods prior to full payment of the purchase price, then Buyer, as Debtor hereby grants a Security Interest, pursuant to Article 9 of the Uniform Commercial Code, to Seller, as Creditor in the following Collateral: (a) all machines and any other Goods acquired from Seller, at any time (including on dates after the date of this Order Confirmation) and all Accounts, Contract Rights, General Intangibles, Instruments, rents, monies, payments and other rights arising out of a sale, lease or other disposition of such machines and any other Goods; (b) all Proceeds and products of any of the foregoing; (c) all Buyer's Records (including, but limited to records maintained on computer software) evidencing or otherwise relating to any of the foregoing, and authorizes Seller to file a Financing Statement (Form UCC 1).
4. **Delivery.** This sale is made EX WORKS at Seller's premises in Newburyport, Massachusetts, which means that the risk of loss passes to Buyer when the machines sold are made available to Buyer and that Buyer is responsible for all shipping and freight charges.
5. **Delay.** Seller will not be liable for any delay in the performance of orders or contracts, or in the delivery or shipment of machines or any other goods, or for any damages suffered by Buyer by reason of such delay, if such delay is, directly or indirectly, caused by, or in any manner arises from, fires, floods, accidents, civil unrest, acts of God, war, governmental interference or embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials, or supplies, transportation delays, or any other cause or causes (whether or not similar in nature to any of these hereinbefore specified) beyond its control. Seller shall have the additional right, in the event of the happening of any of the above contingencies, at its option, to cancel this order and the sales contract therein described or any part thereof without any resulting liability. Shipments made within 20 days after specified date of delivery shall constitute a good delivery. Any delivery not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered machines or any other goods.
6. **Limited Warranty.** Seller shall repair any defect which impairs the use for which the machine is sold, when such defect arises out of Seller's error in manufacture and only if Seller is notified in writing of such defect, within five (5) business days of discovery. All shipping and freight costs of replacement parts provided pursuant to this limited warranty shall be borne by Buyer. Any replaced parts shall become the property of the Seller and all shipping and freight costs of replaced parts shall be borne by Buyer. In the event that Seller performs any work, pursuant to this limited warranty at Buyer's premises, Buyer, at no charge, shall provide unskilled staff, lifting devices, scaffolds, sundry supplies and otherwise provide necessary assistance. In addition, Buyer shall have no claim for down time of any machine. Seller's obligation with respect to such machines shall be limited to replacement of parts or repair EX WORKS Newburyport, Massachusetts, and in no event shall Seller be liable for consequential or special damages, or for transportation, installation, adjustment, or other expenses which may arise in connection with such machines. This limited warranty shall not include any defect resulting from: (a) ordinary wear and tear; (b) Buyer's failure to follow any and all directions of Seller, including but not limited to manufacturer's Operating Instructions; (c) installation of any spare parts other than genuine original spare parts, made by such machines' manufacturer; (d) assembly or installation performed by any entity other than Seller; (e) over stressing beyond the performance criteria of any part or component; (f) negligent or improper handling of or use of unsuitable operating materials; (g) any changes, alterations or repairs not authorized by Seller. The warranty exceptions contained herein shall apply to both the acts of Buyer and third parties. This limited warranty and Seller's undertaking to repair shall expire ONE YEAR from the sale of a machine. Any repairs performed or replacement parts provided/installed pursuant to this limited warranty shall not extend the aforementioned time periods. Any claims pursuant to this limited warranty must be made within these respective periods. THIS LIMITED WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS.
7. **Regular Service.** Seller may determine service dates at which complete servicing of the machine is necessary ("Periodic Service"). Such determination shall be based on the use for which the machine is sold. Periodic Service shall not include normal maintenance, i.e. lubricating, which is prescribed in Seller's Operating Instructions. If such dates for Periodic Service are communicated to Buyer, then Buyer shall request that the Seller perform Periodic Service. If Buyer fails to make such request or in any other way fails to cooperate in the performance of such Periodic Service, then the Limited Warranty described in Article 6 hereof shall be null, void and without effect. Seller's Operating Instructions shall be transmitted to Buyer with every delivery of a machine and if not received by Buyer, Buyer shall request such Operating Instructions. Buyer shall operate the machine(s) and any later delivered spare parts or accessories in strict conformity with such Operating Instructions and Buyer's failure to do so shall render the Limited Warranty described in Article 6 hereof to be null, void and without effect.
8. **Patents and Intellectual Property.** Buyer shall hold Seller harmless from, and release and not make claim or suit against Seller because of, any suits, claims, losses, or other liability made against, or suffered by, Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary right, at common law, or claim of unfair trade or of unfair competition, resulting from, or occasioned by, Buyer's use, possession, sale, or delivery of the merchandise sold to Buyer by Seller. Plans, sketches and other technical documentation as well as samples, catalogues, brochures, illustrations and similar materials shall remain the Seller's intellectual property. Any exploitation, reproduction, distribution, publication or demonstration of such as samples, catalogues, brochures, illustrations and similar materials shall remain the Seller's intellectual property is prohibited, unless made with Seller's express consent. Plans, sketches and other technical documentation as well as samples, catalogues, brochures, illustrations and similar materials shall be returned to Seller in the event that, for any reason, the transaction herein provided for does not occur.
9. **Seller's Right of Possession.** Seller shall have the right, in addition to all others it may possess, at any time, for credit reasons or because of Buyer's default or defaults, to withhold shipments, in whole or in part, and to recall goods in transit, retake same, and repossess all goods which may be stored with Seller for Buyer's account, without the necessity of taking any other proceedings, and Buyer consents that all the merchandise so recalled, retaken, or repossessed shall become Seller's absolute property, provided that Buyer is given full credit therefor. The foregoing shall not be construed as limiting, in any manner, any of the rights or remedies available to Seller because of any default of Buyer under the Uniform Commercial Code as in force and effect in the Commonwealth of Massachusetts on the date of the signing of this Order Confirmation.
10. **Controlling Provisions.** These terms and conditions shall supersede any provisions, terms, and conditions contained on any confirmation order, or other writing Buyer may give or receive, and the rights of the parties shall be governed exclusively by the provisions, terms, and conditions hereof. Seller makes no representations or warranties concerning this order except such as are expressly contained herein, and this order may not be changed or modified orally. This is not a firm offer.
11. **Governing law.** This Order Confirmation and the sales contract therein described shall be a contract made in the Commonwealth of Massachusetts and governed by the laws thereof.
12. **Arbitration.** Any controversy or claim arising out of, or relating to this Order Confirmation and the sales contract therein described or the performance or breach thereof shall be settled by arbitration in the City of Boston in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered may be entered and enforced in any court of competent jurisdiction.
13. **Severable Provisions.** The provisions of this agreement are severable, and if any one or more provisions of this agreement may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provisions to the extent enforceable shall nevertheless be binding and enforceable.