

ADDITIONAL TERMS AND CONDITIONS OF SALE

1. **General.** The Terms and Conditions of Sale outlined herein shall apply to the sale by the Company of products, equipment, parts and services ("Equipment") to Purchaser. Acceptance of orders, whether oral or written, is based on the express condition that Purchaser agrees to all of the terms and conditions contained herein. These terms and conditions represent the complete agreement of the parties, superseding all previous communications, and no terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein shall be binding upon Company unless made in writing and signed and approved by an officer of Company. No modification of any of these terms will be effected by Company's shipment of goods following receipt of Purchaser's purchase order, shipping request or similar forms containing printed terms and conditions conflicting or inconsistent with the terms herein. Purchaser's acceptance of Equipment and/or making any payment for Equipment shall constitute acceptance of and full assent to these Additional Terms and Conditions of Sale.

2. **Prices.** All prices are F.O.B. Company's factory or other place of manufacture and are subject to adjustment, without notice, to Company's prices in effect at the time of shipment. Price does not include freight charges and installation services unless otherwise stated in the quotation or confirmation.

3. **Payment Terms.** All accounts shall be paid net in U.S. dollars at Company's principal offices, in accordance with the terms specified in the quotation and/or listed on the Company's invoice. If, in the judgment of the Company, the financial condition of Purchaser at the time Equipment is ready for shipment does not justify the terms of payment specified, the Company may require full payment prior to making shipment. A service charge of the lesser of 1-1/2% per month or the maximum permissible rate will be added to all past due accounts.

4. **Costs of Collection.** In the event Purchaser shall default in its obligations to the Company, Purchaser shall be liable for all of Company's costs of collection, including reasonable attorneys fees.

5. **Title and Risk of Loss.** Title and risk of loss or damage to the Equipment shall pass to the Purchaser upon tender of delivery F.O.B. Company's facility or other place of manufacture. Notwithstanding the foregoing, any claim by Purchaser against Company for shortage or damage occurring prior to such delivery must be made in writing within ten (10) days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from Company in the condition claimed. Any claim by Purchaser for damage occurring during shipment shall be made directly against the freight carrier, with a copy of such claim forwarded to Company within ten (10) days. Any shipments returned to Company as a result of Purchaser's unexcused delay or failure to accept delivery will require Purchaser to pay all additional costs incurred by Company.

6. **Security.** If Purchaser fails to make payment in accordance with the terms hereof, the Company reserves the right to remove and reclaim the Equipment upon refund to Purchaser of the whole sum paid to the Company by said Purchaser on account of the purchase price of said Equipment and thereby terminate any and all liability of the Company to the Purchaser on account of the purchase and use of the Equipment. A purchase money security interest in the Equipment shall remain in Company, regardless of its mode of attachment to realty or other property, until full payment has been made therefore. Purchaser agrees upon request to do all things and acts necessary to perfect and maintain said security interest and shall protect Company's interest by adequately insuring the Equipment against loss or damage from any cause. Purchaser shall cause Company to be named as an additional insured under each such policy.

7. **Assignment.** Neither party shall assign or transfer this contract without the prior written consent of the other party.

8. **Delivery and Delays.** Delivery dates shall be interpreted as estimated and in no event shall dates be construed as falling within the meaning of "time is of the essence." Company shall not be liable for any loss or delay due to war, riots, terrorism, fire, flood, strikes or other labor difficulty, acts of civil or military authority including governmental laws, orders, priorities or regulations, acts of the Purchaser, embargo, shortage of transportation facilities or delay in transportation, or inability to obtain necessary labor or materials from usual sources, other contingencies of manufacture or shipment or other causes beyond the reasonable control of Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay. Company will use all reasonable efforts to comply with purchaser's requests as to method of shipment, but Company reserves the right to use an alternate method of transportation or route of shipment if substantial delay might otherwise occur. In such cases Company will notify Purchaser of such changes as soon as reasonably possible. If the Buyer declines or is unable to take delivery at the time(s) specified, the Company will have the Equipment stored for Buyer's risk and account, and the Equipment shall be considered "shipped."

9. **Taxes.** Except for sales tax imposed in the State of Illinois and California, if applicable, the price does not include any present or future Federal, State or local property, license, privilege, sales, use, gross receipts or other excise, transportation, occupational, like taxes or assessments which may be applicable to, measured by, imposed upon or result from this transaction or any services performed in connection therewith. Any taxes itemized separately to

Purchaser on the Company's quotation, order acknowledgment or invoice, shall be paid promptly to Company. All others incurred by the Purchaser through performance of the contract shall be the Purchaser's responsibility to pay directly to the proper taxing authority.

Company will accept a valid exemption certificate from Purchaser, if applicable.

10. **Set Offs.** Neither Purchaser nor any affiliated company or assignee shall have the right to claim compensation or to set off against any amounts which become payable to Company under this contract or otherwise.

11. **Patents.** Company shall defend any suit or proceeding brought against Purchaser and shall pay any adverse judgment entered therein so far as such suit or proceeding is based upon a claim that the use of the Equipment manufactured by Company and furnished under this contract constitutes infringement of any patent of the United States of America, providing Company is promptly notified in writing and given authority, information and assistance for defense of same; and Company shall, at its option, procure the Purchaser the right to continue to use said Equipment, or to modify it so that it becomes non-infringing, or to replace the same with non infringing equipment, or to remove said Equipment and to refund the purchase price. The foregoing shall not be construed to include any agreement by Company to accept any liability whatsoever in respect to patents for inventions including more than the Equipment furnished hereunder, or in respect of patents for methods and processes to be carried out with the aid of said Equipment. The foregoing states the entire liability of Company with regard to patent infringement. Purchaser shall, in respect of goods packaged by the Company in accordance with designs, processes or formulas supplied, determined or requested by Purchaser, defend the Company at Purchaser's expense and pay costs and damages awarded in any suit brought against the Company for infringement of any letters patent by reason of use of such designs, processes or formulas provided the Company promptly notifies the Purchaser in writing of any claim of or suit for infringement and tenders defense thereof to Purchaser. The Company is entitled to be represented in any suit at its own expense.

12. **Warranty.** Company warrants that the Equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period eighteen (18) months from the date of shipment by Company or twelve (12) months from commencement of use of the Equipment, whichever occurs first (the "Warranty Period"). Purchaser shall be obligated to promptly report any failure of the Equipment to conform to this warranty in writing to Company within the Warranty Period, whereupon Company shall, at its option, correct such nonconformity by suitable repair to such Equipment, or furnish a replacement part F.O.B. point of shipment, provided Purchaser has fully paid for the Equipment and has stored, installed, maintained and operated such Equipment in accordance with good industry practices and has complied with specific recommendations or instructions of Company. Company shall not be liable for any repairs, replacements, or adjustments to the Equipment or any costs of labor performed by Purchaser or others without Company's prior written approval. Equipment returns for any reason will be refused without the company's prior authorization.

Samples supplied by the Company are solely for the purpose of evaluating the suitability of such material for potential use and, as such, the samples are not intended to serve as warranties of any type, either express or implied.

Upon request, the Company will endeavor to furnish such technical advice as is requested by Purchaser. It is expressly understood that, unless otherwise agreed in writing, any technical advice furnished by the Company with reference to the use of its products is given without charge, and Seller assumes no obligation or liability for the technical advice given, or results obtained, all such advice being given and accepted at Purchaser's risk.

This warranty does not apply to goods, subcomponents and materials not manufactured by the Company, and the Company shall not be liable for any defects contained in such goods, components and materials. Such goods, components and materials that are not manufactured by the Company shall only carry with them the warranty offered by their manufacturer, if any, to the extent such warranty is transferable.

This warranty shall not apply to Equipment that has been altered, modified or repaired by anyone other than Company or to Equipment that has been damaged through accident, misuse, neglect or lack of proper maintenance. The effects of corrosion, erosion and normal wear and tear on the Equipment are specifically excluded from this warranty.

COMPANY MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF TITLE, AND ALL OTHER WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

Correction by Company of non-conformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of Company for such non-conformities, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise with respect to or arising out of such Equipment.

13. **Limitation of Liability.** The remedies of Purchaser set forth herein are exclusive, and the total liability of Company with respect to this contract or the

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Equipment and services furnished hereunder, in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical direction covered by or furnished under this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of Equipment upon which such liability is based. Notwithstanding the foregoing, nothing in this section shall be construed as an attempt by Company to limit its liability for personal injury or death, which shall be determined in accordance with applicable law.

COMPANY AND ITS SUPPLIERS SHALL IN NO EVENT BE LIABLE, WHETHER ARISING UNDER CONTRACT, WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY NATURE ARISING AT ANY TIME OR FROM ANY CAUSE WHATSOEVER (EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES), INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION OR INCREASED EXPENSE OF OPERATIONS, SERVICE INTERRUPTION, COST OF PURCHASED OR REPLACEMENT POWER, CLAIMS OF PURCHASER'S SUBCONTRACTORS OR SUPPLIERS, COST OF MONEY, LOSS OF USE OF CAPITAL OR REVENUE.

Any claim by Purchaser with reference to the goods sold hereunder for any cause shall be deemed waived by Purchaser unless submitted to Company in writing within thirty (30) days from the date Purchaser discovered, or should have discovered, any claimed breach.

In the event that a court determines that the sole remedies stated in and incorporated in these Additional Terms and Conditions of Sale have failed of their essential purpose, then Purchaser's exclusive remedy for breach of any Company warranty shall be the return of the Equipment freight prepaid, for refund of the purchase price less a depreciation/restocking charge of two percent (2%) per month.

The provisions of this Paragraph 13 shall supersede any inconsistent provisions in any document involving Purchaser's purchase of Equipment or forming any part of any resulting contract.

14. Performance Standards. Capacity and/or fineness standards (if any) listed with the Equipment will only be achieved if the density, particle, size, shape, moisture content and chemical make-up of the feed material is CONSISTENT and IDENTICAL to that which the Company tested or specified with respect to the Equipment and is fed by Purchaser evenly and uniformly in a controlled manner to the Equipment and away from the Equipment.

15. Waiver of Insured Claims and Subrogation. As to any loss that is covered by any property insurance, boiler insurance, or the like Purchaser and Company, for themselves, for all other insureds under any such insurance policy, and for their insurers under any such insurance policy, hereby waive any claim against each other for any loss by fire, flood, explosion, mechanical breakdown or otherwise. Both Purchaser and Company, to the fullest extent permitted by each such policy, waive any right of subrogation against each other and against their respective employees, agents, officers, affiliated companies, suppliers, subcontractors and insurers.

16. Cancellation Charges. If Purchaser notifies Company that it terminates this order for its convenience, Company will stop all work as promptly as reasonably possible, but Purchaser shall be responsible for a cancellation charge, computed on the basis of Company's full cost including overhead, plus twenty percent (20%), for all engineering work, work in process, raw materials, supplies, administrative expenses and all commitments made by Company in connection with the order, less such allowances as Company may be in position to make for any standard components and for the balance of the material as scrap. If any portion of the Equipment subject to the quotation, order acknowledgment or invoice is identified as "special" or "Made-to-Order," Purchaser's order shall not be cancelled or cancelable by Purchaser after acceptance by Company, except upon payment in full of the purchase price.

17. Confidentiality. Any proposals, prints, brochures, drawings, or other information furnished to Purchaser by Company are intended for confidential use by Purchaser, shall remain the property of Company, and shall not be disclosed or used to the detriment of Company's competitive position.

18. Promotional Materials. All of Company's drawings, descriptive matter, weights, dimensions, the descriptions and illustrations contained in Company's catalogues, price lists or advertisements, are approximate only and are intended merely to give a general idea of the goods described therein and shall not form part of this contract. Because Company is continually researching and improving its products, it reserves the right to improve, correct and/or further modify its designs and specifications upon notification and mutual agreement between Company and Purchaser.

19. Waiver. Waiver by Company of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time.

20. Severability. In the event that any one or more of these terms or conditions is held invalid, illegal or unenforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.

21. Governing Law. This contract and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed exclusively by the laws of the State of Illinois, including the Uniform Commercial Code, without giving effect to the principles of conflicts of law thereof. In the event Purchaser's place of business is in a country that has ratified the United Nations' Convention on the International Sale of Goods (1980) ("Convention"), the parties agree to exclude application of the Convention. With respect to any suit in connection with these terms and conditions and any sales pursuant hereto, Purchaser concedes that it is subject to personal jurisdiction in and that venue is proper in the courts of Will County, Illinois.

22. Purchaser's Use, Covenants and Indemnification. All safety devices, sensors and guards offered in Company's quotation are recommended for purchase. Purchaser hereby agrees as part of Company's consideration to sell the Equipment to Purchaser that Purchaser covenants to Company that Purchaser: will use Equipment only for its intended uses; will keep Equipment level and balanced and in good repair; will keep all guards in place; will train all operators, service personnel, other employees and third parties who deal with it in the safe use of the Equipment in accordance with the operator's manuals and instruction sheets relating to the Equipment, with OSHA Regulations and with applicable National Fire Protection Association (NFPA) and American National Standards Institute (ANSI) standards/recommendations; will implement and enforce a Lockout/Tagout program per OSHA; will conduct a Process Hazard Analysis of its process and will comply with the findings of its analysis; has determined or will determine the proper NFPA classification for the area where the Equipment will be located and has ordered and will order from the Company and from other suppliers only components that are suitable for that classification; will comply with OSHA regulations, with applicable National Electric Code (NEC), NFPA and ANSI standards/recommendations and with any other applicable state or federal safety laws or regulations; will install fire and explosion detection and suppression equipment appropriate to Purchaser's products and process; has determined without reliance on Company that Equipment is a suitable component in Purchaser's process; will not remove or modify any device, warning sign, operator's manual or work handling tools accompanying, installed on or attached to the Equipment; will comply with the terms of this contract, including these Additional Terms and Conditions of Sale; and, if ownership of Equipment is transferred, will notify Company of the name and address of the new owner and will furnish the new owner with all manuals, instructions and guards. Recognizing that under some circumstances Company can be held liable to third parties because of actions by the Purchaser, the Purchaser agrees that if any damage or injury (including death) to any person or to any property (including loss of use thereof) results, or is alleged to have resulted, in whole or in part from any modification or alteration of the Equipment (including but not limited to the removal of any guards), from the improper or abnormal operation of Equipment without the Company's written consent or approval, or from breach of any covenants in this paragraph or of other provisions of these Additional Terms and Conditions of Sale, then Purchaser will defend, indemnify, and hold Company harmless from all liability, costs, and expenses (including attorney fees and all other costs of litigation and defense) for which Company is or may be held liable in connection with such injury or damage, whether Company's liability or alleged liability be in contract, negligence, strict tort, or otherwise. Purchaser shall indemnify Company and hold Company harmless from all loss, cost and expense (including reasonable attorneys fees) incurred by Company in the defense of any lawsuit, proceedings or claims that may be asserted against Company based upon alleged defects in or failures of the Equipment where such defects or failures are the result of the actions of persons other than Company. Purchaser shall not operate Equipment which is considered to be defective without first notifying Company in writing of its intention to do so. Any such use of Equipment shall be at Purchaser's sole risk and liability. Purchaser shall as promptly as possible notify Company in writing, and in all events within ten days after its occurrence, of any accident or malfunction involving any Equipment which results in injury to or death of persons, including Purchaser's agents and employees, or damage to property, including Purchaser's property, or the loss of use thereof; and Purchaser shall cooperate fully with Company in investigating and determining the cause of any such accident or malfunction. In the event that a portion of this provision be deemed unlawful, then that portion and the remainder of this provision shall remain enforceable to the fullest extent permitted by law.

23. Fire & Explosion Protection. The Equipment processes, handles and/or may create fine dusts or powders. As such, there may be a fire and explosion hazard. Purchaser agrees to contact its property insurance company and determine what, if any, fire or explosion protection requirements should be met and to inform Company of any such requirements. Fire and explosion detection and suppression systems vary depending on what materials Purchaser is processing and using, and they are something that Purchaser must coordinate throughout its factory. Thus, Purchaser is solely responsible for determining what fire and explosion protection is necessary for its particular facility, including the Equipment, and Purchaser must supply any necessary fire and explosion detection and suppression equipment or systems.