



10201 Bren Road East | Minnetonka, Minnesota 55343

## TERMS AND CONDITIONS OF SALE

### A. Applicable Terms

1. All orders and sales contracts are subject to acceptance by Seller. These terms and conditions of sale ("Agreement"), together with any other document(s) that Burns Engineering, Inc. ("Seller") has attached hereto or executed that specifically reference this Agreement, shall apply to all such accepted orders and sales contracts and shall constitute the entire agreement between Seller and you ("Customer") regarding your purchase and use of Sellers products, services and support (collectively, "Products"). This Agreement shall supersede all other agreements and understandings, whether written or oral, between the parties with respect to such Products, including, without limitation, any contrary or additional terms or conditions contained in the order or sale contract delivered by Customer.

2. By accepting delivery of the Products or by making payment for the Products, Customer agrees to be bound by and accept the terms and conditions of this Agreement. These terms and conditions are subject to change at any time in Seller's sole discretion upon written notice. This Agreement may NOT be altered, supplemented or amended by the use of any other document(s) unless otherwise agreed to in a separate written agreement signed by Seller. If Customer does not wish to be bound by this Agreement, Customer must promptly notify Seller in writing prior to Seller's commencement of production of any Products ordered by Customer.

### B. Warranties, Disclaimers, and Limitations of Liability and Remedies

1. Except as otherwise provided in this Paragraph B, Seller warrants, for one year after shipment, that the Products are free from faulty workmanship or the use of defective materials and that such Products will conform to Seller's applicable written specifications, or, if appropriate, to specifications proposed by Customer and accepted by Seller in writing for such Products. Seller warrants that at the time of shipment it has title to the Products free and clear of any and all liens and encumbrances.

2. Seller makes NO WARRANTY as to Products or other goods not manufactured by it; provided, that as to Products or other goods not manufactured by Seller, Seller shall assign to Customer any rights Seller may have under any warranty of the supplier thereof, to the extent permitted by Seller's contract with its supplier. THE LIMITED WARRANTIES SET FORTH IN PARAGRAPH B1 DOES NOT COVER ANY LOSS CAUSED BY ACCIDENTS OR CARELESS HANDLING OF THE PRODUCT. THIS WARRANTY SHALL NOT APPLY TO ANY PRODUCTS WHICH SELLER DETERMINES TO HAVE BEEN SUBJECT TO ANY CONDITIONS IN EXCESS OF THOSE ESTABLISHED BY APPLICABLE SPECIFICATIONS, OR OTHERWISE HAVE BEEN THE OBJECT OF ACCIDENT, MISUSE, NEGLIGENCE, OR IMPROPER INSTALLATION, IMPROPER TESTING, UNAUTHORIZED REPAIR, ALTERATION OR DAMAGE AFTER SHIPMENT BY SELLER.

3. Seller's limited warranties as set forth in Paragraph B1 shall not be enlarged or affected by, and no other obligation or liability shall arise or grow out of, Seller's rendering of technical advice or service in connection with Customer's order of any Products or other goods furnished hereunder.

4. Seller's entire obligation under the limited warranty set forth in Paragraph B1 shall be limited to repair or replacement of any warranted Products which prove to be defective within the warranty period specified in Paragraph B1, or to refund of the purchase price paid in lieu of such repair or replacement subject to return of the Product. Seller shall in all cases have the exclusive option as to which remedy, or combination thereof, it shall provide hereunder with respect to such defective Products. Such remedy shall be Customer's exclusive remedy for any breach of such warranty. Seller shall have a reasonable time to repair or replace such Products. Products which prove to be defective during the warranty period must be received by Seller no later than thirty (30) days after the termination of the warranty period. All transportation and insurance charges for shipment of such defective Products to Seller shall be paid by Customer. Such warranty shall be subject to these additional conditions: (i) Seller is promptly notified in writing upon discovery by Customer that such Products have failed to conform to this Agreement with a detailed explanation of any alleged deficiencies, (ii) such Products are returned to Seller, FOB Seller's plant, and (iii) Seller's examination of such Products shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and have not been caused by circumstances that are excluded from the limited warranty as provided in Paragraph B2.

5. THESE WARRANTIES ARE THE ONLY WARRANTIES MADE, OR WHICH MAY BE DEEMED TO HAVE BEEN MADE, TO ANY PERSON BY SELLER. THESE WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER. REMEDIES SET FORTH IN THIS PARAGRAPH B SHALL BE THE EXCLUSIVE REMEDIES AVAILABLE TO ANY PERSON. SELLER SHALL NOT BE LIABLE TO ANY PERSON FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY DESCRIPTION, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, WHETHER ARISING FROM WARRANTY, CONTRACT, NEGLIGENCE, OTHER TORT, OR OTHERWISE.

6. No person has any authority to bind Seller to any representation or warranty except those set forth in this Paragraph B, or otherwise to alter the content of such Paragraph.

7. Customer agrees to indemnify and to hold Seller harmless from and against any and all claims, demands, liabilities, losses, and expenses of whatsoever kind or nature whatsoever, including, without limitation, attorneys' fees and expenses, which Seller may at any time incur or sustain by reason of or relating to Customer's resale of any Products or its incorporation or other use of any Products in or in relation to any other goods directly or indirectly sold, leased or otherwise transferred by Customer to any other person or entity. Such indemnity shall apply, without limitation, to claims, demands, etc., relating to personal injury and/or property damage predicated upon negligence, strict liability or other tort, warranty or other contract, or any other legally recognizable basis. This Paragraph B7 shall be construed, without limitation, to bar any action-over or other claim by Customer against Seller with respect to anything indemnified against hereunder, except to the extent specifically permitted by Paragraph B.

### C. Seller's Obligations

1. All sales are FOB point of shipment. Delivery dates are estimates only and Seller's failure to meet a scheduled delivery date shall not be a breach. Seller's sole obligation hereunder is to deliver the Products in good condition to the carrier at the point of shipment. The carrier shall be deemed to be Customer's agent. All claims for damage and shortages must be filed by Customer with the carrier. Unless Customer reasonably conveys specific instructions with respect to method of shipment, Seller will exercise its own discretion with respect thereto.

2. Seller shall not be liable to any person for any delay in delivery or for non-delivery, whether in whole or in part, caused by or otherwise materially related to the occurrence of any contingency beyond the reasonable control of Seller, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of terrorism, act of a public enemy, failure or delay in transportation, act of any government or agency or subdivision thereto, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, materials, capital or machinery, technical failure, or, in general, any other contingency whatsoever, whether similar or dissimilar to those enumerated herein, where Seller has exercised ordinary care in the prevention thereof. If any such contingency occurs, Seller may allocate production and deliveries among its customers as Seller deems appropriate. If any delay in delivery pardonable under this Paragraph C2 extends for longer than ninety (90) days beyond the due date for such delivery, Seller shall have the option to cancel such delivery upon written notice to Customer of such intention. This Paragraph C2 shall not in any way be deemed to limit or preclude Seller from asserting Sections 2-613 or 2-615 of the applicable version of the Uniform Commercial Code (the "UCC") or other rule of law as an excuse of Seller's delay or failure to perform pursuant to this Agreement.

3. All title to the Products, and the risk of loss thereof, passes to Customer upon Seller's delivery of the Products to the carrier at the shipping point, whereupon Seller shall have no further obligation concerning delivery. Seller has no obligation to retain or return any materials or documentation provided by Customer unless expressly agreed to by Seller in writing.

4. Seller reserves the option to deliver the Products in installments from time to time.

### D. Obligations of Customer

1. Customer shall pay the amount shown on each of Seller's invoices within the period specified thereon, or, if no amount and/or payment terms are stated thereon, Customer shall pay the amount stated on the face of Seller's acknowledgement form within thirty (30) days after the date of such invoice. Invoices may be issued from time to time based on partial completion. In the event Seller in good faith deems itself insecure for any reason with respect to Customer's ability to pay for ordered Products, Seller may demand payment in advance and may completely suspend its own performance and all preparation thereof until it receives such payment. In the event such payment is not received within the period of time designated by Seller in such demand, Seller may, at its election, treat this Agreement as repudiated by Customer. Seller shall not be obligated to request written assurance of performance, as provided in Section 2-609 of the UCC, prior to deeming itself insecure or treating the Agreement as repudiated under this paragraph. If the Products or any part thereof are in transit at the time Seller deems itself insecure, Customer authorizes Seller to direct the carrier or any bailee having possession of the Products not to deliver the Products to Customer, regardless of the quantity of the Products in the possession of the carrier or bailee, and to direct the carrier or bailee to redeliver the Products to Seller or any other person or entity, all at Customer's expense. Customer may be charged 1.5% interest per month or the highest rate permitted by law, whichever is less, on late payments. Customer agrees to reimburse Seller for any collection costs (including, without limitation collection agency and/or reasonable attorneys' fees and expenses) incurred to collect amounts not paid when due.

2. Unless otherwise specifically provided herein, the amount of any present or future sales, revenue, excise or other tax applicable to the Products or the manufacture or sale thereof, shall be added to the invoice price and shall be paid by Customer; or in lieu thereof, Customer shall provide Seller with a tax exemption certificate acceptable to the appropriate taxing authorities. Customer further agrees to pay any additional taxes arising from an ultimate use different from that indicated on the tax exemption certificate furnished to Seller which is considered taxable by such taxing authorities.

3. In the event Customer for any reason cancels all or part of any order or orders placed with Seller, or in the event Seller for cause cancels all or part of any order or orders, Customer shall be liable to Seller for termination charges, which shall include a price adjustment based upon the quantity actually delivered, all costs (whether direct or indirect) incurred or committed to with respect to this Agreement or any order, as the case may be, a reasonable allowance for prorated general expenses, and a reasonable allowance for anticipated profits. Such charges are in addition to any other remedies of Seller hereunder.

### E. Rights and Remedies

1. Seller shall have, without limitation, all of the remedies for any breach of this Agreement which are conferred by the UCC and all other available remedies it may otherwise have at law and in equity.

2. Customer's EXCLUSIVE REMEDIES for breach of this Agreement shall be: (i) in the event Customer rightfully rejects and properly returns the Products, or accepts non-conforming Products, repair or replacement (at Seller's exclusive option) of such rejected and returned or non-conforming Products, or, if such remedy fails of its essential purpose, or if Seller elects, refund of the purchase price paid by Customer for such Product in exchange for return of the Product; or (ii) in the event Seller repudiates or fails, whether in whole or in part, to deliver and such failure is not excused by Paragraph C2 or otherwise, cancellation of the undelivered or repudiated order and refund of whatever portion of the purchase price Customer has paid for such Products, subject to Paragraph D3 hereof.

3. CUSTOMER UNDERSTANDS AND AGREES THAT THE IMMEDIATELY PRECEDING PARAGRAPH CONSTITUTES A WAIVER OF ALL REMEDIES FOR SELLER'S BREACH OF THIS AGREEMENT EXCEPT THOSE SET FORTH OR REFERRED TO IN SUCH PARAGRAPH. SELLER SHALL IN NO EVENT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY DESCRIPTION WHATSOEVER.

### F. Government Contract Conditions

1. If the Products to be furnished under this Agreement are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number shall appear on Customer's purchase order, those clauses of the applicable U.S. Government procurement regulation which are mandatory provisions, required by Federal Statute to be included in U.S. Government subcontracts shall be incorporated herein by reference.

2. Except as otherwise required by federal statute, if any audit or examination of Seller's books and records is applicable to this Agreement whether relating to performance or termination of the work, or both, it shall be made only by the Government audit agency having procurement audit authority over Seller's plant.

3. Seller shall not have any obligation to indemnify Customer for any costs, damages or expenses arising out of or related to this Agreement, its performance or any article sold or work performed hereunder.

### G. General Provisions

1. Seller agrees to defend at its expense any suits against Customer or its customers based upon a claim that any Product furnished by Seller under this Agreement infringes any United States letters patent, and to pay costs and damages finally awarded in any such suit; provided that Seller is notified promptly in writing of the suit and at Seller's request and at its expense is allowed to conduct and control the defense of such suit. Customer shall be required to give Seller reasonable assistance in the defense of the suit, at Seller's expense. This indemnity does not extend to any suit or proceeding as to which prompt written notice has not been given or any suit or proceeding which is based upon a patent claim covering a combination in which any Product furnished hereunder is merely an element of the claim combined with other devices or elements, nor does it extend to any Product furnished under this Agreement which is in whole or in part of Customer's design, formula, or specification. If the use or sale of a Product covered by Seller's defense obligation is enjoined as a result of such suit, Seller, at no expense to Customer, shall obtain for Customer and its customers the right to use and sell said Product, shall substitute an equivalent product and extend this patent indemnity thereto, or refund amounts paid for the infringing Product in exchange for its return. The foregoing states the entire liability of Seller for patent infringement by said Products. The sale of the Products covered by this Agreement does not convey any license, by implication estoppel, or otherwise, under any proprietary or patent rights of Seller covering combinations of these Products with other devices or elements. Further, and not in limitation of the foregoing, no license, by implication, estoppel, or otherwise is extended under any proprietary or patent rights of Seller as to any units of the Products other than those furnished to Customer by Seller in fulfillment of the terms and conditions of this Agreement. Customer agrees to indemnify Seller for any claims, actions, damages and liability arising in connection with the Product except as expressly set forth in this Agreement.

2. This Agreement constitutes the complete understanding between Seller and Customer, and may be modified, enlarged or rescinded only by a writing signed by the party to be charged thereby. No waiver by either party of its rights or remedies under this Agreement shall be effective unless in a writing signed by the party to be charged thereby, and no such waiver shall operate as a waiver of such rights or remedies as to any other circumstances or transactions than those set forth in such waiver, or, if not set forth therein, to which such waiver specifically relates.

3. Customer shall not assign any right, duty or interest in this Agreement without the prior written consent of Seller and any attempted assignment shall be wholly void and totally ineffective for all purposes.

4. Any action by Customer for breach of this Agreement must be commenced within 13 months after the cause of action has accrued.

5. All notices required or permitted hereunder shall be in writing and, if sent by mail, shall be made by first class mail (correct postage paid), or, if not by mail, shall be actually delivered. If notice is given by mail, such notice shall be deemed given upon deposit in the US mail or, if otherwise delivered, upon personal receipt.

6. This Agreement shall in all respects be governed by and interpreted in accordance with the laws of the State of Minnesota, without regard to conflicts of laws principles. All claims and disputes arising out of this Agreement shall be resolved exclusively in the County of Hennepin, State of Minnesota and Customer consents to such exclusive jurisdiction.