



TERMS AND CONDITIONS OF SALE

I. Offer and Contract

No offer or contract shall be binding upon WITTENSTEIN Inc. (The "Seller") except by issuance of the Seller's printed acknowledgement form. Acceptance by Seller of buyer's (the "Buyer") order is expressly made conditional on assent of these terms and conditions (the "Terms and Conditions"), either by written acknowledgement or by conduct of Buyer that recognizes the existence of a contract (the "Contract") with respect to the products (the "Products") and services described on Seller's acknowledgement. No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing; failure of Seller to object to conditions contained in any other writing or other communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor acceptance of any such other provisions. These Terms and Conditions also serve as notice of Seller's objection to and rejection of any terms and conditions of purchase or sale included in Buyer's order or other writing that are different from or additional to these Terms and Conditions. Paragraph headings herein are for convenience only and are not to be considered in interpreting any of the provisions herein.

II. Delivery and Risk of Loss and Licenses

1. Delivery of the Products to a common carrier at Seller's principal place of business or at any other loading point, if so agreed to by the parties in writing, shall constitute delivery to Buyer ("Delivery"), and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall upon Delivery, shift to Buyer. If Buyer is responsible for any shipment delay, Seller's written notification to Buyer that the Products ordered hereunder are ready for shipping shall constitute Delivery to Buyer, and all further risk of loss or damage as well as all costs for handling, transportation and storage shall be borne by Buyer.
2. Seller shall not be liable for any damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation or inability to obtain necessary labor, materials or manufacturing facilities. It is Buyer's sole responsibility to pay for and to obtain any governmental or other licenses, certificates or documentation as may be required.

III. Suspension and Cancellation

1. If Buyer shall omit delivery instructions or instructions concerning work commencement or shall fail to accept Delivery or allow work to be done or shall fail to make any payment when it becomes due or shall commit any other breach of contract, or if Buyer shall enter into any composition or arrangement with its creditors or if any distress or execution is levied upon any goods or property of Buyer, or if Buyer shall commit any act of bankruptcy or, if a corporation, a receiver shall be appointed of the whole or any part of its undertaking or assets or if Buyer shall pass a resolution for winding up or if a Court shall make an order to that effect or if Buyer shall have a receiving order made against it, then at Seller's sole option Seller may defer or cancel any further deliveries or services and treat the Contract or any other contract between Seller and Buyer as terminated, but such termination shall be without prejudice to Seller's right to any unpaid price for goods or materials delivered or cost of work done under the Contract and to damages for loss suffered in consequence of such termination.
2. If Seller shall be prevented from delivering goods or materials or performing work in accordance with the Contract as a result of delay or default on the part of Buyer or any other reason beyond Seller's reasonable control Seller shall be entitled to reschedule the Delivery or performance date or dates as it shall reasonably require.
3. Buyer may not cancel or terminate any orders accepted by Seller in accordance with Article I hereof, except with Seller's prior written consent and then only upon such terms as shall be acceptable to Seller. Authorized return shipments must be returned in good order and condition to Seller's principal place of business, unless otherwise specified by Seller, must be accompanied by a packaging slip, and must have transportation and insurance charges prepaid. Buyer agrees to pay Seller a restocking fee of thirty percent (30%) of the original purchase price for any return shipments authorized by Seller. Buyer may, in its sole discretion, either request a credit for, or a refund of the purchase price, less any amount due to Seller for the aforementioned restocking fee, for any authorized return shipments, provided that any goods are returned to Seller in good order and resellable condition as determined by Seller in its sole discretion.

IV. Products

Seller reserves the right to revise and discontinue Products at any time and without prior notice. Seller will ship Products that have the same or similar functionality and performance of the Products ordered, but changes, including but not limited to changes with regard to construction, measurements and weight, due to technical requirements between what is shipped and what is described in specification sheets, catalogs, or the like, are possible.

V. Prices and Payment

1. If the Products are shipped from Seller's principal place of business or from any other location within the U.S.A., the quoted price is F.O.B. Seller's principal place of business or the location of shipment, whichever is applicable unless otherwise agreed upon in writing. If Products are shipped from outside the U.S.A., the quoted price is F.O.B., port of dispatch, unless otherwise agreed upon in writing.
2. The quoted price of the Products does not include duty, tariffs, taxes, freight costs, palletization or similar charges which shall be borne by Buyer, unless otherwise agreed upon in writing. All prices are subject to change prior to Seller's issuance of an acceptance form. For all prices, products, and services Seller reserves the right to make adjustments due to changing market conditions, product discontinuation, or other extenuating circumstances.
3. Buyer shall be responsible for any palletization, insurance and shipping charges of domestic shipments of the Products and Buyer shall reimburse Seller for any such charges paid by Seller, unless otherwise agreed upon in writing.
4. Payment for all orders must be received by Seller within thirty (30) days of the date of the invoice.
5. Overdue amounts shall bear a delinquency

charge of interest at eighteen percent (18%) per annum or the maximum rate permitted by law. The interest rate is subject to change at Seller's discretion.

VI. Taxes and Other Charges

Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee or charge of any nature whatsoever imposed by any governmental authority, domestic or foreign, on or measured by the transaction between Seller and Buyer shall be paid by Buyer in addition to the price quoted or invoiced. In the event that Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore unless otherwise agreed upon in writing.

VII. Limited Warranties

1. Seller warrants that the Products, including such parts manufactured by others as are integral therewith, shall be free from defects in material and workmanship for a period of twelve (12) months from the date of shipment. Seller's obligations under the aforesaid warranty shall be repairing or replacing any part or parts of the Products, which if properly installed, used and maintained, prove defective in material and workmanship. Any freight charges and travelling expenses of Seller's service personnel shall be the responsibility of Buyer. Such repair or replacement shall be Seller's sole obligation and Buyer's sole remedy hereunder and shall be conditioned upon a) Seller's receipt of written notice of any alleged defect within thirty (30) days after its discovery, and b) at Seller's option, return of such defective Products or part thereof freight prepaid to Seller's principal place of business. Any Product repaired or replaced pursuant to this warranty will be warranted for the remain of the original warranty period
2. Seller's obligations under paragraph 1. of this provision shall not apply to any component or part of the Products sold hereunder which (1) which is consumed by operation above rated capacity or excessive use, or (2) which has been damaged due to negligent or faulty use, alteration, maintenance, storage, repair, operation, or handling by Buyer, or (3) which is installed or operated in disregard of the operating manual of the Products.
3. Any description or representation of the Products whether in writing or made orally by Seller or Seller's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, or similar materials used in connection with Buyer's order are for the sole purpose of identifying the Products and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the Products shall not be construed as an express warranty unless confirmed to be such in writing by Seller. Performance figures and specifications by Seller are estimates only and are not warranties, unless expressly stated otherwise.
4. THE WARRANTY EXPRESSED HEREIN SHALL BE IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART.

VIII. Warranty Claims, Inspection, and Waiver of Defects

1. Written notice of any alleged covered defect must be presented to Seller within thirty (30) days after its discovery, and Seller must be allowed to inspect the Products while they are in the alleged defective condition. Use of the Products must be suspended until written clearance is issued by Seller for continued use, provided that Seller, upon receipt of written notice of an alleged defect, proceeds without unreasonable delay to remedy any defect coming within the warranty.
2. Buyer shall inspect all Products immediately upon their arrival and shall give written notice to Seller within thirty (30) days after receipt of the Products of any claim that the Products do not conform to the terms of the Contract. Seller shall have reasonable access to inspect any allegedly non-conforming Products.
3. Buyer waives any right to assert any claim against Seller arising from any non-conformity of the Products sold hereunder which would have been observable on reasonable inspection or testing within thirty (30) days after Delivery

IX. Limitation of Liability

1. Except as otherwise agreed in writing, Seller's liability with respect to the Products shall be limited to the warranty provided in Articles VII. And VIII. Hereof, and shall be limited to the Contract price.
2. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES OF LAW, WITH RESPECT TO THE PRODUCTS SOLD OR SERVICE RENDERED BY SELLER, OR UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS, DAMAGE OR EXPENSE OF ANY KIND, INCLUDING LOSS OF PROFITS, ARISING IN CONNECTION WITH THE CONTRACT OR WITH THE USE OR LIABILITY TO USE SELLER'S PRODUCTS FURNISHED UNDER THIS CONTRACT. SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY IS LIMITED TO EITHER (1) REPAIR OR REPLACEMENT OF DEFECTIVE PARTS OR PRODUCTS, AND/OR (2) AT SELLER'S OPTION, RETURN OF THE PRODUCTS TO SELLER AND REFUND OF PURCHASE PRICE.
3. Without limiting the generality of the foregoing Seller specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of the Products or any associated equipment, cost of capital, cost of repairs to the Products subject to Seller's warranty performed by persons other than Seller without Seller's prior written consent, cost of substitute Products, facilities or services, down-time or slow-down costs or for any other types of economic loss, and for claims of Buyer's customers or any third party for any such damages. Seller disclaims any liability for any claim, whether in contract or in tort, which arose more than two (2) years prior to the initiation of arbitration or litigation by Buyer against Seller.

X. Buyer Indemnity

To the fullest extent permitted by law, Buyer will indemnify, defend and hold Seller, including Seller's partners, officers, directors, agents, employees, subsidiaries, affiliates, parents, successors and assigns, harmless from any claim, demand, cause of action, suits, debt or liability (including reasonable attorney's fees, expenses and court costs) arising from: (a) your modification(s) of and/or addition(s) to Product(s); (b) your breach of this Contract, (c) your omissions, misrepresentations or negligence, and (d) the Products sold by you damage a third party to the extent such claim is based on (i) your modification of and/or addition to the Products, misuse or abuse of the Products, negligence or breach of any provision in this Contract; (ii) your failure to abide by all applicable laws, rules, regulations and orders that affect the Products; (iii) your omission, misrepresentation or negligence, (iv) your negligence, or (v) you or your end-users cause intentional harm to any person or property. Indemnified claims, debts and liabilities include the amount of any discount in price or concession that is made available by Seller to Buyer

XI. Security Interest

BUYER HEREBY GRANTS TO SELLER A SECURITY INTEREST IN THE PRODUCTS SOLD HEREUNDER TO SECURE PAYMENT OF THE PURCHASE PRICE OF SUCH PRODUCTS AND AGREES, AND APPOINTS SELLER ITS AGENT, TO TAKE ALL SUCH ACTION AND TO EXECUTE ALL SUCH DOCUMENTS AND INSTRUMENTS AS MAY BE NECESSARY OR REASONABLY REQUESTED BY SELLER TO PERFECT AND CONTINUE SELLER'S SECURITY INTEREST HEREUNDER.

XII. Proprietary Information/Confidentiality

1. All drawings, diagrams, specifications, and other information furnished by Seller is proprietary to Seller and confidential. Such information has been developed at substantial expense and contains trade secrets that are the exclusive property of Seller. Buyer may not reproduce or distribute such information except to such of Buyer's employees who are required to have such information in order to perform their duties and agree, in writing, to keep such information confidential. All such information supplied by Seller except for information that (a) was generally available to the Buyer from public or published sources, provided publication did not take place in violation of these Terms and Conditions or through fault or omission of the Buyer, (b) was lawfully obtained from a source under no obligation of confidentiality, directly or indirectly, to either the Buyer or the Seller, or (c) was disclosed to the general public with the written approval of the Seller shall be received in confidence, and Buyer shall exercise due diligence and reasonable care to hold such information in confidence.
2. This section shall survive the termination or expiration of these Terms and Conditions.

XIII. Export Control

Buyer understands that products and technical data provided by the Seller may be subject to restrictions concerning the export of products or technical information from the United States, or the reexport from other countries, that may be imposed on the Parties from time to time. Each Party agrees that it will not export, reexport, directly or indirectly, (nor knowingly facilitate an export or reexport) any products or technical information acquired from the other Party under this Agreement, or any products using such technical information, to a location or in a manner that at the time of export or reexport requires an export license or other governmental approval, without first obtaining the written consent to do so from the appropriate agency or other governmental entity in accordance with Applicable Law.

XIV. Remedies for Breach

Buyer understands and agrees that the Seller will not have adequate remedy at law for the material breach or threatened breach by Buyer, or its, agents, employees, representatives or subcontractors, of any one or more of the covenants set forth in Article XI of these Terms and Conditions. Buyer further agrees that in the event of any such material breach or threatened breach, the Seller may, in addition to (but not in substitution for) the other remedies which may be available to it either at law or in equity, file suit in equity to enjoin the Buyer from the breach of or threatened breach of said covenants.

1. XV. **Severability** If at any time any one or more of the provisions of these Terms and Conditions become invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions of these Terms and Conditions shall not be in any way impaired.

XVI. Arbitration

All disputes arising under this Contract shall be settled by final and binding arbitration in the City of Chicago, Illinois in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties may agree on the selection of a single arbitrator, but in event they cannot agree, each party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. The award by the arbitrator or arbitrators shall be final and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

XVII. Governing Law

THIS AGREEMENT AND ANY SALES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ITS CONFLICTS OF LAW RULES.

XVIII. Complete Agreement

These Terms and Conditions of Sale and Seller's acceptance form constitute the complete and exclusive statement of the agreement between the parties hereto. It supersedes all prior written and oral statements, including prior representations, statements, conditions, or warranties.