

TERMS AND CONDITIONS OF SALE

The following terms and conditions shall be deemed a part of every order quoted, accepted or acknowledged by Semler Industries Inc. ("Seller"):

1. **DEFINITIONS:** As used herein, the term "Buyer" shall mean the purchaser of the goods identified on the front hereof or attachments hereto, and all others liable for the purchase price; the term "Goods" shall mean all machinery, equipment, accessories, parts and any labor, installation, work and services identified or referred to on the face hereof and all attachments, exhibits, and amendments, and in these terms and conditions; the term "Order" shall mean the terms and conditions described in Seller's Quotation or Acknowledgement, all attachments, exhibits, and amendments, and these Terms and Conditions of Sale.
2. **QUOTATIONS:** In the event of any inconsistency between the terms of Seller's Quotation and Acknowledgement, the terms of Seller's Acknowledgement shall control. The terms of Seller's Quotation may be changed at any time by oral or written notice sent or communicated to Buyer prior to receipt of Buyer's acceptance. An acceptance of Seller's Quotation received more than thirty days after the quotation date may, at Seller's option, be rejected.
3. **ACCEPTANCE:** SELLER'S ACCEPTANCE OF BUYER'S PURCHASE ORDER RELATING TO THE GOODS IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF THE TERMS AND CONDITIONS SET FORTH IN THIS ORDER, WHICH ARE IN LIEU OF ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION PERTAINING TO BUYER'S ORDER OR THE GOODS, WHICH ADDITIONAL OR DIFFERENT TERMS SHALL BE DEEMED INEFFECTIVE AND REJECTED. BUYER ASSENTS TO THE TERMS AND CONDITIONS OF THIS ORDER (WHICH INCLUDE THESE TERMS AND CONDITIONS) BY: PLACING AN ORDER BASED UPON OR OTHERWISE ACCEPTING SELLER'S QUOTATION; RECEIVING, AFTER PLACING AN ORDER, SELLER'S ACKNOWLEDGEMENT WITHOUT PROMPTLY OBJECTING TO IT IN WRITING; INSTRUCTING OR REQUESTING SELLER TO BEGIN WORK ON OR TO SHIP ANY OF THE GOODS AFTER RECEIPT OF SELLER'S QUOTATION OR ACKNOWLEDGMENT; OR ACCEPTING OR PAYING FOR ALL OR ANY PART OF THE GOODS.
4. **CANCELLATION; RETURNS:** This order is not subject to cancellation by Buyer without the written consent of an authorized officer of Seller. No Goods may be returned to Seller for credit, repair or replacement without Seller's written permission.
5. **PAYMENT:** If any work or shipment of the Goods is delayed by or at the request of Buyer, Seller may demand payment based on the purchase price and the percentage of completion as determined by Seller and payment covering Seller's increased costs as a result of the delays. Any payment of the purchase price not paid by Buyer when due shall be assessed a late payment charge of 1 and 1/2% per month of the overdue payment from its due date until paid or the highest rate late payment charge permitted by applicable law, whichever is lower.
6. **TAXES:** Prices quoted do not include taxes, license fees, or other assessments with respect to the Goods. Buyer shall pay any and all use, sales, privilege, or other taxes or license fees or assessments imposed by foreign, federal, state or local governments.
7. **SHIPMENT:** All shipments are F.O.B. Seller's plant or other point of manufacture, and at the risk of Buyer after delivery to the carrier. Unless otherwise indicated in this Order, selection of the means of transportation for shipment of the Goods shall be at Seller's sole discretion. All packing, crating, storage, shipping, insurance and other incidental costs with respect to the Goods shall be for the account of or paid directly by Buyer. Buyer's claims for damage to the Goods in transit must be settled with or filed against the carrier and not Seller. All claims for shortages or other nonconformities of shipments must be reported to Seller in writing within ten days after receipt of each shipment of the Goods.
8. **DELAYS:** Any delivery date for the Goods acknowledged by Seller is a desired and not a promised date. Seller will make all reasonable efforts to meet the delivery schedule set forth in this Order but shall not be liable for failure to do so. Seller shall not be liable for any damage to or loss of the Goods or any delay in or failure to deliver, service, repair or replace the Goods arising from shortage of raw materials, failure of suppliers to make timely delivery, labor difficulties of any kind, fire, windstorm, flood, theft, war, embargoes, governmental acts or rulings, loss or damage or delays in carriage, acts of God, or any other circumstances reasonably beyond Seller's control. Goods stored at the request of Buyer or because Buyer refuses or delays shipment shall be at the risk and expense of Buyer.
9. **INSTALLATION:** Unless otherwise stated in this Order, the Goods are sold for installation and servicing by Buyer. Buyer will supply all necessary labor, material, and permits to properly install the Goods in accordance with Seller's specific instructions. Seller will not be responsible for moving any machinery, for pipe fitting, electrical work, or any other labor. Seller recommends that it or one of its authorized representatives supervise Buyer's installation and start-up of the Goods. If Buyer requests Seller's supervision of installation and start-up, Buyer shall promptly pay Seller for such services at Seller's then current rates. If Buyer installs and starts up the Goods without Seller's supervision, Buyer shall have the sole responsibility for all installation procedures. Compliance with any and all local, state and federal requirements is the responsibility of Buyer.
10. **WARRANTY:** For a period of one year from date of shipment in the case of new Goods, or 30 days from the date of return for Goods serviced or repaired or parts replaced by Seller, Seller will repair or replace any part of the Goods manufactured, repaired, serviced, or replaced by it which it determines to have been defective in material or workmanship under normal use and service. Prior to repair or replacement, Seller shall have the right to examine the part claimed defective at its option either at Buyer's plant or at Seller's plant in Franklin Park, Illinois, with transportation charges prepaid. Buyer shall be responsible for costs of removal, transportation, and reinstallation of warranted parts. For this warranty to apply, Buyer must give Seller written notice of any warranted defect within fifteen days after its discovery and, in any event, not later than three hundred eighty (380) days from the date of shipment of new Goods by Seller or forty-five (45) days from the date of return of Goods or parts serviced, repaired, or replaced by Seller. Any warranted part which has been the subject of warranty service by Seller carries Seller's warranty only until either the expiration of the original warranty period or thirty (30) days from the date the part was replaced or other warranty service performed on it, whichever is later. This warranty shall not apply to any of the Goods or parts thereof not manufactured by Seller, repaired or altered by anyone but Seller, operated or installed contrary to instructions, or subject to misuse, negligence, or accident. The only warranties of the Goods or parts thereof not manufactured by Seller are those of the manufacturer, but Seller will cooperate with Buyer, at Buyer's expense, in Buyer's exercise of rights under any applicable manufacturer's warranty. THE WARRANTIES AND REMEDIES PRINTED ABOVE ARE THE ONLY WARRANTIES AND REMEDIES APPLICABLE TO THE ORDER OR THE GOODS. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED.
11. **LIMITATION OF LIABILITY:** SELLER SHALL NOT BE LIABLE WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE, OR OTHERWISE, FOR CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING COSTS OF REMOVAL, REINSTALLATION OR SHIPMENT, DOWNTIME, LOST PROFITS, OR LOST SALES. UNDER NO CIRCUMSTANCE SHALL SELLER'S LIABILITY OR BUYER'S REMEDY FOR DAMAGES AGAINST SELLER EXCEED THE AMOUNT OF THE PURCHASE PRICE OF SELLER'S GOODS DESCRIBED ON THIS ORDER. IN THE EVENT OF ANY ACCIDENT, OCCURRENCE OR WARRANTY CLAIM CONCERNING THE GOODS, BUYER MUST NOTIFY SELLER PROMPTLY IN WRITING AND PERMIT SELLER TO PRESERVE EVIDENCE, TEST THE GOODS, AND INVESTIGATE THE CAUSE THEREOF. BUYER SHALL GIVE SELLER PROMPT AND CONTINUING ACCESS TO THE GOODS FOR INSPECTION AND TESTING, TO THE ENVIRONMENT AND LOCATION OF THE GOODS, AND SHALL COOPERATE WITH SELLER BY PROMPTLY FURNISHING ALL RELEVANT INFORMATION, DATA, TEST RESULTS, WITNESSES, AND OTHER INFORMATION RELATIVE TO ANY OCCURRENCE, ACCIDENT OR CLAIMED DEFECT IN THE GOODS. FAILURE OF BUYER TO GIVE PROMPT NOTICE AS REQUIRED HEREIN OR TO COOPERATE IN THE INVESTIGATION OF AN OCCURRENCE, CLAIM OR ACCIDENT CONCERNING THE GOODS, SHALL BAR BUYER FROM ANY REMEDY AGAINST SELLER. IN NO EVENT SHALL ANY CAUSE OF ACTION ARISING OUT OF THE ORDER OR CONCERNING THE GOODS THEMSELVES BE BROUGHT BY BUYER MORE THAN EIGHTEEN MONTHS AFTER THE DATE OF SHIPMENT OF THE GOODS. BUYER'S LIMITED WARRANTY OF REPAIR OR REPLACEMENT OR RETURN OF THE PURCHASE PRICE ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. IN THE EVENT THAT CONSEQUENTIAL AND INCIDENTAL DAMAGES CONSIST OF PERSONAL INJURY AND/OR PHYSICAL PROPERTY DAMAGES AS WELL AS DAMAGES OF A PECUNIARY NATURE, THIS DISCLAIMER SHALL APPLY TO ALL THREE TYPES OF DAMAGES TO THE FULLEST EXTENT PERMITTED BY LAW. IF, HOWEVER, THE PERSONAL INJURY AND/OR PHYSICAL PROPERTY DAMAGES CANNOT BE DISCLAIMED OR LIMITED AS PROVIDED HEREIN, THEN IN ANY SUCH EVENT THE DISCLAIMER OF PECUNIARY OR ECONOMIC CONSEQUENTIAL AND INCIDENTAL DAMAGES SHALL NEVERTHELESS BE FULLY ENFORCEABLE. SELLER DISCLAIMS ALL RESPONSIBILITIES FOR AND BUYER AGREES TO INDEMNIFY SELLER FROM ANY CLAIMS, DAMAGES, OR EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES) RELATING TO ENVIRONMENTAL DAMAGE, POLLUTION, WASTE OR CLEAN-UPS ARISING OUT OF OR RELATING TO THE GOODS OR THE MAINTENANCE THEREOF OR BUYER'S FAILURE TO COMPLY WITH ALL APPLICABLE ENVIRONMENTAL OR OTHER LAWS.
12. **SECURITY INTEREST; DEFAULT:** Buyer grants and Seller retains a purchase money security interest in Goods until paid in full, notwithstanding their delivery to Buyer. Buyer agrees to execute upon request financing statements in favor of Seller covering the Goods. If any payment for the Goods is not paid when due Seller may declare all payments immediately due and, in addition to all other rights and remedies accorded to it, enter Buyer's premises and repossesses and sell the Goods on or off Buyer's premises. Buyer shall be liable for Seller's reasonable attorneys' fees and other costs incurred in the collection of amounts owed by Buyer or in enforcing this security interest.
13. **GOODS SPECIFIED BY BUYER:** If the Goods are manufactured in accordance with Buyer's designs, blueprints, drawings or specifications, (i) Buyer shall indemnify and hold Seller harmless from all liability, damages, and costs, including attorneys' fees, arising out of patent infringement claims, and (ii) Buyer agrees to accept under-runs and over-runs on each of the Goods not exceeding 10% of quantities ordered, with billings adjusted accordingly.
14. **APPLICABLE LAWS; ARBITRATION:** The Order is made in and it and all matters pertaining to the Goods shall be governed by the laws of the State of Illinois. Any controversy or claim arising out of this Order or its breach or pertaining to the Goods, except any claim or action by Seller to collect amounts owing to it or to enforce its security interest, shall be settled by arbitration in Chicago, Illinois, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.
15. **INVALID TERM:** The invalidity of any term contained in the Order shall not affect any other of its terms.
16. **NONWAIVER:** Seller's failure to enforce or declare a default or breach with respect to any particular term or condition of the Order shall not be considered a waiver of Seller's right to enforce or be protected by any other term or condition or, on a subsequent occasion, with respect to that particular term or condition.
17. **ALTERATION OF TERMS AND PAROLE EVIDENCE:** The terms and conditions of the Order are intended by the parties as a final expression and a complete and exclusive statement of the agreement of the parties. None of the terms and conditions contained in the Order may be modified except by a written instrument signed by an authorized officer of Seller delivered to Buyer.