



## SALES ORDER ACKNOWLEDGMENT

### TERMS AND CONDITIONS OF SALE

#### ITALCER USA, INC.

1. Applicable Law and Jurisdiction. These general terms and conditions apply to all proposals and quotations submitted by Italcercer USA, Inc. ("Seller"), to all purchase orders received by Seller, and to all goods and services sold by Seller, except as otherwise provided in the quotation or other documents issued by Seller. "Buyer" includes the person to whom a quotation is given and, at Seller's election, the person issuing a purchase order. This sale or any sale resulting herefrom consists only of these terms and conditions and those in other documents signed by Seller which are referred to herein or are attached hereto (all of which constitute the "Agreement"). The Agreement shall be governed, construed and interpreted under the law of the State of Illinois, including those provisions of the Uniform Commercial Code ("UCC") as adopted by Illinois, except as provided herein. Any services to be provided are ancillary to and part of a sale of goods, and the UCC and the Agreement exclusively shall apply to all goods and services to be provided hereunder ("Goods"). The Circuit Court of Cook County, Illinois shall have jurisdiction over the parties and shall be the exclusive venue for resolving any disputes arising between the parties, and subject to federal jurisdiction, in which case the venue shall be the federal District Court of Northern Illinois. Any declaration of unenforceability of a provision shall not affect the enforceability of the other provisions.

2. Formation, Integration and Modification.

A. The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of all or any portion of a quotation in accordance with the quotation's terms, or receipt of the Goods by Buyer, will constitute a binding contract under the terms of the Agreement. The contract is subject to Seller's revocation without liability until it is approved by Seller. Notice of such approval may be furnished to Buyer in the form of an acknowledgment, shipment, or other form of express approval.

B. Orders submitted on Buyer's purchase order or other form (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with these Terms and Conditions) may be accepted or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing), notice is hereby given that Seller objects to any such terms in Buyer's purchase order. Seller shall not be deemed to have

in any way enlarged or modified its liabilities or obligations by filling such orders or by failing to further object to Buyer's terms or conditions.

C. The Agreement is a final, complete and exclusive statement of the terms of the agreement of the parties. Seller is willing to negotiate written changes to these terms and conditions, but an adjustment in the price of the Goods may be required. No modifications, limitations, waivers, or discharge of the Agreement or any of its terms shall bind Seller unless in writing and signed by Seller's authorized employee. No modifications, limitations, waivers or discharge of any provision of the Agreement agreed to by Seller shall affect Buyer's liabilities to Seller accrued prior thereto. Seller may correct unilaterally any mathematical and typographical errors in the Agreement. A course of performance shall not constitute a modification or a waiver by Seller of any right.

D. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be for the benefit of Seller's agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to other parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

E. Buyer and Seller acknowledge they are merchants in respect to the Goods and that the parties have had an opportunity to review the Agreement; and all provisions of the Agreement are reasonable.

3. Authority of Seller's Agents. No agent, employee or representative of Seller has any authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement.

4. Prices and Payment.

A. Prices contained in Seller's published price lists are subject to change without notice. Prices contained in individual written quotations or proposals are firm only for a period of sixty (60) days from the date of the quotation. Beyond the sixty (60) day period the prices are subject to change and Buyer should inquire of Seller as to their validity and request a written confirmation or change. Prices do not include taxes and Buyer shall pay all applicable sales or other taxes levied with respect to Goods and the Agreement, unless exempt therefrom. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Seller shall have the right at any time to bill Buyer separately for any such items Seller may be called upon to pay. Unless otherwise specified by Seller, all prices are Ex Works Seller's factory or warehouse from which shipment is or was made.

B. Prices reflect expected inflation and are firm for Goods to be delivered within 12 months from receipt of an order. For those Goods to be delivered after 12 months from receipt of an order, increases in prices may be made by Seller based on changes in the Bureau of Labor's National Wholesale Price Index for Commodity Group Industrial Commodities. The Index changes utilized for calculation will be those between the 12th month from receipt of order and the month preceding actual delivery reduced by any projected inflation specifically listed in the quotation upon which the order is based. If any delay in delivery beyond the date of delivery scheduled at the time of entry of the order is requested or otherwise caused by Buyer, Seller may accept the delay and adjust

the purchase price under the provisions of this subsection using the change between the month delivery was scheduled and the month preceding actual delivery.

C. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design and manufacturing required by changes requested by Buyer after the date of any quotations.

D. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller and will be due net thirty (30) days after the date of shipment.

E. Seller may elect to deliver the goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale and Buyer shall timely pay the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future shall be considered an installment delivery. A failure to pay for an installment within the time for payment is an anticipatory material breach of other installments by Buyer.

F. Each item of ancillary equipment included in the Goods and priced separately shall be considered a separate sale and Buyer shall timely pay the price pursuant to the payment terms of the Agreement for each such item which is delivered.

G. All amounts not paid to Seller when due shall incur a carrying charge of 1.5% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.

5. Delivery.

A. Goods quoted to Buyer are subject to prior sale or other commitment. Shipping dates are estimates, based on Seller's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt of Buyer's purchase order. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order and of all drawings, information and approvals necessary to provide the Goods and, when applicable, to Seller's receipt from Buyer of an acceptable confirmed irrevocable letter of credit.

B. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation.

6. Delay of Shipment or Performance Excused for Various Reasons.

A. All tryout, delivery, and other dates for Seller's performance are estimates only. In addition, Seller shall not be in default because of its delay or failure to deliver or perform resulting in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order, or (ii) the lack of usual means or transportation, fires, floods, explosions, strikes or any other accidents or contingencies, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery or performance, or (iii) delays by Buyer in inspecting, testing and approval, in furnishing requested specifications, materials, or information, in making payments, or otherwise. In the event that one or more deliveries hereunder is suspended or delayed by reason of any one or more of such occurrences for a period of sixty (60) days, Seller

may, at its option, terminate the Agreement or waive such occurrences and establish a new delivery schedule.

B. If shipment of any item is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the item at the place of manufacture at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for an item shall be due and payable thirty (30) days after Buyer is notified that the item is ready for shipment. If Seller is unwilling to accommodate Buyer by holding such item, Buyer agrees to accept shipment immediately. Except as otherwise provided in the Agreement, Seller shall not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If such charges are specifically included in the price, any increase in rates becoming effective after the date the price is quoted to Buyer shall be added to the price.

C. Whenever Seller's supply of Goods, materials or means of production is insufficient to meet the estimated delivery schedule or in the event of any occurrence described in subsections A and B, Seller, in its sole discretion, may allocate its supply to its own use or other orders.

D. This section shall be effective even as to events described which exist on the date of a quotation or of contract formation.

#### 7. Inspection, Testing and Rejection.

A. Seller's standard test procedures conducted by Seller's representative in Buyer's facilities, at the place of manufacture, or other location chosen by Seller shall be the criteria for acceptance of the Goods, unless other conditions have been specified in the Agreement for specific acceptance procedures or test. On request Seller will quote to Buyer additional charges required to conduct any additional acceptance procedures requested by Buyer.

B. All drawings, specifications, technical documentation, samples, prototypes and Goods shall be deemed accepted by Buyer if Buyer does not provide a rejection within seven (7) days of receipt or other reasonable time established by Seller. Buyer shall have seven (7) days after receipt of the item to inspect and either accept or reject it. If it is rejected, notice must be given to Seller so that it will arrive no later than fourteen (14) days after receipt of the item by Buyer. Failure to so act shall constitute an irrevocable acceptance by Buyer of the item. No attempted revocation of acceptance shall be effective. Any rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. All defects and non-conformities which are not so specified are waived. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer shall return them to Seller, express, collect, within three days after such request. A failure to so return shall constitute an irrevocable acceptance.

C. Upon notification by Seller that the Goods are ready for approval prior to shipment, Buyer may provide at the location chosen by Seller, at its own expense, one or more qualified and authorized employees to inspect the Goods, check them for general compliance with the Agreement, and authorize shipment. In the event said inspection is not performed by Buyer within 5 days, then Seller may, in its own discretion, determine

that Buyer has waived the right of approval prior to shipment and arrange for shipment. Post-shipment discretionary changes requested by Buyer will be Buyer's responsibility and expense.

D. Any claim by Buyer for shortages must be in writing with satisfactory evidence delivered to Seller within seven (7) days of delivery.

E. Any expense incurred by Buyer in the inspection of Goods shall be paid by Buyer, whether or not the Goods have been rejected as defective or nonconforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

8. Express warranties.

A. Seller warrants to Buyer only, that Goods manufactured or distributed by Seller shall be free from defects in materials and workmanship for twelve (12) months from the date of installation or use by Buyer, or fifteen (15) months from the date of delivery to Buyer, whichever date occurs first, and subject to the disclaimers and limitations in the Agreement. Because Goods may be subject to a wide variety of use, installation, maintenance and cleaning the warranty against defects is only against such defects and not against any other failures such as, but not limited to those due to wear and tear.

B. Seller warrants to Buyer that the Goods will be basically as described in the Agreement (subject to the limitations stated herein) and Seller's published and internal standards: however, Seller retains the right to modify or change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, such is advisable and non-material. Seller may, in its discretion also rely on any generally accepted industry standards.

C. Seller's warranties shall apply only if the Goods: have been installed and used in conformity with instructions furnished by Seller, if any; have been subjected to normal use for the purpose for which Goods were designed; have not been subjected to misuse, negligence, or accident, and have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods.

9. Disclaimer and Limitation of Express Warranties. There are no express warranties other than those contained herein, and any representations as to performance and other matters except as contained herein were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties. Seller does not warrant any Goods not manufactured by it, but Seller shall assign to Buyer upon request all assignable warranties of Seller's suppliers or such Goods.

10. Limitation of Seller's Liability. Defective or non-conforming Goods or parts thereof shall be repaired or replaced by Seller without any additional charge and shipped to Buyer, Ex Works Seller's plant, for reinstallation by Buyer, subject to the terms hereof. Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations) exclusively to those provided in this section. Buyer waives any causes of

action or theories of liability, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new warranty, but the express warranties shall be extended for any defective or non-conforming Good during the period it is in the possession of Seller.

11. Disclaimer of Implied Warranties. SELLER DISCLAIMS ALL IMPLIED WARRANTIES (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY. There are no warranties which extend beyond those express warranties contained herein. Buyer affirms that it has not relied upon Seller's skill or judgment to select or furnish Goods for any particular purpose. Seller does not warrant the Goods will comply with the requirements of any safety code or regulation of any federal, state, municipality or other jurisdiction.

12. Service and Training Performed by Seller. All warranty and non-warranty parts or labor service and training, if any, provided by Seller or its agents or contractors (including those provided under subsequent purchase orders) shall be subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Seller might have access to the Goods during or after installation, but Seller is not under any duty to inspect the Goods for any defective conditions or any improper use or modification of the Goods nor to correct or advise Buyer of any such condition, use or modification observed by Seller. Any notifications which may be given are subject to all limitations and waivers in this Agreement.

13. Responsibilities Under the Occupational Safety and Health Act (OSHA).

A. It is Buyer's or other user's responsibility to provide all proper devices, tools and means that may be necessary to effectively protect all personnel from bodily injury which otherwise may result from the method of particular use, operation, set-up, or service of the Goods. OSHA regulations and other sources should be consulted by Buyer to implement the above.

B. The technical detail of OSHA and many additional references to other standards render it impossible for Seller to state that the Equipment is in complete compliance unless specific sections or paragraphs of OSHA are identified by Buyer. Because of changes which occur in OSHA, state codes, local codes and user safety programs, Seller must be advised by Buyer if Buyer believes modifications in the Goods are required for compliance. A quotation will be submitted for such modifications upon Buyer's request.

C. Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safety under all circumstances. Buyer must install and use the Goods in a safe and lawful manner in compliance with applicable health and safety regulations and laws and general industry standards of reasonable care.

14. Indemnification. Buyer shall indemnify Seller from third parties for any and all claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract or otherwise arising out of the use, storage, sale, processing or other disposition of the Goods, if the

action or inaction of Buyer or its employees, customers, agents, or others, was a material or proximate cause of injuries or damages giving rise to claims against Seller.

15. Cancellation and Breach.

A. If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover Goods in transit or delivered, and otherwise enforce its remedies for Buyer's default.

B. Seller shall be awarded incidental damages and costs (such as actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains any relief or damages.

C. Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment, and if such security is not posted Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.

D. All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative.

E. Seller shall not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

16. Consequential, Incidental, and Other Damages. BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES AS DEFINED IN THE UCC OR OTHERWISE. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations. Any legal inability to limit or restrict the right of Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder.

17. Security Interest. In addition to any security interest granted by the UCC, Buyer hereby grants a security interest to Seller in all Goods and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller, whether or not arising hereunder. Buyer will sign financing statements evidencing the security interest as reasonably requested by Seller, or Seller may file a copy of the Agreement or portion thereof as a financing statement. Buyer grants Seller an irrevocable power of attorney coupled with an interest to sign a financing statement to perfect Seller's security interests. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others to repossess all Goods in which it has a security interest. In case of a default by Buyer, Buyer hereby irrevocably appoints Seller as its agent to obtain possession of the Goods and documents related thereto. The Goods shall be and remain strictly personal property and retain their character as such. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in any Goods which are the subject to this Agreement if payment therefor shall not have been made in full to Seller.

18. Proprietary Information.

A. Buyer acknowledges that any information disclosed to Seller has not and will not be confidential or a trade Secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

B. All proposals, plans and other information furnished by Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller and shall not be shown nor disclosed to any other bidder, and shall not be shown nor disclosed to any third party nor used by Buyer, except as may be necessary for the selection or use of the Goods.

C. Any invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller. Any patentable features developed by Seller shall be the property of Seller and Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement, except as provided in subsection A.

D. Seller is not obligated to furnish detailed or shop working drawings, engineering calculation, computer programs, or other information for any Goods or part thereof not specifically required by the Agreement.

19. United States Government Regulations. Buyer shall not engage in any transaction with respect to the Goods, by way of resale, lease shipment or otherwise, which violates any statute or regulation of the United States of America.

20. Assignment. No right or interest in the Agreement may be assigned by Buyer without the prior written consent of Seller. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this section.