



# WARRANTY TERMS & CONDITIONS OF SALE

## **GOVERNING EFFECT & ACCEPTANCE**

These terms and conditions shall govern any and all sales of Authorized Product Lines ("Goods") by WEETECH INC. ("Seller"), to Customer ("Buyer"), and any sales of Goods by Seller to Buyer shall be expressly conditioned upon Buyer's acceptance of these Warranty Terms/Conditions of Sale. Any other terms and conditions, including terms and conditions typed or printed on any purchase order, shall be subordinate to these terms and conditions. By placing an order with Seller for any Goods and services described in a quotation or other description of Goods delivered herewith, Buyer acknowledges acceptance of all these terms and conditions of sale. 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 purchase order or other writing that are different from or additional to these Terms and Conditions. Any and all orders of Goods placed by Buyer shall be subject to and contingent upon written acceptance of Seller and shall not take effect or be final and binding as a contract unless and until Seller issues a written order confirmation to Buyer.

## **PRICES & TAXES**

Prices are subject to change without notice at any time prior to acceptance of order on Seller's confirmation form. All prices and deliveries of Goods are F.O.B. Gurnee, Illinois or such other point of shipment as is expressly written in the purchase order and acknowledged by Seller in writing. Buyer agrees to pay all present and future U.S. federal, state and local tax obligations, including but not limited to sales, use and excise taxes. If Buyer claims that the Goods are exempt from any particular tax, Buyer must provide Seller with a tax exemption certificate acceptable to the tax authorities. Buyer shall insure the Goods upon delivery for an amount sufficient to cover any balance owed to Seller and Buyer hereby grants Seller an assignment of insurance benefits payable in the event of loss of the Goods after delivery, as Seller's interest may appear. Quoted prices are for the exact quantity and equipment stated in a quotation and shall be effective only for the period up to the quote expiration date. Prices shall be subject to correction for clerical errors.

## **CANCELLATION CHARGES, RETURN OF GOODS**

No order shall be canceled, altered, or amended, and no Goods shall be returned for credit unless Seller expressly consents thereto in writing signed by an officer of Seller, which shall not be unreasonably withheld providing Buyer indemnifies and compensates Seller for all loss or expense occasioned by such cancellation. All cancellations accepted by Seller are subject to cancellation charges and/or restocking fees which will be determined by the Seller and will reflect, among other factors, the expenses already incurred and commitments made by Seller, and sales and administrative overhead. Seller shall have the absolute right to cancel the order upon (i) material breach of any of these Terms and Conditions by Buyer; or (ii) failure by Buyer to make any payment; or (iii) insolvency of Buyer, the filing of a voluntary petition in bankruptcy by Buyer, the filing of an involuntary petition to have the Buyer declared bankrupt, the appointment of a receiver or trustee for Buyer, the execution by Buyer of an assignment for the benefit of creditors; or (iv) the discontinuance of business by Buyer or the sale by Buyer of the bulk of its assets other than in the usual course of business.

## **SHIPMENT & DELIVERY**

All delivery dates are estimates only. Seller's only obligation with respect to delivery dates shall be to use reasonable effort to meet same. All shipments shall be F.O.B. Gurnee, Illinois unless otherwise agreed in writing between Buyer and Seller. Title and risk of loss shall pass to Buyer at the F.O.B. point. Unless otherwise agreed in writing, Seller will ship via surface transportation. Seller will not be liable for any delays, breakage, loss or damage after having made delivery in good order to the carrier. In the event Buyer does not take timely delivery of Goods when Seller tenders the Goods for delivery according to the purchase order, Seller shall have the right to charge Buyer a storage fee of one-half of one percent (.5%) of the balance of the purchase price then due for each month the Goods remain on the premises of Seller, or to store the Goods to a third party, in the event the Goods must be stored for more than sixty (60) days. Any delays by Buyer in furnishing necessary technical information or documents (data required by Seller to perform its obligations) or caused by order amendments requiring additional production time, shall result in a corresponding postponement of the time allowed for delivery of the Goods. Seller shall have the right to charge Buyer all extra costs and expenses incurred on account of delay on Buyer's part. Seller reserves the right to insure all shipments at Buyer's expense.

## **FORCE MAJEURE, WAIVER**

Seller shall not be liable for any delay to make delivery or failure to deliver due to any clause or contingency beyond the control of Seller (including but not limited to accidents, breakdowns, strikes, riots, sabotage, insurrections, war, delay or interruptions in or failure of sources of materials, supplies, labor, energy or transportation, acts of God, or orders of any court, governmental body, authority or agency). Seller may, at its option, allocate available supplies among its customers, including Buyer, in any manner that Seller decides is fair and reasonable, extend the delivery time or cancel the contract for such Goods, in whole or in part. Such allocations, extension of delivery time or cancellation shall not affect the right of Seller to cover for any unpaid Goods previously delivered.

IN NO EVENT SHALL 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 SUCH FAILURE OR DELAY IN DELIVERY.

## **TERMS OF PAYMENT**

Unless otherwise agreed to in writing by Seller, all payments shall be due net thirty (30) days from invoice date. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. Any past due balances shall accrue a service charge of 1.5% per month until paid. Buyer shall pay all excise, sales, use, privilege, or any other taxes due in connection with the sale of ordered Goods or services, whether such taxes are local, state or federal, unless Buyer provides Seller with a certificate of tax exemption for the Goods. Buyer shall reimburse Seller for any such taxes Seller is required to pay. Seller retains title to and reserves all rights as to ownership and copyright of all shipments sent to Buyer until payment is received and cleared. Seller shall have the right to collect goods, suspend performance or withhold deliveries in the event of default in any payment and to require payment in cash, the giving of security, or other adequate assurance from Buyer satisfactory to Seller, in the event Seller reasonably deems itself insecure on account of Buyer's financial condition or otherwise. In the event of default in payment, Buyer shall pay all costs incurred by Seller, including its reasonable attorney's fees in order to enforce payment or collection of past due sums from Buyer.

## **CLAIMS & REMEDIES**

All claims for loss or damage in transit are to be made by Buyer directly to the carrier. No deduction of any kind from the Seller's invoice amount shall be made. Buyer shall inspect all Goods immediately upon their arrival and shall give written notice to Seller of any claim that the Goods do not conform to the terms of the contract within seven (7) days of receipt. Seller shall have reasonable access to inspect any allegedly non-conforming Goods. Buyer waives any right to assert any claim against Seller arising from any non-conformity of Goods which would have been observable on reasonable inspection or testing within forty-five (45) days after delivery.

Written notice of any alleged defect within the warranty period must be presented to Seller immediately upon Buyer's discovery of the defect, and Seller must be allowed to inspect the Goods while they are in the alleged defective condition. Operation of the Goods must be suspended until written clearance is issued by Seller for continued operation provided that Seller, upon receipt of written notice of an alleged defect, proceeds without unreasonable delay to remedy any defects coming within the warranty.

**WARRANTY, DISCLAIMER, LIMITATION OF LIABILITY**

THE WARRANTY EXPRESSED HEREIN IS 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 THE SELLER'S PART. THE FOLLOWING WARRANTIES ARE IN LIEU OF THE WARRANTY OF USE OR FITNESS FOR A PARTICULAR PURPOSE. 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 GOODS FURNISHED UNDER THE CONTRACT. SELLER'S SOLE LIABILITY AND BUYER'S SOLE REMEDY ARE LIMITED TO EITHER (i) REPAIR OR REPLACEMENT OF DEFECTIVE PARTS OR GOODS, OR (ii) AT THE SELLER'S OPTION, RETURN OF THE GOODS TO SELLER AND REFUND OF PURCHASE PRICE. SUCH REMEDY SHALL BE BUYER'S ENTIRE AND EXCLUSIVE REMEDY, IN THE EVENT OF BREACH OF WARRANTY OR NEGLIGENCE OF SELLER.

Seller warrants that the Goods manufactured by Seller, when properly installed, used and maintained, will conform to the description and specifications in the confirmed purchase order under which they are shipped, and will be free from substantial defects in materials and workmanship for a period of twelve (12) months from the date of shipment to the end-user. A substantial defect shall be a failure of materials or workmanship affecting the utility of the Goods to the Buyer or resulting in a failure of the Goods to perform within quoted ranges and specifications within the warranty period. Seller shall warranty replacement parts and repairs for a period of twelve (12) months.

The following are expressly excluded from warranty coverage: defects resulting from (i) improper storage, assembly, or installation of the Goods by Buyer or any third party; (ii) normal wear and tear of consumable parts; (iii) misuse, abuse, improper or careless handling, or accidental damage; (iv) substitution of parts or materials or improper maintenance by Buyer or any third party; (v) operation of the Goods in excess of their rated capacity (especially overloading); (vi) abnormal or unusual operating conditions or applications; and (vii) use or operation of the Goods for a function or application other than that for which they were designed or different from the intended application made known to Seller, before the Goods were sold. Seller shall pay only the expense of repair or replacement, at its option, of the Goods in performance of its warranty hereunder, and its maximum liability shall not exceed the purchase price of the Goods. Seller's warranty does not extend to any Goods or parts thereof that are not manufactured by Seller or that Buyer alters or modifies, or that Buyer adds to or incorporates into Seller's Goods (including but not limited to controls, electronics and other parts or equipment) and only the warranty, if any, given by the manufacturer thereof, will apply. Seller's obligation under this warranty will not apply to any product which (i) is normally consumed in operations or (ii) has a normal life inherently shorter than the warranty period stated herein.

SELLER SHALL NOT BE LIABLE FOR ANY OTHER DAMAGES, INCLUDING INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, USE, PRODUCTION, RAW MATERIALS, OR END PRODUCTS), OR FOR ANY OTHER CLAIMS OR DAMAGES ARISING OUT OF THE PURCHASE, DELIVERY, INSTALLATION, OR USE OF THE GOODS WHETHER CLAIMED IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.

Buyer shall have no cause of action for breach of warranty unless Buyer has given prompt notice in writing to Seller of any claims under this warranty and has given Seller a reasonable opportunity to correct the claimed defect. Any suit or cause of action for breach of warranty must be brought prior to the lapse of twelve (12) months following expiration of the warranty period, or be forever barred.

**CONFIDENTIALITY & NON-DISCLOSURE**

Seller retains title to and reserves all rights as to ownership and copyright of all documents, drawings, descriptions, compilations of data, photographs, illustrations, estimates and other technical information provided to Buyer in connection with the quotation or with the sale, installation, service or repair of Goods sold, and Buyer shall return same to Seller upon its request unless such materials containing technical data are retained in connection with Buyer's maintenance and use of Goods purchased from Seller. Buyer shall retain such information in confidence except to the extent Buyer can establish that it previously received such information lawfully from a third party or that such information is generally available in the public domain. Buyer may not reproduce or distribute such materials without the written consent of Seller. All such materials relating to the Goods supplied by Seller (except information as may be established to be in the public domain or disclosed through judicial or government action) shall be received in confidence, and Buyer shall exercise reasonable care to hold all such information in confidence. In the event Buyer's personnel visit Seller's facilities or otherwise receive any proprietary or confidential information from Seller, said information shall be retained as confidential by Buyer and not disclosed to any third party without the written consent of Seller.

**LIMITATION OF LIABILITY & INDEMNIFICATION**

Buyer assumes all risk and liability for personal injury or death as to Buyer's employees, agents, or servants, or to third persons and for property damage arising out of the use or possession of the Goods sold by Seller to the Buyer, and Buyer shall indemnify, defend and hold harmless Seller against any claims, demands, suits, or causes of action, whether in contract, tort (including but not limited to negligence and strict liability) or otherwise, with respect to any property damage, personal injury, or death resulting from Goods subjected to (i) improper storage, assembly, or installation by Buyer or any third party; (ii) misuse, abuse, improper or careless handling, or accidental damage; (iii) substitution of parts or materials or improper maintenance by Buyer or any third party; (iv) operation of the Goods in excess of their rated capacity (especially overloading); and (v) use or operation of the Goods for a function or application other than that for which they were designed or different from the intended application made known to Seller before the Goods were sold. Any cause of action arising from this agreement or the breach thereof must be commenced within twelve (12) months after the cause of action accrues.

**JURISDICTION**

The terms and conditions of sale between Seller and Buyer shall be governed by and construed according to the laws of the State of Illinois, and jurisdiction of any action to enforce terms and conditions of sale shall lie in the courts of Lake County, Illinois. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**NON-ASSIGNMENT**

Buyer's rights and obligations hereunder may not be assigned without prior written consent of Seller.

**ENTIRE AGREEMENT; MODIFICATION; BINDING EFFECT**

These terms and conditions of sale between Seller and Buyer constitute the entire agreement between the parties regarding sales and supersede all other understandings, agreements, or representations, express or implied, or course of dealing between the parties. No modification or amendment of these terms and conditions of sale shall be effective unless made in writing, signed and dated by the Seller and Buyer, by and through their duly authorized officers or agents. These terms and conditions of sale shall be binding upon and inure to the benefit of the parties and their legal representatives, successors, and assigns.