



TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT:** The parties agree that there are no understandings, agreements or representations, express or implied, not specified herein, respecting this quotation or sale, and that this document contains the entire intent and agreement between Magna Products Corp. (hereinafter "Seller") and the buyer of products and services identified on the attached quotation or purchase order (hereinafter "Buyer"). No course of prior dealing and no usage of the trade shall be relevant to supplement or explain the terms used herein.

All sales made by Seller are expressly subject to these Terms and Conditions, and the rights and intentions of the parties shall be governed exclusively hereby. Buyer agrees that upon issuing a purchase order to Seller, it shall be deemed to have accepted these Terms and Conditions as the sole and controlling Terms and Conditions of such contract. Any contract which follows submission of these Terms and Conditions to Buyer shall be governed exclusively hereby and by any amendments hereto made in accordance with these Terms and Conditions, regardless of any statement to the contrary or any other inconsistent or additional terms and conditions which may be contained in any purchase order or other document submitted or issued by Buyer. Receipt and acceptance, whether under protest or otherwise, of the material or supplies delivered pursuant to any such contract shall be conclusive evidence of Buyer's acceptance of these Terms and Conditions as the sole and controlling Terms and Conditions of such contract. Any shipment made by Seller shall be in reliance upon Buyer's acceptance of these Terms and Conditions and shall not constitute an acceptance of an offer to contract on the basis of any other terms and conditions.

2. **TERMS AND PRICE:** Time is of the essence with respect to any bid, offer or quotation attached hereto and, unless accepted within ten (10) days after the date made, such bid, offer or quotation shall be deemed withdrawn. Any such bid, offer or quotation may be withdrawn by Seller at any time prior to acceptance. All prices quoted shall be subject to adjustment to those in effect at time of acceptance of such bid, offer or quotation. All prices are F.O.B. point of shipment, except as otherwise set forth herein. Risk of loss for any damages, loss or destruction of the goods shall pass to Buyer upon delivery of the goods to a carrier.

Unless Buyer arranges its own transportation, Buyer shall pay Seller a transportation charge for freight and insurance of goods delivered to Buyer. Unless otherwise indicated in advance by Buyer, shipment shall be by ground freight or parcel delivery, at Seller's option. Seller reserves the right to control routing and select the type of carrier, either freight allowed or prepaid. If a method of transportation other than that selected by Seller is requested by Buyer, Buyer shall pay an additional charge for such alternate method over the cost of the method and routing selected by Seller. Re-assembly of any goods shipped in parts or disassembled shall be at Buyer's sole cost.

Terms of payments are subject to the approval of the Seller's Credit Department and all payments are due net thirty (30) days from date of shipment of goods hereunder. Where any partial shipment of goods is made, a pro rata portion of the purchase price shall be due. Interest at the rate of eighteen percent (18%) per annum will be charged on all past due invoices, which interest Buyer agrees to pay in equal monthly installments until all such past due amounts have been paid. Seller may decline to deliver goods except for payment in cash, or may stop goods in transit, whenever for any reason Seller has doubt as to Buyer's ability to pay. In case of export sales, all payments shall be by means of a confirmed irrevocable letter of credit.

Buyer shall pay Seller the amount of any excise, sales, privilege, use or any other taxes, Local, State or Federal, except income tax, arising from the sale or delivery of goods to Buyer. Buyer may, however, in lieu of such payment, provide Seller with a tax exemption certificate acceptable to Seller in its unfettered discretion.

3. **DELIVERY:** Delivery and shipment dates specified in any bid, offer, quotation or purchase order are subject to, and Seller shall not be liable directly or indirectly for, delays caused by any prioritization or allocation necessitated by governmental orders or regulations, any delay attributable to Buyer's failure to supply necessary data or to any changes requested by Buyer, or delays caused by fire, flood, strikes, lockouts, riots, war, breakdowns, priorities or embargoes, accidents, civil or military authority, shortage of labor, failure or delay in obtaining any supplies, materials or manufacturing facilities, difficulty in obtaining raw materials, and any other causes beyond Seller's reasonable control including causes designated Acts of God or force majeure by any court of law. Existence of any of the aforementioned conditions shall extend the time for delivery accordingly. Buyer shall reimburse Seller for any and all costs and expenses occasioned by delays attributable to Buyer, and any completed goods held by Seller during any such delay shall be held at Buyer's sole cost and risk. Seller shall not be liable for any damages or penalties whatsoever, whether direct, indirect, special, or consequential, resulting from its failure to perform or delay in performing, for any of the foregoing reasons. Where Buyer is responsible for any delay in shipment, the date of completion of goods may be treated by Seller as the date of shipment for purposes of payment.

4. **CANCELLATIONS OR ALTERATIONS:** Buyer may not cancel or alter purchase orders nor may Buyer defer deliveries of goods, completed or in process, beyond the original specified delivery dates, except with Seller's express written consent and provided Buyer agrees to indemnify Seller against any and all losses related to such delayed shipment. Any request by Buyer to defer delivery shall be deemed to constitute Buyer's agreement to indemnify Seller for any such losses.

5. **LIMITED WARRANTY:**

(a) **NEW PRODUCTS:** Seller warrants the products herein described, to the extent the same are of Seller's own manufacture, against defects of material and workmanship under normal use and service for a period of twelve (12) months from the date of shipment or the date of installation, whichever occurs first. Equipment or parts manufactured by others but furnished by Seller will be repaired or replaced only to the extent of the original manufacturer's warranty. Seller makes no warranty as to the quality or performance of any such equipment or parts.

(b) **REBUILT PRODUCTS:** Seller warrants the rebuilt products herein described against defects of material and workmanship under normal use and service for a period of three (3) months from the date of shipment or the date of installation, whichever occurs first.

These warranties do not cover ordinary wear and tear, abuse, misuse, overloading, altered products, or materials not of Seller's manufacture. Seller will in no event be liable for or accept responsibility for performance of any component of Buyer's system not supplied by Seller.

Seller's obligation under these warranties shall, at Seller's option, be limited to repairing or replacing, or allowing credit for, any part or parts which may prove to be defective. Any replacement parts shipped hereunder shall be shipped in accordance with the terms of Section 2 above. Seller shall only be obligated to repair or replace any such parts if Buyer gives Seller prompt notice of the defect or defects and an inspection by Seller (if required by Seller) confirms the defect or defects. Buyer shall prepay all transportation costs of any goods returned to Buyer hereunder. Buyer shall be solely responsible for determining suitability of goods for use in connection with Buyer's other parts and equipment, and Seller shall have no responsibility in this respect and makes no warranty with respect to the suitability of goods delivered by Seller for use with any other parts and equipment.

Goods returned to Seller without written permission of Seller will not be accepted for credit. Buyer shall bear the sole risk of loss with respect to any damage, loss or destruction of such goods. Expenses incurred by Buyer in repairing any defective product will not be reimbursed or credited by Seller unless authorized by Seller in advance in writing. Seller shall have no obligation to repair or replace goods hereunder until such equipment or parts have been fully paid for.

EXCEPT AS EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. The foregoing paragraphs provide Buyer's entire and exclusive remedy for any claim in connection with the sale or furnishing of goods or parts or their design, suitability for use, installation or operation. No employee or agent of Seller is authorized to make any warranty other than those specifically set forth herein. The terms of any specification or chart issued by Seller or attached hereto are descriptive only and shall not be deemed to constitute a warranty of any kind.

6. **LIMITATION OF LIABILITY:** Buyer expressly agrees that Seller will in no event be liable for any direct, indirect, special or consequential damages whatsoever, whether grounded in negligence, strict liability, or contract. Seller's liability under no circumstances will exceed the price paid by Buyer for the goods and services provided by Seller with respect to which liability is claimed. Any action by Buyer for breach of contract must be commenced within one (1) year of delivery of the goods and/or services.
7. **REJECTION/REVOCAION OF ACCEPTANCE:** Buyer must notify Seller, in writing, of any rejection of goods delivered by Seller within ten (10) days of delivery of the goods. Buyer understands and agrees that it shall be deemed not to have acted reasonably to inspect goods for latent defects if it fails to do so within one week of delivery of the goods. Failure to notify Seller within such ten (10) day interval shall be deemed to constitute acceptance of the goods by Buyer and Buyer shall be deemed to have waived any right to revoke acceptance of the goods.
8. **PATENT INFRINGEMENT:** Seller will not be liable for any claim of patent infringement except with respect to goods manufactured by Seller, in the form in which Seller supplies such goods to Buyer and without regard to their use by Buyer. If Buyer notifies Seller promptly of any such claim relating to goods manufactured by Seller and, upon Seller's request, authorizes Seller to defend or settle any suit or controversy involving such claim, Seller will indemnify Buyer against the reasonable expenses of any such suit and the amount of any judgment or settlement in which Seller acquiesces, provided that Seller's obligation to indemnify Buyer hereunder shall not exceed the price paid by Buyer for the allegedly infringing goods. If an injunction is issued against the further use of the allegedly infringing goods, Seller shall have the option of procuring for Buyer the right to use the goods, or of replacing them with non-infringing goods or removing them and refunding the purchase price. The foregoing expresses Buyer's entire and exclusive remedy as to patent infringement, and Seller will not be liable for any damages whatsoever suffered by reason of any claim of infringement except as provided herein. Buyer will hold Seller harmless and will indemnify Seller against any and all claims, demands, liabilities, damages, costs and expenses resulting from or connected with any claim of patent infringement arising out of the manufacture or modification by Seller of goods in accordance with any design or specifications provided by Buyer.
9. **MODIFICATIONS:** No waiver, alteration or modification of any of the provisions hereof shall be binding unless in writing and signed by a duly authorized corporate officer of Seller. No agent or representative of Seller has either the capacity or authority, express or implied, to modify these Terms and Conditions, or to enter into any other contractual obligations affecting Seller in any manner whatsoever unless such authority is in writing and signed by a duly authorized corporate officer of Seller.
10. **GOVERNING LAW:** Any contract into which these Terms and Conditions are incorporated shall be governed by the laws of the State of New York without regard to its conflicts of law principles.
11. **ATTORNEYS' FEES AND COSTS; FORUM:** In the event any suit or action is instituted to preserve or enforce Seller's rights hereunder, Buyer hereby agrees that Seller may recover, in addition to the costs and disbursements allowed by statute, all costs or expenses (including attorneys' fees) of collecting or attempting to collect any sums due Seller under any purchase order attached hereto. Buyer expressly agrees that with respect to any disputes with Seller, whether in contract or in tort, relating to the validity, construction, interpretation, and enforcement of these Terms and Conditions, Buyer shall be subject to personal jurisdiction within the State of New York, and specifically to jurisdiction in the Supreme Court of the State of New York in and for the Counties of Monroe, Livingston and Ontario and in the United States District Court for the Western District of New York. Buyer and Seller agree that in the event of any such dispute between them, venue shall be proper in any of such courts, and in no other.
12. **GENERAL:** Any assignment by Buyer of a purchase order or any rights hereunder without the prior written consent of Seller shall be void and of no force or effect.

The provisions of any contract resulting from any purchase order attached hereto are for the benefit of the parties thereto and not for any other person.

The headings contained in these Terms and Conditions are for reference purposes only and shall not affect in any way the meaning or interpretation of these Terms and Conditions.