

TERMS & CONDITIONS

1.) Terms of Payment:

- a. If buyer has requested the 30 Day Open Account billed to Parts Statement option in Part II of the order form, and seller agrees to sell pursuant to such terms, then the buyer shall pay the total purchase price shown on the invoice in accordance with the terms set forth below.
- b. If Buyer has requested the Installment Plan (Fixed Rate) in Part II of the order form, and the Seller agrees to sell pursuant to such terms, then the Buyer shall pay the Down Payment (if any), and the Time Balance in monthly installments in accordance with the terms set forth below until paid in full.
- c. For a Facility Action order (orders over \$80,000), the Buyer will not be invoiced for items shipped until all items on the order are shipped or until December 1st of the current calendar year, which ever comes first. When the Facility Action order is invoiced, the Buyer will be billed according to the payment option requested on Part II of the order form.
- d. Buyer agrees that all its accounts with Seller will be administered on a net settlement basis and that Seller and/or its subsidiaries and affiliated companies ("Seller Affiliates") may set off amounts due to Seller Affiliates from Buyer against any amounts due to Buyer from Seller Affiliates regardless of the contracts from which such obligations arise without giving prior written notice of such action.

2.) Freight, Installation, and Taxes:

Freight and installation costs (if provided) are estimates on the order form. Actual freight costs, actual installation costs, and applicable taxes will be added to the final invoice and will be borne by the Buyer. If excavation is required for installation, any unforeseen ground sub-surface conditions and obstructions are the sole responsibility of the building owner, dealer, or general contractor. Rotunda estimated installation prices do not include sub-surface conditions or obstructions that could not have been reasonably foreseen prior to excavation. Seller Affiliates and Equipment Manufacturer are not liable for any sub-surface conditions.

3.) Finance Charge:

Monthly portion of the Finance Charge due is calculated each month by multiplying 1/12 of the annual finance charge rate times the remaining portion of the Unpaid Balance of Cash Price, and is added to the portion of the Unpaid Balance of Cash Price due each month.

4.) Security Interest:

Buyer hereby grants to Seller a continuing security interest in the Equipment, including all products and proceeds thereof, until all amounts due hereunder are paid. Buyer agrees to execute, and pay filing fees for, any financing statement or other documents deemed necessary by Seller to maintain a valid security interest in the Equipment.

5.) Risk of Loss:

Seller shall be responsible for risk of loss until Equipment is delivered to the carrier, at which time risk of loss shall be the responsibility of the Buyer.

6.) Delays:

Seller shall not be liable for any failure or delay in delivering Equipment, or any failure to perform any provision hereof, resulting from, fire, flood or other casualty, riot, strike or other labor difficulty governmental regulation or other restriction, or any other cause beyond Seller's control.

7.) Acceptance and Inspection:

Buyer shall be deemed to have accepted Equipment upon delivery. Equipment shall be deemed to have been delivered in good condition unless Buyer gives Seller notice to the contrary within 10 days after delivery. In the event that the Buyer provides notice that the Equipment is not in good condition, Buyer's sole obligation will be to replace any Equipment whose non-conformance is caused by Buyer's negligence or willful misconduct.

8.) Unconditional Obligation:

Buyer's obligation to make payments to Seller or its assignee shall be absolute and unconditional and shall continue unmodified despite any loss, damage or other interruption in the use of Equipment. The obligation of Buyer to pay in full any amounts due under this contract shall not be subject to dispute, claim, counterclaim, defense or other right which Buyer may have to assert against Seller or the Manufacturer of Equipment. Buyer acknowledges that: (a) Buyer has selected Equipment and Equipment Manufacturer ("Manufacturer"), and Buyer has determined Equipment's suitability and fitness for the Buyer's purpose, (b) Seller is not the Manufacturer of Equipment, and (c) Manufacturer issues its own warranty and performs the obligations under such warranty.

9.) Warranty:

THE MANUFACTURER'S WARRANTY SHALL BE BUYER'S EXCLUSIVE REMEDY, RECOURSE OR DAMAGE FOR ANY DEFECT IN WORKMANSHIP OR MATERIAL OR ANY FAILURE OF THE EQUIPMENT. SELLER MAKES NO WARRANTIES, REPRESENTATIONS, INDEMNITIES OR GUARANTEES WHATSOEVER WITH RESPECT TO EQUIPMENT EITHER EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE LIABILITY OF THE SELLER SHALL BE LIMITED TO EXPRESS OBLIGATION TO DELIVER THE EQUIPMENT. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER FORESEEABLE OF UNFORESEEABLE, WHICH BUYER MAY INCUR, EXPERIENCE OR CLAIM, INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF PROFITS, INTERRUPTION IN BUSINESS, LOST OPPORTUNITY, WORK STOPPAGE OR OTHER IMPAIRMENT OF ASSETS, ARISING OUT OF MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY, IN TORT OR OTHERWISE, ON ACCOUNT OF ENTERING INTO OR RELYING ON THIS AGREEMENT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.) Maintenance:

Until all amounts due hereunder are paid, Buyer (I) shall use the Equipment carefully and properly, (II) shall maintain and repair all items of the equipment in order to keep them in good order and condition and, in particular, shall comply fully with the maintenance, operating, usage or other instructions provided by the Manufacturer, (III) authorizes Seller, or any third party appointed by seller, to inspect the Equipment when necessary and (IV) shall at all times keep the Equipment free and clear of all liens, charges or encumbrances,

11.) Insurance and Indemnification:

Until all amounts due hereunder are paid, Buyer shall defend, indemnify and hold harmless Seller from and against, and at Buyer's own expense provide insurance satisfactory to Seller covering any and all losses, damages, claims, expenses and other liabilities (including attorneys fees), relating to or arising out of: (I) damage, loss, theft, or destruction of the Equipment, or (II) death, injury or property damage connected with the use, operation or condition (including without limitation, defects whether or not discoverable by any party) of the Equipment. Buyer shall promptly notify Seller of any such claim. Seller shall have the right to participate, at its own expense, in any proceeding for which Buyer has undertaken the defense of Seller, and in no event shall Buyer settle any claim against Seller without Seller's prior written consent. Buyer shall provide evidence of such insurance to Seller upon demand. Seller is under no obligation to examine any insurance certificate or advise Buyer that its insurance does not comply with the requirements set forth herein. The losses covered by insurance shall in all cases be payable to Seller and Buyer as their interests may appear. If Buyer fails to insure the Equipment as herein provided, Seller may, but is not obligated to place such insurance upon the Equipment and the Buyer agrees to pay to Seller on demand the premiums for such insurance placed by Seller. In no event shall any insurance coverage be deemed to limit or replace Buyer's obligation to indemnify Seller as provided herein.

12.) Default:

In the event that Buyer: (a) fails to pay any amount due hereunder within ten (10) days of the due date, (b) fails to comply with any other provision hereof, (c) files, or if there is filed against Buyer, any petition under any bankruptcy or insolvency laws or suffers the appointment of any issues or receiver for all or any part of Buyer's business or assets, or (d) has any assignment (voluntarily or involuntarily), lien, attachment or levy issued against the Equipment unless such petition, assignment or appointment, lien, attachment or levy is withdrawn or nullified within twenty (20) days then Buyer shall be in default hereunder and all Buyer's indebtedness and obligations to Seller shall, at Seller's option, become immediately due and payable, and Seller may, at its option, terminate this contract and repossess any and all items of Equipment with or without legal process and sell the same at private or public sale without prior notice to Buyer to the extent permitted by law. Upon request, Buyer shall deliver the Equipment to Seller at a place designated by Seller. Repossession and/or sales of Equipment upon such default shall not affect the Seller's right to retain all payments made prior to repossession or to recover the balance due hereunder for any deficiency. Buyer shall reimburse Seller all costs of collection, repossession and resale (including reasonable attorneys' fees, court costs and other expenses incurred by Seller). Buyer hereby releases Seller from any liability for damages resulting from repossession hereunder. The rights and remedies of Seller, in event of default herein mentioned shall not be deemed exclusive, but shall be cumulative and in addition to all other rights and remedies existing under law and may be enforced successively or concurrently. Waiver by Seller of any default shall not be deemed a waiver of any other default.

13.) General:

The waiver by either party of, or failure to claim a breach of any provision of this contract shall not be deemed to be waiver of any provision of this contract, shall not be deemed to be a waiver of any subsequent breach or to affect in any way the effectiveness of such provision. Neither party shall refer to the other in advertising or public releases, or use any of the other trademarks, without that party's prior written approval. This contract constitutes the entire agreement between the parties and may not be changed except by an instrument in writing signed by the parties. This contract may not be assigned to Buyer without the Seller's prior written consent. Seller may assign or subcontract any portion of this contract at any time, but shall not thereby be relieved from any liability hereunder. In the event that one or more clauses of this contract are found to be unenforceable, illegal or contrary to public policy court of competent jurisdiction, the remainder of this contract shall remain in full force and effect except for the unenforceable, illegal or other provisions. This agreement is a Michigan agreement and shall be interpreted, construed and enforced in accordance with the laws of the State of Michigan, United States of America. Each of the parties hereto agrees that any legal or equitable action or proceeding with respect to this agreement shall be brought only in any court of the State of Michigan, or in any court of the United States of America sitting in Michigan, and each of the parties hereto submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to such party's person and property. Each party hereby irrevocably waives any objection to the laying of venue of any such action or proceeding in the above described courts.