

WOODINGS INDUSTRIAL CORPORATION - Terms and Conditions of Sale

All sales of Woodings Products are subject to the following Terms and Conditions of Sale.

1. **Definitions.** The word "Seller" as used herein shall mean Woodings Industrial Corporation. The word "Buyer" shall mean the party to whom the Woodings product is sold. The term "Product" means machines, parts, drill steel and any other equipment sold by Seller.

2. **Acceptance.** All Contracts and orders are subject to final acceptance at the home office of the Seller at Mars, Pennsylvania.

The terms and conditions herein contained, any additional "Supplement to Terms and Conditions of Sale," and terms and conditions stated in the Seller's quotation shall constitute the only agreement between the Seller and the Buyer. Any terms and conditions proposed by the Buyer in its purchase order or otherwise, whether before or after receipt hereof are hereby expressly rejected and shall not become part of the contract between the Buyer and the Seller unless specifically accepted in writing by a duly authorized officer of the Seller. The Seller's quotation is made subject to prior sales to third parties. In any event, said quotation will become void if not accepted by the Buyer within 30 days from the date of the offer.

Seller reserves the right to hold shipment of telephone or oral orders until written confirmation has been received from Buyer. Buyer assumes full responsibility for inaccurate or incomplete data supplied on special orders.

3. **Prices.** All prices are subject to change without notice at any time and are based in part on the applicability of the Terms and Conditions set forth herein. Should the Buyer desire other or different terms, the prices may be adjusted accordingly.

Prices are F.O.B. point of shipment at Seller's factory for equipment boxed, crated, or skidded for domestic shipment (export packing charges are extra). Prices are those in effect at the time the order is received at Woodings Industrial Corporation, Mars, Pennsylvania 16046, U.S.A.

IF BUYER SHOULD DELAY SHIPMENT BEYOND ORIGINAL CONTRACT DATE, THE PRICES CHARGED WILL BE THOSE IN EFFECT AT THE TIME THE SHIPMENT IS MADE.

Seller reserves the right to cancel Buyer's order in the event that (a) any government price regulation, schedule or ceiling prescribes a price lower than Seller's price established in the order acknowledgment, or in any way prevents Seller from purchasing or otherwise acquiring any commodity or service necessary to the performance of the order, or in any way prevents Seller from adjusting its prices when the cost of any such commodity or service is increased and (b) in the event any major change in economic conditions renders Seller's performance unprofitable.

4. **Taxes.** Prices do not include any sales, use, excise, property or other such taxes, tariffs and duties that may be levied on the transaction by local, state, federal or foreign

governments. Any taxes Seller is required to collect for Buyer will be added to the invoice or billed separately to the Buyer. Any claim of Buyer's exception from any sales or use tax shall be accompanied by an appropriate exemption certificate.

5. **Terms of Payment. - Domestic.** Unless otherwise specified in the Seller's quotation, the terms of payment will be net cash 30 days from date of invoice, subject to credit approval by Seller's credit department. In cases where shipment of a completed product is delayed at request of Buyer, Seller reserves right to issue invoice for the product as of the date it becomes ready for shipment. Late charges at the rate of 1.5% per month (18% annually) may be charged on past due accounts.

Foreign. Unless otherwise specified in the quotation and upon Seller's acceptance of the order, the terms of payment shall be through an unconditional, irrevocable letter of credit, all payments to be made in United States Dollars. Letter of Credit to be established through and confirmed by a New York bank and shall provide for payment against Seller's sight draft accompanied by a commercial invoice and Buyer's forwarding agent's receipt acknowledging delivery of equipment to a United States port and by such other documents, if any, as may be required by the governments involved.

6. **Delivery.** The quoted delivery dates are approximate and a more specific date will be established upon the Seller's acceptance of Buyer's order. Delivery dates are subject to revision at any time due to causes beyond the Seller's control. These would include, but not be limited to, delay in receipt of purchaser's signed order or complete specifications, fire, shortages of material, transportation delays, strikes, failure of suppliers or subcontractors to meet delivery schedules, war, riots and any action by or prior system imposed by authority of any government agency. Any delay or non-delivery caused by the foregoing shall not result in liability for the Seller.

Delivery to a common carrier or licensed trucker shall constitute tender of delivery to the Buyer and all risk of loss or damage in transit shall be borne by the Buyer. In no event the Seller be held liable for damages or contingent expenses caused by delays in delivery.

Seller reserves the right to stoppage in transit and repossess equipment not withstanding delivery to the carrier, until payment in full has been made to Seller. Buyer by acceptance of the products grants a security interest to Seller in such products until paid in full together with all of the rights and remedies of a secured party under the Uniform Commercial Code. Buyer appoints Seller its attorney-in-fact to file Uniform Commercial Code -1 financial statements to record its security interest.

No claim relating to quantity, condition, loss or damage to the goods made by Buyer will be accepted by Seller after thirty (30) days after date of shipment.

7. **Warranty, Disclaimer, Limitation of Liability and Remedy.** Seller warrants to the original Buyer only that products manufactured by the Seller and sold directly by the

Seller or through an authorized representative and used by the original Buyer within limits of rated and normal usage will be free from defects which are not commercially acceptable in material and workmanship.

This warranty shall apply only to products sold, installed and maintained in the forty eight (48) continental United States. Any product not so sold, installed, and maintained shall be sold "as is" and any repairs or service shall be provided in accordance with paragraph 10 hereof, "Repairs and Service Non Warranty," unless otherwise expressly agreed to in writing by Seller. In no event shall the Buyer have any rights greater hereunder than if all components were manufactured by Seller.

The terms of this warranty do not in any way extend to any product or part thereof which has a life under normal usage inherently shorter than the one year period indicated above or which was not manufactured by the Seller. Seller's obligation and liability with respect to components not manufactured by the Seller shall be limited to the extent of express warranties received by Seller from such component manufacturers.

This warranty is void and of no effect and Seller shall not be liable for any breach of warranty, express or implied if the equipment or any part of component thereof shall have been repaired or altered by persons other than the Seller unless expressly authorized in writing by Seller, or if the equipment is operated or installed contrary to Seller's instruction or subjected to misuse negligence or accident.

Written notice of any claimed defect within the warranty period must be presented to the Seller immediately upon Buyer's discovery of the defect.

Seller shall have the option to inspect any parts claimed to be defective either at the Buyer's place of business or at the Seller's place of manufacture while the product is in the claimed defective conditions. No return shall be accepted unless Seller has had an opportunity to inspect the equipment or has expressly authorized the return. Operation of the product must be suspended until written clearance is issued for continued operation provided that Seller upon receipt of written notice of a claimed defect will proceed without unreasonable delay to remedy any defect coming within the warranty which is found to exist. During the warranty period, parts found to be defective by Seller's inspection will be furnished free of charge, shipment F.O.B. Aforesaid point of shipment.

THERE ARE NO OTHER WARRANTIES THAT EXTEND BEYOND THE WARRANTY HEREIN CONTAINED. THE WARRANTY STATED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART. No statement, oral or written, inconsistent with this warranty is binding on the Seller. No agent, employee or representative of the Seller, other than an officer, duly authorized, has any authority to bind the Seller to any confirmation, representation or warranty concerning the Seller's product beyond that specifically included in the warranty contained herein. UNDER NO CIRCUMSTANCES WILL THE SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGE OR EXPENSE OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURIES AND

LOSS OF PROFITS, ARISING IN CONNECTION WITH ANY CONTRACT OR WITH THE USE, ABUSE, UNSAFE USE OR INABILITY TO USE SELLER'S PRODUCTS. Seller's maximum liability shall not exceed and Buyer's remedy is limited to either (A) repair or replacement of the defective part or product or at the Seller's option, (B) return of the product and refund of the purchase price; and such remedy shall be the Buyer's entire and exclusive remedy.

The sole purpose of the stipulated exclusive remedy shall be to provide the Buyer with free repair or replacement of defective products, or refund of the purchase price, in the manner provided herein. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective products, or to refund the purchase price in the prescribed manner.

8. Indemnification. Buyer agrees to indemnify and hold Seller harmless from any and all liability, loss or damages which Seller may suffer as a result of claims, demands, costs or judgments made against Seller arising out of any use whatsoever of the machinery and equipment sold pursuant to this Agreement, which liability, loss or damages, claims, demands or judgments are based upon or result from (a) any alteration or modification of the machinery or equipment by Buyer, Buyer's officers, agents or employees; or (b) the failure of Buyer, Buyer's officers, agents or employees to follow manufacturer's instructions, warnings or recommendations which are communicated by Seller to Buyer in any form before, during or after the item of this sale; or (c) the failure of Buyer, Buyer's officers, agents or employees to comply with federal, state, or local laws or regulations applicable to the use of such machinery or equipment, including but not limited to the 1970 Occupational Safety and Health Act as amended; (d) the failure of Buyer, Buyer's officers, agents or employees to properly train and instruct anyone using such machinery or equipment.

9. Repairs and Service - Non-Warranty. The cost of all servicing of equipment not provided for in preceding sections may be charged for by the Seller at a per diem rate per man per workday plus transportation and living expenses.

10. Cancellation. Upon written request from Buyer to cancel all or part of an order, the Seller will stop all work as promptly as possible. Any and all work that is complete on date of notification in writing to stop work or cancel shall be invoiced and paid in full; For work that is not completed, a cancellation charge will be rendered in lieu of liquidated damages. Cancellation charge will be computed on the basis of the Seller's full cost (for all engineering work, all work in process and raw materials, all supports and commitments made by the Seller in connection with the order) plus 15%, less such allowances as the Seller may be in a commercially practical position to make for any standard components and for the balance of the material as scrap. Buyer shall promptly instruct Seller as to the disposition of the product and the Seller, if instructed, shall hold the product for Buyer's account. All costs of storage, insurance handling, boxing or other costs in connection therewith shall be borne by the Buyer. Seller shall have no obligation to use the product in filling orders for other of its customers.

11. Property Rights. Seller retains for itself any and all property rights in and to all designs, engineering details and other data pertaining to any equipment designed in connection herewith and to all rights of discovery, invention of patent rights arising out of work done for Buyer. The Buyer

expressly agrees that it will not assert any property rights, therein, except the rights for itself and subsequent owners to use the equipment. Any prints, brochures, drawings or other information furnished to the Buyer by the Seller are intended solely for the confidential use by the Buyer and shall remain the property of the Seller, and shall not be used to detriment of the Seller's competitive position. No license to manufacture is conveyed as part of the sale or otherwise.

12. Patent Indemnity. If any product furnished by the Seller is rightfully claimed to infringe any United States Patent issued at the time Buyer's order is accepted, Seller agrees at its option: (1) to procure for Buyer, the right to use the product, or (2) to modify or replace the product so as to avoid infringement, or (3) to accept re-delivery of the product and reimburse Buyer for the purchase price and any transportation expenses incurred by Buyer. Should any litigation be instituted against Buyer based on a claim that any product in the condition received from Seller infringes any United States patent, Seller will undertake the defense thereof on Buyer's behalf and pay any damages and costs awarded therein against Buyer, provided Seller is given prompt written notice and is furnished with copies of all demands, process and pleadings, and Buyer cooperates fully in giving Seller authority, information and assistance at Seller's expense for such defense, as well as control over the defense and negotiations with regard to settlement.

THE FOREGOING REPRESENTS SELLER'S ENTIRE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CHARGE OF PATENT INFRINGEMENT AND IS IN LIEU OF ANY STATUTORY WARRANTY RELATING TO INFRINGEMENT. SELLER SHALL HAVE NO RESPONSIBILITY INsofar AS ANY PRODUCT IS MODIFIED BY BUYER OR IS MADE OR MODIFIED BY SELLER IN ACCORDANCE WITH BUYER'S ORDER AND BUYER SHALL INDEMNIFY SELLER IN ACCORDANCE WITH THE INDEMNITY IN PARAGRAPH "12" ABOVE FOR ANY CLAIM WHICH ARISES OUT OF SELLER'S COMPLIANCE WITH BUYER'S SPECIFICATIONS. SELLER SHALL ALSO HAVE NO RESPONSIBILITY WITH REGARD TO ANY SETTLEMENT, ADMISSION OR PROMISE MADE BY BUYER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, NOR SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS, CLAIMED TO HAVE BEEN SUSTAINED BY BUYER OR ANY USER OF THE PRODUCT ARISING OUT OF ANY CLAIM OF INFRINGEMENT.

Seller is entitled to indemnity from certain of its suppliers and the rights and options vested in Seller shall extend to such suppliers and may be exercised by them.

13. Reservation of Rights. Seller reserves the right to make subsequent improvements and changes in design of its products without imposing any obligation to make such changes or improvements upon products sold to the Buyer.

14. Limitation of Action. Any action for breach of Seller's warranty must be commenced within twelve (12) months from the time the cause of action accrues unless the period for action shall be extended by Seller in writing. In the interpretation of this limitation of action for breach of Seller's warranty it is expressly agreed that there are no warranties of future performance of the equipment that would extend the period of limitation herein contained for bringing an action.

IT IS EXPRESSLY UNDERSTOOD THAT ANY EFFORT BY BUYER, SELLER OR AGENTS TO REPAIR ANY PRODUCT SHALL NOT EXTEND THE TWELVE (12) MONTH PERIOD OF LIMITATION UNLESS SELLER AGREES IN WRITING. THE WARRANTY SET FORTH IN PARAGRAPH "7" APPLIES TO REPLACEMENT PARTS AS WELL AS EQUIPMENT

ORIGINALLY SOLD, AND NOTHING EXCEPT SELLER'S WRITTEN CONSENT SHALL EXTEND ITS OBLIGATION IN WARRANTY MORE THAN THE PERIOD SPECIFIED IN PARAGRAPH "7".

15. Installation Costs. All cost incident to installation or erection or both of any product shall be borne solely by Buyer.

16. Interpretation and Jurisdiction. Any contract resulting from Seller's quotation or acknowledgment of Buyer's purchase order shall be governed by and construed in accordance with the laws of the State of Pennsylvania other than its conflict of laws doctrine. The Buyer consents to the exclusive Personal Jurisdiction over the parties of the courts located in Allegheny County, Pennsylvania and venue in such courts.

WOODINGS INDUSTRIAL CORPORATION, MARS,
PENNSYLVANIA 16046