

# Terms and Conditions

# PRICE ENGINEERING COMPANY, INC.

## TERMS AND CONDITIONS OF SALE

1. **ENTIRE AGREEMENT.** The terms and conditions set forth below constitute all of the terms and conditions of the agreement between Price Engineering Co., Inc ("Seller") and the buyer ("Buyer") regarding the products and related services (collectively, "Products"). Seller's acceptance of Buyer's order is expressly conditioned on Buyer's acceptance of these terms and conditions, and Buyer, upon placing an order, is presumed to have accepted all these terms and conditions without modification. If there is a discrepancy or conflict between any exhibit or supplement to this Buyer's order and these terms and conditions, these terms and conditions shall control. This document is intended by Seller and Buyer to be the complete, exclusive and final statement of their agreement. Any changes to this document must be in writing and signed by Seller and Buyer.

2. **SHIPMENT.** Shipment is F.O.B. Seller's plant or other place of manufacture, unless otherwise specified. The risk of loss to the Products (including damage or destruction thereto) passes to Buyer upon Seller's delivery of Products to the carrier. Unless shipping arrangements are specified by Buyer, Seller will make commercially reasonable arrangements for shipment.

3. **DELIVERY.** Seller will make every effort to fill orders within the time stated, but the stated delivery date is approximate only, and Seller reserves the right to re-adjust shipment schedules. Acceptance by Buyer of the Products when received waives any claim for loss or damage resulting from a delay, regardless of the cause of the delay. If shipment is delayed or suspended by Buyer, Buyer will pay the invoice price for the Products as per payment terms, together with Seller's handling, storage charges, demurrage and similar charges in effect, if any. Seller may make delivery in installments. All such installments will be separately invoiced and paid as billed without regard to subsequent deliveries. Buyer's failure to pay any installment when due will excuse Seller from making future deliveries.

4. **PRICES AND FEES.** All prices are subject to change without notice and any unshipped balance on Buyer's order shall be invoiced to and paid by Buyer at prices in effect at the time of delivery. Unless otherwise specified, payment terms are net thirty (30) days from invoice date. In addition to the purchase price, Buyer will pay any federal, state and local sales, excise, privilege, use or other taxes arising from the sale or delivery of the Products or the use thereof, or in the case of sales tax provide Seller with an appropriate exemption certificate. If Buyer requests changes in the Products or delays progress of the manufacture or shipment of the Products, the contract price will be adjusted to reflect increases in the selling price caused thereby. If by the terms of sale credit is extended to Buyer, Seller reserves the right to revoke such credit if Buyer fails to pay for any Products when due, and Seller may demand payment prior to the commencement of any further shipment. Buyer shall also reimburse seller for any collection and legal fees incurred by Seller in enforcing Buyer's order or any agreement hereunder.

5. **WARRANTY; EXCLUSIVE REMEDY.** Seller warrants that the Products manufactured by it will be free from defects in materials and workmanship for a period of twelve (12) months from the date of installation or operation or, if earlier, eighteen (18) months from the date of shipment to Buyer. The foregoing limited warranty runs only to Buyer and not to purchasers of the Product from Buyer. Seller's sole and exclusive obligation to Buyer under this warranty will be, at Seller's option, to repair or replace any Products or parts thereof manufactured by Seller which have proven defective in material or workmanship, or to refund the portion of the purchase price relating to the defective Product of part. This warranty does not cover Products that are defective due to ordinary wear and tear, abuse, misuse, modification, overloading, alteration or Products or parts which have not been installed, operated or maintained in accordance with Seller's written instructions. **ANY REPAIRS TO THE PRODUCTS THAT ARE NOT MADE BY SELLER, UNLESS AUTHORIZED IN ADVANCE BY SELLER, WILL VOID THIS WARRANTY.** No claims under this warranty will be valid unless Buyer notifies Seller in writing within a reasonable time of discovery of such defect, but in no event later than the end of the warranty period set forth above. Upon the repair or replacement of a defective Product or part, Seller's warranty will continue for the remainder of the warranty period for the original Product or part.

6. The warranty and warranty period for Products or parts purchased by Seller from third parties are limited to the warranty and warranty period extended to Seller from the manufacturer thereof. The remedy of repair, replacement or refund provided for herein is Buyers exclusive remedy for breach of the above limited warranty. **THE FOREGOING WARRANTY IS THE ENTIRE AND EXCLUSIVE WARRANTY REGARDING THE PRODUCTS AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

If any Products are provided with software ("Software"), Seller warrants that it owns all right, title and interest in and to the Software or otherwise has the right to grant a sublicense to any third-party software contained in the Software, that the Software substantially conforms to any agreed-upon written documentation, that the Software is free from material defects in workmanship and materials that prevent it from substantially meeting such specifications, and that, to Seller's knowledge, the Software does not contain any virus, worm or other limiting routine, instruction or design that erases data or programming or otherwise renders the Software or Buyer's system inoperable or incapable of being properly used. Seller does not warrant that the operation or use of the Software will be uninterrupted or error-free. Such warranties run for ninety (90) days from the date of installation or operation. The above warranties apply only if the Software is used as intended.

7. **LIMITATION OF LIABILITY. SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS OR LABOR COSTS, ARISING FROM THE SALE, USE OR INSTALLATION OF THE PRODUCTS OR SOFTWARE, FROM THE PRODUCTS OR SOFTWARE BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, OR ON TORT OR OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER CONCERNING THE SALE, USE OR INSTALLATION OF THE PRODUCTS OR SOFTWARE. NEITHER PARTY WILL HAVE ANY NEGLIGENCE OR OTHER TORT LIABILITY TO THE OTHER, OR ANY THIRD PARTY, ARISING FROM ANY BREACH OF THIS AGREEMENT. IN NO EVENT SHALL SELLER'S LIABILITY FOR ANY MATTER ARISING PURSUANT TO BUYER'S ORDER EXCEED THE SUM TOTAL OF THE PAYMENTS ACTUALLY MADE BY BUYER PURSUANT TO SUCH ORDER.**

8. **INSTALLATION.** Buyer, at its expense, is to make all service connections necessary for operating the Products, such as electricity, water and air. Buyer will install the Products in accordance with Seller's instructions and will indemnify Seller against any and all damages, demands, suits, causes of action, claims and expenses arising directly or indirectly out of Buyer's failure to so install the Products.

9. **REFURBISHED EQUIPMENT.** Except as otherwise expressly agreed in writing by Seller, Seller has no responsibility to ensure that equipment refurbished by Seller will meet any laws or standards imposed by any governmental agency or certification or standards organization.

10. **SPECIFICATIONS.** Seller may, at its option, make changes in the design, arrangement or components of the Products if, in Seller's judgment, such changes will be beneficial to the operation of the Products. Buyer may not make any changes in the specifications for the Products unless Seller approves of such changes in writing. If any such change made by Buyer results in an increase in prices or change in delivery schedules for the Products, Buyer shall accept such increase or change upon Seller's written notice of same.

11. **Proprietary Information; Confidentiality.** All non-public materials and information furnished by Seller or any other person acting on behalf of Seller and all information learned or observed about Seller or its operations through performance of Buyer's order is confidential and Buyer shall not disclose any such information to any other person, or use such information for any purpose other than performing Buyer's order without Seller's express written consent.

12. **DESCRIPTIONS.** All weights, measurements, dimension, drawings, capacities and other particulars of the Products, whether contained in plans, photographs, catalogs, price lists or advertising material or otherwise, are only approximate and are included solely for Buyer's guidance. Such particulars do not form part of the contract, and deviations therefrom or subsequent changes in design are not grounds for non-acceptance of the Products and do not constitute a breach of the agreement.

13. **INFRINGEMENT.** Seller at its expense will defend and hold Buyer harmless from and against all damages, costs and expenses arising from any claim of infringement or misappropriation of any patent, trademark registered design or other intellectual property rights caused by the Products originally manufactured by Seller, provided such claim of infringement or misappropriation is not based upon or caused by: (a) Seller's compliance with any designs, drawings, samples, specifications or instructions regarding the Products provided by Buyer; (b) the modification of the Products following shipment by Seller; or (c) the combination, operation or use of the Products with devices, products, parts, or software not supplied by the Seller. In all other cases Buyer at its own expense will defend and hold Seller harmless from and against all damages, costs and expenses arising from any claim of infringement or misappropriation of any patent, trademark registered design or other intellectual property rights caused by the Products. If any such originally manufactured Product is held to infringe any United States patent and if Buyer's use thereof is enjoined, Seller will, at its expense and option: (1) obtain for Buyer the right to continue using the Products, (2) supply a non-infringing Product, (3) modify the Product so that it becomes non-infringing, or (4) refund the then market value of such Product. In no event shall Seller's liability exceed the sales price of the infringing Product. **THE FOREGOING REPRESENTS SELLER'S ENTIRE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CHARGE OF MISAPPROPRIATION OR INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT AND IS IN LIEU OF ANY STATUTORY WARRANTY RELATING TO INFRINGEMENT.** Seller will have no responsibility insofar as any Product or part thereof is made by another, is modified by Buyer or is made or modified by Seller in accordance with Buyer's order.

14. **NAMEPLATES.** Any nameplate or other form of identification (including serial number) which Seller has affixed to or marked upon any of the Products may not be removed by Buyer without Seller's written consent.

15. **TERMINATION BY BUYER.** Buyer may not cancel orders placed with Seller, except with Seller's written consent and then only if Buyer makes payment to Seller to indemnify it against loss, including without limitation expenses incurred and commitments made by Seller.

16. **TERMINATION BY SELLER.** Seller may cancel Buyer's order without penalty if Buyer fails to comply with the terms or conditions of its order, including terms or conditions regarding timely payment.

17. **LOSS, DAMAGE OR DELAY.** Seller will not be liable for loss, damage or delay resulting from causes beyond its reasonable control or caused by strikes or labor difficulties, lockouts, acts or omissions of any governmental authority or Buyer, insurrection or riot, war, acts of terrorism, fires, floods, Acts of God, breakdown of essential machinery, accidents, embargos, cargo or material shortages, delays in transportation or inability to obtain labor, materials or parts from usual sources. In the event of any such delay, performance will be postponed by such length of time as may be reasonably necessary to compensate for the delay. If performance by Seller under Buyer's order cannot be accomplished by Seller due to any action of governmental agencies, or any laws, rules or regulations, Seller may, at its option, cancel Buyer's order without liability.

18. **WORK BY OTHERS; ACCESSORIES AND SAFETY DEVICES.** Unless agreed in writing, Seller, being the supplier of the Products, has no responsibility for labor or work of any nature relating to operation, use of installation of the Products, all which will be performed by Buyer or others. It is the responsibility of Buyer to furnish such accessory and safety devices as may be desired by it and/or required by law. Buyer shall require its employees to use all safety devices, guards and proper safe operating procedures to the extent set forth in manuals and instruction sheets furnished by Seller. Buyer is responsible for consulting any operator or machine manual, and ANSI safety standards, OSHA regulations and other applicable sources.

19. **No Assignment.** Buyer shall not delegate or assign its rights or obligations hereunder, in whole or in part, without Seller's prior written consent. Any attempted delegation or assignment by Buyer without such consent shall be void.

20. **INDEPENDENT CONTRACTOR.** Seller, its agents and other suppliers shall at all times be independent contractors and Buyer shall make no express or implied representations to the contrary.

21. **GENERAL.** (a) No modification or waiver of this agreement or any of its provisions is valid unless expressly agreed to by Seller in writing. No waiver by Seller of any default under this agreement is a waiver of any other or subsequent default; (b) The unenforceability of invalidity of one or more of the provisions of this agreement will not affect the enforceability or validity of any other provision of this agreement; (c) **THE COMPLETE AGREEMENT BETWEEN SELLER AND BUYER IS CONTAINED HEREIN AND NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS OF BUYER SHALL BE BINDING UNLESS AGREED TO BY SELLER IN WRITING.** No course of dealing, usage of trade or course of performance will be relevant to supplement or explain any terms used in this agreement; (d) Buyer may not assign any of its rights, duties or obligations under this Agreement without Seller's prior written consent and any attempted assignment without such consent, even if by operation of law, will be void; and (e) this agreement is governed by and shall be construed in accordance with the laws of the State of Wisconsin, without regard to its conflicts of laws principles. Buyer hereby consents to the jurisdiction and venue of the state courts located in Waukesha County, Wisconsin and agrees that all claims shall be heard and determined only in such courts.