

CUSTOMER TERMS AND CONDITIONS

- 1. Acceptance of Orders.** All orders are subject to approval and acceptance in writing by DMARK Corporation ("DMARK").
 - 2. Complete Agreement.** Acceptance of orders, whether oral or written, is based on the express condition that Buyer agrees to all the terms and conditions contained herein. These Terms and Conditions of Sale, and the terms and specifications set forth on the face of this document, constitute the entire agreement between DMARK and Buyer identified on the face of this document for the sale of the equipment described in this Agreement ("Equipment," which term includes all its parts and related operating system software provided by DMARK.) This Agreement supersedes any conflicting or additional terms in any other agreement, whether oral or in writing, related in any way to this Agreement or Equipment, including without limitation Buyer's or third-party purchase orders, finance agreements, leases, acceptance agreements, and manufacturers' warranties. **DMARK hereby rejects any other agreement or offer of terms that varies or adds to this Agreement's terms, unless DMARK expressly accepts such terms in a signed writing.**
 - 3. Prices.** All prices are F.O.B. Point of Origin, unless otherwise specified. Transportation cost shall be paid and borne by Buyer. Prices do not include sales, use, excise, or other fees or taxes.
 - 4. Payment Terms.** Payment terms are Net 30 days from the date of Invoice, unless otherwise agreed by DMARK. All sales are subject to credit approval. Payment schedule, if any, is defined in our quotation. A service charge of the lesser of 1.5% per month or the applicable maximum legal rate will be added to all past due accounts.
 - 5. Security.** DMARK reserves the right to require payment for any shipment hereunder in advance, or satisfactory security, if the financial responsibility or performance of Buyer becomes unsatisfactory to DMARK. If Buyer fails to make payment in accordance with the terms of this agreement, or fails to comply with any provision hereof, DMARK may, at its option (and in addition to other remedies), cancel any unshipped portion of the order, and buyer remains liable for all unpaid amounts. DMARK shall have a lien on all Equipment until fully paid. At its discretion, it may file and record its security interest in Equipment, whether Equipment is shipped to Buyer or a third-party, or sold at any point by Buyer.
 - 6. Shipment.** Shipping schedule will be computed from the date of receipt by DMARK of Buyer's written order or, in the case of special items, from the date of receipt of complete information necessary to proceed with design and manufacture, and is subject to (a) prior sale and confirmation by DMARK at time of placing the order, (b) force majeure, and (c) delay in delivery by manufacturers.
- DMARK will use reasonable efforts to comply with Buyer's requests as to method of shipment but DMARK reserves the right to use an alternate method of transportation or route of shipment if substantial delay might otherwise occur. In such cases, DMARK will notify Buyer of such changes as soon as reasonably possible. Risk of loss shall pass to Buyer upon delivery by DMARK to carrier consigned to Buyer or Buyer's consignee, regardless of who selected the carrier and whether shipment or rigging is prepaid or included in the price.
- 7. Force Majeure.** DMARK shall not be liable for delays in shipment or default in delivery for any cause beyond DMARK's reasonable control including, but not limited to, government action, shortage of labor, parts, raw material, production or transportation facilities, labor difficulty involving employees of DMARK or others, fire, flood, or other casualty. In the event of any delay in DMARK's performance due in whole or in part to any cause beyond DMARK's reasonable control, DMARK shall have such additional time for performance as may be reasonably necessary under the circumstances. Acceptance by Buyer of any goods shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery such as goods.
 - 8. Taxes.** All taxes, fees, and excises of any nature whatsoever now or hereafter levied by governmental authority upon the sale or transportation of any goods covered hereby shall be paid and borne by the Buyer.
 - 9. Title.** Delivery of goods to carrier shall be deemed delivery to Buyer, and thereupon title to such goods, and risk of loss or damage, shall be Buyer's. Any claim by Buyer against DMARK for shortage or damage occurring prior to such delivery must be made in writing within five (5) days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from DMARK in the conditions claimed Equipment, including all of its parts, shall remain personal property regardless of how affixed to any realty or structure.
 - 10. Warranty & Disclaimer.** All goods (except wear parts) sold by DMARK and used within manufacturer approved specifications are warranted by the manufacturer against defects in material and workmanship under normal single

shift operating conditions under the terms of the manufacturer's published warranty.

THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, AND DMARK MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS, OR AS TO ANY INTELLECTUAL PROPERTY RIGHTS, PATENTS, TRADEMARK, TRADE SECRET, OR COPYRIGHT IN EQUIPMENT.

- 11. Limitation of Remedies.** DMARK shall not be liable for incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling or use of the Equipment, or from any other cause with respect to the Equipment of this agreement, whether such claim is based on breach of contract, breach of warranty, strict liability, tort, negligence or any other equitable or legal theory. DMARK's liability hereunder in any case is expressly limited, at DMARK's election, to repair or replacement (in the form originally shipped) of Equipment.
- 12. Returned Goods.** Equipment cannot be returned without DMARK's prior written consent and assignment of a return authorization number. If such consent is obtained, Equipment purchased from DMARK may be returned subject to a restocking charge of fifty percent (50%), provided such Equipment is unused and free from defects or damage and is resalable by DMARK at the time of return. The return provision does not apply to parts specially made for a Buyer nor a Buyer's own parts repaired by DMARK.
- 13. Termination.** If Buyer notifies DMARK that it wishes to terminate this order for its convenience and if DMARK in its sole discretion accepts the termination, DMARK will stop all work as promptly as reasonably possible. Buyer shall pay a termination charge computed on the basis of all of DMARK'S direct, indirect and allocated engineering, production, material, selling and administrative expenses plus twenty five percent (25%). This charge is agreed to be a reasonable estimate of damages to DMARK for all work in process, raw materials, all supplies and all commitments made by DMARK in connection with the order.
- 14. Proprietary Information.** Any quotes, proposals, prints, plans, specifications, models, drawings, or other information furnished to Buyer by DMARK are intended for confidential use by Buyer, shall remain proprietary to DMARK, and shall not be disclosed or used to the detriment of DMARK or to the benefit of anyone other than DMARK. All such material will be returned by Buyer to DMARK if there is any cancellation or termination of the order.
- 15. Buyer's Indemnity.** With respect to goods manufactured by DMARK or by others for DMARK, to Buyer's design, specifications or instructions, Buyer guarantees that such goods or the process or manufacture do not infringe any patent, registered designs, trademarks, or other proprietary right. Buyer agrees to save harmless, indemnify and at DMARK's option defend DMARK from and against any and all liabilities, costs, claims, demands and expenses (including reasonable attorney's fees) which result by reason of any breach of this guaranty. Signatory for Buyer represents that s/he has full authority to enter into this Agreement on behalf of Buyer. Buyer warrants Buyer has full authority to enter into this Agreement and that Buyer's entry into this Agreement does not breach or constitute default under any other agreement, nor constitute an unlawful or tortious act.
- 16. Waiver of Rights.** Waiver by DMARK of any breach of these terms and conditions shall not be construed as a waiver of any other breach and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time. Waiver or modification of any term of this Agreement can only occur by a written agreement signed by DMARK.
- 17. Applicable Law and Binding Arbitration.** This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the state of California, including its Commercial Code, but without giving effect to the principles to conflicts of the law thereof. ALL ACTIONS, DISPUTES, CLAIMS, AND CONTROVERSIES UNDER COMMON LAW, STATUTORY LAW OR IN EQUITY, OF ANY TYPE OR NATURE WHATSOEVER, BETWEEN OR INVOLVING BUYER AND DMARK (INCLUDING ANY ALLEGED AGENT, EMPLOYEE, OFFICER, OR OWNER OF EITHER) SHALL BE RESOLVED EXCLUSIVELY THROUGH BINDING ARBITRATION BY A RETIRED STATE OR FEDERAL JUDGE IN ORANGE COUNTY, CALIFORNIA, AND THE PREVAILING PARTY SHALL BE AWARDED ATTORNEY'S FEES, COSTS, EXPERT FEES AND ARBITRATION FEES. All court proceedings related to the arbitration shall be exclusively in Orange County, California, And the parties submit to personal jurisdiction in such courts.