

PACIFIC CONSOLIDATED INDUSTRIES LLC TERMS AND CONDITIONS OF SALE

1. ACCEPTANCE

The offer of sale from Pacific Consolidated Industries LLC ("PCI" or "Seller") and its acceptance by the Buyer is expressly subject to the following terms and conditions and no others, unless the same have been consented to in writing by PCI. The placing of the resultant order by Buyer and its acceptance of the articles being sold hereunder shall be conclusive evidence of Buyer's approval of and consent to the terms and conditions herein contained.

2. PRICES AND PAYMENT

All prices set forth in the offer are FOB Origin/Ex-Works PCI's facilities, Riverside, CA, USA, and unless otherwise stated, do not include cartage insurance, taxes, packaging, shipping, freight, or other similar charges. All payments shall be made in accordance with the terms set forth in PCI's offer unless otherwise agreed by Buyer and Seller. The maximum allowable service charge under the laws of the state in which PCI is located shall be applied to all past due accounts commencing from the due date of the invoice until paid.

3. PERFORMANCE / DELIVERIES

- a) PCI shall not be liable for delays in delivery, performance, or failure to perform, manufacture or deliver due to causes beyond its reasonable control; or acts of God, acts of the Buyer, acts of civil or military authority; Governmental priorities, fires, strikes, floods, epidemics, war; or inability due to causes beyond its reasonable control to obtain necessary labor, materials, utilities, components or manufacturing facilities. In the event of any such delay, the date of performance/delivery shall be extended for a period of time as may be necessary to compensate for any such delay.
- b) If customer requests a delay in shipment beyond the agreed delivery date in the sales order acknowledgement, PCI will invoice in full after ten (10) calendar days, and payment is due in accordance with the agreed upon payment terms. PCI also reserves the right to impose a storage fee after 45 calendar days. The storage fee will be monthly, or any portion thereof, and will be calculated at 1.5% of the order value, with a minimum amount of \$300.00. The storage fee is non-refundable, and will be payable prior to shipment.

4. LIMITED WARRANTY; LIMITATION OF LIABILITY AND REMEDIES

- a) PCI warrants that the articles delivered hereunder conform to final specifications, drawings, and other descriptions agreed in writing to be applicable, and are free from defects in materials and workmanship. These warranties shall run to the Buyer, its successors, assigns and customers.
- b) The responsibility of PCI hereunder, and the sole and exclusive remedy of Buyer, its successors, assigns or customers for a breach of any warranty hereunder, is limited to correction or replacement by PCI at its plant without charge of any article or part which has been returned to PCI and which is not in accordance with this warranty; provided, however: (1) PCI must be notified in writing of the defect or nonconformity within the warranty period; (2) Buyer must obtain a Return Material Authorization (RMA) number from Seller and the affected article or part must be returned to PCI within thirty (30) days after discovery of such defect or nonconformity; (3) PCI shall have the sole right to determine whether returned articles or parts shall be repaired or replaced; (4) if PCI is unable to repair or replace defective or nonconforming articles or parts within a reasonable time after receipt thereof, Buyer shall be credited for their value at the original purchase price; (5) PCI shall not be responsible for costs of removal and reinstallation or for items returned without a RMA; and (6) Buyer agrees to assume round-trip transportation costs (shipping and handling) for defective or nonconforming articles to and from PCI's facility, and transportation is at the risk of the Buyer.

- c) PCI's responsibility under these warranties shall expire twelve (12) months after shipment of the Capital Equipment/Accessories, and three (3) months after shipment of the Spare Part(s). In the case of any warranty repair by PCI on Capital Equipment/Accessories, the warranty shall remain in effect for the remainder of the twelve (12) month period from the date of shipment of the repaired or replaced item, whichever is longer. Out of warranty repair work conducted by PCI shall have a three (3) month warranty period after delivery, unless otherwise agreed.
- d) Unless otherwise agreed, and except as may be necessary to comply with these warranties, PCI reserves the right to make changes in its products without any obligation to incorporate such changes in any product manufactured, overhauled or repaired theretofore.
- e) These warranties will not apply if the articles or any parts thereof have been subjected to: (1) any maintenance, overhaul, installation, storage, operation, use handling, or environment which is improper or not in accordance with PCI's instructions; (2) any alteration, modification, or repair by anyone other than PCI or its authorized representative; or (3) any accident, misuse, neglect, or negligence after delivery by PCI. The warranty shall not apply to any article to the extent that the defect or nonconformity is attributable to any part not supplied or approved by PCI.
- f) PCI's obligations under these warranties are conditioned on Buyer's obligation to maintain records which will accurately reflect maintenance performed on PCI's equipment and establish the nature of any unsatisfactory condition of PCI's equipment. PCI, at its request, shall be given access to such records for substantiating warranty claims.
- g) Except as set forth in paragraph (b), parts or components not manufactured by PCI shall be in accordance with the standard warranty provision of the manufacturer or supplier thereof, which warranty constitutes the sole obligation of PCI and the sole remedy of Buyer.
- h) No warranty is given with respect to articles or parts not overhauled or replaced by PCI.
- i) ALL OTHER WARRANTIES WHETHER EXPRESSED, IMPLIED, OR STATUTORY, SUCH AS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED AND DISCLAIMED TO THE EXTENT THEY EXCEED THE WARRANTIES GRANTED HEREIN. THIS WARRANTY COMPRISES PCI'S ENTIRE LIABILITY IN RELATION TO ANY FAILURE OR DEFECT TO THE EXCLUSION OF ALL OTHER LIABILITY OR REMEDIES IN TORT (WHETHER FOR NEGLIGENCE OR OTHERWISE) OR IN CONTRACT OR OTHERWISE. IN NO EVENT SHALL PCI BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES RESULTING FROM INJURY TO ANY PERSON OR PROPERTY OR FROM ANY INTERRUPTION OR LOSS OF BUSINESS.
- j) No agreement extending this warranty shall be binding upon PCI unless in writing and signed by PCI's duly authorized officer or representative.

5. TAXES

The amount of Federal, State or local taxes applicable to the sale, use or transportation of the articles sold or the work performed hereunder and all duties, imposts, tariffs, or other similar levies shall be added to the prices and paid by the Buyer, except where the Buyer shall furnish an appropriate certificate of exemption therefrom. Buyer indemnifies and holds PCI harmless from the payment or imposition of any tax imposed on any articles sold or used hereunder, or for any work performed hereunder under the provisions of any State Sale or Use Tax Act plus penalties or interest or attorney's fees connected with the imposition of any such sales or use tax in connection with the articles sold or used or the work performed hereunder.

6. EXPORT

If any article sold hereunder is for export, Buyer shall be responsible for arranging for transportation, insurance, and compliance with local country export/import or re-export laws and clearances. If PCI will be responsible for obtaining the U.S. Government export license prior to export, this offer of sale is conditioned upon U.S. Government approval of PCI's export license application. If PCI's export license application is not approved by the U.S. Government, this offer of sale is null and void.

7. SEVERABILITY

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. To the extent permitted by applicable law each party hereby waives any provision of law which renders any provisions hereof prohibited or unenforceable in any respect.

8. APPLICABLE LAW; CHOICE OF LAW AND FORUM; BUYER'S OBLIGATION IN EVENT OF ITS BREACH; EXCLUSION OF U.N. CONVENTION

This Agreement shall be interpreted in accordance with the laws of the State of California applicable to agreements made and performed entirely in California. Any litigation arising out of or relating to this Agreement shall be in the State of California. Any legal action by Buyer in connection with any alleged breach must be commenced within one (1) year from the date of the alleged breach. In any action by PCI to enforce its rights hereunder in which PCI prevails, Buyer agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by PCI. The United Nations Convention on the Contracts for International Sale of Goods, 1980, and any amendment or successor thereto is expressly excluded from this Agreement.

9. WAIVER

Failure by PCI to assert all of any part of its rights upon any breach of this Agreement shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach not shall any waiver be implied from the acceptance of any payment or service. No written waiver of any right shall extend to or affect any other right PCI may possess nor shall such written waiver extend to any subsequent similar or dissimilar breach.

10. ESTIMATED PRICING

Estimated pricing is defined to mean an approximate calculation only. The final price may exceed the estimated price.

11. INTELLECTUAL PROPERTY RIGHTS

PCI retains all intellectual property rights in the articles delivered in accordance with this Agreement including, but not limited to, any and all patent, trade secret, trademark or copyright rights. Buyer shall have no such rights by virtue of entering into this Agreement. Specifically, and without limiting the generality of the foregoing, Buyer agrees that it shall not, following its purchase of the articles hereunder, build, manufacture, fabricate or reverse engineer the articles, or sell any items so built, manufactured, fabricated or reverse engineered.

12. U.S. EXPORT CONTROL AND EMBARGO LAWS

Buyer shall bear all responsibility for complying with any and all export control and embargo laws and regulations of the United States and shall promptly provide PCI with any requested export control documentation, including but not limited to any requested end user information. Buyer hereby certifies that any products, technology, or software disclosed or provided by PCI will not be exported, re-exported, sold, leased, or transferred in violation of: (a) the U.S. Export Administration Regulations; (b) the U.S. International Traffic in Arms Regulations; and (c) applicable U.S. trade and economic sanctions administered by the U.S. Department of Treasury's Office of Foreign Assets Control. Buyer shall defend, indemnify and hold harmless PCI for any Buyer failure to comply with such laws or regulations.

13. SHIPMENT, TITLE, RISK OF LOSS

The articles being sold hereunder shall be delivered to Buyer FOB Origin/Ex-Works PCI's facilities, Riverside, CA, USA, and shall be deemed accepted by Buyer at PCI's facilities. Buyer shall take title at PCI's facility upon shipment and regardless of the method of delivery risk of loss or damage shall pass to Buyer upon Seller's delivery to a carrier.

14. ENTIRE AGREEMENT

Upon acceptance of this Agreement by Buyer, the provisions hereof (including the pertinent documents, drawings and specifications applicable hereto) shall constitute the entire Agreement between the parties and supersede all prior prices, offers, negotiations and agreements relating to the subject matter hereof.

15. TERMINATION

In the event Buyer cancels any order placed with Seller, Buyer hereby agrees to fully compensate Seller for: (a) all costs incurred by Seller in connection with such order, including without limitation manufacturing and raw material costs for items partially manufactured; and (b) all losses suffered by Seller due to interruptions to manufacturing schedules and dedication of resources, opportunity costs, lost sales and lost profits. Seller will use commercially reasonable efforts to avoid and/or minimize such costs and losses (to the extent the same may be avoided or minimized). Buyer agrees to pay such charges within thirty (30) days after the date of invoice therefore.