

## YOKOHAMA TWS NORTH AMERICA, INC. ("SELLER") GENERAL TERMS AND CONDITIONS OF SALE

**1. Applicable Law and Jurisdiction.** These general terms and conditions apply to all proposals and quotations submitted by Seller, to all purchase orders received by Seller, and to all goods and services sold by Seller, except as otherwise specifically provided in a document signed by Seller. This sale and any sale resulting here from consists only of these terms and conditions and those in other documents referenced herein or attached hereto or in a document subsequently signed by Seller and referencing this transaction (all of which constitute the "Agreement"). The Agreement shall be governed, construed and enforced under the laws of the State of Massachusetts including the Uniform Commercial Code in force on the initial date of the Agreement ("UCC"), except as provided herein. The U.N. Convention on the International Sale of Goods shall not apply. Any services to be provided hereunder, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units), shall be considered ancillary to a sale of goods and the UCC shall apply to all goods and services to be provided hereunder ("Goods"). THE COURTS OF MASSACHUSETTS SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT. The parties stipulate to the convenience of Massachusetts courts as to all litigation. Any declaration of unenforceability of a provision shall be as narrow as possible and shall not affect the enforceability of the other provisions.

**2. Formation, Integration and Modification.** A. The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of Seller's quotation (according to its terms), Seller's actions in reliance on Buyer's oral acceptance of a written or oral quotation, or Buyer's receipt of the Goods, will constitute a binding contract under the terms of the Agreement. The Agreement is subject to Seller's revocation or cancellation without liability until approved by Seller at its home office. Notice of such approval may be furnished to the Buyer by an acknowledgment, shipment, or other form of express approval. B. An order submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with these Terms and Conditions), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other writing. Seller shall not be deemed to have enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions. C. The Agreement is a final, complete and exclusive statement of the parties' Agreement. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in writing and signed by Seller's authorized employee. Seller may correct unilaterally any mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or customs in the trade shall not constitute a modification or waiver by Seller of any right by Seller. D. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be for the benefit of Seller's agents, employees, contractors, and suppliers. If any provisions are determined to apply to third parties, all other provisions shall also apply.

**3. Prices, Payment and Risk of Loss.** A. Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices contained in individual written quotations or proposals are firm only for a period of 30 days from the date of the quotation. Prices do not include taxes. Buyer shall pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt therefrom. All prices are in United States dollars. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt all invoices rendered by Seller for any such items Seller may pay and for the Goods. B. This Agreement is for a shipment contract and the Goods shall be delivered F.O.B. Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. C. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, and manufacturing required by changes requested by Buyer after the date of any quotation. D. All amounts not paid to Seller when due are subject to incur a carrying charge of 1.5% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.

**4. Delivery.** Shipping dates are estimates based on Seller's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller's books. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment, and other conditions as specified in the Agreement, and of all drawings, information and approvals necessary to provide the Goods and to grant any credit proposed in the Agreement.

**5. Delay of Shipment or Performance Excused for Various Reasons.** A. If shipment of any item or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the item at the place of manufacture at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for an item shall be due and payable 30 days after Buyer is notified that the item is ready for shipment. If Seller is unwilling to accommodate Buyer by holding such item, Buyer shall accept shipment immediately. B. Seller shall not be in default because of its delay or failure to deliver or perform resulting, in whole or in part, from: (i) any embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order, or (ii) the lack of usual means or transportation, fires, floods, explosions, strikes or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which interfere with, or render substantially more burdensome, Seller's production, delivery, or performance.

**6. Inspection, Testing and Rejection.** A. If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other procedures have been specified in the Agreement. B. All drawings, specifications, technical documentation, samples, prototypes and Goods shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven days of receipt or other reasonable time established by Seller. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED.

**7. General Express Warranties.** A. Seller warrants to Buyer only, that Goods (or portions thereof manufactured by Seller) shall be free from defects in materials and workmanship which are identified to Seller in writing within the one year warranty period following shipment of the Goods to Buyer, subject to the disclaimers and limitations of the Agreement. Absence of such written claims during this period will constitute a waiver of all claims with respect to the Goods. B. Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is non material. C. Seller's warranties shall apply only if the Goods: (i) have been installed, maintained, and used in conformity with instructions and recommendations furnished by Seller from time to time, if any; (ii) have not been subjected to misuse, movement of the structure, physical abuse, installation error, negligence or accident; and, (iii) have not been altered or repaired by persons other than Seller in a manner, which, in the judgment of Seller, adversely affects the condition of the Goods. It is Buyer's responsibility to determine suitability of the Goods for Buyer's use and Buyer assumes all risk and liability associated therewith.

**8. Disclaimer and Limitation of Express Warranties.** There are no express warranties other than those contained in the Agreement. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines, or procedures unless specifically contained in the Agreement.

**9. Remedy and Limitation of Seller's Liability.** A. Defective or non-conforming Goods or parts thereof discovered during the one-year warranty period shall be repaired or replaced by Seller without any additional charge and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller determines to be not in conformity with the express warranties contained herein. If Seller elects, Seller may, upon return of such Goods and making a determination of non-conformity or defect, keep the Goods and refund the purchase price. Buyer's remedies shall be limited exclusively to those provided in this section. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new warranty except the warranty period provided for herein shall be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date repaired or replacement Goods are delivered to Buyer. B. Buyer must contact Seller requesting warranty coverage plus a return authorization number and other instructions for the return of Goods to Seller or other instructions. If requested by Seller, Buyer shall issue a new purchase order or amendment to Seller for replacement Goods, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer must comply with Seller's return instructions (including return of the Goods) within 30 days or the claim shall be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying, and packing returned Goods. Goods returned without compliance with the above procedures shall be returned to the Buyer at Buyer's cost.

**10. Disclaimer of Implied Warranties.** SELLER DIS-CLAIMS ALL IMPLIED WARRANTIES (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in this Agreement.

**11. User's Responsibility for Safety.** It is Buyer's or other user's responsibility to provide all proper devices, tools, training, and other means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation or use of the Goods. If Buyer fails to comply with the obligations set forth in this section, Buyer shall indemnify and save Seller harmless from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the use of the Goods and all warranties of Seller shall become automatically void.

**12. Indemnification.** Buyer shall indemnify Seller from all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of the use, storage, sale, or other disposition of the Goods and supplies or materials used in connection with the Goods if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller.

**13. Consequential, Incidental, and Other Damages.** BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations. Any legal inability to limit or restrict the right of Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder, and under no circumstance shall Buyer recover more than the purchase price.

**14. Proprietary Information.** A. Buyer acknowledges that any information disclosed to Seller has not and will not be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure. Otherwise, Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement. B. All proposals, plans and other information furnished by Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any third party or used by Buyer except as may be necessary for the selection or use of the Goods. C. Any invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller.

**15. United States Government Regulations.** Buyer shall not engage in any transaction with respect to the Goods which violates any statute or regulation of the United States of America.

**16. Time for Bringing Action.** Any proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the payment cannot be filed nor maintained unless: (i) it is commenced within one year after the cause for action has accrued; (ii) Buyer has given timely written notice to Seller of its claim as provided herein; and (iii) Buyer deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action shall accrue no later than shipment of the Goods.

**17. Payment.** Our invoices are payable at the specific lockbox address indicated on the invoice or as an ACH payment at our bank net thirty days from invoice date, unless agreed otherwise. Cash discounts for prompt payment may only be taken if agreed in advance and within the specified discount period. In the event of failure to make payment within the agreed terms, interest at the rate of 18% of the sum invoiced may be due and payable, calculated from the date of invoice, automatically and without notice. Moreover, in the event of failure to make payment upon due date, a demand for payment mentioning the present clause will be sent by certified mail or overnight carrier. If such demand remains in effect for ten days, the principal sum will be increased by a lump sum indemnity of 25% in damages, reserving the right to claim interest, as well as any possible collection and/or attorney fees. There will be a forty dollar (\$40.00) charge for all returned checks.

**18. Certify.** We hereby certify that these goods were produced in compliance with all applicable requirements of the Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of Regulations and Orders of the United States Department of Labor issued and amended under Section 14 thereof.

**19. Equal Credit Opportunity Act.** We are in compliance with the Equal Credit Opportunity Act and do not discriminate with respect to the extension of credit against an applicant on the basis of sex, race, color, creed, national origin, age or marital status.

**20. Equal Credit Opportunity Act – Notification of Credit Application.** If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact the Credit Department at (781) 914-3410 within 60 days from the date you are notified of our decision. We will send you a written statement of the reasons for the denial with 30 days of receiving your request for the statement.