

Viking West Engineered Products Standard Terms and Conditions of Sale

- 1) **Scope.** Prices quoted are for acceptance within thirty (30) days from date of quotation unless otherwise stated. The terms and conditions of sale set forth below apply to all quotations made and purchase orders accepted by Viking West Engineered Products ("Seller").
- 2) **Acceptance of Orders.** Each purchase order ("Order") is subject to these terms and conditions of sale. Any other terms and conditions for an Order, or any attempt to vary, alter or waive these terms and conditions, shall be invalid unless expressly agreed to in writing, signed by an executive officer of Seller.
- 3) **Scheduling.** Shipping dates are approximate and are based upon prompt receipt of all necessary information. The buyer hereunder ("Buyer") shall furnish to Seller written shipping instructions in sufficient time to permit Seller to make shipment within any time or times herein specified for shipment. In the event of a delay in delivery due to any reason described in Section 15 below the delivery date shall be deferred for a period equal to the delay. In the event such delay shall continue for more than two weeks then, at Seller's option, the order will be deemed cancelled without liability to Seller.
- 4) **Delivery and Transportation.** Seller shall not be liable for delays in delivery or other defaults in performance of this Order arising out of causes beyond Seller's control. Unless otherwise agreed to in writing by Seller, delivery of the products and goods specified in the Order ("Products") shall be made EXW (per Incoterms 2000) Seller's place of business. Title to Products passes to Buyer and Products are at risk of Buyer from and after delivery EXW Seller's place of business. Unless otherwise agreed to, Buyer will pay all costs of shipping, and the risk of loss, shortage, delay or damage to Products in transit shall fall upon Buyer, whose responsibility it shall be to file any claims with the carrier.
- 5) **Terms of Payment.** Invoices for Products are due and payable (30) thirty days from the date of invoice unless other terms are shown on the face hereof. Interest shall accumulate and be charged on all past due amounts at a rate of 1% per month (12% per annum). If Buyer delays any shipment, then payment thereon shall become due on the date when Seller decides to make such shipment. If Buyer delays the work covered by the Order, then the payments due thereon at any time shall be a portion of the purchase price equal to the percentage of completion (minus any previously paid portion), as determined by Seller at its sole discretion. Seller reserves the right to ship Orders and make collection thereon by sight drafts with a bill of lading attached.
- 6) **Taxes.** Prices do not include foreign or domestic sales, use, excise or similar taxes. Consequently, in addition to the prices specified herein, the amount of any present or future sales, use, excise or other general or specific tax, or export or import duties, tariff or penalties or other governmental charges fixed or imposed by any lawful authority(ies) upon or applicable to the production, sale, shipment, delivery or use of the Products sold hereunder shall be added to the price and be paid by Buyer to the Seller or, in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to the relevant taxing authorities. If any such taxes are paid by Seller, Buyer shall reimburse Seller for same upon presentation of an invoice.
- 7) **Warranty.** Seller warrants the Products to be free from defects in title, material and workmanship. The extent of Seller's obligation hereunder is to either repair or replace its nonconforming Products, EXW Seller's plant, if returned within twelve (12) months after date of delivery to the Buyer. No allowance will be granted for any repairs or alterations made by Buyer without Seller's written approval. This warranty shall not be construed to cover the cost of any work done by Buyer on material furnished by Seller or the cost of removal or installation of Products. THE FOREGOING STATES THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED BY SELLER TO BUYER AND THERE ARE NO OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED IN FACT OR BY LAW. THE WARRANTIES STATED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR VERBAL, STATUTORY, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED. THIS WARRANTY DOES NOT APPLY TO ANY PRODUCTS WHICH HAVE BEEN SUBJECTED TO MISUSE, MISHANDLING, MISAPPLICATION, NEGLIGENCE, (INCLUDING BUT NOT LIMITED TO USE OF UNAUTHORIZED PARTS OR ATTACHMENTS), OR ADJUSTMENT OR REPAIR PERFORMED BY ANYONE OTHER THAN SELLER OR ONE OF SELLER'S AUTHORIZED AGENTS OR TECHNICIANS.
- 8) **Limitation of Liability.** Seller shall not be responsible, obligated, or liable for any injury or damage resulting from any application or use of Products, either singly or in combination with other products. SELLER'S SOLE LIABILITY FOR BREACH OF WARRANTY OR ANY OTHER CLAIM SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCTS OR RETURN OF THE PURCHASE PRICE, AT SELLER'S SOLE OPTION. SELLER SHALL NOT BE LIABLE FOR DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL, INCIDENTAL, PUNITIVE, LIQUIDATED OR SPECIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCTS OR ARISING OUT OF ACCEPTANCE OF THIS ORDER. BUYER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST, OR EXPENSE THAT MAY BE SUSTAINED BY SELLER BECAUSE OF ANY SUCH LOSS, DAMAGE, OR INJURY.
- 9) **Acceptance of Products.** Products will be deemed accepted without any claim by Buyer unless written notice of non-acceptance is received by Seller within thirty (30) days if delivery is EXW Seller's place of business, or within ten (10) days of delivery if the parties agree to shipping terms other than EXW. Such written notice shall not be considered received by Seller unless it is accompanied by all freight bills for such shipment, with agent's notations as to damages, shortages and conditions of equipment, containers and seals. Non-accepted Products are subject to the return policy stated below.
- 10) **Return of Products.** No product may be returned to Seller without Seller's prior written agreement.

- 11) Damages to Returned Products.** If Buyer elects to return Products to Seller for refurbishment, Buyer agrees to accept all risk of damage or destruction of such returned Products, and Seller shall not be liable for any failure or inability on the part of Seller to complete refurbishment upon any such returned Products.
- 12) Limitations of Actions.** All claims, demands or actions must be brought within one (1) year of date of tender of delivery, or within eighteen (18) months of the relevant Order if no tender of delivery is made, notwithstanding any statutory period of limitation to the contrary.
- 13) Intellectual Property.** Buyer shall defend, indemnify and hold Seller harmless against any and all claims, demands judgment, expense or loss resulting from infringement of third party patents, copyrights or trademarks arising from Seller's compliance with, and Products based upon, Buyer's designs, specifications or instructions. The sale of anything by Seller does not convey any license, rights, title or interest to Buyer, whether by implication, estoppel or otherwise, or under patent claims, industrial property right, trademark, trade secret or any other intellectual property rights covering combinations of such things with other devices or elements. Seller retains all intellectual rights, title and interest in Products and their underlying technology, including Seller's process, manufacturing and all other technologies used in Seller's performance hereunder.
- 14) Financial Responsibility.** If in the sole Judgment of Seller the financial resources of Buyer become impaired or unsatisfactory at any time during the term of any agreement between the parties, then Seller may require of Buyer a deposit or suitable security or margin for performance by Buyer in such amount or amounts from time to time as Seller shall specify. If Seller requests a deposit, Buyer shall make such deposit not later than the close of Seller's next business day. If Buyer fails to make such deposit, then Seller may at its option: (1) cancel the agreement between the parties or the undelivered portion thereof, in which case Buyer agrees to pay Seller the difference between the market price on date of cancellation and the price previously agreed upon by the parties; (2) resell at any time for Buyer's account all or any undelivered portion of Products, in which case Buyer agrees to pay Seller the difference between the resale price and the price previously agreed upon by the parties; or (3) change the terms of payment. In the event Buyer shall be or becomes insolvent, or admits in writing Buyer's inability to pay Buyer's debts as they mature, or if Buyer shall make an assignment with creditors or if there are instituted by or against Buyer proceedings in bankruptcy or under any insolvency laws or for reorganization, receivership or dissolution, then Seller may terminate all agreements between the parties at any time and without notice.
- 15) Force Majeure.** Unforeseeable conditions, including but not limited to events of war, fire, epidemics, quarantine restrictions, flood, strike, labor trouble, breakage of equipment, accident, riot, the imposition of any government price control regulation or any other act of governmental authority, acts of God or other contingencies (whether similar or dissimilar to the foregoing) beyond the reasonable control of Seller, interfering with the production, supply, transportation, or consumption practice of Seller at the time respecting the products covered by the agreement between the parties or in the event of inability to obtain on terms deemed by Seller to be practicable any raw material (including without limitation energy source) used in connection therewith, shall be deemed to be an excusable delay in Seller's performance hereunder for the duration of such condition. As promptly as practicable Seller will notify Buyer of any such conditions that delay or threaten to delay Seller's timely performance hereunder. Seller may, during any period of shortage due to any such conditions, allocate its supply of such raw material among its various uses therefore (e.g. manufacturing and sales) in such manner as Seller deems practicable and allocate its supply of such products among such various uses thereof in any manner which Seller deems fair and reasonable.
- 16) Reasonable Attorneys' Fees.** If any suit or other proceeding is brought for the recovery of the purchase price by Seller, or for any unpaid balance or for the breach by Buyer of any term of the Order or other agreement between Seller and Buyer, Buyer shall pay to Seller, in addition to any damages provided by law, reasonable attorneys' fees and costs of collection.
- 17) Security Title.** Legal and beneficial title and the right of possession of the Products shall remain with Seller until all payments due from Buyer to Seller (including deferred payments whether evidenced by notes or otherwise) have been made, and Buyer agrees to do all acts necessary to perfect and maintain such right and title in Seller.
- 18) Cancellations.** Buyer may cancel an Order only upon written consent and upon payment to Seller of any cancellation charges levied by Seller, which shall take into account among other things expenses incurred and commitments already made by Seller, and Seller's profit margin.
- 19) General.**
- (a) Orders and other agreements between Buyer and Seller shall be construed in accordance with and governed by the law of the Province or British Columbia, without regard to its conflict of laws principles. The provisions of the United Nations Convention for the International Sale of Goods ("CISG") shall not govern the rights and obligations of the parties in connection herewith.
 - (b) Any assignment by Buyer of the Order or other agreement between Buyer and Seller or of any rights or obligation of the agreement made without express written consent of Seller shall be void.
 - (c) Except as may be expressly provided to the contrary in writing, the provisions of the Order or other agreement between Buyer and Seller are for the benefit of the parties hereto and not for any other person.
 - (d) By accepting delivery of any goods sold by Seller, including Products, Buyer waives any future claims and rights of setoff or withholding against any payments due hereunder and agrees to pay all sums due regardless of any dispute, setoff, or cross claim.
 - (e) No waiver by Seller of any breach of any provision of the Order or other agreement between Buyer and Seller will constitute a waiver of any other breach.
 - (f) The terms and conditions set forth above contain all of the representations, stipulations, warranties, agreements and understandings with respect to the subject matter of the Order or other agreement between Buyer and Seller, and execution hereof by either party has not been induced by any representation, stipulation, warranty, agreement or understanding (including any course of prior dealings between the parties hereto) of any kind other than those set forth herein.
 - (g) No amendment, addition to, alteration, modification or waiver of all or part of the Order or other agreement between Buyer and Seller shall be of any force or effect unless in writing and signed by Seller.
 - (h) In addition to the rights and remedies conferred upon Seller by law, Seller shall not be required to proceed with the

performance of any Order or contract if Buyer is in default in the performance of any Order or contract with Seller, and in case of doubt as to Buyer's financial responsibility, shipments under any Order may be suspended or sent sight draft with bill of lading attached by Seller.

(i) Any delay or omission by Seller in exercising any right or remedy provided for herein shall not constitute a waiver of such right or remedy nor a bar to or a waiver of any such right or remedy on any future occasion.

- 20) Entire Contract.** The terms and conditions set forth herein constitute a complete and exclusive statement as to their subject matter notwithstanding any other representations, promises, warranties, statements or agreements to the contrary. Any additional, contradictory or different terms contained in any initial or subsequent Order or communication from Buyer pertaining to Products are hereby objected to. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein. Acceptance or acquiescence in a course of performance rendered subject to these Terms and Conditions shall not be relevant to determine the meaning hereof, even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection.
- 21) Compliance with Laws.** It is the intention of the parties that the transaction covered by these Terms and Conditions will at all times be in compliance with all applicable laws including, without limitation, all export and import laws, regulations and restrictions, and foreign corrupt practices and anti-bribery laws.
- 22) Export Licensing/ITAR Representation.** Buyer agrees to comply with all applicable export and import laws and regulations. Buyer's obligation as set forth in this provision shall survive the expiration or termination of this agreement. Buyer agrees to defend, indemnify, and hold Seller harmless from all claims or liabilities that may arise from Buyer's violation of any applicable import or export laws.
- 23) Arbitration.** With respect to sales in Canada, any controversy or claim arising out of or relating to the Order or these Terms and Conditions shall be finally settled in the City of Vancouver in the Province of Vancouver by binding arbitration in accordance with the Commercial Arbitration Act of British Columbia and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. With respect to sales outside Canada, any controversy or claim arising out of or relating to the Agreement between Buyer and Seller, or the breach thereof shall be finally settled in Vancouver, British Columbia in accordance with the International Commercial Arbitration Act of British Columbia and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof pursuant to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards.