



AUTOPROPAC and AUTOTECHSERV TERMS AND CONDITIONS

1. **PAYMENTS:** Payments shall be made in legal tender of the United States of America. Buyer shall make such arrangements for payment as Seller shall from time to time reasonably require, and Seller may suspend production, shipment or delivery until such arrangements are made. Failure by Buyer to make payment in full within the time period set forth on the invoice or within the time period expressly agreed upon in writing by the parties shall constitute a material breach of contract by Buyer permitting Seller to suspend production, shipment or delivery under this or any other contract between Buyer and Seller and, upon such breach, Buyer shall pay to Seller interest at the rate of eighteen percent (18%) per annum on all unpaid amounts owing the Seller and Seller shall have, in addition, all other remedies permitted to Seller by law, equity and this contract. If Seller takes legal action to collect any amount due hereunder, Buyer shall pay all court costs plus reasonable attorney's fees incurred by Seller in bringing such legal action.
2. **TAXES:** To the extent legally permissible, all present and future taxes imposed by any Federal, state, foreign, or local authority that Seller may be required to pay or collect, upon or with reference to the sale, purchase, transportation, delivery, storage, use or consumption of goods or services, including taxes upon or measured by the receipts therefrom (except net income and equity franchise taxes), shall be for the account of Buyer and shall be payable by Buyer and included in amounts owing to Seller.
3. **TITLE; INCIDENTAL TRANSPORTATION AND STORAGE CHARGES:** Unless otherwise agreed, title to goods and risk of loss shall pass to Buyer at the F.O.B. shipping point designated by Seller. Seller shall have the right to assess a storage and handling charge for goods left in Seller's possession after notification to Buyer that the goods are available to ship.
4. **TIME OF SHIPMENT AND SHIPPING:** Time is not of the essence as to Seller's manufacture and shipment obligation only. Each shipment is to be considered a separate sale.
5. **SPECIFICATION VARIATIONS:** Except in the particulars specified by Buyer expressly agreed to in writing and signed by Seller, the products furnished hereunder shall be produced in accordance with Seller's standard practices.
6. **FORCE MAJEURE; ALLOCATION OF PRODUCTION:** In the event either party's performance hereunder is delayed or made impossible or commercially impracticable due to causes such as fire, explosion, strike or other difference with workers, shortage of energy sources, facilities, material or labor, delay or lack of transportation, temporary or permanent plant shutdown, breakdown or accident, compliance with or other action taken to carry out the intent or purpose of any law, regulation, or other requirement of any governmental authority, or any cause beyond that party's reasonable control, that party shall have such additional time within which to perform this contract as may be reasonably necessary under the circumstances. However, the obligation of Buyer to pay for goods delivered is never suspended. In addition, if, due to force majeure or any other cause, Seller is unable to produce sufficient goods to meet all demands from customers and internal uses, Seller shall have the right to allocate production among its customers and plants in any manner which Seller may determine to be equitable.
7. **DEFAULT:** Time is of the essence as to Buyer's performance of all of its obligations hereunder. Buyer shall be in default hereunder if any one or more of the following events occurs: (a) Buyer shall default in timely performing or providing any of its obligations to Seller; (b) a receiver, liquidator or trustee of Buyer, or any of its property, is appointed by court order; (c) Buyer is adjudicated bankrupt or insolvent; (d) any property of Buyer is sequestered by court order; (e) a petition is filed by or against Buyer under any bankruptcy, reorganization, dissolution or liquidation law of any jurisdiction; (f) Buyer becomes insolvent; or (g) in the event that delivery is dependent on Buyer's cooperation, Buyer fails to cooperate in effecting delivery at the time agreed upon, or absent such agreement, at the time fixed by Seller. In the event of any such default all unpaid payments shall, at Seller's option, become immediately due and payable and Seller shall have the right to consider its contract with Buyer cancelled and to recover damages and shall further have all rights and remedies, including those of a secured party, provided by applicable law. For purposes of this paragraph, "Buyer" shall include any corporation, limited liability company, limited or general partnership, or other entity or person controlling, controlled by, or under common control with Buyer.
8. **SECURITY AGREEMENT:** To secure all payments by Buyer under this Invoice, Buyer, hereby grants a security interest in certain assets as more particularly set forth in this Section 8. This Security Agreement is made in order to secure all of Buyer's payment obligations hereunder. As collateral security for the payment and performance in full of its obligations hereunder, Buyer pledges, hypothecates, assigns, transfers, sets over, delivers, and grants to the Seller a security interest in all right, title and interest of Buyer which presently exists or which hereafter arises in, to or under all products, goods, equipment, or other materials shipped or delivered to Buyer wherever located, now existing and after acquired, and all proceeds, products, replacements and substitutes of any of the foregoing and any property of any character whatsoever into which any of the foregoing may be converted. From and after the date of this Invoice and until Buyer's obligations hereunder are paid in full, Buyer irrevocably authorizes Seller at any time and from time to time to file in any filing office in any UCC jurisdiction any initial financing statement and amendment thereto that indicates the collateral pledged hereunder and contains any other information required for the sufficiency or filing office acceptance of any financial statement or amendment and naming Seller as a secured party. Buyer will not create, permit or suffer to exist, and Buyer will defend the collateral pledged hereunder against, and take such other action as is necessary to remove, any lien on such collateral, and will defend the right, title and interest of Seller in and to any of Buyer's rights under such collateral against the claims and demands of all persons whomsoever. At any time and from time to time, upon the written request of Seller and at the sole expense of Buyer, Buyer shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as Seller may deem desirable to obtain the full benefits of this security agreement and of the rights and powers herein granted, including filing any financing or continuation statements under the UCC with respect to the liens granted hereunder or under any other lien document as to those jurisdictions that are not UCC jurisdictions.
9. **WARRANTY DISCLAIMERS:** Subject to paragraph 5 herein, Seller warrants "new" product to be free from defects in workmanship and material under normal stand-alone use and conditions for usually a period of one year from date of original purchase. Used equipment is sold "as is" with no warranty. Damage due to abnormal use, extreme conditions, misuse, use of the product as a component of another product or machinery, ill treatment and unauthorized modification and repairs are not covered by this warranty. Seller is not liable for any consequential or punitive damages arising out of any failure of the equipment to perform as intended. Seller shall bear no responsibility or obligation with respect to the manner of use of any equipment sold by it. SELLER SPECIFICALLY DISCLAIMS AND NEGATES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR A PARTICULAR PURPOSE INCLUDING, WITHOUT LIMITATION, ANY WARRANTY THAT THE USE OF SUCH EQUIPMENT FOR ANY PURPOSE WILL COMPLY WITH APPLICABLE LAWS AND REGULATIONS.
10. **LIMITATION OF REMEDIES:** Buyer's exclusive remedies with respect to any products furnished by Seller hereunder that are found to be defective or otherwise not in conformity with this contract shall be limited exclusively to the right to replacement thereof or to repayment of the price, as above provided. Seller's liability for any other breach of this contract shall be limited to the difference between the delivered price of the products covered hereby and the market price of such products at Buyer's destination at the time of such breach. IN NO EVENT SHALL SELLER BE LIABLE FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF PROFIT, DELAY, OR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES. BUYER SHALL HOLD SELLER HARMLESS FROM ALL CLAIMS OR ACTIONS BROUGHT BY THIRD PARTIES WITH RESPECT TO ANY DAMAGES DESCRIBED UNDER THIS PARAGRAPH 10.
11. **EXCLUSIVE TERMS AND CONDITIONS; ACCEPTANCE; MODIFICATION:** No terms or conditions other than those stated herein and no agreement or understanding, oral or written, in any way purporting to modify these terms and conditions shall be binding on Seller unless hereafter made in writing, specifically stating that it is a modification of these terms and conditions, signed by Seller's authorized representative. These conditions and this form constitute Seller's acceptance of Buyer's order, and this acceptance, unless modified as provided in this paragraph 11, is expressly made conditional on Buyer's assent to these conditions as the only conditions for this and any future sale. Acceptance of the products sold hereunder by Buyer shall constitute assent to all conditions contained herein, and Seller hereby objects to and rejects any and all additional or different terms proposed by Buyer, whether contained in Buyer's purchase order or shipping release forms, or elsewhere. All proposals, negotiations, and representations, if any, made prior and with reference hereto are superseded hereby.
12. **CONDITIONS INCORPORATED BY REFERENCE:** Any clause required to be included in a contract of this type by any applicable law or administrative regulation having the effect of law shall be deemed to be incorporated herein.
13. **WAIVER:** Waiver by Seller or Buyer of any breach of these provisions shall not be construed as a waiver of any other breach.
14. **ASSIGNMENT:** This contract shall be binding upon the Buyer and Seller and their respective successors and assigns; however, neither party may assign its rights or obligations hereunder without the prior written consent of the other party.
15. **TITLES:** The titles used in these Conditions are for convenience of reference only and are not to be considered in interpreting the substance of the conditions.
16. **GOVERNING LAW; JURISDICTION:** THIS CONTRACT SHALL BE INTERPRETED OR ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF UTAH. BUYER HEREBY SUBMITS TO THE PERSONAL JURISDICTION OF THE STATE AND FEDERAL COURTS SITUATED IN UTAH COUNTY, UTAH.