

Standard Terms and Conditions of Sale and Delivery (1/1/03)

- 1. General.** In these terms and conditions of sale, Pfannenber Inc. is referred to as "Seller" and the party to whom Seller's quotation is addressed is referred to as "Buyer". All sales of Seller are subject to the following terms and conditions. Any purchase order or other communication from Buyer that contains terms and conditions in addition to or inconsistent with the following will not be binding upon Seller unless acceptance of those terms and conditions is made in writing by an authorized representative of Seller. Failure of Seller to object to provisions contained in any purchase order or other communication from Buyer will not be construed as a waiver of these terms and conditions nor an acceptance of any such provisions. Seller's quotation, these terms and conditions and Seller's order acknowledgment constitute the entire agreement between Buyer and Seller with respect to the sale of Seller's products, and supersede all oral and written proposals, representations, understandings and agreements previously made or existing with respect to the sale of Seller's products. Seller's quotation, these terms and conditions and Seller's order acknowledgment are governed by and must be construed according to the laws of the State of New York without reference to the laws of any other jurisdiction. Any action or proceeding relating to the sale of Seller's products must be commenced and will remain in New York State Supreme Court, Erie County, or in the United States District Court for the Western District of New York.
- 2. Quotations.** Written quotations automatically expire 30 days from the date issued unless otherwise specified in the quotation. A verbal quotation expires on the day that it was made. All quotations are subject to the terms and conditions of our regular form of order acknowledgment and the terms and conditions described in this document. All quotations, to be binding, must list the actual quantities required.
- 3. Acceptance of Orders.** Orders become effective only when accepted by Seller's written order acknowledgment. To avoid delay, new Buyers should include credit information or references with their first order, or remit cash. Transportation costs must not be deducted from the selling price.
- 4. Specifications.** If Buyer provides any specifications or designs for products, Buyer will indemnify Seller for all claims, costs and expenses (including attorney's fees and disbursements) from any patent, trademark or copyright infringement claim resulting from compliance with these specifications and designs. Seller will not be responsible for the accuracy or suitability of these specifications and designs or the performance of any products built in conformance with them.
- 5. Cancellation.** Orders for normal quantities of standard products may be cancelled without charge, if written notice is provided to Seller in enough time to stop shipment. Cancellation of orders for standard products in abnormal quantities or orders for products to be produced in accordance with Buyer's specifications or designs requires the prior consent of Seller which may not be unreasonably withheld, provided, that Seller will be reimbursed for any costs that it cannot mitigate. Determination of whether a particular quantity is abnormal or whether products were produced in accordance with Buyer's specifications will be made by Seller. Seller's determinations and Seller's calculation of any costs that it cannot mitigate will be final and conclusive.
- 6. Delay.** Shipping dates are estimated. If the Buyer delays in supplying information necessary to proceed with an order, the estimated date of shipment may be extended by Seller accordingly. Seller is not liable for late shipments. Any penalty clause for failure to meet shipment dates is not binding upon Seller unless specifically approved in writing by an officer of Seller. If Buyer causes a delay in shipment, Seller may invoice Buyer and hold the products at Buyer's risk, cost and expense pending Buyer's instructions.
- 7. Payment.** If satisfactory credit is established with Seller, terms of credit are net 30 days from date of invoice. If Buyer defaults in any payments when due, Seller reserves the right to defer delivery or cancel the order, without prejudice to its other lawful remedies. In the event Seller engages the services of an attorney to collect such overdue amounts, Buyer agrees to pay the attorney's fees and
- disbursements. Seller reserves the right to ship its order and make collection by sight draft with bill of lading attached or on a C.O.D. basis or any other terms.
- 8. Taxes and Other Charges.** Buyer will pay any manufacturers' tax, retailer's occupation tax, use tax, sales tax, duty, custom inspection or testing fee, or any other tax, fee or charge of any nature whatsoever, imposed by any government authority, on or measured by any transaction between Seller and Buyer.
- 9. Freight; Title and Risk of Loss.** All prices quoted (including repairs and parts) are F.O.B. Seller's factory, no freight allowed. Title and risk of loss pass to Buyer upon delivery to carrier.
- 10. Minimum Billing.** Seller reserves the right to assess an order processing surcharge of US \$100 for any order (including orders for parts) less than US \$250.
- 11. Return of Products.** Buyer must obtain authorization and shipping instructions from Seller before returning any products.
- 12. Warranty.** Seller warrants its products (original parts only) against any defects in workmanship and material for a period of 365 days after shipment. If Buyer makes a claim under this warranty within the specified period and it is subsequently determined by Seller upon inspection in Seller's factory that the product is defective, the product will be replaced or repaired at Seller's option. This is Buyer's sole remedy for defective products. All defective products must be returned by Buyer, freight prepaid. This warranty does not apply to any product that has been repaired or altered without Seller's knowledge and consent, operated or installed contrary to Seller's instruction, subjected to misuse, improperly maintained, or is damaged by accident or negligence. THIS WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THERE ARE NO OTHER WARRANTIES THAT EXTEND BEYOND THIS EXPRESS WARRANTY.
- 13. Limitation of Liability.** Seller will not be liable for damages to products, other property or persons due to improper installation or through attempts to use products under conditions that exceed the designed capabilities. SELLER WILL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY SPECIAL, CONTINGENT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. Seller's liability with respect to a claim for any other damages arising out of or connected with the manufacture, sale, purchase, non-delivery, operation, use or performance of any product sold by Seller will in no event exceed the price paid for the product.
- 14. Indemnification.** If Seller is made a party to any proceeding, action or arbitration, on the basis of breach of warranty, negligence, strict liability or tort, by Buyer, or any persons deriving title from Buyer, or any third party, unless it shall be determined that Seller was solely negligent or solely at fault, then Buyer will indemnify and hold Seller harmless for all damages, costs and expenses in connection with such proceeding, action or arbitration, including attorneys fees.
- 15. Dimensions.** The dimensions published in Seller's catalog are approximate. Certified dimension drawings can be obtained upon request to the nearest sales office.
- 16. Product Changes.** Seller may change its product design at any time. Seller assumes no obligation to incorporate these changes in units manufactured prior to the change.