

# Terms and Conditions of Sale

Ferrie Franzmann Industries, LLC, a Colorado limited liability company, d/b/a ESS Metron (the "Seller") and the company or individual named on the face of this invoice (the "Buyer") agree to the following terms and conditions (these "Terms and Conditions"):

- 1. NONCONFORMING TERMS.** No terms contained in any purchase order or other document received from the Buyer, either prior or subsequent to the date of this invoice, shall be binding upon the Seller unless expressly accepted in writing by an authorized representative of the Seller. Seller's acceptance of Buyer's purchase order is expressly limited to and made conditional upon Buyer's acceptance of these Terms and Conditions contained herein, to the exclusion of any and all other terms and conditions, whether the source of such terms and conditions is Buyer's standard terms and conditions, any other document of Buyer, any course of dealing, any course of performance, any trade custom or usage, and/or any other source whatsoever.
- 2. TAXES.** Except as otherwise provided on the face of this invoice, the price does not include any applicable sales, use, VAT, excise, or other taxes, duties, assessments, charges, and import or export fees imposed on the products and/or services described on the face of this invoice (the "Products"). The Buyer agrees to pay all such taxes.
- 3. SHIPMENT.** Unless otherwise specified by the purchase order, the Products shall be delivered FCA (Incoterms 2010) Buyer's facility identified on the purchase order (the "Delivery Point"), and risk of loss for the Products shall pass to Buyer upon delivery at the Delivery Point, it being understood and agreed that all of Seller's prices are based on such delivery terms. Title to the Products shall pass from Seller to Buyer at the later to occur of (i) delivery of the Product at the Delivery Point and (ii) receipt by Seller of Buyer's payment in full of the purchase price.
- 4. PAYMENT TERMS.** Unless otherwise specified by the Seller in writing, the terms of payment shall be 20% of the purchase price with Seller's Submittal Transmittal, 30% of the purchase price with Buyer's release to manufacturing and prior to procurement of materials, and 50% of the purchase price prior to delivery at the Delivery Point. The Seller reserves the right at any time and in its sole discretion to require payment in full in advance or C.O.D. or to otherwise modify the payment terms. Past due amounts shall bear interest at the rate of 18% per annum or the highest rate permitted by law, whichever is less. If the Buyer is located outside the United States, an irrevocable confirmed letter of credit in favor of Seller for 100% of the Product's value is required before production of the Products will commence. This letter of credit shall be issued by a bank reasonably acceptable to Seller and any expenses associated with the issuance, drawdown, or enforcement of this letter of credit, will be borne by the Buyer.
- 5. MINIMUM BILLING.** All orders of \$50.00 net or less will be invoiced at the minimum rate (\$50.00 net) with transportation charges added.
- 6. DELIVERY.** Delivery dates are not guaranteed by Seller and are based on normal expectancies only. Notwithstanding the generality of the foregoing, in no event shall Seller be deemed in default on account of any delay in the performance of any obligation of Seller if the delay is caused directly or indirectly by one or more forces or events beyond the reasonable control of Seller, including, but not limited to, delay caused directly or indirectly: (i) by action or inaction of Buyer, (ii) by failure of any manufacturer, contractor or supplier to timely provide raw materials, parts, tools, tooling, equipment, services, technical information, data or assistance, transportation or any other material or service reasonably necessary for performance by Seller, (iii) by governmental action or inaction, (iv) by strike or other labor disturbance, or (v) by war, armed hostilities, riot, fire, breakage of equipment, explosion, flood, earthquake, or any Act of God.
- 7. CANCELLATION AND CHANGE.** Orders are subject to cancellation, partial cancellation or change only with the consent of the Seller and only upon such terms as the Seller may impose. Should Buyer terminate, cancel, or stop its order, in whole or in part without Seller's consent, such termination, cancellation, or stoppage shall constitute a breach by Buyer, for which Seller shall be entitled to all damages of Seller related to such breach, including, without limitation, the amount of Seller's cancellation costs and damages, including expenditures on materials, labor, overhead, and payments to subcontractors, direct costs incurred by Seller in settling claims with subcontractors or suppliers, reasonable profits on the work performed including work in process on the terminated portion of the order prior to Seller's receipt of the Buyer's termination, cancellation, or stoppage notice, which amount shall be calculated at not less than Seller's profit margin on the entire project multiplied by the cost of the total work performed prior to Seller's receipt of the Buyer's termination. Prices are set on the basis of the total quantity ordered, even though shipment may be in stages. Cancellation of a portion of an order after an earlier portion has been shipped and invoiced will result in an adjustment to the purchase price and an additional charge to the Buyer.
- 8. LIMITED WARRANTY.** Seller's Limited Warranty is valid only with ESS Metron. Installation, Start-up and Training Commencement Certificate that has been signed off by Seller's certified Service Representative and registered with the Seller. The Seller warrants that at the time of delivery at the Delivery Point all Products will be free from defects in Seller-supplied materials and Seller-supplied workmanship for a period of one (1) year from the initial operation of the Product, not to exceed eighteen (18) months from the date of delivery at the Delivery Point, whichever comes first; provided, however, that the foregoing warranty shall not cover, and Buyer acknowledges that Seller has made no warranty (and that Seller does not make any warranty) with respect to any of the following: (x) parts, materials, assemblies, or other items provided directly or indirectly by Buyer, if any, (y) parts, materials, assemblies, or other items obtained directly or indirectly from the original equipment manufacturer or from any other source, if any, or (z) any design aspect of the Products supplied by Buyer (the "Limited Warranty"). Seller's sole liability, and Buyer's exclusive remedy, for Seller's breach of the Limited Warranty shall be the repair or replacement of the Products, at Seller's election, of the defective Products shown to Seller's reasonable satisfaction to have been defective at the time of delivery. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE LIMITED WARRANTY, OR IN ANY AGREEMENT BETWEEN BUYER AND SELLER PERTAINING TO THE PRODUCTS, OR AT LAW OR IN EQUITY: THE WARRANTIES, OBLIGATIONS, AND LIABILITIES OF SELLER, AND THE REMEDIES OF BUYER SET OUT IN THIS SECTION 8, ARE SOLE AND EXCLUSIVE, AND ARE MADE AND ACCEPTED BY BUYER IN LIEU OF, AND BUYER WAIVES AND RELEASES, ALL OTHER WARRANTIES, OBLIGATIONS, AND LIABILITIES OF SELLER, AND ALL OTHER CLAIMS AND REMEDIES OF BUYER, EXPRESS OR IMPLIED, ARISING BY STATUTE OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN THE PRODUCTS OR ANY DEFECT IN THE SELLER-SUPPLIED WORKMANSHIP OR ANY DEFECT IN ANY SELLER-SUPPLIED MATERIALS PERTAINING TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO THE WAIVER AND RELEASE BY BUYER OF THE FOLLOWING: (i) ANY STATUTORY OR IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PURPOSE, (ii) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, AND (iii) ANY OTHER RIGHT, CLAIM, OR REMEDY WHATSOEVER OF BUYER OR OF ANY PERSON OR ENTITY CLAIMING BY, THROUGH, OR UNDER BUYER AGAINST SELLER, WHETHER ARISING PURSUANT TO THE LIMITED WARRANTY, PURSUANT TO ANY AGREEMENT PERTAINING TO THE PRODUCTS, OR IN CONTRACT, IN INDEMNITY, IN TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), IN PRODUCTS LIABILITY, IN STRICT LIABILITY, OR OTHERWISE. BY ACCEPTING OR USING THE PRODUCTS, BUYER FURTHER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT NO STATEMENT OR REPRESENTATION HAS BEEN MADE BY SELLER, OR RELIED UPON BY BUYER THAT IS INCONSISTENT WITH THE LIMITED WARRANTY.**
- 9. DEFECTIVE GOODS AND TESTING.** If the Buyer believes that Products are defective, it must notify the Seller immediately in writing. The goods shall not be returned to the Seller without the prior written authorization of the Seller. If the Buyer wishes to conduct tests to determine whether the goods are conforming, it must notify the Seller prior to conducting the tests, endeavor to reach agreement with the Seller on testing procedures and provide the Seller with an opportunity to witness such tests.
- 10. INTELLECTUAL PROPERTY.** Buyer acknowledges and agrees that Intellectual Property pertaining to the Products shall be owned solely and exclusively by Seller. For purposes of this Section 10, "Intellectual Property" means the following, whether now or hereafter existing: all rights of intellectual and/or industrial property anywhere in the world, including for the avoidance of doubt, patents (including patents of importation, patents of confirmation, patents of improvement, patents and certificates of addition and utility models, as well as divisions, reissues, continuations, continuations-in-part, renewals and extensions of any of the foregoing), data, information, inventions, ideas, discoveries, improvements, know-how (including information comprised in or derived from formulae, designs, specifications, processes, techniques, drawings, parts lists, product documentation, manuals, instructions, and planning documents, each in whatever form held), work product, copyrights, trade secrets, trade and services marks, industrial property, and including all registrations and applications for the same, and the right to apply for any of the same, and all like rights, and all other forms whatsoever of intellectual property, whether or not patentable.
- 11. GOVERNMENT CONTRACTS AND SUBCONTRACTS.** If a government contract number appears on the face of this invoice, clauses contained in the Armed Services Procurement Regulations of the Federal Acquisition Regulations which the government expressly requires be included in subcontracts to which the Buyer is a party shall be incorporated in this invoice by reference.
- 12. DEFAULT.** In the event the Buyer fails to make payment in the amounts and at the time required by the Seller pursuant to this invoice or is in default under any other provisions of this invoice or any sales order, invoice or other agreement between the Buyer and the Seller, or in the event of any proceedings, voluntary, in bankruptcy or insolvency by or against the Buyer, the inability of the Buyer to meet its debts as they come due or the appointment, with or without the Buyer's consent, of an assignee for the benefit of creditors or a receiver, then the Seller shall have the right, in addition to all the other rights it may possess at any time, to withhold shipments, in whole or in part, and to recall goods in transit, retake same and repossess all goods which may be stored with the Seller for the Buyer's account, without the necessity of instituting any other proceedings. The Buyer agrees that all goods so recalled, retaken or repossessed shall become the absolute property of the Seller, provided that the Buyer is given full credit therefore. The Seller shall also have all of the rights and remedies available to it under the Uniform Commercial Codes and other laws in effect.
- 13. WAIVER.** No waiver of any provision of this invoice by the Seller shall be valid unless in writing and signed by an authorized representative of the Seller. No delay on the part of the Seller in exercising any right of remedy available to it shall be valid unless in writing and signed by an authorized representative of the Seller. No delay on the part of the Seller in exercising any right or remedy available to it shall operate as a waiver of such right or remedy.

14. **GOVERNING LAW.** This invoice and the sale of the Products shall be governed by the laws (excluding conflicts of law principles) of the State of Colorado. The United Nations Convention on Contracts for the International Sales of Goods shall not apply to the sale of the Products. Any litigation pertaining to the invoice or these Terms and Conditions may only be brought in, and Buyer submits to the jurisdiction of and waives any objection to venue in, the federal and state courts located in Denver, Colorado.
15. **ATTORNEYS' FEES.** In the event of litigation between Seller and Buyer to enforce the invoice or these Terms and Conditions, or for damages or any other remedy for breach thereof or hereof, the prevailing party shall be awarded reasonable attorneys' fees to be taxed as costs in addition to any other remedy or judgment awarded pursuant to the litigation.
16. **COUNTERPARTS.** This Agreement may be executed in duplicate counterparts, which shall constitute one and the same instrument.
17. **SEVERABILITY.** In the event that any provision, term or condition of the invoice or these Terms and Conditions is declared void, unenforceable, or against public policy, then said provision, term or condition shall be construed as though it did not exist and shall not affect the remaining provisions, terms, or conditions of the invoice or these Terms and Conditions, and the same shall be interpreted as far as possible to give effect to the parties' intent.
18. **ENTIRE AGREEMENT.** The provisions of these Terms and Conditions, including the invoice, constitute the entire agreement between Seller and Buyer with regard to the Products and, except as set out in these Terms and Conditions, including the invoice, there are no other agreements, representations, warranties, or other understandings whatsoever between Seller and Buyer with regard thereto.
19. **LIMITATION OF LIABILITY.** WITHOUT PREJUDICE TO ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, SELLER SHALL NOT HAVE ANY OBLIGATION OR LIABILITY, AND BUYER ACKNOWLEDGES THAT SELLER SHALL NOT HAVE ANY OBLIGATION OR LIABILITY WHATSOEVER, TO BUYER, OR TO ANY PERSON OR ENTITY CLAIMING BY, THROUGH, OR UNDER BUYER, WHETHER ARISING PURSUANT TO THE LIMITED WARRANTY, PURSUANT TO ANY AGREEMENT PERTAINING TO THE PRODUCTS, OR IN CONTRACT, IN INDEMNITY, IN TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), IN PRODUCTS LIABILITY, IN STRICT LIABILITY, OR OTHERWISE, FOR ANY EXEMPLARY OR PUNITIVE DAMAGES OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (EVEN THOUGH SUCH DAMAGES MAY BE FORESEEABLE) INCLUDING, BUT NOT LIMITED TO: LOSS OF PROFITS OR REVENUES; LOSS OF USE OF EQUIPMENT; COST OF CAPITAL; COST OF SUBSTITUTE EQUIPMENT, REPAIRS, OR FACILITIES; COST OF DOWNTIME; COST OF PURCHASED OR REPLACEMENT PRODUCTS OR PARTS; COST OF TRANSPORTATION; COST OF FREIGHT, INSPECTION, INSTALLATION, REMOVAL OR REINSTALLATION WITH RESPECT TO THE PRODUCTS; OR CLAIMS OF ANY CUSTOMERS OF BUYER FOR ANY SUCH DAMAGES.
20. **PRICING.** Any price quoted by Seller to Buyer is valid for a period of 30 days from the date of such quote. The pricing terms on any invoice of Seller is valid for a period of 90 days from the date of such invoice, it being understood and agreed by Buyer that if payment is not received by Seller pursuant to these Terms and Conditions, such pricing is subject to adjustment in Seller's sole discretion.
21. **PRICE CLAUSE M.** Applies to all quotation and orders. Quotation price is valid for a period of 30 days from the date of the quote. Order Price is firm provided that a release to manufacture is received within 90 days of the order or 30 days from the date of submittals issuance and/or shipment made within 6 months from the time of acceptance of the order. Any extension in time will be subject to a 1½% price increase of the order price per Month.

**Seller is an Equal Opportunity Employer as required by Executive Order 11246, as amended.**