

## ORBITALUM NORTH AMERICA SALES TERMS AND CONDITIONS

All sales made by Orbitalum North America® or any of its divisions or subsidiaries (hereinafter called "Seller") to its customers (hereafter called "Purchaser") are subject to the following Sales Terms and Conditions (the "Terms"). Purchaser's acceptance of these terms and conditions shall be made by either (a) Purchaser's providing a purchase order for products or services (an "Order") to Seller or (b) Purchaser's receipt of any products, equipment, or consumables ("Products") or services from Orbitalum North America, whichever occurs first.

- 1. Acceptance.** These Terms, any quotation provided by Seller, acknowledgment or invoice and all documents incorporated by specific reference constitute the complete agreement governing the sale of Products. No Orders shall be binding upon Seller until accepted in writing by an authorized official of Seller; and in all events any Order shall be subject to these Terms. No additional or different terms will be binding upon Seller unless specifically agreed to in writing. Failure of Seller to object to provisions contained in any Order or other communication from a purchaser shall not be construed as a waiver of these terms and conditions, nor an acceptance of any such provisions. SELLER HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS OR ON PURCHASER'S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT.
- 2. Modification and Cancellation.** Once Seller has accepted an Order or begun work on an Order, Purchaser cannot cancel or modify that Order without Seller's written consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred by Seller in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits.
- 3. Quotations.** Quotations are only valid in writing and for 60 days from the date of the quotation. All quotations are subject to change or withdrawal without prior notice to Purchaser. Quotations are made subject to approval of Purchaser's credit. Seller may refuse Orders and has no obligation to supply Products unless Seller issues an Order acknowledgement or upon the shipment of Products.
- 4. Return Merchandise Authorization (RMA).** Orbitalum North America issues RMA numbers for any product returned to Orbitalum North America for credit, refund, replacement, or repair. Customers are required to have an RMA number for returns. RMA numbers should be clearly marked on the outside of the shipment. Product sent in for repairs not covered under warranty will have a repair quotation issued. Once the repair quotation is issued, customer has 60 days to authorize repairs by providing a purchase order (PO). If PO is not received within 60 days, return shipping will have to be arranged by customer, otherwise goods will be discarded after 90 days of repair quotation.
- 5. Credit Approval.** All shipments are subject to approval by Seller's credit department. Seller may invoice Purchaser and recover for each shipment as a separate transaction. If, in Seller's sole judgment, Purchaser's financial condition is or becomes unsatisfactory, then Seller may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments upon Seller's acceptance of an Order; and/or (b) terminate any or all of Purchaser's Orders.
- 6. Delivery, Title and Risk of Loss.** Unless otherwise agreed upon by the parties in writing, all shipments are ExWorks Seller's facility (Incoterms 2010). Title and risk of loss for Products shall pass to Purchaser upon delivery in accordance with the applicable shipping term. Seller may make a single delivery of Products or may make deliveries in installments; unless otherwise set forth herein all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of his payment obligations or obligations to accept remaining deliveries.

If the parties agree to delay the date of delivery based on Purchaser's request, Seller may invoice based on the originally scheduled delivery date and Purchaser's payment obligations shall remain unchanged and Purchaser shall remit payment within 30 days of invoice date. If the Products are not shipped within 15 days after notification to the Purchaser that they are ready for shipping, Seller may store such Products at the Purchaser's risk in a warehouse or yard or at Seller's premises. Purchaser shall pay all handling, transportation and storage costs associated with such storage.

7. **Substitutes.** Seller may furnish suitable substitutes for materials unobtainable because of acts by a governmental authority or resulting from inability to obtain materials from Seller's suppliers.
8. **Minimum Order.** All Orders shall be subject to Seller's minimum order amount of \$100.00 USD, or a surcharge may be assessed at Seller's election.
9. **Returns.** All returns must be pre-approved in writing by Seller before being shipped to Seller. All returned Products must be in unused, resalable condition at Purchaser's expense. In addition to nonrefundable freight charges, returns are subject to a 15% restocking fee. Standard tooling, bits, and blades (new in original, factory sealed packaging) with a combined retail value of \$100.00 USD or greater may be returned for credit without a restocking fee. Returned standard tooling with a combined retail value under \$100.00 USD will not be accepted for return and shall remain the property of the Purchaser. Products that have been specially designed and manufactured for Purchaser may not be returned.
10. **Terms of Payment.** All prices are quoted, and payments must be received, in U.S. Dollars (USD). All prices are subject to change without notice unless otherwise specified by Seller. The price of Products on order but unshipped may be adjusted to the price in effect at the time of shipment. Quoted prices are, however, firm for the days designated. Purchaser shall pay all invoices within 30 days of the invoice date unless otherwise specified by Seller. Overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by governing law. Purchaser's inspection rights herein will not affect the payment terms. Under no circumstances will Purchaser have a right of set-off. If Purchaser fails to make any payment as required, Purchaser agrees to reimburse Seller for all associated costs incurred by Seller, including reasonable attorney fees and court costs. Seller may submit invoices to Purchaser as partial shipments are made. If Purchaser fails to remit any payment as required herein or Seller suspects Purchaser to be insolvent or otherwise unable to pay for the Products, Seller may demand full or partial payment in advance before proceeding with performance of its obligations or cancel any orders at its option without prejudice to other lawful remedies. Purchaser's use of credit cards for payment must be pre-approved in writing by Seller and are subject to Seller's credit card policy, which shall be provided upon request.
11. **Taxes and Other Charges.** Seller's prices do not include, and Purchaser shall pay, all applicable federal, state, municipal, and other government taxes. Exemption certificates must be presented to Seller when the Order is placed and prior to shipment if they are to be honored and must be valid for the place of delivery. If Seller is subsequently required to pay any such fees, taxes, or charges, Purchaser shall reimburse Seller therefor.
12. **Product Warranties.** Seller warrants that it will convey the Products free and clear of all liens, security interests and encumbrances created by, through or under Seller. Seller further warrants that for a period of 12 months from the date of shipment (the "Warranty Period"), under normal use and given proper installation and maintenance as determined by Seller, the Products: (a) will conform to Seller's written specifications or other descriptions; and (b) will be free from substantial defects in material and workmanship.

In the event of a breach of the warranties set forth above (the "Warranties"), Seller will, at Seller's option and as Seller's sole liability and Purchaser's sole remedy, repair, replace or credit Purchaser's account for, any Product that fails to conform to the Warranties provided that (i) during the Warranty Period Seller is promptly notified in writing upon discovery of such failure with a detailed explanation of any alleged deficiencies; (ii) Seller is given a reasonable opportunity to investigate all claims; and (iii) Seller's examination of such Product confirms the alleged deficiencies and that the deficiencies were not caused by accident, misuse, neglect, improper installment, unauthorized alteration or repair or improper testing. No Products may be returned to Seller until inspection and approval by Seller. Freight for returned Products shall be paid for by Purchaser.

The Warranty against defects does not apply to: (1) consumable components or ordinary wear items including but not limited to feed screws, chain drives, clutch friction parts, cutting tools, tungsten weld tips, and blades; or (2) use of the Products with equipment, components or parts not specified or supplied by Seller or contemplated under the Product documentation. EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE). To the extent permitted, Seller shall assign to Purchaser any warranties Seller receives from third party manufacturers of parts, components, and equipment.

13. **Service Warranty.** Seller warrants that (a) it will perform services in a timely, competent, and professional manner and in accordance with industry standards; and (b) the services shall conform to any applicable specifications or statement of work.
14. **Limitation of Liability.** The Seller shall not be responsible or liable for any damage resulting from improper storage, handling, or use of Product prior to placing the apparatus in service, and will not assume any responsibility, expense, or liability for unauthorized repairs. Purchaser is solely responsible for determining if a Product is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of Seller's Products, Seller is not responsible for the results or consequences of use, misuse or application of its Products.

SELLER SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST SELLER, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. IN NO EVENT WILL SELLER'S LIABILITY IN CONNECTION WITH THE AGREEMENT OR SALE OF SELLER'S PRODUCTS EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS AS TO WHICH THE CLAIM IS MADE.

15. **Intellectual Property.** All intellectual property rights embodied in or associated with the Products, including but not limited to patents, trademarks, copyrights, trade secrets, trade dress, service marks, and designs ("Intellectual Property"), are and shall at all times remain the sole and exclusive property of Seller. Other than a limited right to use the Products as intended in accordance with the Purchase hereunder, no rights or licenses of any kind are granted by Seller with respect to the Intellectual Property. Seller does not waive any rights in any Intellectual Property whether presently owned or hereafter acquired. Purchaser has no interest in and shall make no claim with respect to any of the Intellectual Property. Purchaser agrees not to reverse engineer any of the Products or the technology embodied therein. Seller represents and warrants that the Products and their use as intended do not knowingly infringe or otherwise violate the intellectual property rights of any third parties.
16. **Trademarks.** Purchaser shall not use, directly or indirectly, in whole or in part, Seller's name, or any other trademark or trade name that is now or may hereafter be owned by Seller (collectively the "Trademarks"), as part of Purchaser's corporate or business name, or in any way in connection with Purchaser's business, except in a manner and to the extent authorized herein or otherwise approved by Seller in writing. Purchaser hereby acknowledges Seller's ownership of the Trademarks and the goodwill associated therewith. Purchaser shall not infringe upon, harm, or contest the validity of any Trademarks.
17. **Confidential Information.** All information furnished or made available by Seller to Purchaser in connection with the subject matter hereof shall be held in confidence by Purchaser. Purchaser agrees not to use (directly or indirectly), or disclose to others, such information without Seller's prior written consent. The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by Seller; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to Seller with respect to such information.
18. **Compliance.** Purchaser agrees to comply with all applicable federal, state, local and foreign rules, regulations, ordinances, and laws applicable to Purchaser's obligations hereunder and Purchaser's use of the Products, including import/export laws, labor laws and anti-corruption laws. If Purchaser delivers Products to others who may use the Products outside the United States, Purchaser acknowledges and shall advise others that the Products are controlled for export by the U.S. government, and that the Products may require authorization prior to export from the United States or re-export from any location beyond the U.S. Purchaser agrees that it will not export, re-export or otherwise distribute Products in violation of any export control laws or regulations of the United States. Purchaser further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals on the Consolidated Screening List, which is comprised of lists of by the Department of Commerce, Department of State (BIS and DDTC) and the Department of the Treasury which identifies parties that the United States government maintains restrictions on as to certain exports, re-exports or transfers of items. Purchaser shall indemnify and hold Seller harmless for any violation by Purchaser or any of Purchaser's assignees, vendees, or transferees of any applicable laws.

19. **Anti-Corruption.** Purchaser agrees it has not made and will not make any direct or indirect payment, offer to pay or authorization to pay any money, gift, or valuables to any government official or the immediate family of such official, for the purpose of influencing an act or decision of the government or such individual in order to assist, directly or indirectly, Purchaser in obtaining or retaining business, or securing an improper advantage.
20. **Governing Law and Dispute Resolution.** Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the state of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. If either party commences litigation or mutually agreed upon alternative dispute resolution concerning any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney's fees in such litigation or mutually agreed upon alternative dispute resolution, provided that if each party prevails in part, such fees will be allocated in the manner as the court or arbitrator determines to be equitable in view of the relative merits and amounts of the parties' claims.
21. **Force Majeure.** Seller will not be responsible for failure to perform in a timely manner when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Seller's employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Seller to perform.
22. **Assignment.** No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement or any Order may be made without Seller's prior written consent. Any attempted assignment will be void. Seller may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon the parties and their respective permitted successors and assigns.
23. **Relationship of the Parties.** Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.
24. **Survival.** Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products, will remain in effect until fulfilled.
25. **Waiver.** In the event of any default by Purchaser, Seller may decline to ship Products. If Seller elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, Seller's actions will not constitute a waiver of Purchaser's default or any other existing or future default, or affect Seller's legal remedies.
26. **General.** These terms and conditions, as published on the Orbitalum North America website located at [www.orbitalum.us](http://www.orbitalum.us) at the time of sale, are the official terms and conditions of sale between Orbitalum North America (Seller) and Purchaser, and may be amended from time to time without notice at Seller's sole discretion.