

# TM Industrial Supply, Inc.

## Terms and Conditions of Export Sale (TM-ES-5)

**NOTICE: THE OFFER, ORDER ACKNOWLEDGMENT, ORDER ACCEPTANCE, OR SALE OF ANY PRODUCT COVERED HEREIN IS CONDITIONED UPON THE TERMS CONTAINED IN THIS INSTRUMENT. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY THE BUYER ARE OBJECTED TO AND WILL NOT BE BINDING UPON THE SELLER UNLESS SPECIFICALLY ASSENTED TO IN WRITING BY THE SELLER.**

**ALL ORDERS ARE SUBJECT TO FINAL ACCEPTANCE BY SELLER, AND SELLER RESERVES THE RIGHT TO REJECT ANY ORDER IN WHOLE OR IN PART.**

### Article I – Prices

Prices include the cost of (i) Seller's usual inspection and factory tests and (ii) Seller's standard packing (or containerizing, if applicable) for domestic shipments only. Any additional expense for special packing will be charged to the Buyer.

### Article II – Delivery, Title, and Risk of Loss

- A. Except as stated in Paragraph B below, the terms of delivery shall be FCA Seller's Plant, Erie, Pennsylvania, USA as defined in Incoterms 2000. Partial deliveries shall be permitted. Upon delivery, all risk of loss or damage shall pass to Buyer. Title to Products shall remain with Seller until payment in full is received by Seller. Delivery times are approximate and are dependent upon prompt receipt by Seller of all material and information necessary to proceed with work without interruption. Buyer is responsible for obtaining and maintaining insurance for the full value of the Product delivered. Insurance shall name Seller as payee until full payment is received by Seller and title has passed from Seller.
- B. If Buyer cannot take delivery of any part of the Product when ready for delivery, due to any cause referred to in Article III, Seller may place such Products in storage (which may be at the place of manufacture). In such event, (i) Seller shall notify Buyer of the placement of any Product in storage, (ii) Seller's delivery obligations shall be deemed fulfilled and all risk of loss or damage shall thereupon pass to Buyer, (iii) any amounts otherwise payable to Seller upon delivery shall be payable upon presentation of Seller's invoices therefore and its certification as to such cause, (iv) promptly upon submission of Seller's invoice, Buyer shall reimburse Seller for all expenses incurred by Seller, such as preparation for and placement into storage, handling, storage, inspection, preservation, and insurance, and (v) when conditions permit and upon payment of all amounts due hereunder, Seller shall assist and cooperate with Buyer in any reasonable manner with respect to the removal of any Product which has been placed in storage.

### Article III – Excusable Delays

- A. Seller shall not be liable for delays in delivery or failure to perform due directly or indirectly to (i) causes beyond Seller's reasonable control, (ii) acts of God, acts (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), governmental

priorities, port congestion, riots, revolutions, strikes or other labor disputes, fires, floods, sabotage, nuclear incidents, earthquakes, storms, epidemics, or (iii) inability due to causes beyond Seller's reasonable control to obtain either necessary and proper labor, materials, components, facilities, energy, fuel, transportation, governmental authorizations or instructions, materials or information required from the Buyer. The foregoing shall apply even though any of such causes exist at the time of the order or occurs after Seller's performance of its obligations is delayed for other causes.

- B. Seller shall notify Buyer of any delay or failure excused by this Article and shall specify the revised delivery date as soon as practicable. In the event of such delay, subject to Paragraph C of this Article, there shall be no termination and the time of delivery or performance shall be extended for a period equal to the time lost by Seller by reason of the delay.
- C. If delay excused by this Article extends for more than sixty (60) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either party (except where delay is caused by Buyer, in which event only Seller), upon thirty (30) days written notice, may terminate the order with respect to the unexecuted portion of the work, whereupon Buyer shall pay Seller for all completed work including costs and pro rata profits. Buyer will also pay all costs, direct and indirect, incurred on all incomplete work.

### Article IV – Cancellation Charges

- A. Cancellation Charges
- Stock Items
    - A twenty-five percent (25%) minimum cancellation charge will apply when a stock item is ordered and is subsequently cancelled.
  - Non-Stock Items
    - A thirty percent (30%) minimum cancellation charge, plus actual expenses incurred, will apply when a non-stock item is ordered and subsequently cancelled. Actual expenses incurred will include, but are not limited to, engineering charges, labor costs, as well as all expenses for hardware that cannot be readily applied to other jobs.
    - Items cancelled after completion will be subject to a one hundred percent (100%) net cancellation charge.
  - Minimum charge of \$100 net will apply to any cancellation.
  - Charge for Rescheduling of Shipment
    - Where the Buyer requests a delay of shipment of thirty (30) days or more from the shipping date (including failure to provide ship-to address), a rescheduling charge of one and one-half percent (1½%) will be added to the net selling price for each month or partial month of delay (total of \$100 net minimum per extension).

#### Article V – Credit, Payments, Invoices and Financial Condition

- A. Payment shall be made in US Dollars as follows:
1. On an order of fifteen thousand US Dollars (US \$15,000) or under, payment shall be made simultaneously with the placing of the order where laws of the Buyer's country permit.
  2. On orders over fifteen thousand US Dollars (US \$15,000), or if the law of the Buyer's country forbid compliance with Paragraph 1 above, payment shall be made through a letter of credit to be established by Buyer at its expense. All costs, including any bank confirmation charges, relating to such letter of credit are for the account of the Buyer. All letters of credit shall be in favor of and acceptable to Seller, shall be consistent with the terms of this instrument, shall be maintained in sufficient amounts and for the period necessary to meet all payment obligations, shall be irrevocable and issued by, or confirmed by, a major USA bank within 15 days after acceptance of the order, shall permit partial deliveries and shall provide for pro rata payments upon presentation of Seller's invoices therefore and either Seller's certificate of delivery shall be FCA, Seller's Plant, Erie, Pennsylvania, USA as defined in Incoterms 2000, or of delivery into storage with certification of cause therefore and for the payment of any charges for storage, export shipment, price adjustments, and cancellation or termination.
- B. In the event that Seller agrees to any deviation from the cash or letter of credit requirements set forth above, Seller reserves the right to arrange for export shipment of the Products.
- C. If Buyer fails to fulfill any condition of its payment obligations, Seller may (i) withhold deliveries and suspend performance, or (ii) continue performance if Seller deems it reasonable to do so, or (iii) place the Products in storage pursuant to the provisions of Article II hereof. In any event, the costs incurred by Seller as a result of Buyer's non-fulfillment shall be payable by Buyer upon submission of Seller's invoices therefore. Seller shall be entitled to an extension of time for performance of its obligations equaling the period of Buyer's non-fulfillment whether or not the Seller elects to suspend performance. If such non-fulfillment is not rectified by Buyer promptly upon notice thereof, Seller may cancel the agreement and Buyer shall pay Seller for all completed work including costs and pro rata profits. Buyer will also pay all costs, direct and indirect, incurred on all incomplete work.
- D. Except to the extent otherwise specified by Seller in its quotation, pro rata payments shall become due without setoff as deliveries are made in accordance with original schedules. If Seller consents to delayed deliveries after completion of any product, payment for completed products shall become due on the date when Seller is prepared to make delivery and risk of loss for the products shall pass to Buyer.
- E. Any order for products by Buyer shall constitute a representation that Buyer is solvent. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency at any time prior to receipt of full payment.
- F. If Buyer's financial condition at any time does not justify continuance of the work to be performed by Seller hereunder on the agreed terms of payment, Seller may require full or

partial payment in advance. In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against the Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its proper cancellation charges. Seller's rights under this Article are in addition to all rights available to it at law or in equity.

#### Article VI – Taxes and Duties

- A. All USA taxes are included in the price except sales, use, excise, value-added, and similar taxes which have been excluded based on the assumption that the transaction involves exportation. All rights to drawback of USA customs duties paid by Seller with respect to Products (or material or components thereof) belong to and shall remain in Seller. If Buyer arranges for export shipment, Buyer agrees to furnish, without charge, evidence of exportation or other evidence of tax or duty exemption acceptable to the taxing or customs authorities when requested by Seller, failing which, the amount of any USA taxes or duties imposed on Seller in connection with the transaction shall be promptly reimbursed in US Dollars by Buyer to Seller upon submission of Seller's invoices thereof.
- B. Any taxes (including income, stamp and turnover or value-added taxes), duties, fees, charges, or assessments of any nature levied by any governmental authority other than of the USA in connection with this transaction, whether levied against Buyer, against Seller or its employees or against any of Seller's subcontractors or their employees, shall be the responsibility of the Buyer and shall be paid directly by Buyer to the governmental authority concerned. If Seller or its subcontractors, or the employees of either, are required to pay any such levies and/or fines, penalties, or assessments in the first instance, or as a result of Buyer's failure to comply with any applicable laws or regulation governing the payment of such levies by Buyer, the amount of any payments so made, plus the expense of currency conversion, shall be promptly reimbursed in US Dollars by Buyer upon submission of Seller's invoices therefore.

#### Article VII – Warranties

- A. **SELLER MAKES NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE AND NO SUCH WARRANTIES SHALL APPLY.** Seller makes no warranty, expressed or implied, except that products manufactured by Seller shall be free from defects in material, workmanship and title, and shall be of the kind and quality specified or designed by Seller. Seller's obligations, set forth below, shall apply only to failures to meet the foregoing warranties (except as to title) occurring within twelve (12) months (the "Warranty Period") from date of delivery pursuant to Article II and the warranty is only valid if the Seller is given written notice within thirty (30) days of such occurrence and provided the Product or part thereof is made available to Seller as specified by Seller.
- B. If any product or service fails to meet the foregoing warranties (except as to title), the sole remedy for Buyer shall be Seller's correction of any such failure, at Seller's option, (i) by repairing any defective or

damaged part or parts of the product, or (ii) by making available, FCA Seller's plant, Erie, Pennsylvania, USA, as defined in Incoterms 2000, any necessary repaired or replacement parts. Any such failure shall not be cause for the extension of the duration of the Warranty Period specified in this Article. Where a failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price with the maximum adjustment being equal to the purchase price of the product.

- C. The preceding paragraphs set forth the exclusive remedies for claims (except as to title) based on defect in or failure of products or services, whether claim is in contract or tort (including negligence) and however instituted. Upon the expiration of the Warranty Period, all such liabilities shall terminate. Except as set forth in Article VIII, "Patents", the foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied, or statutory. Except as provided in Paragraph E below, Seller does not warrant any products or services of others incorporated in Seller's product or designs of Buyer.
- D. Seller's obligations under paragraph B above shall not apply to any Product, or part thereof, which (i) is normally consumed in operation, or (ii) has a normal life inherently shorter than the warranty period specified in Paragraph A, or (iii) is not properly stored, installed, used, maintained, or repaired or is modified other than pursuant to Seller's instructions or approval, or (iv) has been subjected to any other kind of misuse or detrimental exposure, or has been involved in an accident.
- E. With respect to any Products not manufactured by Seller (except for integral parts of Seller's Products to which the warranties set forth above shall apply), Seller gives no warranty, and only the warranty, if any, given by the manufacturer of such component parts shall apply.
- F. The conditions of any tests shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that may be made. The warranties and remedies set forth herein are conditioned upon (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of Seller and (b) Buyer promptly notifying Seller of any defects and, if required, promptly making the product available for correction.

#### Article VIII – Patents

- A. Seller warrants that any Product (or part thereof) manufactured by Seller and furnished hereunder shall be free of any rightful claim of any third party for infringement of any USA patent. If Buyer notifies Seller promptly of the receipt of any claim that such Product infringes a USA patent and gives Seller information, assistance, and exclusive authority to settle and defend such claim, Seller shall, at its own expense and option, either (i) settle or defend such claim or any suit or proceeding arising there from and pay all damages and costs awarded therein against Buyer, or (ii) procure for Buyer the right to continue using such Product, or (iii) modify the Product so that it becomes non-infringing, or (iv) replace the Product with a non-infringing product, or (v) remove the Product and refund the purchase price less reasonable depreciation and any transportation or installation costs which have been separately paid by Buyer. If, in any such suit arising from such claim, the continued use of the Product for the purpose intended is enjoined by any court of

competent jurisdiction, Seller shall at its option, take one or more of the actions under (ii), (iii), (iv) or (v) above. Buyer loses rights under (i), (ii), (iii), (iv) and (v) if Buyer does not give written notice to the Seller specifying the nature of the right or claim of the third party within ten (10) days after Buyer has become aware or ought to have become aware of the right or claim. The foregoing states the entire liability of Seller for patent infringement of any Product and it's subject to the limitation of total liability set forth in Article IX.

- B. The preceding paragraph shall not apply (i) to any Product (or part thereof) which is manufactured to Buyer's design or (ii) to the use of any Product (or part thereof) furnished hereunder in conjunction with any other product in a combination not furnished by Seller as a part of this transaction. As to any Product, part or use described in the preceding sentence, Seller assumes no liability whatsoever for patent infringement. Buyer agrees to indemnify Seller for any and all damages for infringement of patents or trademarks resulting from reliance on Buyer's purchase order, specifications, drawings, blueprints, etc.
- C. With respect to any Product (or part thereof) furnished hereunder which is not manufactured by Seller, only the patent indemnity of the manufacturer, if any, shall apply.
- D. The patent warranty and indemnity obligations recited above are in lieu of all other patent warranties and indemnities whatsoever, whether oral, written, express, implied, or statutory.

#### Article IX – Limitations of Liability and Indemnities

- A. Except as provided in Article VIII, "Patents", the total liability of Seller, including its subcontractors or suppliers, on any and all claims, whether in contract, warranty, tort (including negligence or patent infringement) or otherwise, arising out of, connected with, or resulting from the performance or non-performance of any agreement resulting here from or from the manufacture, sale, delivery, resale, repair, replacement, or use of any Product or the furnishing of any service, shall not exceed the price allocable to the Product or service which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the Warranty Period specified in Article VII.
- B. In no event, whether as a result of breach of contract, warranty, tort (including negligence or patent infringement) or otherwise, shall Seller, or its subcontractors or suppliers, be liable for any special, consequential, incidental, indirect, or exemplary damages, including, but not limited to, loss of profit or revenues, loss of use of the Products or any associated equipment, cost of capital cost of substitute goods, facilities, services or replacement power, downtime costs or claims of Buyer's customers for such damages. If Buyer transfers title to, or leases the Products sold hereunder to, or otherwise permits or suffers use by, any third party, Buyer shall obtain from such third party a provision affording Seller and its subcontractors and suppliers the protection of the preceding sentence.
- C. If Seller furnishes Buyer with advise or other assistance which concerns any Product supplied hereunder or any system or equipment in which any such Product may be installed and which is not required by the terms of this instrument or pursuant to any agreement resulting here from, the furnishings of such advise or assistance shall not subject Seller to any liability, whether in contract, warranty, tort (including negligence or patent infringement), or otherwise.

#### Article X – Disclosure Information

Any information, suggestions, or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in writing signed by a duly authorized representative of Buyer.

#### Article XI – Nuclear Use

- A. Products and services sold hereunder are not intended for application (and shall not be used) in connection with the use or handling of nuclear material or the construction or operation of a nuclear installation. Buyer warrants that it shall not use such products or services for such purposes, unless such use is agreed to in writing by Seller.
- B. If, in breach of the foregoing, any such use occurs, Seller disclaims all liability for any nuclear or other damages, injury, or contamination and Buyer shall indemnify Seller against any such liability, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise.

#### Article XII – Arbitration; Personal Jurisdiction; Controlling Law; and Venue

- A. Any dispute, controversy or claim arising out of or relating to this contract, or any breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association.
- B. This contract shall be governed by and construed in all respects in accordance with the laws of the Commonwealth of Pennsylvania, without regard to any conflict of laws, rules or principles that might refer the governance or construction to any other jurisdiction, except that questions affecting the validity, enforceability, or infringement of any patent shall be governed by the United States code and regulations. The United Nations Convention on the International Sales of Goods shall not apply. If either party seeks injunctive relief or judicial enforcement or interpretation of the arbitration provisions hereof, each party agrees to submit to the exclusive personal jurisdiction and venue of the United States District Court for the Western District of Pennsylvania, unless subject matter jurisdiction is not satisfied, in which case each party hereby agrees to submit to the exclusive personal jurisdiction and venue of the Court of Common Pleas, Erie County, Pennsylvania.
- C. The appointing authority shall be the American Arbitration Association.
- D. The case shall be administered by the American Arbitration Association in accordance with its International Rules of Arbitration.
- E. The number of arbitrators shall be three, unless otherwise limited by the International Rules of Arbitration of the American Arbitration Association.
- F. The place of arbitration shall be Erie, Pennsylvania, USA.
- G. The language to be used in the arbitral proceedings and for the interpretation of this contract shall be English.
- H. Buyer agrees that in the event suit is instituted by Seller to enforce any of these terms and conditions, or to collect any sums of money, damages or costs from the Buyer hereunder, Buyer shall pay all actual costs of collection, expert witness fees and reasonable attorneys' fees incurred by Seller in any such suit or suits. Furthermore, if Seller prevails in a lawsuit commenced by Buyer under this agreement, Seller shall be entitled to recover all actual costs of litigation, expert witness fees and reasonable attorneys' fees incurred by Seller in such suit or suits.

#### Article XIII - General

- A. Any Products furnished by Seller hereunder shall comply with federal, state, and local laws and regulations of the USA applicable to the manufacture, packing, sale, and shipment of such Products as of the date of Seller's quotation and shall comply with any amendments thereto which may have come into effect prior to the time such Products are furnished, provided that the price and, if necessary, delivery shall be equitably adjusted to compensate Seller for the effect of compliance with any such amendments. Seller shall not comply with any law, regulation, or requirement which would subject Seller to criminal or civil penalties or loss of tax benefits under any federal, state, or local law or regulation of the USA, and the furnishing of any quotation or acknowledgement of any order does not constitute the furnishing of or an agreement to furnish any information which would subject Seller to any of the above mentioned penalties or loss of tax benefits. Seller shall not comply with any other law, regulation or requirement which would increase Seller's costs, unless there is an appropriate adjustment in price.
- B. The delegation or assignment by buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void.
- C. Any representation, understanding, proposal, agreement, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on Seller. No modification, amendment, rescission, waiver or other change shall be binding on Seller unless assented to in writing by Seller.
- D. The provisions of any agreement resulting here from are for the benefit of the parties hereto and not for any other person except as specifically provided herein.
- E. Buyer may terminate an order only upon paying Seller for all completed work including costs and pro rata profits. Buyer will also pay all costs, direct and indirect, incurred on all incomplete work. Termination of an order shall not relieve either party of any obligation arising out of work performed prior to termination.
- F. As used throughout this instrument, (i) the term Product (or Products) is defined to include all equipment, materials, supplies, components, services, engineering design and data, or other work which Seller has contracted to supply and (ii) the term Seller is defined to mean TM Industrial Supply, Inc., TM Industrial, TM Filtration, Fluid Engineering, and Envirovision Modular Systems™.
- G. The invalidity, in whole or in part, of any Article or Paragraph thereof shall not affect the validity of the remainder of such Article or Paragraph or of any agreement resulting here from.
- H. Minimum order charge is \$100.

#### Article XIV – Export Shipment

- A. If Seller exercises its rights under Paragraph B of Article V, Seller shall arrange for (i) export shipment to Buyer's country and (ii) marine warehouse-to-warehouse insurance (including war risk, if available). Buyer shall pay Seller for all fees and expenses, including, but not limited to, those covering preparation of consular documents, consular fees, ocean freight, storage, insurance, and Seller's then current fee for such services. Notwithstanding any extension of credit to Buyer, all such charges shall be promptly reimbursed by Buyer in US Dollars upon submission of Seller's invoices therefore.
- B. In performing any of the foregoing services, Seller shall comply with any reasonable instruction of Buyer or, in the

absence thereof, shall act according to its best judgment. In so acting on Buyer's behalf, neither Seller nor its agents shall be liable for negligence or for any special, consequential, incidental, indirect or exemplary damages to Buyer resulting there from.

Article XV – Governmental Authorizations

- A. The party that arranges for export shipment (or Buyer's designated export agent) shall be responsible for the timely application in its own name for any required USA export license. Buyer shall be responsible for timely obtaining and maintaining any required import license, exchange permit or any other governmental authorization. Buyer and Seller shall assist each other when such help is reasonably possible. Seller shall not be liable if any authorization of any government is delayed, denied, revoked, restricted, or not renewed, and buyer shall not be relieved thereby of its obligations to pay Seller for its Products or any other charges which are the obligation of the Buyer hereunder.
- B. All shipments hereunder shall at all times be subject to the export control laws and regulations of the USA and any amendments thereof. Buyer agrees that it shall not make any dispositions of USA origin Products purchased from Seller, by way of transshipment, re-export, diversion, or otherwise, other than in and to the ultimate country of destination specified on Buyer's order or declared as the country of ultimate destination on Seller's invoices, except as said laws and regulations may expressly permit.