

## TERMS & CONDITIONS

**1. GENERAL.** The Terms and Conditions of Sale outlined herein shall apply to the sale by Toolytics Industrial, Inc. (hereinafter referred to as Company) of products, equipment, and parts relating thereto (hereinafter referred to as Equipment). It shall be understood that the Company's proceeding with any work shall be in accordance with the terms and conditions outlined herein. The Company will comply with applicable laws and regulations in effect on the date of Company's proposal as they may apply to the manufacture of the Equipment. Compliance with any local governmental laws or regulations relating to the location, use or operation of the Equipment, or its use in conjunction with other equipment, shall be the sole responsibility of the Purchaser. The Company shall not be bound by any contract or any modification thereto until approved in writing by an offer of the Company. The contract, when so approved, shall supersede all previous communications, either oral or written.

**2. ACCEPTANCE OF ORDERS.** The acceptance of all orders and all sales by Company are made subject to and expressly conditional upon these Terms and Conditions of Sale ("Terms and Conditions"). We only accept orders and purchases on the condition that Purchaser agrees to all the terms in these Terms and Conditions. Unless you assent to all the Terms and Conditions, this section shall be deemed a rejection of your offer and our acknowledgement of your purchase order, agreement to ship or shipment of any Equipment to you shall not be an acceptance of any terms and conditions not set forth herein and shall constitute a counteroffer. Purchaser may accept the counter offer only on these Terms and Conditions. TERMS IN YOUR ACCEPTANCE THAT ARE ADDITIONAL TO OR NOT IDENTICAL WITH THESE TERMS AND CONDITIONS OF THE COUNTEROFFER WILL NOT BECOME PART OF THE CONTRACT WITHOUT OUR EXPRESS WRITTEN CONSENT.

**3. QUOTATION.** Quotations are firm for thirty (30) days from date unless otherwise noted. Clerical errors are subject to correction. Acceptance of the offer represented by a quote is expressly limited to the provisions hereof. No additional or different terms in Purchaser's purchase order or other communication shall constitute a part of the quotation unless expressly agreed to in writing by Company.

**4. TAXES.** The price does not include any present or future Federal, State, or local property, license, privilege, sales, use, excise, gross receipts or other like taxes or assessments applicable to this transaction or any services performed hereunder. Such taxes will be itemized separately to Purchaser. The Company will accept a valid exemption certificate from Purchaser. If exemption certificate is not recognized by the governmental taxing authority, Purchaser agrees to promptly reimburse the Company for any taxes which the Company is required to pay.

**5. PAYMENT TERMS.** Payment terms are set forth in invoices we issue to you. If payment in full on any invoice is not received when due, or if your credit worthiness is deemed unsatisfactory by us at any time, we may take, without incurring any liability, one or more of the following actions: (a) impose a service charge at the rate that is the lesser of (i) 1.5% per month or (ii) the maximum rate allowed by applicable law, on any amount past due commencing from the date of such invoice, (b) modify or accelerate payment terms, and/or (c), withhold delivery of Equipment under any Accepted Order not yet shipped and/or delay, recall or reclaim shipments of Equipment on route to you or delivered until arrangements satisfactory to us are made to secure payment for any outstanding invoice and for all open Accepted Orders. If any account or accounts are placed in the hands of a collection agency or an attorney, or collected through probate or bankruptcy proceedings, or through other legal procedures, Purchaser agrees to pay all reasonable collection costs, including reasonable attorneys' fees.

### **6. TERMS OF PAYMENT (A) (B)**

- A. Engineered / Customized Equipment:
  - 1. 50% of order value due at time of Purchaser's submitted and approved order.
  - 2. 40% of order value due at time of equipment notification of ready to ship.
  - 3. 10% of order value due at Net-15 days from installation completion and equipment commissioning.
- B. Order Values > \$100,000:
  - Same as above (A)

All payments are U.S. dollars. Pro rata payments to apply as shipments are made.

**7. BANK & CREDIT CARD FEES.** As with many other merchants, all proceeds from orders are captured in full at the time the order is placed, not when the merchandise ships. Circumstances may exist where we require payment for orders to be made in the form of a wire transfer in advance. Company will apply a fee (currently \$18-\$22 USD for domestic and \$22 USD for international) to process the wire transfer. Contact must be made in advance with Company to request approval for a wire transfer. Following approval, Company will provide you with the necessary banking information to initiate a wire transfer. A surcharge of 3% will be imposed on all credit card purchases.

**8. ORDER CANCELLATION.** Company reserves the right to cancel orders at any time for any reason. In the event of Purchaser's termination of a purchase order ("PO"), the Purchaser shall pay to Company a cancellation fee of 25% of the order total or an amount equivalent to Company's actual direct out of pocket costs incurred-plus a percentage of the PO value, as outlined below, to cover sales and administrative expenses. The percentage is based on the proportion of time which has elapsed from the date of the Purchase Order, to the originally scheduled shipment date, as follows:

Percent of time elapsed from PO date to scheduled ship date:	Cancellation fee % of PO Value
0-10%	5%
11-20%	15%
21-30%	25%
31-40%	35%
41-50%	45%
51-60%	55%
61-70%	65%
71-80%	75%
81-90%	85%
91-100%	95%

**9. PRICE INCREASES.** All prices are subject to automatic increase without prior notice by an amount equal to price increases and/or surcharges charged to us by our suppliers at any time between our acceptance of an Accepted Order and the date delivery is completed for any material we allocate to fulfill an Accepted Order.

**10. DELIVERY AND DELAYS.** Company shall deliver products to Purchaser F.O.B. Point of Shipment; partial deliveries shall be permitted. All shipping charges and expenses shall be paid by Purchaser. All shipping and handling fees will be added to invoice. Delivery dates shall be interpreted as estimated and in no event shall dates be construed as falling within the meaning of "time is of the essence". The Company shall not be liable for any loss or delay due to causes beyond the reasonable control of the Company. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be adjusted to reflect the actual length of time lost by reason of such delay. The Purchaser's receipt of Equipment shall constitute a waiver of any claims for delay.

**11. DELIVERY DELAY AND HELD ORDERS.** In the event Purchaser delays or extends the delivery date for any of the Equipment sold hereunder, beyond the original scheduled delivery date, Purchaser agrees to pay Seller, as a storage fee, an amount equivalent to one- and one-half percent (1.5%) of the total purchase order value per calendar month or fraction thereof (calculated and charged on a per day basis) for the period during which delivery is extended or delayed beyond the original scheduled delivery date (the "Storage Fee"). Additionally, in the event that Company is performing installation services, if, at the time of delivery, the Purchaser's location is not ready or is unsafe for installation; Company reserves the right not to begin or to discontinue the work. In such event, Company may charge Purchaser an amount equivalent to the Storage Fee set forth above until such time that the location is ready and safe, as determined by Company, for installation services.

**12. TITLE AND RISK OF LOSS.** Title and risk of loss or damage to the Equipment shall pass to the Purchaser at F.O.B Point of Shipment unless otherwise agreed upon by the parties, except that a security interest in the Equipment shall remain in the Company, regardless of mode of attachment to realty or other property, until full payment has been made therefor, and Purchaser shall adequately insure the Equipment against loss or damage from any cause wherein the Company shall be named as an additional insured. Equipment damaged in shipment cannot be returned and all claims for such damage should be directed immediately to the transportation company.

**13. WARRANTY.** The Company warranty does not extend to products not manufactured by the Company. As to such products or parts, Purchaser shall be entitled to proceed only upon the terms of that particular manufacturer's warranty. Used products are sold AS IS with no representation or warranty. The Company warrants that the Equipment manufactured by it and delivered hereunder will be free of defects in material and workmanship for a period of twelve months from the date of placing the Equipment in operation or eighteen months from the date of shipment, whichever shall first occur. The Purchaser shall be obligated to promptly report any failure to conform to this warranty, in writing to the Company within said period, whereupon the Company shall, at its option, correct such nonconformity, by suitable repair to such Equipment or, furnish a replacement part provided the Purchaser has stored, installed, maintained, and operated such Equipment in accordance with good industry practices and has complied with specific recommendations of the Company. Company reserves the right to take possession of or direct Purchaser to return any replaced parts, which shall become Company property. Accessories or equipment furnished by the Company, but manufactured by others, shall carry whatever warranty the manufacturers have conveyed to the Company and which can be passed on to the Purchaser. This warranty shall not apply to any component which Purchaser directs Company to use in or add to the Equipment, and which would not otherwise be used or added by the Company. The Company shall not be liable for any repairs, replacements, or adjustments to the Equipment or any costs of labor performed by the Purchaser or others without the Company's prior written approval. The effects of corrosion, erosion, and normal wear and tear are specifically excluded. Performance warranties are limited to those specifically stated within the Company's proposal, and the Company's obligation for meeting such performance warranties shall be to correct in the manner and for the period of time provided above. THE COMPANY MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, EXCEPT THAT OF TITLE, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. Correction by the Company of nonconformities whether patent or latent, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of the Company for such nonconformities, with respect to or arising out of such Equipment. The Purchaser shall not operate Equipment which is considered to be defective, and any such use of Equipment will be at the Purchaser's sole risk and liability.

**14. LIMITATION OF LIABILITY.** The remedies of the Purchaser set forth herein are exclusive, and the total liability of the Company with respect to this contract, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the purchase price of the unit of Equipment upon which such liability is based. The Company and its suppliers shall in no event be liable to the Purchaser, any successors in interest or any beneficiary or assignee of this contract for any consequential, incidental, indirect, special, or punitive damages arising out of this contract or any breach thereof, or any defect in, or failure of, or malfunction of the Equipment hereunder, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

**15. FORCE MAJEURE.** If our performance of any obligation is delayed due to unavailability of Equipment or any other cause beyond our reasonable control by reason of fire, strike, lock-out, labor trouble, war, epidemic, embargo, flood, delay in transportation, lack or unavailability of trailers and/or railway cars, failure of carriers or sub-trades, shortage of manpower, restrictive governmental laws or regulations (including any trade actions, export controls, tariffs, customs or duties) or to any other cause or reason beyond the Company's commercially reasonable control (a "Force Majeure"), notwithstanding that such Force Majeure may have existed at the time of submission or acceptance of an Accepted Order, we shall not be liable and any portion of an Accepted Order not filled or shipped will be retained as an Accepted Order and delivered as soon as possible. However, we may elect to cancel the Accepted Order, without liability, if we believe that the Equipment will not become available within a reasonable period of time as we so determine. We also reserve the right to apportion Equipment among our customers in such manner as we consider equitable, and our determination shall be conclusive and binding on you without liability to us.

**16. GOVERNING LAW.** The rights and obligations of the parties shall be governed by the laws of the State of California excluding any conflicts of law provisions. The United Nations Convention on Contracts for the international sale of goods shall not apply to this agreement.