



# Phoenix Industrial Technologies

## Terms and Conditions

The Quotation and any resulting sales are conditional on the terms and conditions set forth below. Any additional or different terms or conditions submitted by Purchaser shall be deemed objected to by the Company and shall be of no effect nor in any circumstance binding upon the Company unless accepted by the Company in writing. If Purchaser objects to any of the terms and conditions, said objection must be specifically brought to the attention of the Company by Purchaser by a written instrument separate from any purchase order or other printed form of Purchaser. Said objections shall be deemed proposals for different terms and conditions and may be accepted only by a writing executed by an authorized representative of the Company at its office in Santa Clara, California.

1. **PRICES:** Prices quoted on products manufactured or serviced by the Company are firm for 30 days from quotation date provided shipment can be made within one year from date of order. If shipment is delayed beyond one year, the Company reserves the right to invoice prices in effect at the time of shipment.

2. **DELIVERY:** Delivery of products ordered hereunder shall be made FOB shipping point unless otherwise expressly indicated in a writing signed by the Company. Unless, at the time of Purchaser's acceptance of the Company's quotation, Purchaser specifies in writing a desired method of transportation (air express, motor freight, etc.), Company will use its judgment in selecting the carrier and route. Shipping dates are estimated and Company assumes no responsibility for delays.

Purchaser may delay delivery of any items, provided, however, if such delay is in excess of 60 days from the scheduled date of delivery. Company may invoice Purchaser for said items and hold them at Purchaser's risk and expense pending instructions from Purchaser. In the event such delay extends beyond six (6) months from said delivery date, then Purchaser agrees to pay prices in effect at the time of shipment.

3. **PAYMENTS:** Terms are net cash 30 days from date of invoice. Other terms must have written approval from executive representation of company. Pro-rata payments, if applicable, shall become due as shipments are made.

All payments 7 days in arrears will be given a reminder call. All payments 14 days in arrears are subject to credit term review with the possibility of COD terms being imposed until payments are brought current. All payments 40 days in arrears are subject to finance charges of 1 ½% per month on outstanding balance.

4. **SALES AND SIMILAR TAXES:** The prices provided for herein are exclusive of any present or future Federal, State, Municipal, or other sales or use tax with respect to the material or products covered hereby, or any other present or future excise tax upon, or measured by, the gross receipts from this transaction or any allocated portion thereof or by the gross value of the material or products covered hereby and of any present or future property tax or similar charge with respect to the material or products covered hereby. If the Company is required by applicable law or regulation to pay or collect any such tax or taxes on account of this transaction of the material or products or services covered hereby, then such amount of tax shall be paid by the Purchaser in addition to the prices herein provided for.

5. **WARRANTY:** Company makes **NO WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, AND NO OTHER EXPRESSED OR IMPLIED WARRANTIES** which extend beyond the description contained in the applicable specification. The Company warrants that the products manufactured by it shall be free from defects in material, workmanship, and title, and shall be made in accordance with the specifications, when approved in writing by the Company and the Purchaser. If any item manufactured by the Company shall not comply with the applicable specifications, or shall prove defective in material and/or workmanship, within one year from the date of shipment, Purchaser shall notify Company, in writing, of such defect or non-compliance. Company shall, at its option, modify, repair, replace, or refund the purchase price of said item. Company shall have the option to have such item returned to it, FOB its factory, or to make such adjustment at the point of installation. Company shall accept no responsibility if such items have been improperly stored, installed, used, or maintained, or if Purchaser has permitted any unauthorized modifications, adjustments, and/or repairs to the item. Adjustments for items not manufactured by the Company shall be provided by the standard warranty, if any, of the manufacturer or supplier thereof. Notwithstanding any breach of contract or negligence on the part of the Company, the foregoing constitutes the sole obligation of the Company, and the sole remedy of the Purchaser.

6. **DISCLAIMER OF DAMAGES:** COMPANY SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGE UNDER ANY CIRCUMSTANCES including, but not limited to, damage or loss resulting from inability to use the product, increased operating costs, loss of production, loss of anticipated profits, or other special, incidental, or consequential damages, whether similar or dissimilar, or any nature arising from any cause whatsoever, including negligence.

7. **LIMITATION OF LIABILITY:** Company's maximum liability hereunder, arising from any cause whatsoever, including, but not limited to, breach of contract or negligence, shall not exceed the price of the item which gives rise to the claim. Any aforementioned cause of action must be commenced within one year from the date on which action accrues.

8. **OCCUPATIONAL SAFETY & HEALTH ACT:** Company makes every effort to design products in accordance with applicable national consensus standards and codes. However, due to lack of Occupational Safety and Health Administration action relative to product standards test procedures, and interpretations needed to ensure compliance with the general standards promulgated under the Act, Company cannot warrant compliance with same. Compliance with standards promulgated under the Act for any given application, installation, use, and maintenance is the sole responsibility of the Purchaser, for which the Company assumes no responsibility or liability. Company will quote on any specific modification.

9. **FLSA:** Company specifically represents that all products will be produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended.

10. **NON-DISCRIMINATION:** The non-discrimination provisions of Executive Order 11246 and all applicable Federal regulations issued thereunder are incorporated herein by reference.

11. **GOVERNMENT REGULATIONS:** In the event that Purchaser desires to incorporate any government regulations regarding the purchase of the products, it shall specify with particularity any such regulation on the face of its order. Such requests shall not become a part of this order unless specifically agreed to by Company in writing.

12. **PERFORMANCE:** The Company's performance shall be subject to any and all prohibitions, restrictions, regulations, or priorities of the Federal or any state government or any subdivision or agency thereof and Company shall not be liable for any failure to perform, in whole or in part caused by any such prohibition, restriction, regulation, or priority or by fires, floods, strikes, work stoppages, accidents, casualties, inability to procure supplies and raw materials, delays in transportation, or other causes beyond the Company's control.

13. **INSURANCE:** Company shall maintain comprehensive general liability insurance policies to protect the Company's liability and Workmen's Compensation protection for the Company's employees. However, the Company shall not accept any contractual liability indemnity.

14. **CHANGES:** Purchaser may, prior to delivery, make changes in the specifications of the product or the quantity ordered, however, any such change shall be subject to written acceptance by the Company. Purchaser agrees to pay any additional cost and/or escalation cost occasioned by such change order, and the Company reserves the right to modify or revoke its warranty if it deems that said change will effect the performance of the product. Company shall advise the Purchaser of new delivery date necessitated by any such change.

15. **TERMINATION:** Purchaser may at anytime prior to delivery terminate this order in whole, or in part, for Purchaser's convenience upon written notice to the Company, in which event the Company shall be entitled to a reasonable termination charge consisting of a percentage of the contract price reflecting the percentage of work performed prior to receipt of Purchaser's written notice of termination plus actual cost resulting from termination. In no event shall such charge be in excess of the total contract price.



# Phoenix Industrial Technologies

## Terms and Conditions

16. **INSPECTION:** Purchaser shall have the right to inspect the products, when practicable during manufacture. Notwithstanding any such inspection, Purchaser shall inspect the products within a reasonable time of delivery, but in no event shall such reasonable time extend beyond 45 days from receipt of products.
17. **ASSIGNMENT:** Neither Company nor Purchaser shall have the right to assign any right or interest in Company's quotation or any resulting contract, unless such assignment is in connection with the transfer of all, or substantially all, of the assignor's business.
18. **OWNERSHIP:** Specifications, drawings, manufacturing data, and other information transmitted between Company and Purchaser in connection with the Company's quotation and resulting sale are the property of the originating party, and are disclosed in confidence on the condition that they are not to be reproduced, copied, or used for any purpose detrimental to the interest of the other.
19. **GOVERNING LAW:** The rights and obligations of the Company and the Purchaser with respect to the Company's quotation and any resulting contract shall be governed by the laws of the State of Texas.