

DOMESTIC SALES CONTRACT TERMS AND CONDITIONS

1. PRICE. Unless otherwise expressly provided on the invoice hereof, prices stated herein do not include duties or sales, use, gross receipts, excise or similar taxes and, accordingly, in addition to the price stated herein, the amount of any such present or future taxes or duties or increases therein applicable to the goods covered by this Contract or to the manufacture, production, transportation or sale thereof, shall be added to the price and paid by the Purchaser named on the invoice hereof ("Purchaser") or in lieu thereof, Purchaser shall provide Anemostat ("Seller") with tax-exemption certificates acceptable to the relevant taxing authorities. Unless otherwise expressly provided on the invoice hereof, the prices stated are F.O.B. Seller's factory.

2. PAYMENT. Unless otherwise expressly provided on the invoice hereof, all payments are to be made net 30 days after date of invoice. Seller may at any time require full or partial payment in advance of delivery, or in advance of manufacture, or satisfactory assurances or security from Purchaser that invoices will be paid when due if in Seller's judgment the same at any time becomes necessary. If payment is not made when due, interest at the lower of 1 1/2 % per month or the highest rate permitted by applicable law will be charged thereon and paid by Purchaser from the due date thereof until paid. In the event Purchaser does not pay within the terms of this Contract, all collection costs incurred by Seller, including attorney's fees, will be paid by Purchaser. Time and terms of payment are of the essence and if any default therein be made by Purchaser or if the financial responsibility of Purchaser shall at any time become impaired or unsatisfactory to Seller, Seller shall have the right to terminate this Contract or to defer or to discontinue further shipments hereunder until past due payments are made or satisfactory assurances of Purchaser's financial responsibility are received by Seller (without prejudice, however, to any rights or claims which Seller may have in law or in equity) and such right shall continue irrespective of any prior failure on the part of Seller to exercise such right. Each shipment is to be considered a separate sale.

3. WARRANTY. UNLESS OTHERWISE EXPRESSLY PROVIDED ON THE INVOICE HEREOF, AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, SELLER WARRANTS ONLY THAT THE GOODS COVERED HEREBY WILL CONFORM TO THE DESCRIPTION ON THE INVOICE HEREOF, THAT SELLER WILL CONVEY GOOD TITLE THERETO, FREE FROM ANY LIEN OR ENCUMBRANCE, AND THAT SAID GOODS WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE AND SERVICE AND PROVIDED SAID GOODS HAVE NOT BEEN REPAIRED, ALTERED OR NEGLECTED AND HAVE BEEN HELD IN NORMAL INDOOR STORAGE PRIOR TO INSTALLATION. ANY CLAIM ON ACCOUNT OF DEFECTIVE GOODS OR FOR ANY OTHER CAUSE WHATSOEVER WILL CONCLUSIVELY BE DEEMED WAIVED BY PURCHASER UNLESS WRITTEN NOTICE THEREOF IS GIVEN TO SELLER WITHIN 12 MONTHS OF SHIPMENT OF THE GOODS TO WHICH SUCH CLAIM RELATES. SELLER WILL BE GIVEN REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS, AND NO GOODS OR PARTS THEREOF MAY BE RETURNED BY PURCHASER TO SELLER UNTIL AFTER RECEIPT BY PURCHASER OF DEFINITE SHIPPING INSTRUCTIONS FROM SELLER. GOODS SO RETURNED WILL BE REPAIRED OR REPLACED WITHOUT CHARGE. SELLER SHALL RESERVE THE EXCLUSIVE RIGHT TO ASSIGN FACTORY REPRESENTATIVES IN THE REPAIR OR MODIFICATION OF GOODS SUPPLIED HEREIN.

SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO PRODUCTS, ACCESSORIES OR PARTS FURNISHED BY SELLER BUT NOT MANUFACTURED BY SELLER. SUCH PRODUCTS, ACCESSORIES OR PARTS WILL CARRY ONLY THE WARRANTY, IF ANY, OF THE MANUFACTURER THEREOF, AND SELLER HEREBY ASSIGNS TO PURCHASER ALL OF ITS RIGHTS AND INTEREST IN THE WARRANTIES, IF ANY PROVIDED BY THE MANUFACTURERS OF SUCH PRODUCTS, ACCESSORIES AND PARTS TO THE EXTENT THAT THIS ASSIGNMENT IS NOT PROHIBITED BY THE TERMS OF ANY AGREEMENT BETWEEN SELLER AND THE SAID MANUFACTURERS.

THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE IS NO OTHER WARRANTY, EXPRESSED OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN. SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL OR SPECIAL DAMAGES FOR ANY BREACH OF WARRANTY OR ANY DAMAGES FOR NEGLIGENCE OR FOR THE COST OF REMOVAL, TRANSPORTATION OR REINSTALLATION OF DEFECTIVE OR REPLACEMENT GOODS. SELLER'S LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY SHALL BE EXPRESSLY LIMITED TO THE REPAIR OF DEFECTIVE GOODS, OR THE SHIPMENT OF EQUIVALENT GOODS F.O.B. THE SHIPPING POINT INDICATED ON THE INVOICE HEREOF, OR THE REPAYMENT OF THE PURCHASE PRICE UPON RETURN OF THE GOODS TO SELLER WITH SELLER'S APPROVAL, OR THE GRANTING OF A REASONABLE ALLOWANCE ON ACCOUNT OF ANY DEFECTS, AS SELLER IN ITS SOLE DISCRETION MAY ELECT.

4. DELAYS. The scheduled dates for shipment of the products are estimated based on current and anticipated manufacturing capabilities at the time of quotation and may be quoted as weeks after receipt of order. All delivery dates are estimates only, and Seller shall not be liable for any damages relating to failure to ship the products as of a certain date. Seller shall not be liable for any delay in fulfillment of or failure to fulfill this Contract arising from any factory or labor conditions, fire, failure or delay in Seller's usual sources of supply by the acts or omissions of Purchaser, its agents, subcontractors or material suppliers, or any cause not reasonably within the control of Seller. In the event of any delay in delivery or failure to manufacture due to a cause beyond Seller's control, unless otherwise agreed, the time for delivery shall be deemed extended for a period equal to the period of delay.

5. TRANSPORTATION AND DELIVERY. Unless otherwise provided on the invoice hereof, all deliveries of goods are F.O.B. Seller's factory and Seller assumes no liability for loss or damage to the goods after delivery for shipment at Seller's factory, and risk of loss with respect to the goods passes to Purchaser at the said F.O.B. point.

6. INSPECTION. Purchaser shall inspect the products immediately on the arrival thereof, and shall within fourteen (14) days after arrival give written notice to Seller of any matter by reason whereof it may allege that the products are not in accordance with the agreement. If Buyer shall fail to give such notice, the products shall be deemed to be in all respects in accordance with the agreement terms. All products made to special specifications are deemed to be inspected and accepted before shipment is made, and may not be canceled.

7. CHANGE ORDERS. Proposed changes in the goods subject to this Contract, submitted in writing by the Purchaser, will be reviewed by Seller for acceptability and for the effect of the proposed changes on shipping schedules and prices; Seller will submit to Purchaser its decision to accept or not to accept the proposed changes and the amendments to the shipping schedules, selling prices and other terms upon which the proposed changes would be acceptable to Seller; the changes will become effective as amendments to this Contract upon Purchaser's written acceptance of the said amended terms.

8. RETURNS AND BACKCHARGES. Goods delivered hereunder may not be returned by Purchaser without the approval of Seller and the obtaining of appropriate documentation (including return tags) from Seller. All returns so approved are subject to Seller's restocking charge unless otherwise agreed to in writing by Seller. No backcharges for repairs, corrections or changes in construction of the product shall be made by Purchaser or accepted by Seller without the prior written approval of an authorized employee at Seller's factory.

9. LIMITATIONS OF LIABILITY. No representation or warranty, expressed or implied, made by any sales representative or other agent or representative of the Seller which is not specifically set forth herein shall be binding upon Seller. Seller shall not be liable for any special, incidental or consequential damages, losses or expenses directly or indirectly arising from the manufacture, sale, or use of the products or from any other cause relating thereto.

10. CANCELLATION. This contract is not subject to cancellation by the Purchaser except with Seller's prior written agreement and after full payment by Purchaser of Seller's cancellation charges which shall be equal to all amounts incurred by Seller for materials, labor and overhead in respect of the canceled goods plus reasonable contract profits.

11. ARBITRATION. Upon thirty (30) days' prior written notice provided by Purchaser or Seller to the other party, any claim arising out of or related to this Agreement or the default thereof, which has not been resolved by mutual agreement of the parties shall be settled by arbitration, which shall be conducted at the District Courts of Springfield, Massachusetts in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, as modified or supplemented herein, or as the parties mutually agree otherwise. Notwithstanding the rules of the arbitral body, the Parties agree (a) that any arbitration shall be presided over by one arbitrator who has been admitted to the practice of law, and be in good standing or on retirement status in any of the fifty United States or the District of Columbia, (b) that the arbitrator shall base his or her decision on the facts as presented into evidence and (c) that the arbitrator shall prepare a written memorandum of decision setting forth the findings of fact and conclusions of law. The decision of the arbitrator or arbitrators shall be final, and judgement may be entered upon it in accordance with the applicable law in any court having jurisdiction. Any claim for relief made pursuant to this Agreement shall be made within one (1) year from the date upon which the party claiming relief knew or should have known of the cause of action constituting such claim. This Section shall not be deemed a limitation of Seller's rights or remedies to file suit in a court of competent jurisdiction for the collection of amounts due to Seller hereunder, whether directly against the Purchaser or under applicable material payment bonds, unless such rights or remedies are expressly waived by Seller.

12. MISCELLANEOUS.

(a) The waiver by Seller of any term, provision or condition hereunder shall not be construed to be a waiver of any other terms, provisions or conditions hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

(b) This Contract and all questions of validity, interpretation, performance and nonperformance shall be governed by the laws of the State of Massachusetts.

(c) Purchaser is hereby notified of Seller's objection to any of Purchaser's terms inconsistent herewith and to any additional terms proposed by Purchaser in accepting this Contract and such inconsistent or additional terms shall not become a part of this Contract unless expressly accepted in writing by Seller. Neither Seller's subsequent lack of objection to any such terms, nor the delivery of goods covered hereby, shall constitute or be deemed an agreement by Seller to any such terms.

(d) This Contract, including the terms and conditions on the invoice and reverse side hereof, supersedes all prior negotiations and understandings of the parties and contains the complete and final agreement between Seller and Purchaser concerning the subject matter hereof and no other agreement in any way modifying any of the said terms and conditions will be binding upon Seller unless made in a writing specifically referring to this Contract and signed by Seller's authorized representative.