

## M. BRASHEM, INC.

### TERMS AND CONDITIONS OF SALE

All sales of goods by M. Brashem, Inc. ("Seller") to its customers ("Buyer") are subject to and conditioned upon Buyer's acceptance of these Terms and Conditions of Sale ("Terms and Conditions"). The Buyer's agreement to these Terms and Conditions shall be conclusively presumed from Buyer's failure to promptly object in writing and/or from Buyer's order for such goods.

**Entire Agreement.** The Seller's attached quotation or sales confirmation, the Buyer's order (limited to description of goods purchased) and these Terms and Conditions shall constitute the entire agreement between Seller and Buyer for the subject goods, and shall supersede all prior or contemporaneous statements, agreements, promotional material or representations, whether written or oral. Any different or additional terms or conditions contained in any correspondence or documents from Buyer are hereby objected to by Seller and shall not be part of this agreement, unless specifically agreed to in writing by Seller.

**F.O.B.** Unless otherwise stated, all shipments are F.O.B. Seller's warehouse or Supplier's dock. Title to the subject goods and risk of loss shall pass to Buyer upon Seller's or Supplier's placing the goods with a commercial carrier.

**Price.** Unless otherwise stated, prices quoted do not include freight, Insurance, import duties, or sales, use, excise or any other taxes or governmental fees, impositions or assessments, all of which shall also be billed to and be paid by Buyer. Any increases or additions in the foregoing charges imposed by law, regulation or governmental action following Seller's quotation or confirmation of prices shall also be paid by Buyer. Prices quoted by Seller are subject to change because of increase in Seller's costs upon thirty (30) days prior notice and shall be paid by Buyer for all subsequent deliveries unless objected to, in writing, prior to shipment. In the event of such objection, Seller shall be excused from making further shipments.

**Cancellation and Returned Goods.** Orders placed by Buyer may not be cancelled without Seller's prior written consent. The amount of credit, if any, allowed to Buyer for returned products shall be at the sole discretion of Seller. In the event of cancellation without Seller consent, Seller shall be entitled to recover any and all damages suffered by Seller from Buyer.

**Recovery of Costs for Buyer Delays.** If shipments are delayed by Seller at the request of Buyer or because Buyer's credit is questioned as stated below, Buyer shall reimburse Seller for all costs, losses or other damages Seller incurs because of such delay, in addition to the price payable for those goods.

**Credit.** Shipments, deliveries and performance of work shall at all times be subject to the approval of the Seller's Credit Department. The Seller may at any time decline to make any shipment or delivery except, upon receipt of prior payment or security or upon other terms and conditions satisfactory to Seller.

**Terms of Payment.** Subject to the credit provisions above, terms of payment are as shown on the Seller's quotation or invoice. A cash discount shall not be allowed on any taxes, duties. Governmental impositions, transportation or insurance charges included in delivered prices. Any payment not made when due shall accrue interest at the lesser of twelve percent (12%) per annum, or the maximum rate permitted by law. until paid in full.

**Security Agreement.** To secure full payment of the price for goods purchased from Seller, Buyer hereby grants Seller a first-priority purchase money security interest in such goods. Buyer authorizes Seller to file financing statements and take actions as deemed necessary or desirable by Seller to perfect, protect or continue the perfection of the security interest granted herein. Seller shall have all rights of a secured creditor granted by applicable law to enforce this security interest in the event of Buyer's default.

**Inspection.** Buyer may inspect ordered goods at the place of manufacture, provided it does not interfere with the manufacturer's operations, and consequent approval or rejection shall be made before shipment subject to confirmation by Seller. If Buyer's inspection is not made until receipt, Buyer shall immediately notify Seller of any defect and afford the Seller a reasonable opportunity to confirm. No goods may be returned without the Seller's consent.

**LIMITED WARRANTY.** SELLER WARRANTS THAT GOODS SOLD ARE FREE FROM MATERIAL DEFECT AND ARE AS SPECIFIED IN SELLER'S QUOTATION. SELLER DISCLAIMS ANY AND ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY OR AT COMMON LAW, EXPRESS OR IMPLIED, INCLUDING, BUT WITHOUT LIMITATION, THE WARRANTY OF FITNESS OF THE GOODS FOR ANY SPECIFIC PURPOSE, WHETHER OR NOT KNOWN TO SELLER, AND ANY WARRANTY OF MERCHANTABILITY.

PROMPT WRITTEN NOTICE OF ANY DEFECT OR NON-CONFORMITY MUST BE GIVEN TO SELLER FOLLOWING DISCOVERY. CLAIMS UNDER THIS WARRANTY WILL BE HONORED ONLY FOR DEFECTS IN MATERIAL OR WORKMANSHIP IN EXISTENCE AT THE TIME OF DELIVERY AND ONLY IF SUCH CLAIMS ARISE DURING NORMAL AND PROPER USE OF THE GOODS. ALL CLAIMS MUST BE MADE WITHIN ONE (1) YEAR FOLLOWING DATE OF SHIPMENT OF AFFECTED GOODS OR WITHIN THIRTY (30) DAYS FOLLOWING USAGE, WHICHEVER FIRST OCCURS.

**LIMITATION OF LIABILITY.** SELLER'S LIABILITY SHALL BE LIMITED SOLELY TO PROVIDING REPLACEMENTS FOR DEFECTIVE OR NONCONFORMING GOODS. SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL, DIRECT OR INDIRECT DAMAGES INCURRED BY BUYER OR ANYONE CLAIMING THROUGH BUYER.

SELLER SHALL AT NO TIME BE LIABLE FOR A CLAIMED BREACH OF THIS AGREEMENT IN AN AMOUNT EXCEEDING THE STATED PRICE OF THE AFFECTED GOODS.

**Sole Source.** If Seller has designated a sole source for manufacture or supply of the goods ("Supplier"), Seller shall be excused from any delay or failure to perform in the event the Supplier defaults or fails to comply with its agreement with Seller.

**Force Majeure.** The Seller shall be excused for any delay or failure in performance due to acts of God, war, riot, embargoes, acts, laws or regulations by civil or military authorities, fires, floods, accidents, quarantine restrictions, mill conditions, strikes, differences with workmen, delays in transportation, shortage of cars, fuel, labor or materials, Supplier defaults or any other circumstance or cause beyond the control of the Seller in the reasonable conduct of its business.

**Choice of Law, Jurisdiction and Venue.** These Terms and Conditions shall be governed by and interpreted in accordance with the laws of the State of Washington, without reference to its conflicts of laws principles. In the event of any dispute or action to enforce their agreement, Seller and Buyer consent to and submit themselves to the exclusive jurisdiction and venue of the State or Federal courts located in King County, Washington, USA.

**Attorney's Fees.** Buyer shall reimburse Seller for all attorney's fees and costs incurred to protect Seller's interests or to enforce these Terms and Conditions or any related agreement whether or not formal legal action is commenced, including any actions in bankruptcy proceedings or on appeal.