

## Terms and Conditions of Sales

### 1. **Contract Formation**

If this instrument is a quotation, whether or not responsive to a request from the buyer, it constitutes the offer of Carleton Technologies Inc. (hereafter referred to as "Carleton") to the buyer, and becomes a binding contract under the terms and conditions set forth herein when it is accepted by the buyer. However, unless otherwise specified, any such acceptance shall be valid only if made within 60 days of the date of Carleton's proposal. If this instrument is an acknowledgment, it constitutes Carleton acceptance of the buyer's order, subject, however, to the terms and conditions set forth herein. Upon the creation of a contract, this instrument will recite the entire agreement between the parties with respect to the goods, equipment, or services being purchased, and shall supersede any other agreement writing or understanding, whether made before or after the date of this instrument. Thus Carleton's contractual obligations are expressly limited to the terms contained herein. The inclusion of any different or additional terms in any other instrument is objected to, and performance by Carleton shall occur with the express understanding that only the terms and conditions recited herein shall control.

### 2. **Terms of Payment**

- a) All payments are to be made in U.S. funds, and without expense to Carleton.
- b) Payment shall be cash with the order or sight draft attached to a bill of lading (or other shipping documents) at the option of Carleton.
- c) When credit is extended by Carleton, invoices shall be due and payable within thirty days of the invoice date. Any amount unpaid thirty days after shipment is subject to a monthly service charge, on the unpaid balance. However, notwithstanding the foregoing, Carleton retains the option to refuse or revoke credit, and to require immediate payment of all outstanding balances and payment on delivery for all future deliveries.
- d) Buyer agrees to pay any expense incurred in collecting any unpaid balance of the purchase price, or in recovering possession of goods, including reasonable attorney's fees.
- e) If Carleton extends credit to the Buyer, then for the purpose of securing payment and performance of all Buyer's obligations hereunder, Carleton shall retain a security interest in all of the goods being sold pursuant to this agreement. At Carleton's request, Buyer shall execute and join in executing all financing statements and other instruments, in form satisfactory to Carleton, which Carleton deems necessary or desirable to protect its security interest in the goods being sold pursuant to this agreement.

### 3. **Packaging and Shipment**

Packaging and shipment shall be in accordance with good commercial practice and with domestic shipping.

### 4. **Delivery and Title**

- a) Delivery shall be FOB factory. Title shall pass at delivery.
- b) Under no circumstances shall Carleton have any liability whatsoever for delays, loss of use, or for any indirect or consequential damages arising from any delay or loss of use.
- c) Carleton shall not be responsible for failure to perform any obligation arising hereunder due to any events beyond its control. These events shall include, but are not limited to, fire, storm, flood, earthquake, explosion, accidents, acts of public enemy, sabotage, strikes, labor disputes, labor shortages, work stoppages, transportation embargoes or delays, failure or shortages of materials or machinery used by Carleton in the manufacture of the goods supplied hereunder, acts of God, failure of suppliers or subcontractors to satisfactorily meet scheduled deliveries, and acts or regulations or priorities of the Federal, State, or local government or branches or agents thereof, government contracts or shipments to purchasers to fulfill government contracts.
- d) No claim for shortage in packaging shall be allowed unless reported to Carleton within ten days after receipt of goods.

### 5. **Patents**

- a) The Buyer shall not receive, as a result of the sale of goods hereunder, any right or license of any kind under any patent owned or controlled by Carleton, or under which Carleton may be licensed. However, the foregoing provision shall not limit the right of the customer to use and sell such goods, in the event that such goods are covered by any such patent.
- b) Carleton agrees to defend any suit, foreign or domestic, that any party might institute against the Buyer for alleged infringement of a patent or patents relating to specific devices or apparatus of Carleton's own design and furnished to the Buyer under this contract. However, this paragraph shall apply only to such infringements as shall arise only from the use of such specific devices or apparatus itself and not as a part of any combination of any other apparatus, device and/or part. Furthermore, Carleton's obligations under this paragraph shall only arise if the buyer (a) shall have made all payments then due under this contract; (b) shall have given Carleton immediate notice, in writing, of the alleged infringement and of the institution of any suit; (c) shall permit Carleton to defend such suit; and (d) shall furnish to Carleton all information, assistance, and authority which, in the opinion of Carleton's attorneys, is necessary to defend such suit. Carleton shall have no liability under this paragraph for or under any compromise reached without Carleton's written consent. Unless arising as a direct consequence of litigation which Carleton has itself defended under the terms of this paragraph, Carleton shall have no liability for any patent infringement. Carleton shall also not be required to defend any suits or pay any damages which may arise directly or indirectly, by reason of the use of any part, device, apparatus, and/or design not furnished by Carleton.

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### **6. Indemnity**

If any goods are made in compliance with Buyer's plans, designs, specifications or instructions, Buyer shall indemnify and hold harmless, and defend Carleton from and against any damage, loss, expense, liability, claims, suits, judgments, decrees, and costs caused by or relating to the plans, designs, specifications or instructions for such goods, including any patent infringement or alleged infringement.

### **7. Warranties**

- a) Carleton warrants that each item of its manufacture is free from defects in material and workmanship at the date of shipment. This warranty shall not apply to any parts or parts supplied to but not manufactured by Carleton. As to such parts, Carleton agrees to purchase the same from a reputable supplier and to assign to its customer whatever right Carleton may have under warranties.
- b) Carleton's obligation under this warranty is limited to replacing or repairing any items which within twelve months from either the date of shipment or the date of assignment to storage at Buyer's request, whichever first occurs, is proven by Carleton Inspection to have been defective at the time of shipment. A defect in a component of any unit shall not, when that component is capable of repair or replacement, operate to require replacement of the entire unit. As a condition of this warranty, Buyer shall notify Carleton in writing of any claimed defect immediately upon discovery and shall return the item, transportation prepaid, to Carleton for inspection. However, the Buyer is responsible for damages during shipment to and from Carleton and is also responsible for transportation charges of return shipment. Carleton shall not provide uncompensated field service under this warranty and no allowance will be made for repairs or alterations. Carleton shall not be responsible for work or repairs performed which are not performed either by Carleton employees or by personnel expressly authorized by Carleton to perform the particular work or repair. This assembly by anyone other than personnel authorized by Carleton shall, at the option of Carleton, void the terms of this warranty.
- c) Unless Carleton is contractually obligated to provide installation assistance, proper installation and checkout shall be the sole responsibility of the Buyer.
- d) The warranties provided under this agreement shall be void as to any equipment or accessories which, in the opinion of Carleton, have been abused or subjected to abnormal use or for which Carleton factory representatives are denied free and safe access.
- e) Carleton shall not be liable for improper use, installation, operation or maintenance of items manufactured by Carleton, nor for any damage resulting from improper use, installation, operation or maintenance, or from the failure of Buyer to fulfill the instructions or recommendations contained in the Carleton installation, maintenance and/or operations manuals. In addition, Carleton shall not be responsible for any damages or loss of production or profits, damage to product or economy of operation, damage to tools or work pieces, or any other consequential or incidental damages occasioned by defects in or failure of any goods supplied by Carleton, or by defects in or failure of any product in which a component manufactured by Carleton is incorporated.
- f) Carleton shall not be responsible for the performance of any product which incorporates component parts manufactured by Carleton unless such performance is expressly designated as Carleton's responsibility under the terms of the written agreement between Carleton and the Buyer.
- g) Carleton shall not be responsible for any defect arising from or related to any specification, design, or design change requested by the Buyer.
- h) THE WARRANTIES CONTAINED HEREIN ARE EXCLUSIVE AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **8. Information, Data and Design**

Any proposals, prints, brochures, drawings, designs, data or other information furnished to the Buyer by Carleton before, after, or contemporaneously with the execution of this contract are intended for confidential use by the Buyer, shall remain the property of Carleton, and shall not be used to the detriment of Carleton's competitive position. When given, all such proposals, performance and production projections, prints, brochures, drawings, designs, data and other information are based on Carleton's knowledge and understanding, but are, in all events, estimated only and are not guaranteed or warranted in any respect. The providing of any design information by Carleton shall not constitute an assumption of design responsibility unless otherwise expressly assumed by Carleton.

### **9. Cancellation of Contract**

Under no condition may the Buyer cancel his obligations under this contract. Any attempt to do so will entitle Carleton, in its sole discretion, to either (a) recover all direct, indirect, and consequential damages arising by reason of such attempted cancellation, or (b) retain as liquidated damages any customer deposit made under this contract.

### **10. Applicable Law**

In the event of a dispute regarding any of the terms or conditions contained herein, the parties agree that the law of New York State will control.

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### **11. Assignments**

The Buyer's rights may not be assigned or otherwise transferred to any other person, whether by operation of law or otherwise, without Carleton's prior written approval.

### **12. Waivers**

Waiver by Carleton of any breach of any of these provisions, or its failure to exercise any right, shall not be construed as a waiver of any other breach, or a waiver to exercise any other right.

### **13. Default**

If the Buyer fails to pay any invoice when due, or fails to accept shipments as scheduled, Carleton may, at its option and without prejudice to other remedies, either defer further shipments until the default is corrected or cancel Carleton's remaining obligations under the Contract.

### **14. Buyer's Authorization**

Buyer represents and warrants that the person who executed the offer which this instrument accepts, or who will execute the Buyer's acceptance of the offer contained in this instrument, has duly executed the relevant documents on behalf of the Buyer, and is duly authorized so to act.