

## **PARTS SALES TERMS AND CONDITIONS**

1. Waukesha-Pearce Industries, LLC ("Seller") sells the parts and equipment (the "Goods") set forth on the attached quotation and/or invoice (the "Contract") to Buyer. Acceptance is expressly limited to the terms of the Contract and to the conditions contained herein. If Buyer issues a purchase order or other agreement for the Goods, these terms and conditions shall be incorporated into such purchase order or contract for all purposes, provided, however, that to the extent any term of these terms and conditions modifies or conflicts with any provision of such purchase order or contract, these terms and conditions shall control.
2. Unless specified on the quotation, federal, state and local taxes and duties are not included and, if applicable, will be added to the purchase price.
3. Freight, if quoted, is at the current applicable rate. The actual freight rate in effect at the time of shipment will be charged to Buyer. Material may also be subject to handling charges for items shipped from Seller's inventory. All shipments are made EX WORKS Seller's facility unless otherwise specified. Shipments are packaged for domestic shipment only.
4. Invoices are due in full thirty (30) days from the date of receipt of the invoice, without setoff or deduction. Unpaid invoices will accrue interest at the maximum rate allowable by law. In the event that any collection action is required to collect invoices, Buyer shall pay the reasonable costs of collection, including attorney's fees.
5. Once a purchase order or contract is placed and accepted by Seller, Goods may not be cancelled and a cancellation charge may be applied in the event of a cancellation is accepted. Seller may, in its sole discretion, agree to reasonable delays in shipments requested by Buyer, provided, however, that demurrage may be added to the final invoice if Buyer requested the delay in shipment. However, Seller shall not be liable for any delay in manufacturing or shipment because of events beyond the reasonable control of Seller, including acts of God, fire, flood, strikes or unavailability of raw Goods, and in no event shall Seller be liable for any failure to ship the Goods on the date specified. In the event the shipment of Goods is delayed for any reason other than at the request of Buyer, Buyer may cancel any Goods not yet shipped but shall remain liable for all Goods already shipped.
6. Seller has no responsibility or liability for damage or loss during shipment. Claims should be made to the carrier. Seller will provide reasonable assistance in connection with such claims.
7. Claims for shortage or notice of rejection must be made in writing within ten (10) days of receipt of the shipment. Goods processed or used in any manner by Buyer shall be deemed to have been accepted. Seller shall be provided a reasonable opportunity to inspect any rejected Goods.
8. Goods may not be returned without the prior written approval of Seller, which consent may be withheld in its sole discretion. Returned Goods will be subject to restocking and reprocessing fees. All returned Goods must be returned in the same manner and condition as originally shipped. Goods not on Seller's current price list and Goods containing steel fibers, electrical wiring and components and rubber goods may not be accepted for return. Goods that require a core return shall be returned by Buyer no later than 90 calendar days for the original invoice date. Cores shall be inspected upon return and the Buyer is responsible for any additional charges for cores that do not meet acceptance criteria. Final core credit may be subject to inspection and credit of the core from the Seller's manufacturer or supplier.
9. Seller warrants that the Goods are free from manufacturing

defects for all Goods manufactured by Seller and shall be free from any defects in title. If any the Goods are found to be defective within one (1) year from the date of shipment, Seller shall, at Seller's option, repair or replace the Goods manufactured by Seller to correct the deficiency provided Buyer notifies the Seller in writing of such defect within ten (10) days of discovery of the alleged deficiency. Seller shall not be responsible for costs associated with removal, replacement or installment of the Goods. For Goods manufactured by third parties, Seller shall assign to Buyer all available warranties and shall assist Buyer in the enforcement of such warranties. In no event does this warranty include deficiencies caused by normal wear and tear of Goods and/or equipment or to damages caused by abnormal service conditions, including excessive operation at peak pressure, negligence or accident, modification, or the acts or omissions of Buyer or any third party, including, without limitation, failure to maintain the Goods according to manufacturer's specifications. Buyer shall provide complete and accurate operation and maintenance records to substantiate proper maintenance and operation of the Goods. **THE REMEDIES SET FORTH IN THIS CONTRACT ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO BUYER. OTHER THAN AS SET FORTH THEREIN, THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, EXPRESSED OR IMPLIED. ALL OTHER WARRANTIES ARE DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

10. Buyer is solely responsible for the selection of the Goods, all engineering associated therewith, and the installation and use of the Goods. Seller shall not be liable for any loss and/or damages, including, without limitation, personal injury, property damage or damage to equipment in which the Goods are used or installed, incurred by Buyer in connection with the Goods or the use of the Goods except as expressly provided for in these terms and conditions. In all events, Seller's maximum liability shall be limited to the price actually paid by Buyer. In no event shall Seller be liable to Buyer or any third party for any lost profits, loss of use, reasonable costs of procurement of substitute goods or services, or for any indirect, special, incidental, punitive, or consequential damages, however caused, and whether in contract, warranty, tort, or under any other theory of liability.

11. Neither Party may assign or delegate this Agreement or any of its rights or obligations hereunder without the prior written consent of the other, which consent may be withheld in the Party's sole discretion.

12. The Contract and these terms and conditions shall be governed by and construed in accordance with the laws of the State of Texas applicable to contracts made and to be performed therein, exclusive of the choice of law or conflict of laws provisions thereof. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be exclusively brought in the federal or state courts of Harris County, State of Texas, and each of the Parties irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein.

13. The Contract and these terms and conditions constitute the entire agreement between Buyer and Seller and shall not be amended except in writing signed by both parties. It supersedes all other agreements, negotiations, or understandings, verbal or written, with respect to said subject matter and shall prevail over any different or additional terms and conditions contained in any other document, and may be amended only as set forth above.