

## TERMS & CONDITIONS

### 1. ORDERS AND ACCEPTANCE:

- a) THE FOLLOWING TERMS AND CONDITIONS SHALL BE A PART OF ANY CONTRACT OF SALE ("Order") FOR GOODS AND/OR SERVICES WHICH MAY BE ENTERED INTO BETWEEN BUYER AND AJAX TOCCO MAGNETHERMIC CORPORATION dba PINES ENGINEERING ("ATM") WHETHER PURSUANT TO ANY PROPOSAL, RESPONSE TO REQUEST FOR QUOTATION, PURCHASE ORDER OR OTHERWISE. ANY TERMS OR CONDITIONS IN BUYER'S PURCHASE ORDER, RELEASE DOCUMENT, ACKNOWLEDGMENT OR OTHER APPROVAL WHICH ARE IN CONFLICT OR INCONSISTENT WITH OR ADDITIONAL TO THE TERMS AND CONDITIONS HEREIN ARE EXPRESSLY REJECTED BY ATM AND WILL NOT BECOME A PART OF ANY RESULTING CONTRACT BETWEEN BUYER AND ATM WITHOUT ATM'S EXPRESS WRITTEN CONSENT.
- b) NEITHER ACKNOWLEDGMENT OF BUYER'S ORDER NOR THE FILLING AND SHIPMENT OF SUCH ORDER SHALL CONSTITUTE ACCEPTANCE OF SUCH CONFLICTING, INCONSISTENT OR ADDITIONAL TERMS, NOR SHALL SUCH ACTIONS IN ANY WAY OPERATE TO MODIFY OR CHANGE THE TERMS AND CONDITIONS HEREIN.
- c) BUYER'S ACCEPTANCE OF SHIPMENT, COMMENCEMENT OF SERVICES AND/OR PAYMENT FOR THE GOODS AND/OR SERVICES CONSTITUTES ACCEPTANCE OF ATM'S TERMS AND CONDITIONS.
- d) NO ORDER SHALL BE BINDING UPON ATM UNTIL ACCEPTED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF ATM AND AN ACKNOWLEDGMENT SENT TO THE BUYER.

**2. QUOTATIONS:** All written quotations shall automatically expire on the expiration date listed on the quotation, but in no event later than ninety (90) days after issuance, and are subject to withdrawal by notice within that period. ATM, at its sole option, may extend the effective date of written quotations up to six months. Prices shown on published price lists and other literature issued by ATM do not represent unconditional offers to sell, and are subject to change without notice. ATM's prices do not include installation or final on-site adjustment unless otherwise specified in the quotation.

**3. TAXES:** ATM's prices do not include federal, state, or local taxes, including sales, use, property, import/export, value added, excise or similar tax payments. ATM shall have the right at any time to bill Buyer for any and all such taxes as a separate invoice line item and Buyer agrees to pay and/or reimburse ATM for any such applicable taxes.

**4. PAYMENT:** Payment shall become due as stated in the Order Acknowledgement. ATM reserves the right at any time to demand full or partial payment or appropriate security before proceeding with the work to be performed hereunder, if in the sole judgment of ATM the financial condition of Buyer does not justify continuance under the terms of payment specified in the Order. If delivery is delayed or deferred by Buyer beyond the scheduled date, payment shall be due in full on the date when ATM is prepared to make delivery. ATM reserves the right to add a finance charge to all past due balances at a rate of 2% per month, or any fraction thereof, or at the maximum rate allowable under law, if less. Should the payments not be made in accordance with the schedule stated on the Order Acknowledgement, ATM reserves the right to terminate all or part of the Order, including the Warranty coverage.

**5. DELIVERY AND DELAYS:** Delivery of goods will be Ex Works (Incoterms 2010) ATM's shipping point; all shipping charges collect, unless otherwise specified. Buyer assumes all responsibility for risk of loss or damage to any goods furnished hereunder upon delivery to the carrier at ATM's shipping point. Delivery dates are approximate and are subject to confirmation. ATM shall not be responsible for excusable delays, nor shall Buyer refuse to accept delivery because of any such delays. "Excusable delays" include, without limitation, delays resulting from accidents, acts of God, strikes, fire, floods, weather disturbances, acts of terrorism, governmental controls, inability to obtain materials from suppliers, failure of materials correctly ordered by ATM to meet specifications, or other causes reasonably beyond ATM's control, including any delay attributable to the carrier. If Buyer delays shipment, Buyer will accept title to the equipment, the equipment will be invoiced and payment in full nevertheless shall be due thirty (30) days after the date of such invoice and the equipment shall be held at Buyer's risk and subject to reasonable storage charges. Any delays caused by Buyer will not extend the stated start-up or warranty period.

**6. CHANGES:** Requested changes made by Buyer to an Order are subject to ATM's approval and acceptance. Buyer shall reimburse ATM for all additional costs and expenses related to any such change.

**7. CANCELLATION:** Orders will not be subject to cancellation by Buyer, either in whole or in part, without ATM's written consent, and then only under terms that will reimburse ATM for all costs incurred by it, including, without limitation, preparation costs, costs of purchased materials, engineering costs, total factory costs of the items produced up to the date of acceptance of cancellation including factory direct labor and factory overhead, cancellation charges from ATM's subcontractors and suppliers, any other expenses, and an amount equal to ATM's customary profit, less the refund, if any, actually received by ATM on any purchased items which can be returned to vendors.

**8. OSHA:** Proper application will enable the equipment provided by ATM to meet OSHA Regulations existing as of the date of the Order as interpreted by ATM in connection with Buyer's stated requirements. Some of the OSHA requirements may or may not be applicable depending upon the OSHA inspector and his interpretations of the regulations.

**9. WARRANTIES AND REMEDIES:** Unless otherwise specified in ATM's quotation, ATM provides the following warranties, as applicable:

- a) **Equipment:** The warranty provided by ATM is limited to the warranty specified in ATM's quotation or order acknowledgement. If no quotation or order acknowledgement was issued ATM warrants that the equipment manufactured by it shall, for a period of twelve (12) months from the date of shipment, be free from defects in material and workmanship. In the event that any part or parts, excepting expendable items such as, but not limited to coil liners, thermocouples, refractories and similar items, shall fail within the first twelve (12) months from date of shipment due to defects in material or workmanship, ATM shall at its option, repair or replace FOB shipping point, such defective part or parts. The warranty obligations of ATM with respect to equipment not manufactured by ATM shall conform to and be limited to the warranty actually extended to ATM by its suppliers. Notice of a claim for alleged defective equipment must be given within fifteen (15) days after Buyer learns of the defect. **THE DEFECTIVE PART OR PARTS SHALL BE RETURNED TO ATM, FREIGHT PREPAID, UNLESS OTHERWISE DIRECTED BY ATM.**
- b) **Services:** ATM warrants that the technical field services performed by it will be performed in a good and workmanlike manner. In the event of a breach of this warranty within thirty (30) days, ATM will re-perform the services. ATM shall not be responsible for the acts and workmanship of the employees, contractors, subcontractors or agents of Buyer or the consequences thereof.
- c) **Installation Drawings:** If ATM is, under the terms of the Order, required to prepare foundation and/or electrical and/or piping installation drawings to augment the equipment being furnished by it and/or others, it will prepare said drawings on the basis of the cost involved in the preparation of the drawings. In the event any said drawings are found to be in error due to the fault of ATM, then ATM warrants that it will modify or correct said drawings so that the final drawings represent the installation at the site.
- d) **THE WARRANTIES SET FORTH IN THIS SECTION 10 SHALL BE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES AND ATM MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTIES OF ANY OTHER KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHICH EXTEND BEYOND THE WARRANTIES AS SET FORTH ABOVE.**
- e) ATM shall have no obligation to Buyer if the equipment becomes defective in whole or in part as a result of installation or repairs not made by ATM, or as a result of the use of equipment or replacement parts not provided by ATM, or as a result of removal, operation above rated capacities, operation in conditions other than those recommended by ATM or misapplication or improper use of the equipment after it has been delivered to Buyer.
- f) The obligations of ATM and Buyer's **SOLE AND EXCLUSIVE REMEDIES** hereunder, shall be limited, at ATM's option to the replacement or repair of any equipment or parts thereof, the re-performance of services, and the correction of drawings, all as set forth above in section 10.a) through c). Should the equipment or parts thereof be determined by ATM to be so defective as to preclude the remedying of warranted defects by replacement or repair, or should the re-performance of the services or correction of drawings be impossible or impractical, in ATM's sole discretion, Buyer's **SOLE AND EXCLUSIVE REMEDY** shall then be the refund of the purchase price or so much of the purchase price as Buyer has paid. **THE REMEDIES SET FORTH IN THIS PARAGRAPH CONSTITUTE ATM'S SOLE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDIES AND ARE EXPRESSLY IN LIEU OF ALL OTHER REMEDIES BASED IN LAW OR EQUITY.**

**10. LIMITATION OF LIABILITY: IN NO EVENT SHALL ATM BE LIABLE FOR INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO LOSS OF PROFITS, SAVINGS OR REVENUE OR DOWNTIME. FURTHER, IN NO EVENT SHALL ATM BE LIABLE TO BUYER FOR ANY AMOUNT EXCEEDING THE NET AMOUNT OF THE ORDER.**

**11. BUYER'S DEFAULT:** If Buyer defaults in any payment of performance hereunder or becomes subject to any insolvency, receivership or bankruptcy proceeding or makes an assignment for the benefit of creditors or, without ATM's consent, voluntarily or involuntarily sells, transfers, leases or permits any lien or attachment on the equipment and/or parts delivered hereunder, ATM may terminate the Order with Buyer and treat all amounts then or thereafter that Buyer owes hereunder to be immediately due and payable (subject only to credits required by law) or ATM, at its option, without prejudice to any other lawful remedies, may defer delivery or cancel any Order then outstanding or repossess said equipment and/or parts by any means available by law. ATM shall be entitled to receive reimbursement for its reasonable and proper cancellation charges, plus, in any proceeding or action relating to a default by Buyer, ATM shall be reimbursed by Buyer for ATM's attorney's fees and cost incurred by ATM in respect thereof.

**12. INDEMNITY:** ATM shall indemnify and hold harmless Buyer, its affiliated companies and their respective officers, directors and employees from any claims, damages, losses or expenses for personal injury, death or property damage which are solely and directly caused by ATM's negligent supply of defective product or negligent provision of services. Buyer shall indemnify and hold harmless ATM, its affiliated companies and their respective officers, directors and employees from any claims, damages, losses or expenses which are caused by or arise out of any negligent or intentional act or omission of Buyer, or Buyer's agents, employees, subcontractors, and/or suppliers.

**13. PATENT INDEMNITY:** ATM agrees, at its own expense, to defend any suit against Buyer so far as based on a claim that Buyer by reason of the use of ATM's equipment for the particular use or application for which said equipment is specifically designed and sold by ATM, infringes any United States Patent, other than a product patent on an article manufactured by the use of said equipment, provided that ATM is notified promptly in writing of any such claim or suit and is permitted to assume the full direction and control of the defense against such claim and of any suit brought thereon and given authority, information and assistance by Buyer (at ATM's expense) for such defense. In the event any judgment against Buyer is rendered and becomes final (beyond right of appeal), ATM agrees to pay all damages and costs thereby awarded against Buyer up to the purchase price of said equipment. If, subject to the above limitations, said equipment, or any part thereof, shall be finally held in such suit to constitute an infringement, or believed to be an infringement by ATM, ATM shall have the right, at its sole option and expense, either (a) to procure for Buyer the right to continue using said equipment, without liability for infringement of such patent, (b) to replace said equipment with non-infringing equipment accomplishing the same purposes as the replaced equipment, (c) to modify said equipment, so that it becomes non-infringing or (d) to remove said equipment, and refund to Buyer the purchase price thereof.

**14. INTELLECTUAL PROPERTY/DRAWINGS AND CONFIDENTIALITY:**

- a) All specifications, drawings, designs, data, information, ideas, methods, patterns and/or inventions made, conceived, developed, or acquired by ATM incident to procuring and/or carrying out an Order shall vest in and remain the property of ATM.
- b) Should it be necessary during the performance of an Order for ATM to supply technical information to Buyer, then Buyer agrees (i) that the disclosure of such information is in confidence; (ii) such information is the sole and exclusive property of ATM and is subject to return upon demand; and (iii) such information is not to be used by Buyer, its employees or agents, nor copied or disclosed to third parties without the express written consent of ATM, except that prohibitions against disclosure shall not apply to information which is or becomes publicly available or is or becomes available to Buyer from a third party through no fault of Buyer. Similar undertakings shall exist on the part of ATM for confidential information received by ATM from Buyer.

**15. ERRORS:** Clerical and stenographic errors are not binding and are subject to corrections.

**16. RIGHT TO TERMINATION:** ATM shall be entitled to terminate the Order upon notification(s) from Buyer of its intent to delay shipment authorization for the goods and services covered by the Order beyond the agreed upon delivery date provided that any and all delays initiated by Buyer exceed 180 days from the date of the first notification. Upon termination of the Order Buyer shall be entitled to all work in progress and purchased materials acquired for this contract by ATM. Shipment of these materials would immediately be made to a location specified by Buyer at Buyer's expense, once payment for the work in process has been received.

**17. GENERAL:** Notices to ATM and Buyer shall be given to the respective addresses herein set forth in the quotation or order acceptance or other document to which these Standard Terms and Conditions of Sale are attached and made a part. Any action resulting from any breach on the part of ATM as to equipment or parts delivered hereunder must be commenced within one (1) year after the cause of action has accrued.

**18. WAIVER:** No condoning, excusing or waiver by ATM of any default, breach or nonobservance by Buyer at any time or times with respect to any covenants or conditions set forth herein shall operate as a waiver of ATM's rights with respect to any continuing or subsequent default, breach or nonobservance, and no waiver shall be inferred from or implied by any failure to exercise any of its rights by ATM.

**19. SEVERABILITY:** Should any provision of these terms and conditions be declared by any court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall not be affected thereby, it being the intent of the parties that they would have executed the remaining portion without including any such part or portion which may for reason be declared invalid.

**20. GOVERNING LAW:** For any Order where performance occurs in North America, these Terms and Conditions and the Order to which they apply shall be governed by and construed in accordance with the laws of the State of Ohio (excluding its conflict of laws provisions), including the provisions of the UCC in the State of Ohio. Any proceeding pertaining to any such claim shall be venued in Cleveland, Ohio. For any Order where performance occurs outside North America, any dispute, controversy, or claim arising out of or relating to these Terms and Conditions and the Order, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this contract. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The number of arbitrators shall be three; the place of arbitration shall be The Hague; and the language to be used in the arbitral proceedings shall be English. The United Nations Convention on Contracts for the International Sales of Goods does not apply to any Order.

**21. ENTIRE AGREEMENT/AMENDMENT:** ATM and Buyer agree that the terms and conditions set forth herein constitute their complete and exclusive agreement regarding the subject matter of Buyer's order and supersede any prior communications, representations or agreements of the parties, whether oral or written and cannot be altered, amended, or modified except in writing executed by an authorized representative of each party.

**22. ASSIGNABILITY:** No assignment of this order by Buyer without the consent of ATM in writing shall be binding. ATM reserves the right to (a) assign its rights, duties and obligations to any party purchasing substantially all of ATM's assets and (b) subcontract the manufacture of products. To the extent that assignment is permitted, this Agreement shall inure to the benefit of and be binding upon each party and its permitted successors and assigns.

**23. HEADINGS:** Captions or headings are inserted only for convenience and shall not be construed as part of the foregoing terms and conditions or as a limitation upon the scope of the particular section to which they refer.

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