

Aerzen USA Corp Terms and Conditions of Sale

New Equipment Packages



AERZEN USA CORP (hereinafter called "Seller") agrees to sell equipment (hereinafter called the "Goods") to the Purchaser (hereinafter called the "Buyer") on the following terms and conditions of sale. Any alteration of these terms and conditions shall have no force or effect unless agreed to in writing by an officer of Seller or such other authorized signatory of Seller as designated in writing by Seller.

The terms and conditions as set forth herein and our quotation or as modified by written agreement shall constitute the entire agreement (hereinafter called the "Agreement") between Seller and Buyer. A failure by either party to enforce any rights under this Agreement shall not be deemed to constitute a waiver of those or any other rights under this Agreement. These Terms and Conditions of Sale shall be deemed accepted by Buyer upon Seller's receipt of Purchase Order from Buyer. No condition stated by Buyer shall be binding upon Seller if in conflict with, inconsistent with, or in addition to the Terms and Conditions of Sale, unless expressly accepted in a writing signed by Seller. In the event of conflict or differences in the terms or conditions of Buyer's Purchase Order and the Terms and Conditions of Sale herein, the Terms and Conditions of Sale shall govern.

1. ORDERS: All orders are subject to acceptance and approval by Seller's credit department and are not binding until and unless so approved and accepted. Written acknowledgement of an order shall constitute acceptance and will thereby be a binding contract which cannot be modified or cancelled by Buyer without written consent of Seller.

2. PRICES AND PAYMENTS: All prices are quoted and payable in U.S. dollars, unless otherwise noted. Quoted prices shall remain valid for thirty days unless written communication is received by Seller prior to such time. Seller reserves the right to restrict or modify the terms of payment or to require payment prior to shipment if, in Seller's opinion, the Buyer's financial condition or other circumstances do not warrant shipment on the terms originally specified in the Agreement.

Unless expressly agreed to in writing on a specific contract or order, pending satisfactory credit review, Seller standard payment terms are: (a) For orders under \$100,000 the payment terms shall be Net 30 days from date of shipment, with no retainage held. (b) For orders over \$100,000 the following terms shall apply, assuming satisfactory credit review: 20% of order value from date of accepted purchase order. 30% of order value upon release for production for material procurement. 50% of order value at readiness to ship. (c) All invoices are to be paid Net 30 days. (d) In those cases where progress payments are required, all work on the order will cease if payment is not received in accordance with the payment schedule. (e) Payment retention will not be allowed. In the instance where an invoice is disputed, all undisputed portions remain payable within Net 30 days terms. (f) Interest at the rate of one and one-half percent (1 1/2%) per month or at the highest rate allowed by law, whichever is less, shall be charged to all overdue accounts. Buyer will reimburse Seller for all costs and expenses (including attorney's fees and the costs of bringing any action) incurred in collecting any amounts past due.

3. TAXES: The prices quoted do not include any taxes. Any sales tax, use tax, excise tax, goods, and service tax (GST), value added tax (VAT), customs tax, or other tax of any nature whatsoever imposed by any government authority on the transaction between Seller and Buyer (plus interest and penalties thereon, if any) shall be paid by the Buyer in addition to the prices quoted and invoiced. In the event that Seller is required to pay any such taxes, Buyer shall reimburse Seller on demand. At the time of an order, Buyer shall provide Seller with any tax exemption certificates or other documents acceptable to the taxing or customs authorities.

4. LIABILITY: Seller's liability with respect to the Goods sold hereunder shall be limited to the warranty provided in Section 10 of these Terms and Conditions and shall be limited to the contract price. In no event shall Seller be liable for special, indirect, incidental, consequential or punitive damages, or expenses incurred by Buyer, Buyer's customers or any third party, whether arising from breach of contract, warranty, negligence, strict liability in tort or other theories of law or equity, including, but not limited to, liquidated damages, loss of profits or revenue, loss of use, cost of capital, cost of substitutes, downtime, service interruption, or any other type of economic loss.

5. SHIPPING OR SERVICE DATE: Shipping or service dates are estimates and not a guarantee of a particular day of shipment or service. Seller shall not be liable in any way for any default or delay in shipping or service due to contingencies beyond its control which prevent or interfere with Seller making delivery or providing service on the date specified, including, but not limited to, war, restraints affecting shipping, delivery of materials or credit as a result of war or war restrictions, non-arrival, delay or failure to procure materials as a result of war or war restrictions, rationing of fuel, strikes, lockouts, fires, bombings, terrorism, accidents, floods, droughts, cyber-attacks, and any other contingency affecting Seller, its suppliers, or subcontractors; and Seller shall have the right to cancel a contract of sale or to extend the shipping or service date in the event that one or more of such contingencies prevents or delays shipment or service.

6. DELIVERY:

a. Title and Risk of Loss: All products will be delivered EXW Aerzen, Coatesville, PA unless otherwise agreed by both parties in writing. In no event shall Seller be liable for any delay in delivery or assume any liability in connection with shipment, nor shall the carrier be deemed an agent of Seller.

b. Acceptance of Products: Buyer shall inspect all products promptly upon receipt. All claims by Buyer, except only those provided for under Warranty clauses, which are not asserted in writing by Buyer within five (5) days of receipt are waived.

c. Delays by Buyer: In the event that Goods cannot be shipped to Buyer when ready due to any cause not attributable to Seller, upon notice to Buyer, Seller may ship such Goods to storage. If such Goods are placed in storage, including storage at the facility where manufactured, the following conditions shall apply: (i) all risk of loss or damage shall thereupon pass to Buyer; (ii) title shall transfer to Buyer; (iii) any amounts otherwise payable to Seller upon delivery shall be payable upon presentation of Seller's invoice; (iv) the Goods shall be deemed as shipped and the warranty time period shall commence; (v) all expenses incurred by Seller, such as preparation for and placement into storage, handling, inspection, preservation, insurance, storage and removal charges, and any taxes shall be payable by Buyer; and (vi) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of Goods to the originally agreed point of delivery.

d. Delays in Inspection: In the event that Goods cannot be shipped to Buyer when ready due to delay of Buyer's in-person inspection, upon notice to Buyer, such delay shall constitute a waiver of Buyer's rights of in-person inspection and rejection and an acceptance by Buyer of an inspection report, as determined and compiled at Seller's sole discretion. Such acceptance shall be in addition to the remedies for Delays by Buyer outlined herein.

e. Partial Shipment: Partial shipment of an order will not be made without Buyer's knowledge or consent. In the event a complete shipment cannot be made by the required date, Buyer will be promptly notified. If partial shipment with Buyer's approval is made, excess freight charges, if any, will be billed to the Buyer.

7. CANCELLATION, POSTPONEMENT OR CHANGE ORDERS: Orders are not subject to Buyer's cancellation, postponement, or change in specifications, shipping schedules, or other conditions originally agreed upon without Seller's written consent and then only upon agreement to compensate Seller for any or all losses caused by such cancellation, postponement, or changes. Cancellation charges of between twenty percent (20%) and one hundred percent (100%) of the total price of the contract will be invoiced, as determined at Seller's sole discretion, depending on the status of completion plus Seller's non-recoverable costs attributed to the Buyer's order.

If Seller's manufacturing is delayed or postponed by Buyer, Seller shall be entitled to an equitable price adjustment. If Buyer delay extends for more than ninety (90) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then upon written notice, Seller may terminate the order whereupon Buyer shall promptly pay Seller its cancellation charges as described herein.

Seller may terminate the Agreement without liability to Buyer if (i) Buyer shall materially breach any of the terms and conditions of this Agreement and shall fail to cure such material breach within five (5) days after written notice from Seller; or (ii) Buyer shall become insolvent; or (iii) a petition under the Bankruptcy Act or any other insolvency law shall be filed by or against Buyer; or (iv) Buyer shall make assignment for the benefit of creditors; or (v) Buyer shall fail to make timely payment of any obligation owed by it to Seller; or (vi) in the event Seller reasonably believes that Buyer is unable to make full and prompt payment as required hereunder. Buyer agrees that it shall, no later than thirty (30) days following the effective date of termination of this Agreement, pay all monies owed to Seller at the time of any such termination regardless of any terms of payment that may have otherwise been granted to Buyer by Seller. Seller shall not by reason of its termination of this Agreement in accordance with the terms hereof, be liable to Buyer for compensation or reimbursement of any damages on account of loss of profits or prospective profits on anticipated sales, or on commitments in connection with the business or goodwill of Buyer or otherwise or for direct, indirect, punitive, special, consequential, or liquidated damages.

8. LIMITED WARRANTY: Unless otherwise stated in Seller's quotation, Seller warrants the products and parts that it manufactures will be free from defect in materials and workmanship for twenty-four (24) months from the date of start-up, but not to exceed thirty (30) months from the date of readiness to ship. Performance warranties (if any) are limited to those specifically included in Seller's proposal and identified as such. Goods (including accessories, components, and parts thereof) furnished by Seller but manufactured by others is not warranted by Seller and such Goods shall carry the warranty (if any) which the manufacturer has conveyed to Seller to the extent it can be passed on to the Buyer. Seller shall, upon prompt written notice by the Buyer, correct such non-conformities, at Seller's option, by either repair or replacement. All such defective Goods shall follow the RMA policy set forth in clause 10, and be sent at Buyer's expense directly to Seller's headquarters located at 108 Independence Way, Coatesville, PA, USA, 19320 or an Authorized Service Center. Shipment of repaired or replacement Goods will be at Seller's expense. Seller warrants any Goods repaired or replaced pursuant to the above warranty to be free from defects in materials and workmanship for the longer of: (a) a period of ninety (90) days after the start-up of such repaired or replaced Goods or (b) the period remaining on the warranty.

Goods must be maintained per Seller's Operations and Maintenance manual, including proper maintenance documentation, for the warranty to remain valid.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION, CONDITION OR WARRANTY, INCLUDING, BUT NOT LIMITED TO, STATEMENTS OF CAPACITY, SUITABILITY FOR USE, OR PERFORMANCE, WHETHER MADE BY SELLER, EMPLOYEES OR REPRESENTATIVE PERSONNEL, SHALL BE CONSIDERED TO BE A WARRANTY BY SELLER FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF SELLER WHATSOEVER AND ALL SUCH IMPLIED WARRANTIES ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM ANY CONTRACT RESULTING OR ARISING FROM OR OTHERWISE EVIDENCED BY THIS AGREEMENT.

Failure to notify Seller in writing within five (5) days of discovery of any unsatisfactory operation, improper maintenance or installation shall terminate this Warranty. The above warranties do not apply to products which are (a) repaired, modified or altered by any party other than Seller or Seller's Authorized Service Center; (b) subjected to unusual physical, thermal, or electrical stresses, corrosion or erosion, improper installation, improper grounding, improper maintenance, lack of lubrication, misuse, abuse, accident or negligence in use, improper storage, transportation or handling, or (c) considered a consumable item or an item requiring repair or replacement due to normal wear and tear. SELLER SHALL NOT BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE UNDER THIS CONTRACT WHETHER SUCH LIABILITY IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND IN NO CASE SHALL SELLER'S LIABILITY EXCEED THE PRICE OF THE NONCONFORMING GOODS.

9. NONCONFORMING GOODS: Any rejection of nonconforming Goods must be made by the Buyer within five (5) days of delivery and Buyer must give written notice to Seller within that period. Such notice shall contain a description of the alleged non-conformity. Upon receipt of such notification, Seller will arrange for the return of the Goods, at Seller's expense, and upon confirmation of the nonconformity, Seller, at Seller's expense, will ship conforming Goods to Buyer.

10. RETURNS AND REPAIRS: When Goods are returned for repair, the Buyer must contact Seller's customer support department for shipping instructions and a Return Material Authorization (RMA). Buyer must ship product in original packaging or equivalent, with the RMA clearly marked on the outside of the package, freight prepaid. Seller shall not be responsible for any damage occurring in transit or obligated to accept products returned without RMA. Buyer bears all risk of loss or damage to the returned product until delivery at Seller's designated facility. Any return shipment received by Seller without an RMA or whose contents are not received in their original condition, may be reshipped by Seller freight collect to Buyer. The RMA supersedes any implied return authorization whether oral or in writing that does not include an RMA.

11. RETURNS FOR CREDIT: No returns for credit will be accepted unless Seller's written permission has been obtained in each case in advance, pursuant to clause 10.

12. APPLICABLE LAWS: This Agreement and the respective rights and obligations of the Buyer and Seller with regard hereto shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania, without regard to the principles of conflicts of law thereof.

13. NOTICE: Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be sent to Aerzen USA, 108 Independence Way, Coatesville, PA, 19320

14. ASSIGNMENT: Neither party may assign or transfer this Agreement without the prior written consent of the other party.

15. CONFIDENTIAL INFORMATION: Any design specifications, manufacturing drawings, technical data or other information or materials submitted to Buyer and identified by Seller as confidential are and shall remain the exclusive property of Seller. Buyer agrees to treat such information as confidential and shall not reproduce or disclose such information without the express prior written consent of Seller.

16. WAIVER OF SUBROGATION: Buyer agrees to waive any and all subrogation rights towards Seller.

17. DATA USE: The Goods may include data monitoring services. The data received by Seller may be used by Seller and certain third-party distributors and contractors for the sole purposes of increasing overall customer service and determining claims of warrantability. Seller will use commercially reasonable efforts to ensure that Buyer's data is kept confidential. Buyer may request discontinuance of data monitoring service at any time, subject to waiver of all and any remaining warranties.