

GENERAL TERMS AND CONDITIONS OF SALE

Applicability

These General Terms and Conditions (“**Terms and Conditions**”) apply to all proposals, quotations, sales order acknowledgments, and invoices submitted by C. Matic Usa Inc (“**Seller**”) and to all goods and services sold by Seller (collectively, “**Goods**”) whether pursuant to a purchase order, sales order, or otherwise to a purchaser of such Goods (“**Buyer**”). Any purchase order or sales order submitted by Buyer shall be deemed to incorporate these Terms and Conditions.

Formation, Integration and Modification

- A. Buyer’s acceptance of all or any portion of a quotation in accordance with the quotation’s terms, or receipt of the Goods by Buyer, will constitute a binding contract incorporating these Terms and Conditions. Such contract is subject to Seller’s revocation without liability until it is approved by Seller. Notice of such approval may be furnished to Buyer in the form of an order acknowledgment, shipment, or other form of express approval.
- B. Orders submitted on Buyer’s purchase order or other form (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with these Terms and Conditions) may be accepted or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by these Terms and Conditions, and (unless Seller otherwise advises Buyer in writing), notice is hereby given that Seller objects to any such terms in Buyer’s purchase order. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations by filling such orders or by failing to further object to Buyer’s terms or conditions.
- C. Unless superseded by a specific, signed agreement between Buyer and Seller, the agreement between Seller and Buyer shall include in any case these Terms and Conditions and the proposal, quotation, sales order acknowledgment, and/or invoice to which these Terms and Conditions are attached (the “**Agreement**”). The Agreement is a final, complete and exclusive statement of the terms of the agreement of the parties. All other prior or contemporaneous representations, warranties, covenants, or agreements between Seller and Buyer, or their representatives, with respect to the subject matter are superseded by the Agreement.
- D. No modifications, limitations, waivers, or discharge of the Agreement or any of its terms shall bind Seller unless in writing and signed by Seller’s authorized employee. No modifications, limitations, waivers or discharge of any provision of the Agreement agreed to by Seller shall affect Buyer’s liabilities to Seller accrued prior thereto. Seller may correct unilaterally any mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions solely to the extent required to avoid a conflict in the terms. A course of performance shall not constitute a modification or a waiver by Seller of any right.
- E. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be for the benefit of Seller’s affiliates, agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to other parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

Authority of Seller’s Agents

No agent, director, employee or representative of seller has any authority to bind seller to any affirmation, waiver, representation or warranty concerning the goods, not contained in the agreement.

Prices and Payment

- A. Prices contained in Seller's published price lists or catalogue are subject to change. A 30 day price change notice will be given. Prices contained in individual written quotations or proposals are firm only for the period indicated in the proposal. Beyond the indicated period the prices are subject to change and Buyer should inquire of Seller as to their validity and request a written confirmation or change. Prices do not include taxes and Buyer shall pay all applicable sales or other taxes levied with respect to Goods and the Agreement, unless exempt therefrom.
- B. Prices reflect expected inflation and are firm for Goods to be delivered within six (6) months from receipt of an order. For those Goods to be delivered after six (6) months from receipt of an order, increases in prices may be made by Seller based on changes in the Bureau of Labor's National Wholesale Price Index for Commodity Group Industrial Commodities.
- C. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design and manufacturing required by changes requested by Buyer after the date of any quotations.
- D. Payments for Goods are due net thirty (30) days after the date or invoice. All amounts not paid to Seller when due shall incur a carrying charge of 1.5% per month to the extent allowed by law and otherwise at the highest rate allowed by law.
- E. Seller may elect to deliver the goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale and Buyer shall timely pay the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future shall be considered an installment delivery. A failure to pay for an installment within the time for payment is an anticipatory material breach of other installments by Buyer. Each item of ancillary equipment included in the Goods and priced separately shall be considered a separate sale and Buyer shall timely pay the price pursuant to the payment terms of the Agreement for each such item which is delivered.

Delivery

- A. Goods quoted to Buyer are subject to prior sale or other commitment. Shipping dates are estimates, based on Seller's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt of Buyer's purchase order. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order, all drawings, information and approvals necessary to provide the Goods, and, when applicable, an acceptable confirmed irrevocable letter of credit.
- B. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation.

Delay of Shipment or Performance Excused for Various Reasons

- A. All dates for Seller's performance are estimates only. In addition, Seller shall not be in default because of its delay or failure to deliver or perform resulting in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, pandemic or the adoption or enactment of any law, ordinance, regulation, ruling or order, or (ii) the lack of usual means or transportation, fires, floods, explosions, strikes or any other accidents or contingencies, at Seller's plant or its suppliers' plants or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery or performance, or

(iii) delays by Buyer in inspecting, testing and approval, in furnishing requested specifications, materials, or information, in making payments, or otherwise.

In the event that one or more deliveries hereunder is suspended or delayed by reason of any one or more of such occurrences for a period of sixty (60) days, Seller may, at its option, terminate the Agreement or waive such occurrences and establish a new delivery schedule.

- B. shipment of any item is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the item at the place of manufacture/ depot of logistic center / warehouse at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for an item shall be due and payable thirty (30) days after Buyer is notified that the item is ready for shipment. If Seller is unwilling to accommodate Buyer by holding such item, Buyer agrees to accept shipment immediately. Except as otherwise provided in the Agreement, Seller shall not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If such charges are specifically included in the price, any increase in rates becoming effective after the date the price is quoted to Buyer shall be added to the price.
- C. Whenever Seller's supply of Goods, materials or means of production is insufficient to meet the estimated delivery schedule or in the event of any occurrence described in subsections A and B, Seller, in its sole discretion, may allocate its supply to its own use or other orders.
- D. This section shall be effective even as to events described which exist on the date of a quotation or of contract formation.

Inspection, Testing and Rejection

- A. Seller's standard test procedures conducted by Seller's representative, at the place of manufacture, or other location chosen by Seller shall be the criteria for acceptance of the Goods, unless other conditions have been specified in the Agreement for specific acceptance or testing procedures. Upon request, Seller will quote to Buyer additional charges required to conduct any additional acceptance or testing procedures requested by Buyer if at all possible.
- B. Buyer shall have seven days. (7) days after receipt of any Goods or any drawings, specifications, technical documentation, samples, and prototypes provided in connection with the Goods to accept or reject such items. Buyer shall be deemed to have irrevocably accepted such items if Buyer does not provide a written rejection within such 7 days period, or other reasonable time established by Seller. Any rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. All defects and non-conformities which are not so specified are waived. No attempted revocation of acceptance shall be effective. If Buyer rejects any tender of the Goods and Seller so requests Buyer shall return such rejected Goods to Seller, express, collect, within three (3) days after such request. A failure to so return shall constitute an irrevocable acceptance.
- C. Upon notification, if done by Seller that the Goods are ready for approval prior to shipment, Buyer shall provide, at the place indicated by Seller or other location chosen by Seller, at Buyer's expense, one or more qualified and authorized employees to inspect the Goods, check them for general compliance with the Agreement, and authorize shipment. In the event said inspection is not performed by Buyer within five (5) days, then Seller may, in its own discretion, determine that Buyer has waived the right of approval prior to shipment and arrange for shipment. Post-shipment discretionary changes requested by Buyer will be Buyer's responsibility and expense.

- D. Any claim by Buyer for shortages must be in writing with satisfactory evidence delivered to Seller within seven (7) days of Buyer's receipt of the Goods.
- E. Any expense incurred by Buyer in the inspection of Goods shall be paid by Buyer, whether or not the Goods have been rejected as defective or nonconforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

Express Warranties

- A. Seller warrants to Buyer only that Goods manufactured by Seller shall be free from defects in materials and workmanship for twelve (12) months from the date of installation or use by Buyer or fifteen (15) months from the date of delivery EX WORKS seller's warehouse, whichever date occurs first, subject to the disclaimers and limitations in the Agreement. Because the Goods may be subject to a wide variety of use, installation, maintenance and cleaning, the warranty against defects is only against such defects and not against any other failures including but not limited to those due to wear and tear.
- B. Seller warrants to Buyer that the Goods will generally conform to the description set forth in the Agreement (subject to the limitations stated herein) and Seller's internal standards; however, Seller retains the right to modify or change the dimensions, composition, design, performance, color and appearance of the Goods without notice or liability if, in its judgment, such modifications are advisable and non-material. Seller may, in its discretion, also rely on any generally accepted industry standards.
- C. Seller's warranties shall apply only if the Goods (i) have been installed and used in conformity with instructions furnished by Seller, if any; (ii) have been subjected to normal use for the purpose for which Goods were designed and produced; (iii) have not been subjected to misuse, negligence, or accident; and (iv) have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods.

Limitation of Express Warranties

There are no express warranties other than those set forth herein and any representations as to performance and other matters except as contained herein were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third-party beneficiaries to the express warranties. Seller does not warrant any Goods or parts thereof not manufactured by it, but Seller shall assign to Buyer, upon Buyer's request, all assignable warranties of Seller's suppliers of such Goods or parts.

Buyer's Remedies for Breach; Limitation of Seller's Liability

- A. Defective or non-conforming Goods or parts thereof shall be repaired or replaced by Seller without any additional charge and shipped to Buyer, at Seller's charges for reinstallation by Buyer, subject to the terms hereof. Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations) exclusively to those provided in this section. Buyer hereby waives any causes of action or theories of liability not specifically contemplated herein. The replacement or repair of Goods by Seller does not give rise to any new warranty, but the express warranties set forth herein shall be extended for any defective or non-conforming Goods during the period they are in the possession of Seller.
- B. In no event shall Seller be liable to Buyer or any other party for any special, indirect, incidental, or consequential damages arising out of, or as the result of, the sale, delivery, non-delivery, servicing, assembly, use, loss of use or failure of the goods or any part thereof, or for any charges or expenses of any nature incurred without seller's prior written consent.

In no event shall Seller's liability under any claim made by Buyer exceed the purchase price of the goods in respect of which damages are claimed. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations. Any legal inability to limit or restrict the right of Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder.

Disclaimer of Implied Warranties

Seller disclaims all implied warranties (other than good title) including but not limited to those of fitness for a particular purpose and merchantability. There are no warranties which extend beyond those express warranties contained herein. Buyer affirms that it has not relied upon Seller's skill or judgment to select or furnish Goods for any particular purpose. Seller does not warrant the Goods will comply with the requirements of any safety code or regulation of any federal, state, municipality or other jurisdiction.

Indemnification

To the fullest extent permitted by law, Buyer shall defend, indemnify and hold harmless Seller, its directors, officers, employees, consultants and agents (each, an "Indemnitee" and, collectively, the "Indemnitees"), from and against any and all claims, demands, suits, causes of action, losses, costs, liabilities and damages of every kind and description, including reasonable attorneys' fees and litigation expenses, brought, asserted or made against or incurred by any of the Indemnitees resulting or arising from any act, omission, fault, or negligence of Buyer, its employees, agents, customers, or representatives, or any of their respective employees, consultants, agents, customers, or representatives in connection with the use, storage, sale, processing, or other disposition of the Goods or parts thereof or in any way related to the Agreement. The expiration, termination, or extinguishment of any covenant or agreement shall not affect Consultant's obligations under this section.

Seller's Remedies for Breach

- A. If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover Goods in transit or delivered, and otherwise enforce its remedies for Buyer's default. Seller shall be awarded incidental damages and costs (such as actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains any relief or damages.
- B. Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment, and if such security is not posted Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.
- C. All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative.
- D. Seller shall not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

Security Interest

Buyer hereby grants a security interest to Seller in all Goods and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller, whether or not arising hereunder. Buyer shall, from time to time, do all acts necessary to protect Seller's security interest herein created and Buyer shall execute and deliver to Seller all documents, including Uniform Commercial Code financing statements, which Seller may deem necessary to protect its rights and interests as set forth herein.

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Buyer hereby irrevocably constitutes and appoints Seller as its true and lawful attorney-in-fact, in its name, place and stead, to execute, deliver, acknowledge, file or record any and all such Uniform Commercial Code financing statements to perfect Seller's security interests. The grant of the foregoing power of attorney is coupled with an interest and shall not be revocable by Buyer until all payments due hereunder shall have been made in cash. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others to repossess all Goods in which it has a security interest. In addition, Seller shall have the remedies of a secured party under the Uniform Commercial Code in force in the State of Illinois. The Goods shall be and remain strictly personal property and retain their character as such. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in any Goods which are subject to the Agreement if payment therefor shall not have been made in full to Seller.

Proprietary Information.

- A. Buyer acknowledges that any information disclosed to C.Matic Usa Inc has not and will not be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.
- B. All "proprietary information" (defined below) furnished by C.Matic Usa Inc in bidding, negotiating and performing the Agreement is confidential and the property of Seller and shall not be shown nor disclosed to any third party, nor used by Buyer except as may be necessary for the selection or use of the Goods. "Proprietary information" means information, not generally known, or proprietary to Seller, including, without limitation, information concerning any patents or trade secrets, confidential or secret drawings, processes, formulae, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of Seller, any vendor names, customer lists, customer pricing information, quotes, proposals, pricing strategies or formulae, suppliers, databases, sales and marketing plans, any confidential secret development, design or research work or any other confidential information or proprietary aspects of the business of Seller. Buyer agrees to hold such information in strictest confidence and not to copy, reproduce, deconstruct, reverse engineer, decompile, create derivatives of, sell, assign, license, market, transfer, give or otherwise disclose such information to third parties or to use such information for any purposes whatsoever, without the express written permission of the Seller, other than for the performance of obligations hereunder or as otherwise agreed to herein, and to advise each of their employees, agents and representatives of their obligations to keep such information confidential.
- C. Any invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller. Any patentable features developed by Seller shall be the property of Seller and Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement, except as provided in subsection A.
- D. It is understood and agreed that money damages would not be a sufficient remedy for any breach of this section and that Seller shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Section but shall be in addition to all other remedies available at law or equity.

United States Government Regulations

Buyer shall not engage in any transaction with respect to the Goods, by way of resale, lease shipment, or otherwise, which violates any statute or regulation of the United States of America.

Responsibilities Under the Occupational Safety and Health Act (OSHA)

It is Buyer's or other user's responsibility to provide all proper devices, tools and means that may be necessary to effectively protect all personnel from bodily injury which otherwise may result from the method of particular use, operation, set-up, or service of the Goods. The operator's manual or machine manual, ANSI Safety Standards, OSHA regulations and other sources should be consulted by Buyer to implement the above.

Time for Bringing Action

Any action based upon breach of the Agreement or upon any other claim arising out of the sale of Goods to Buyer (other than an action by Seller for any amount due to Seller by Buyer) must be commenced within one (1) year from the date of delivery of the Goods by Seller or, in the case of a cause of action based upon an alleged breach of warranty, within one (1) year from the date within the warranty period on which the defect was discovered by Buyer and notified to Seller .

Assignment

No right or interest in the Agreement may be assigned by Buyer without the prior written consent of Seller. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this section.

Governing Law and Venue

The Agreement and the sale of all Goods shall be governed by, construed and interpreted under the law of the State of Illinois. Whenever there is a conflict of laws, the laws of the State of Illinois shall prevail. The parties agree that the sole jurisdiction and venue for any disputes hereunder shall be the Circuit Court for cook County, Illinois, or the United States District Court for the Northern District of Illinois, Eastern Division. Buyer, if not located in Illinois, irrevocably appoints the Secretary of State of Illinois as its agent for receipt of service of process or notices.

Severability

In the event that any provision hereof shall violate any applicable statute, ordinance, or rule of law, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.

Legal Fees

In the event of any litigation arising herefrom, Seller shall be entitled to recover from Buyer all reasonable attorneys' fees, costs, and expenses incurred by Seller in enforcing any of Seller's other rights hereunder.