

TERMS AND CONDITIONS

1. **ACCEPTANCE.** This offer may be accepted only on the terms and conditions forth herein which may be modified only in writing by an authorized representative of Seller. Terms included in Buyer's acceptance which are in addition, to or different from, the terms of this offer will not be binding on Seller. The terms hereof shall survive delivery of the equipment ordered hereunder.

2. **SHIPMENT: RISK OF LOSS.** Unless otherwise agreed in writing by Buyer and Seller, all products shall be shipped F.O.B. factory or place of shipment, at Seller's election. Shipping dates are approximate and based on prompt receipt of all necessary information. All risk of loss shall pass to the Buyer upon Seller's delivery F.O.B. factory or place of shipment. All freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges shall be Buyer's, and not Seller's, responsibility. If such charges are, by the terms of sale, included in the purchase price, any increase in rate becoming effective after the date hereof shall be for the account of Buyer.

3. **INSPECTION OF PRODUCTS.** Notwithstanding any rights Buyer may have under the Oregon Commercial Code to inspect, reject and revoke acceptance, Buyer shall have the obligation to inspect all products sold hereunder immediately upon actual receipt of products by Buyer and Buyer shall, within 10 days from such receipt, give notice to Seller in writing or any matter or thing which Buyer claims makes the products nonconforming and which is the basis for Buyer's rejection of the products. If Buyer fails to give such notice within such 10 day period, Buyer shall be deemed to have waived any rights he may have under the Oregon Commercial Code or otherwise, either to inspect the product, to reject nonconforming products or to revoke acceptance of the products. Thereafter, such products shall be deemed to be in conformity with this Agreement and Buyer is bound to accept and pay for all such products in accordance with this Agreement. This Paragraph 3 sets forth Buyer's exclusive right relating to inspection of the products, rejection of nonconforming products and revocation of acceptance of the products and Buyer shall have no other right with respect thereto other than those specified in this Paragraph 3.

4. **PRICES.** Unless otherwise specifically agree, all prices are for material packed for domestic shipment and for delivery F.O.B. factory or place of shipment, at Seller's election. Prices stated on the face hereof are based upon Seller's present costs. Such prices are subject to increase by Seller upon three (3) days written notice at any time prior to delivery in respect of all or any portion of the equipment order, to the extent necessary to cover Seller's increased costs applicable thereto.

5. **PARTIAL SHIPMENTS.** Partial Shipments may be made and payments therefor shall become due in accordance with the terms hereof.

6. **PAYMENT.** Payment of the purchase price shall be made in accordance with the terms set forth on the face hereof. A finance charge of one percent (1.0%) per month or such lesser rate as may be permitted by law will be imposed on any portion of the purchase price remaining unpaid more than forty-five (45) days after delivery. The terms of sale herein are subject to Seller's approval of Buyer's financial condition and Seller may, at any time, prior to delivery modify the terms of payment originally specified to assure prompt payment for the equipment ordered.

7. **TAXES.** The amount of taxes stated on the face hereof, if any, is approximate only. All sales, unitary, excise and similar taxes imposed by the State of Oregon or any other state, which the Seller may be required to pay or collect with respect to the products covered by this Agreement shall be for the account of the Buyer. Buyer shall pay the amount of all such taxes at any time requested by the Seller as if originally added to the price. If Seller pays such taxes for the account of Buyer, Buyer shall reimburse Seller therefor within ten (10) days of receipt of Seller's invoice or other written demand therefor.

8. **SECURITY INTEREST.** Seller shall retain a security interest in the equipment delivered hereunder until the total selling price, including taxes, delivery and other charges, is paid in full by Buyer. Buyer agrees to sign and deliver to Seller any and all documents reasonably requested by Seller, including a Form UCC-1 Financing Statement, in order to protect Seller's security interest hereunder.

9. **DEFAULT.** If the buyer fails or refuses to accept delivery of the equipment and parts ordered hereunder or defaults in the performance of any of the terms, covenants and conditions of this Agreement, Seller may retain the cash deposited or paid to it and the equipment accepted by it on account of the sale price, if any, and apply the same toward payment of its damages. If equipment ordered has been delivered to Buyer by Seller at the same time of default, Seller may declare the full amount due and payable without notice or demand and may repossess the equipment. Repossession and disposition of equipment, and suit for any deficiency, shall be pursuant to applicable laws. The remedies provided herein in favor of Seller shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in Seller's favor existing at law or in equity.

10A. **WARRANTY.** SELLER MAKES NO WARRANTY WITH RESPECT TO THE PRODUCTS SOLD HEREUNDER. HOWEVER, SELLER SHALL DELIVER ANY NEW EQUIPMENT TO BUYER WITH A COPY OF THE MANUFACTURERS WRITTEN WARRANTY APPLICABLE THERETO, BUYERS SOLE REMEDY SHALL BE AGAINST THE MANUFACTURER ON THE TERMS SET FORTH IN MANUFACTURERS WRITTEN WARRANTY.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT OF TITLE), EXPRESS OF IMPLIED, AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES.

USED PRODUCTS ARE SOLD ON AN "AS IS" BASIS AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, UNLESS OTHERWISE EXPRESSLY STATED ON THE FACE OF THIS FORM.

10B. **WARRANTY.** Seller warrants each new part to be free from defects in material and workmanship under normal use and maintenance as herein provided. Sellers sole obligation under this warranty shall be limited to repairing, replacing or allowing credit for, at Seller's option, any part which under normal and proper use and maintenance proves defective in material or workmanship within ninety (90) days or 500 hours of use, whichever occurs first, after delivery to Customer; provided however, that notice of any such defect and satisfactory proof thereof is promptly giving by Customer to Seller, and thereafter such part is returned to Seller, with transportation charges prepaid, and Seller's examination proves such part to have been defective.

This warranty does not apply in respect of damage to any part, product or accessory or attachment thereof caused by overloading or other misuse, neglect, or accident, nor does this warranty apply to any part, product or accessory or attachment thereof that has been repaired or altered in any way which, in the sole judgment of Seller, affects the performance, stability, or general purpose for which it was manufactured.

This warranty does not apply to batteries (other than CLARK brand), tires, distributor points, spark plugs or other trade accessories which are covered by the existing warranties, if any, of the respective manufacturers thereof.

11. **DELAYS.** Seller shall not be liable for loss or damage due to delay in delivery or manufacture, resulting from any cause beyond Seller's reasonable control, including but not limited to, compliance with any regulations, orders, or instructions of any federal, state or municipal government or any department or any agency thereof, acts of God, acts or omissions of the Buyer, acts of civil or military authority, fires, floods, strikes, factory shutdowns or alterations, embargoes, war, riot, delays in transportation, or inability due to causes beyond of all claims for damages. In no event shall Seller be liable for special or consequential damages resulting from delay of delivery.

12. **CANCELLATIONS.** Buyer may not cancel its order, reduce quantities, revise specifications or extend schedules except upon the prior written consent of Seller and the payment to Seller of reasonable and proper cancellation charges which shall take into account expenses already incurred and commitments made by Seller, and Buyer shall indemnify Seller against any loss resulting therefrom.

13. **ARBITRATION.** Any controversy or claim arising out of or relation to this agreement or the transactions contemplated hereby, any breach thereof, or the performance thereof by either party, shall be settled solely by arbitration held in the County of Clackamas, State of Oregon in accordance with the Rules of the American Arbitration Association, and judgement upon the award may be entered in any court having jurisdiction thereof. Any demand of arbitration hereunder shall be made not later than ninety (90) days after delivery of the products. The provisions of Oregon Code of Civil Procedures are incorporated herein by this reference. Discovery in any arbitration proceeding commenced pursuant to this paragraph shall be permitted to the full extent permitted in any civil proceeding commenced under the laws of the State of Oregon.

14. **ATTORNEY FEES.** All attorney fees and costs incurred by either party in connection with the enforcement of this agreement or the transactions contemplated hereby, including but not limited to attorney's fees and costs incurred in connection with any arbitration proceeding initiated hereunder, shall be entitled to be recovered by the successful or prevailing party.

15. **ENTIRE AGREEMENT AND APPLICABLE LAW.** The rights and obligations of Seller and Buyer shall be governed by the laws of the State of Oregon. The provisions hereof are intended by Buyer and Seller as a final expression of their agreement and are intended also as a complete and exclusive statement of all the terms applicable to Buyer's order. No waiver, modification or addition to any of the terms hereof shall be binding on Seller unless made in writing by authorized representative of Seller. In the vent of conflict between Buyer's purchase order and the terms hereof, the latter shall control.

16. **INDEMNITY.** Buyer hereby agrees, covenants and warrants, as a material part of this sale, that it will indemnify, defend and hold harmless Seller from any and all injury and/or damage caused and/or contributed to by the negligence and/or other wrongful conduct of Buyer in any manner pertaining to the possession, use, operation, maintenance, service, and/or repair of the products purchased hereunder by Buyer and/or its agent, employees or other person or entities acting on the behalf of the Buyer.

17. **TESTING.** Permission is granted to the Seller to operate the equipment herein described for the purpose of testing and/or inspection.