



**Sterling Machinery Co.**  
*"Unique in the Market Place"*

## SELLING TERMS AND CONDITIONS

1. The Agreement. All sales by Sterling Machinery, Inc., an Arkansas corporation (the "Seller") to the purchaser of Seller's Goods (the "Buyer") shall be governed by the following terms and conditions of sale. The agreement between Seller and Buyer with respect to the sale of goods and services described in the Seller's order acknowledgment (collectively, the "Goods") shall consist only of the terms appearing herein and in the Seller's order acknowledgment and any attachments, exhibits and supplements hereto or thereto of Seller (the "Contract") together with any terms mutually agreed to in a signed writing hereafter by Seller and Buyer. Buyer's issuance of a purchase order constitutes its acknowledgment that Seller's order acknowledgment is the first document exchanged, and contains the essential elements of, and therefore constitutes, an offer. SELLER HEREBY OBJECTS TO AND REJECTS ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS PROPOSED BY BUYER, PRINTED OR OTHERWISE, WHETHER OR NOT CONTAINED IN BUYER'S PURCHASE ORDER, ON BUYER'S WEBSITE OR OTHERWISE SUBMITTED OR COMMUNICATED BY BUYER, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE DEEMED MATERIAL ALTERATIONS AND SHALL BE VOID AND OF NO EFFECT UNLESS IN WRITING AND APPROVED AND SIGNED BY SELLER SPECIFICALLY REFERRING TO AND AGREEING TO THE CHANGE. The Contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they differ from, modify, add to or detract from the Contract, shall not be binding on Seller. There are no agreements, promises or understandings, either verbal or written that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions hereof. Notwithstanding any contrary provision in Buyer's purchase order, website or other communications, no action by Seller, such as delivery of Goods, the rendering of services or the commencement of work on Goods to be specially manufactured for Buyer, will be deemed an acceptance by Seller of terms different than or additional to those contained in the Contract, whether contained on the purchase order or not.

2. Terms of Payment. Payments shall be made to Seller at the address specified in the invoice, or if not specified, shall be NET 30. Prices are Seller's dock unless otherwise agreed to in the Contract. Unless Seller consents in writing, Buyer may not setoff or deduct amounts owed to Buyer by Seller, Seller's affiliates or others. When any payment is not paid on or before its due date, Buyer agrees to pay a late charge on the sum outstanding, from the due date for receipt of payment to the actual date of receipt of payment, at a rate of one percent (1.0%) per month on

the unpaid balance or the maximum permitted by law, whichever is less. In addition to any other rights of Seller, whenever, in the sole judgment of Seller, the financial condition of the Buyer does not justify the continuation of production or shipment on the specified terms of payment or otherwise becomes impaired or unsatisfactory to Seller, Seller may and reserves the right to change the terms of payment, require full or partial payment in advance, accounts receivable insurance or satisfactory security or guarantee that invoices will be promptly paid when due, charge additional interest or late fees, defer or discontinue further delivery and/or terminate any or all purchase orders of Buyer, without prejudice to any other lawful remedy. Without limiting the generality of the foregoing, Buyer agrees to indemnify Seller for all costs and expenses, including reasonable attorney fees, court costs, and associated expenses incurred by Seller in connection with the foregoing.

3. Delivery. Goods will be delivered Seller's dock with title transferring simultaneously ("Delivery"). Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer. Seller shall not be responsible for claims for error in quantity, weight or number made more than ten (10) days after Delivery of Goods. Buyer is responsible for all costs of packaging, handling, freight and transportation and an extra charge may be made for special conditions. Buyer may not return any Goods without Seller's prior written authorization. Goods returned without permission will not be accepted for credit and will be returned to Buyer, F.O.B. Seller's plant.

4. Risk of Loss. Buyer assumes all risk of loss of Goods upon Delivery by Seller to Seller's dock. Seller agrees to package the Goods, put them in the possession of a carrier, make appropriate arrangements for their transportation, and obtain and deliver documents necessary to enable Buyer to obtain possession of the Goods. Seller shall not be obligated to obtain or pay for insurance or to pay transportation costs unless it has agreed in writing to be responsible for said costs. Buyer agrees to pay all loading, unloading and other charges incidental to transportation, including damage to Goods during freight. Seller will use reasonable efforts to follow Buyer's shipping instructions, but may make reasonable changes thereto with notice to Buyer. Breach of the Contract shall have no effect upon this provision controlling the risk of loss.

5. LIMITED WARRANTY. SELLER WARRANTS THE GOODS AGAINST DEFECTS OF MATERIAL AND WORKMANSHIP UNDER NORMAL USE AND SERVICE FOR NINETY (90) DAYS FROM THE DATE OF SHIPMENT (THE "LIMITED WARRANTY"). THE PARTIES HERETO EXPRESSLY AGREE THAT BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER SHALL BE, AT SELLER'S OPTION, FOR THE REPLACEMENT OF DEFECTIVE GOODS OR A REFUND OF THE PRICE PAID THEREFORE. THE FOREGOING LIMITED WARRANTY DOES NOT COVER LABOR OR OTHER COSTS OR EXPENSES TO REMOVE OR INSTALL ANY DEFECTIVE OR REPLACED GOODS OR COSTS ASSOCIATED WITH REPAIRS PERFORMED BY ANYONE OTHER THAN SELLER OR ONE OF SELLER'S AUTHORIZED AGENTS. NOTWITHSTANDING THE LIMITED WARRANTY, GOODS WHICH MAY BE SOLD BY SELLER THAT ARE NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURER THEREOF. THE LIMITED WARRANTY EXTENDS ONLY TO THE ORIGINAL BUYER AND IS VOID IN CASES OF DAMAGE IN TRANSIT, NEGLIGENCE, ABUSE, ABNORMAL USAGE, MISUSE, ACCIDENTS OR IMPROPER

MAINTENANCE. THE LIMITED WARRANTY DOES NOT COVER PARTS REPAIRED, MODIFIED OR ADJUSTED OUTSIDE OF SELLER'S FACILITIES. ANY UNAUTHORIZED REPAIR OR MODIFICATION OF THE GOODS VOIDS THE LIMITED WARRANTY. THE LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. SELLER MAKES NO REPRESENTATIONS AS TO THE CAPACITY OR PERFORMANCE OF THE GOODS SOLD HEREUNDER EXCEPT AS SET FORTH IN THE ACKNOWLEDGMENT'S SPECIFICATIONS, IF ANY, AND SUCH REPRESENTATIONS ARE EXPRESSLY CONDITIONED UPON THE CORRECTNESS OF THE DATA FURNISHED BY BUYER AND UPON THE GOODS BEING PROPERLY INSTALLED AND MAINTAINED. SELLER, IN ITS MANUFACTURE AND SALE OF THE GOODS, ASSUMES NO LIABILITY AS TO POSSIBLE INFRINGEMENT OF PATENTS BY VIRTUE OF THE USE OF SAID GOODS IN COMBINATION WITH OTHER PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, OR LOSS OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED BY THE USE OF THE GOODS) AND BUYER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, LOSS, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY. LIABILITY OF SELLER TO BUYER, IF ANY HEREUNDER, FOR BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE SHALL IN NO EVENT EXCEED THE AMOUNT OF THE PURCHASE PRICE OF THE GOODS SOLD WITH RESPECT TO WHICH ANY DAMAGES ARE CLAIMED.

6. Remedies. In the event Seller claims Buyer has breached any of its obligations under the Contract, Seller may recover damages resulting from the default, including the Contract price for completed Goods and services and the cost of work-in-progress and raw materials.

7. Excusable Delays and Force Majeure. Seller will not be liable for any delay in performance of the Contract or delivery of Goods when the delay is caused directly or indirectly by fire, flood, accident, riot, acts of God, war, governmental interference, strikes or other labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, failure of tooling or the repair, maintenance or rehabilitation of the tooling, or any other cause or causes whatsoever beyond its control. Additionally, Seller shall be given the opportunity to amend any submitted order acknowledgment upon the happening of the above events which result in raw material price increases.

8. Patents; Technical Information. Seller does not transfer to Buyer any patent, trade secret, trademark, service mark, copyright, know-how or other intellectual property right related to the Goods. Any technical information disclosed by either Buyer or Seller to the other during the term of the Contract is proprietary to the disclosing party and may not be used or disclosed by the other to any other person or entity without the written consent of the owner of the technical information. Any intellectual property used for the supply of Goods under the Contract shall remain the sole and exclusive property of Seller. Except as authorized in writing by and on terms acceptable to Seller, Buyer shall have no right to disclose any technical information to any

third party or to have any third party make any Goods that use the technical information owned by Seller.

9. Cancellation/Reschedule of Purchase Orders.

A. Unless otherwise agreed upon in writing, in the event of any cancellation of all or part of any order by Buyer, Buyer agrees to pay Seller for all reasonable and allocable materials, tooling, material management, labor, overhead and general and administrative costs and expenses incurred as a result of any such cancellation within thirty (30) days from the date of Seller's invoice setting forth such costs and expenses. By way of illustration and not limitation, Seller's costs incurred by reason of Buyer's cancellation may include the storage costs for the items to be purchased, and costs associated with relocating the production to an alternate source, as well as the costs of unreimbursed and/or unamortized research and development costs, capital equipment, raw materials and other property and supplies of Seller needed to produce and which are unique to the Goods.

B. In the event of such cancellation and upon receipt of payment as described above, all completed Goods, assemblies in process, components, and any tooling and equipment owned by Buyer and furnished to Seller under the Contract, shall be returned to Buyer in accordance with instructions specified by Buyer.

C. In the event of any cancellation, Seller's inventory carrying charges will be assessed at a rate of two percent (2%) per month on the value of such inventory until the relevant inventory is disposed of and paid for by Buyer.

D. No extension or rescheduling of the delivery of the Goods shall occur without the written consent of Seller. In the event of any reschedule or extension of delivery of Goods by Buyer for a period of more than one weeks, Seller will charge inventory carrying charges which will be assessed at a rate of three percent (3%) per month until such Goods are shipped.

10. Disputes. The Contract shall be governed by and interpreted under the laws of the State of Arkansas without regard to Arkansas' choice of law provisions. The Parties will first endeavor to resolve through good faith negotiations any dispute arising under the Contract. However, if a dispute cannot be resolved within a reasonable time through good faith negotiations, the Parties agree that the venue for any claim or dispute between them or against any agent, employee, successor, or assignee of the other, whether related to the Contract or otherwise, and any claim or dispute related to the Contract or the relationship or duties contemplated under the Contract, shall lie in the Circuit Court of Polk County, Arkansas or in the United States District Court, Western District, Fort Smith Division.

11. Taxes. Sales, use, occupation, excise, duties and other taxes upon the production, sale or use of the Goods are not included in the price and such taxes or any costs in connection therewith, wherever levied and whether imposed before or after payment of invoice, shall be paid by Buyer.

12. Miscellaneous. No right or interest in the Contract shall be delegated or assigned by Buyer without the written permission of Seller. Any attempt at assignment or delegation shall be void unless made in conformity with this paragraph. Buyer warrants that it is purchasing for its own account and not as an agent. Buyer and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party. The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy. The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreement by the parties with respect to the subject matter of the Contract, including Buyer's request for quotation unless specifically incorporated in the Contract. No subsequent terms, conditions, understandings or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties. A finding that any provision of the Contract is invalid or unenforceable will not render the entire Contract invalid or unenforceable and will not affect the validity or enforceability of any other provision. The provisions of the Contract that by their nature are reasonably intended to survive termination, cancellation or expiration, shall survive any termination, cancellation or expiration of the Contract or any order.