

TECMARK CORPORATION'S TERMS & CONDITIONS OF SALE

GENERAL. THE TERMS AND CONDITIONS SET FORTH BELOW AND ON THE FACE SIDE HEREOF CONSTITUTE THE EXPRESSION OF ALL THE TERMS OF THIS AGREEMENT AND A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND TECMARK CORPORATION ("SELLER") FOR THE SALE OF GOODS CONTEMPLATED HEREIN. Any counteroffer will not be binding on Seller and will be null and void, without notice to Buyer. Acceptance in a course of performance rendered under this Agreement will not be relevant to determine the meaning of this Agreement. All orders are subject to the written approval by an authorized representative of Seller at its headquarters in Mentor, Ohio, U.S.A. No waiver or alteration of the terms herein will be binding unless it is in writing, signed by an authorized representative of Seller. As used herein, the term "**Domestic**" is defined as within the continental United States, and the term "**Foreign**" is defined as outside the continental United States.

CONTROLLING EFFECT. This Agreement supersedes and controls all other prior and subsequent agreements, unless (a) An authorized representative of Seller states otherwise in a signed writing; or (b) There are different or conflicting terms on the face side hereof, in which case, such terms will control this transaction. If this Agreement is executed in duplicate, in a language other than English, the English version will control.

PAYMENT TERMS. Payment terms are *net thirty (30) calendar days* from the date of invoice, unless stated on the face side hereof. Payment not received on time will be charged, to the extent permissible by law, a **late fee of 1%** of the past due amount for each month late. Payment will be made in United States ("U.S.") dollars and in immediately available funds. Seller, without liability, reserves the right to suspend any further performance under this Agreement or otherwise assert alternate payment terms, in the event payment is not made when due or if, in Seller's sole discretion, Buyer's credit is or becomes unsatisfactory. Any claims by Buyer against Seller for an alleged breach of contract, cannot be offset by Buyer against any payment owed to Seller.

SHIPMENT & DELIVERY. Domestic shipments will be *F.O.B. Mentor*, and Foreign shipments will be *EX Works Mentor*, unless stated otherwise on the face side hereof. All scheduled shipping dates are approximate and based upon current availability of materials, present production schedules, and prompt receipt of all necessary information from Buyer. Buyer is to pay all shipping, insurance and related expenses. If shipment is delayed because of Buyer, Seller may, after reasonable notice to Buyer, store the Goods at a place of its own choice at Buyer's sole risk and expense. Seller will not be liable for any damage, loss, fault, or expenses arising out of or related to delays in shipment or other nonperformance of this Agreement due to any cause beyond Seller's control, including but not limited to: (a) strikes, fire, floods, disasters, riots, acts of God, (b) acts of Buyer, (c) labor disruptions, (d) shortages of fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) foreign or domestic government action, or (e) subcontractor, service or supplier delay.

IMPORTING EXPENSES, LICENSING & REGULATIONS. For Foreign shipments, Buyer is exclusively responsible for payment of any and all related import expenses, satisfaction of the respective licensing requirements, and compliance with all applicable regulations and standards, which are required by the Buyer's territory and/or country.

EXPORT REGULATIONS. Seller is bound by all U.S. export regulations, restrictions, trade embargoes, etc. ("U.S. Government Action"); therefore, any offer for the sale of Goods to a Foreign Buyer where sales are restricted by such U.S. Government Action, will not be valid and will immediately expire without any liability whatsoever to Seller.

INSPECTION & ACCEPTANCE. Buyer will immediately inspect the Goods upon receipt. The Goods will be deemed finally inspected, checked and accepted by Buyer, within **three (3) business days** of receipt for Domestic shipments, and within **five (5) business days** after receipt of Foreign shipments, unless Buyer states otherwise to Seller in writing prior to the expiration of the respective time periods.

PACKAGING. Prices stated are based on Seller's standard packaging. Special mutually agreed upon customer packaging will be furnished only when specified and so stated herein, and the cost thereof will be borne by Buyer.

PRICE. All prices are in U.S. dollars, are based on the terms and conditions herein, and are subject to change, with previous notice to Buyer, in the event of: (i) alterations in specifications, quantities, designs, delivery schedules or special packaging instructions as provided herein; (ii) increases in the cost of fuel, power, material, supplies, or labor; or (iii) Foreign or Domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the goods purchased hereunder. Prices do not include sales, use, excise or similar taxes. Buyer will pay such taxes attributable to the sale of the Goods covered hereby, or will provide Seller with tax exemption certificates acceptable to taxing authorities. No discount will be allowed, unless specifically set forth on the face side hereof.

PRICE QUOTATIONS. All written quotations automatically expire unless accepted in writing within **thirty (30) calendar days** from the date quoted. Verbal quotations are invalid unless and until written confirmation by an authorized representative of Seller is issued to Buyer within **five (5) business days** therefrom for Domestic shipments, and **thirty (30) calendar days** therefrom for Foreign shipments. Such written confirmation will supersede any verbal quote.

WARRANTY. Seller warrants and agrees that, for a period of **fifteen (15) months from the date of manufacture**, the Goods will be free from defects in materials and workmanship. **THE PARTIES HERETO EXPRESSLY AGREE THAT BUYER'S SOLE AND EXCLUSIVE REMEDY ("Exclusive Remedy") AGAINST SELLER WILL BE FOR THE REPAIR OR REPLACEMENT OF, OR ISSUANCE OF CREDIT FOR, GOODS DETERMINED BY SELLER, IN ITS SOLE AND ABSOLUTE DISCRETION, TO BE NONCONFORMING BY REASON OF A DEFECT IN MATERIALS OR WORKMANSHIP.** Seller's warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication, neglect, accident, improper installation, modification, or adjustment, repair, evaluation, or testing performed by anyone other than Seller or one of Seller's authorized agents. Buyer will be responsible for compliance with all written instructions relative to the installation, use and limitations of the Goods. Failure to comply with such instructions will constitute misuse of the Goods. **Unless the Seller expressly agrees otherwise in writing, all warranties will be null and void and of no force or effect in the event the Buyer fails to make any payment due to Seller strictly in accordance with the terms hereof, and in no event will Seller be liable with respect to any claim or cause of action brought under any of the foregoing warranties from and after the date of such material breach. THE FOREGOING WARRANTY AND OBLIGATION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE NOT EXPRESSLY SET FORTH HEREIN. THE FOREGOING WARRANTY EXTENDS ONLY TO THE ORIGINAL BUYER OF THE GOODS AND IS NOT TRANSFERABLE. THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION HEREIN.**

RETURN OF GOODS. For Goods to be returned for an alleged defect in materials or workmanship within the warranty period, Buyer must: (1) Contact Seller to obtain a Returned Goods Authorization Number ("RG Number"); (2) Return such Goods in accordance with the Seller's instructions regarding the manner and mode of shipment; and (3) **Prepay** all shipping costs. Such shipping costs will be reimbursed, if a defect in materials or workmanship is determined by Seller in its sole and absolute discretion. For custom purposes, foreign returns will include a proforma invoice stating the lowest fair market value ("FMV") of the returned Goods, which in no event, will such FMV exceed Buyer's original purchase price of the Goods from Seller. Domestic returns will be shipped F.O.B. Mentor, and foreign returns will be shipped Destination Duty Paid ("DDP").

LIMITATION OF LIABILITY. Seller's maximum liability for its Goods, including, but not limited to, breach of contract or warranty, negligence, or strict liability, will be limited to the repair or replacement of, or issuance of credit for Goods found by Seller, in its sole and absolute discretion, to be nonconforming by reason of a defect in materials or workmanship within the warranty period. **IN NO EVENT WILL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCT(S) DETERMINED BY SELLER TO BE DEFECTIVE.** Buyer has a one (1) year statute of limitation for any breach of contract claim against Seller. Any additional warranty service, performed other than at Seller's headquarters, without authorization from an authorized representative of Seller, will be at Buyer's sole expense.

DISCLAIMER OF INCIDENTAL & CONSEQUENTIAL DAMAGES. IN NO EVENT, WILL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, (INCLUDING BUT NOT LIMITED TO, BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH) OR THE USE, STORAGE, DISPOSAL OR HANDLING OF THE GOODS SOLD HEREUNDER. INCIDENTAL AND CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF WILL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, LOSS OF BUSINESS, LOSS OF INCOME OR PROFIT, INCREASED EXPENSE OF INSPECTION, OPERATION OR DOWN-TIME, OR LOSSES SUSTAINED AS THE RESULT OF INJURY OR DEATH TO ANY PERSON, OR LOSS OF OR DAMAGE TO ANY PROPERTY. BUYER WILL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

INDEMNIFICATION & ASSUMPTION OF RISK. BUYER ASSUMES ALL RISK, LIABILITY AND RESPONSIBILITY FOR ANY LOSS, DAMAGE, COST AND EXPENSE ARISING OUT OF OR RESULTING FROM THE HANDLING, USE, STORAGE, DISPOSAL OR APPLICATION OF THE GOODS DELIVERED HEREUNDER, AND THE CONTAINERS IN WHICH SUCH GOODS ARE SHIPPED. Buyer hereby assumes and agrees to indemnify, defend and hold Seller harmless from and against all liability, loss, cost, damage and expense (including reasonable attorneys' fees) arising out of or in connection with claims by Buyer, its employees, customers, independent contractors and any third parties based upon or resulting from the handling, use, storage, disposal or application of the Goods delivered hereunder or the containers in which such Goods are shipped. Buyer warrants that the Goods will not be resold, transferred, exported or reused in any way by Buyer in violation of any laws, regulations or export control imposed by the U.S. Government. Buyer represents and warrants that the Goods sold by Seller will not be used in connection with (a) nuclear installation or material; or (b) a "medical device" or surgical implant regulated by the FDA. Buyer will indemnify, defend and hold harmless Seller, including reasonable attorney fees, court costs, and costs of investigation and defense, from any harm or damages or liability caused to Seller by any breach of the foregoing representations or for the failure to comply with any laws or regulations including, without limitation, any U.S. export laws.

MODIFICATION, TERMINATION & CANCELLATION. After acceptance of Buyer's order by Seller, such order may only be modified, terminated, cancelled, or shipment deferred (hereinafter "Altered") prior to shipment, if it is agreed to in writing by an authorized representative of Seller. Buyer will fully indemnify Seller against any and all liability and expense incurred by Seller pursuant to any Altered order. Additionally, Buyer will pay reasonable and proper cancellation charges, as determined solely by Seller, to compensate for disruptions in scheduling, planned production, and costs incurred prior to the order being Altered for materials, labor, factory overhead, work in process and other direct costs; however, such amount will not exceed 25% of the invoice amount, unless the Goods are custom manufactured by Seller for Buyer. Seller will have the right to cancel any order or contract at any time by written notice for any breach of the order or contract by the Buyer and Seller will be entitled to collect cancellation charges as identified above.

INTELLECTUAL PROPERTY. Seller has independently developed confidential and proprietary information, related to the Goods, which may be transmitted, communicated, or otherwise disclosed to Buyer pursuant hereto. Buyer hereby agrees to treat such confidential and proprietary information in the strictest confidence and shall not disclose such information to any third party without the prior written consent of Seller. Buyer acknowledges that no license or right is granted hereby and no license or right will be incorporated herein by reference, implication or by other means with respect to or under any invention, patent application, patent, copyright, trade secret or other Proprietary right contained in or in any way relating to the Goods.

GOVERNING LAW. The Seller and Buyer (regardless of whether Buyer is Domestic or Foreign) expressly agree that this sale of Goods and these controlling terms and conditions, will be governed exclusively by and interpreted in accordance with the laws of the State of Ohio, U.S.A., and agree to exclude the application of the United Nations Convention for the International Sale of Goods ("CISG") from any and all aspects of this sale; however, all foreign delivery terms, as used herein or in other written correspondence used in this transaction for the sale of the Goods, will be exclusively governed by and in accordance with the ICC Incoterms 1990.

GENERAL CONDITIONS. In addition to the rights and remedies conferred upon Seller by law, and without Seller being in breach of this Agreement, Seller will not be required to proceed with the performance of any order or contract if Buyer is in default in the performance of any order or contract with Seller, or in case of doubt as to Buyer's financial responsibility, or other future performance. Any clerical errors are subject to correction. All paragraph headings are for convenience only and are not to be construed as defining the terms and conditions herein. If any provision in this Agreement is determined to be illegal, this Agreement will continue as if such provision were removed.

ELECTRONIC TRANSACTIONS. Any transaction accomplished through Electronic Data Interchange or any other electronic means, including, but not limited to facsimile and Email, will be subject exclusively to the terms and conditions set forth herein, which will be provided to the Buyer: (a) upon the Buyer's request; and/or (b) on an annual basis with the Seller's annual quote to the Buyer.

DISPUTE RESOLUTION. Any dispute arising out of or relating to this sale of Goods, this Agreement, or the breach thereof, except for matters relating to intellectual property or breach of confidentiality, will be resolved exclusively through the following means: (a) Authorized representatives of Buyer and Seller will promptly attempt to negotiate a mutually satisfactory resolution to such dispute. If such negotiations are unsuccessful within thirty (30) days after the representatives' first negotiations, then (b) Such dispute will be resolved through binding arbitration, to be conducted in English in Cleveland, Ohio, U.S.A., in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and governed exclusively by the laws of the State of Ohio, U.S.A. The parties agree that such arbitration will result in a binding resolution within one hundred and eighty (180) days from its start. If Seller is required to resort to the requirements of this section, and Buyer is determined to have breached this Agreement, then Buyer will be liable to Seller for all attorney's fees, filing fees and other related costs involved.

NOTICES. All notices hereunder will be submitted in writing via certified mail, return receipt requested addressed to: Tecmark Corporation, Attn: General Manager, 7745 Metric Dr., Mentor, Ohio 44060, U.S.A.