



11350 North Meridian Street  
Carmel, Indiana 46032-4528  
(317) 844-3995 • FAX (317) 846-2054

## SEEMAC, Incorporated Terms & Conditions

- Definitions.** "Seller" shall mean SEEMAC, Incorporated. "Buyer" shall mean the party purchasing products, goods, materials, and supplies ("Goods") pursuant to these Terms & Conditions ("T&C") as identified herein.
- Governing Document.** These T&C represent the sole governing document between Seller and Buyer for Seller's Goods and supersede all previous T&C, except where expressly indicated in writing by Seller. Seller hereby gives notice that it objects to and rejects any terms or conditions contained in any document which has been or may be supplied by Buyer to Seller which are in any way different from these T&C, unless accepted in writing by Seller. Acceptance by Buyer of Goods covered hereunder shall be deemed Buyer's agreement to these T&C. These T&C will apply to each order accepted or delivered by Seller hereunder.
- Payment.** Terms of sale for Goods shall be net thirty (30) days or 1% ten (10) days net thirty (30) days, with F.O.B. terms as stated on each invoice. Seller may withhold delivery of any Goods pending credit approval or advance payment, as may be required. Past due invoices will be subject to a late payment penalty not to exceed 1.5% per month (18% annual percentage rate), or, if less, the maximum allowable by Indiana law. Buyer agrees to pay all collection costs and expenses, including reasonable attorneys' fees incurred by Seller in collecting or attempting to collect such account. Seller reserves the right to repossess material not paid for in accordance with these T&C. All debts and obligations of Buyer and Seller to each other are mutual and subject to set-off.
- Pricing; Taxes.** All prices are subject to change without notice. Prices quoted are for Goods only and do not include any other charges unless specifically noted in the quotation. All prices are exclusive of any present or future sales, revenue, or excise tax, duties, or all other such similar charges, all of which shall be paid by Buyer.
- Cancellation; Changes.** No order once accepted by Seller can be canceled by Buyer without Seller's written consent and then only upon payment to Seller of all losses and expenses, including lost profits for the entire order. Seller may cancel an order, or any unshipped portion of an order, if (a) Buyer's payments are in default on this or any other order, or Buyer breaches any other material provision hereunder, (b) substantial changes occur in the availability of raw materials or components provided by third party vendors, (c) events beyond Seller's reasonable control, including those specified in Section 14 or otherwise herein, make it impossible to secure shipment, (d) Buyer becomes insolvent or is the subject of the filing of a bankruptcy petition, or makes an assignment for the benefit of creditors or fails to pay its debts as they come due, or (e) Seller has reasonable belief that Buyer is insolvent or will not pay in accordance with the terms herein. Seller reserves the right to make product and design changes in Goods ordered which will not adversely affect form, fit or function requirements, with notification to or price approval by Buyer. All changes requested by Buyer in the process or design of Goods are subject to written approval by Seller and to reasonable changes in delivery and price as Seller determines is necessitated thereby.
- Warranty; Limitation of Liability.** Subject to the limitations set forth herein, Seller warrants the Goods to be free from defects in material and workmanship and warrants that they will conform to Seller's published performance specifications at the time of shipment. Seller shall have the right to validate defects by inspection. This warranty is conditioned upon Buyer's (a) operating and maintaining the Goods in accordance with Seller's specifications and/or instructions, (b) not making any unauthorized repairs or alterations which affect the Goods, and (c) not being in default of any payment obligation to Seller. The foregoing warranty does not cover consumable or expendable Goods or damage caused by negligent operation, use or care of Goods by Buyer. Seller makes no warranty with respect to Goods custom made to Buyer's specifications, and Buyer agrees to hold Seller harmless from claims based upon compliance with such specifications. Notwithstanding anything contained herein, Seller may not and shall not provide a greater warranty to Buyer than that provided by third party suppliers and vendors to Seller in connection with the Goods.

**SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. FURTHERMORE, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES, DIRECTLY OR INDIRECTLY ARISING OR RESULTING FROM THE BREACH OF ANY OF THE TERMS HEREOF OR FROM THE SALE, HANDLING OR USE OF THE GOODS SOLD. SELLER'S LIABILITY HEREUNDER, IF**

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SEEMAC, Incorporated Terms & Conditions (cont'd)

**ANY, FOR A BREACH OF THESE TERMS AND CONDITIONS OF SALE, INCLUDING NEGLIGENCE, IS EXPRESSLY LIMITED AT SELLER'S OPTION TO EITHER (A) TO THE REPAIR OR REPLACEMENT OF THE GOODS SOLD, OR (B) TO THE REFUND OR CREDITING OF THE PRICE OF SUCH GOODS ACTUALLY PAID.**

**ALL CLAIMS HEREUNDER MUST BE MADE IN WRITING, BUT IN ANY EVENT SELLER RESERVES RIGHT TO REJECT CLAIMS NOT COVERED BY WARRANTY. SELLER ASSUMES NO LIABILITY FOR RESULTS FROM THE USE OF ANY GOODS FURNISHED.**

7. **Returns.** Written authorization must be obtained from Seller prior to return of any items for repair or replacement or credit. Buyer's rights to repair or replacement are governed by the terms of Section 6 above. Issuance of credit for returned items shall be made at Seller's discretion upon Buyer's request. Buyer must inspect Goods immediately and no rejection or revocation of acceptance shall be permitted more than five (5) days after delivery or upon use by Buyer of the Goods, whichever occurs first.

8. **Delivery; Risk of Loss.** Title to Goods and all risk of damage or loss shall pass to Buyer per FOB terms stated on each invoice. Freight charges may be added to invoices or billed separately. Each shipment hereunder shall constitute a separate sale. Seller reserves the right to make partial shipments, and failure to make one or more deliveries shall not constitute cause for cancellation hereof by Buyer. Buyer agrees to accept delivery of any part or all of the Goods on the mutually agreed upon delivery date. Any deferred delivery request by Buyer shall be subject to Seller's written approval. On any approved deferred delivery, Seller shall have the right to invoice for the completed portion of the order and to warehouse all completed Goods at Buyer's expense and risk of loss. Furthermore, with regard to any uncompleted portion of the order, Seller reserves the right at its option to either make a cancellation charge under the same T&C of payment as set forth in Section 3 herein or to revise its prices and delivery schedules on the uncompleted portion to reflect its increased costs, delays and expenses.

9. **Shortages; Damage; Acceptance.** Buyer shall give written notice to Seller and the carrier within five (5) days after delivery of any shortage or damage, or failure to conform to the order, or in the case of non-delivery within fourteen (14) days after the expected delivery date. Any use of the Goods by Buyer which is not related to acceptance testing shall constitute acceptance.

10. **Failure to Take Delivery.** If Buyer fails to take delivery of any Goods Seller may, at its own discretion, store the Goods and take such reasonable steps as are necessary to ensure their safe-keeping pending actual delivery and Buyer shall indemnify Seller as to all the costs incurred by Seller. If Buyer fails to collect or (as the case may be) take delivery of any Goods ordered when they are ready, then Seller reserves the right after four (4) weeks to deliver them to Buyer at Buyer's risk, or dispose of the Goods in any other reasonable manner, in which case Buyer shall remain liable to Seller for the cost of the Goods, less the net amounts received by Seller as a result of such disposal (after deducting Seller's costs of such disposal).

11. **Confidentiality.** Buyer and its affiliates, officers, agents, and employees agree to maintain as confidential any Seller supplied proprietary information, regardless of form, and Buyer shall not disclose any such proprietary information to any other person or entity or use such proprietary information for its own purpose or benefit without Seller's written permission.

12. **Disputes.** All actions and proceedings brought by either party relating to or arising from, directly or indirectly, these T&C or any order or Goods subject to these T&C shall be litigated either in the United States District Court for the Southern District of Indiana or an applicable state court in Hamilton County, Indiana. The parties hereby submit to the personal jurisdiction of such courts; hereby waive personal service of process and consent that any such service of process may be made by certified or registered mail, return receipt requested, directed to the appropriate party at its address last specified for notices hereunder. All sales are governed by the laws of the State of Indiana.

13. **Indemnity.** Buyer shall indemnify and hold harmless Seller from and against all liabilities, losses, damages, costs, charges, expenses (including without limitation legal fees and expenses on a full indemnity basis), actions, proceedings, claims and demands incurred by or brought against Seller and arising directly or indirectly out of or in connection with any breach of any of Buyer's obligations under any contract with Seller, including these T&C.

14. **Force Majeure.** Seller shall have no responsibility for, and shall incur no liability to Buyer for, any failure or delays caused by acts of God, provisions of law, accident, explosion, fire, natural disaster, labor-management

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## SEEMAC, Incorporated Terms & Conditions (cont'd)

dispute, abnormal operating conditions, riot, war, terrorism, insurrection, interruption of power or communications, or inability to secure labor materials, production, or transportation facilities, or any other cause beyond Seller's control.

15. **Miscellaneous.** The failure of Seller to insist in any one or more instances upon the performance of any of the terms or conditions herein, or to exercise any right hereunder, shall not be construed as a waiver of any other terms or conditions herein nor of the future performance of any term or condition or the future exercise of any such rights. The failure of Seller to require strict performance of any provision shall not diminish Seller's right thereafter to require strict performance of any provision. If any provision of these T&C is found to be void by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect. These T&C of sale shall be binding upon and inure to the benefit of Seller and Buyer and each of their legal representatives, successors and assignees; provided, however, that no right under these T&C may be assigned by either party. These T&C and the orders and Goods subject hereto may not be assigned or transferred by Buyer to any third party without written consent of Seller. Any notice required to be given shall be sent by Registered Mail, properly addressed, and signed by an authorized representative. Seller's rights hereunder are in addition to any other rights which Seller may have under law or equity.

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