

TERMS & CONDITIONS OF SALE

Definitions.

“**Company**” means Industrial Magnetics, Inc..

“**Buyer**” means the person or company to whom any Proposal is addressed.

“**Product**” shall mean the product or Product(s) proposed for sale by Company.

“**Proposal**” shall mean the written quotation or invoice provided by Company to the Buyer. These terms and conditions are incorporated into and made a part of each Proposal.

“**State**” shall mean the State of Michigan.

“**County**” shall mean the County of Charlevoix in the State.

“**Warranty Period**” shall mean the warranty period provided in the Proposal and/or herein.

1. **Acceptance.** Company’s offer to sell the Product specified in each Proposal is expressly conditioned upon acceptance of these terms and conditions. Company objects to any additional or different terms and conditions contained in Buyer’s purchase order, none of which shall be binding unless specifically agreed to in writing signed by an authorized officer of Company. Failure by Company specifically to object to provisions contained in Buyer’s purchase order shall not in any way alter or waive these terms and conditions. Company reserves the right to substitute substantially comparable goods for the Product stated in any Proposal. A binding contract for each Product sold to Buyer is made under these terms and conditions between Company and Buyer upon Company’s acceptance or fulfillment of Buyer’s purchase order.
2. **Prices & Shipments.** All prices are F.O.B. Company’s facility or other place of manufacture. Buyer is responsible for all costs of transport and insurance. Prices do not include any goods or services, setup, startup, and/or installation, safety equipment, signage, technical data or documentation, proprietary rights of any kind, qualifications, testing or process performance that are not specifically stated in any Proposal. Prices are valid for 90 days from the date of any Company quote unless otherwise stated.
3. **Taxes & Other Charges.** Buyer is responsible for the ultimate payment of all federal, state, local, foreign or provincial taxes, fees or charges of any nature whatsoever (other than Company’s income based taxes) imposed by any governmental authority that may be assessed or levied on materials sold to Buyer provided that such taxes are added to the sales price where Company has a legal obligation to collect them. If Buyer is exempt, Buyer shall provide Company with the documentation necessary to support such a claim and to allow Company document its decision not to collect such tax.
4. **Changes & Cancellation.** If Buyer requests changes to Product after Company’s acceptance of Buyer’s purchase order, Company will issue a revised Proposal specifying any changes in price or time of delivery associated with the requested change. The proposed change shall not become effective unless and until Buyer issues a purchase order recording the change in accordance with Company’s revised Proposal. Buyer agrees to pay to Company a cancellation charge, computed on the following basis: Company’s full costs incurred to date, including without limitation, costs of all engineering work, work in progress, raw materials, supplies, administrative expenses and overhead (20% of purchase price) plus all commitments made by Company in connection with the order, less such allowances as Company may be in position to make for any standard components and scrap material, in Company’s sole determination. If any portion of Product is identified as “Special” or “Made to Order”, Buyer’s order shall not be cancelled or cancelable by Buyer after acceptance by Company, except upon payment in full of the purchase price.
5. **Delivery Dates.** All delivery and shipment dates quoted are approximate and subject to Company’s availability schedule. Company will make reasonable efforts to meet the delivery date(s) quoted, however, Company does not assume liability, consequential or otherwise, because of any delay or failure to deliver all or part of an order for any reason. All delivery promises are predicated upon prompt and timely receipt from Buyer of all necessary information, material samples, documentation, etc.
6. **Installation, Maintenance & Operation.** Buyer is solely responsible for installation, operation and maintenance of the Product in accordance with the manual(s).
7. **Credit & Payment Terms.** For all export orders (excluding Canada), payment in full is required prior to manufacture and shipment of Product(s). Buyer will receive a pro forma invoice when Company receives a valid and binding Purchase Order. For Domestic orders, unless other terms of payment are specified in any Proposal: (a) for orders over \$30,000, Buyer shall pay Company 40% of the total purchase price when submitting a purchase order to Company, and 60% of the purchase price net 30 days after shipment from Company’s facility; and (b) for all other orders, payment shall be made in full within 30 days from the date of shipment from Company’s facility. Buyer shall make all payments in full without any deduction for any claim or setoff or recoupment. The payment terms stated in any Proposal are conditioned upon approval of Buyer’s credit and may be withdrawn or amended at any time by Company at its discretion if (a) Buyer does not maintain a satisfactory credit rating or (b) if Buyer does not maintain its account with Company in good standing. Company reserves the right to change these credit terms, refuse shipment or cancel unfilled orders at any time when the financial condition of Buyer fails to meet the requirements of a satisfactory credit rating or when the previous payment record of Buyer to Company reasonably warrants such action. If delivery dates are delayed by Buyer for reasons within its reasonable control, payments are nevertheless due when Company is prepared to make delivery according to the delivery schedule. Payment is not contingent upon installation, use or operation of any Product(s). No cash discounts for early payment will be granted. Buyer shall be delinquent if payment is not remitted according to the applicable terms. Interest shall accrue on delinquent invoices at the rate of 1.5% per month, subject to federal, state and local laws, on the amount of the unpaid balance from the original due date of the invoice. In the event Company refers delinquencies to an attorney or an agent for collection, Buyer shall pay all costs of collection, including attorney’s fees. Should Buyer become delinquent in the payment of any sum, all contractual obligations of Company to Buyer shall terminate. Notwithstanding the foregoing, if Buyer wishes to dispute an amount which has been invoiced by Company, it will nonetheless make payment on the due date to Company’s lawyers who shall hold such amounts in dispute.
8. **Security Interest.** Company retains a security interest (“Security Interest”) in the Product to secure any portion of the purchase price not paid. These terms and conditions constitute a written security agreement provided by Buyer to Company covering all Product sold by Company to Buyer. Company may record a Uniform Commercial Code Financing Statement evidencing this Security Interest. Company has all rights and remedies accorded by law or equity to a secured seller, including the right to enter upon the premises where the Product shall be located for purposes of removing or rendering them inoperative, and all such rights and remedies shall be cumulative. Buyer shall maintain insurance against all risks to cover full replacement value of the Product until Company has been paid in full and agrees to do all things and acts necessary to perfect and maintain such Security Interest for the benefit of Company.
9. **Title and Risk of Loss.** Title and risk of loss or damage to the Product shall pass to the Buyer upon tender of delivery F.O.B. Company’s facility or other place of manufacture. Any claim by Buyer for damage occurring during shipment shall be made directly against the freight carrier, with a copy of such claim forwarded to Company within ten (10) days. Any shipments returned to Company as a result of Buyer’s unexcused delay or failure to accept delivery will require Buyer to pay all additional costs incurred by Company.
10. **Product Acceptance.** All Product will be deemed accepted by Buyer if Buyer does not provide Company with a written notice of rejection within 5 days of the date of delivery to Buyer, which notice shall specify in detail any reasons for rejection.
11. **Limited Warranty.**
 - a. Company warrants that the Product manufactured by it and delivered hereunder will be free of defects in material and workmanship for the Warranty Period. Such warranty is conditioned upon Seller receiving written notice of any alleged defect within ten (10) days after its discovery within the Warranty Period. Upon receipt of such timely notice, Company shall make an investigation and inspection of such alleged defect. In the event Company determines that Product is defective, Company, at its option and sole discretion, shall either correct such nonconformity by suitable repair to such defective Product, or furnish a replacement part F.O.B. point of shipment, or return to Buyer the purchase price paid for such defective Product; provided that in all instances, Buyer has fully paid for the Product and has stored, installed, maintained and operated such Product in accordance with good industry practices and has complied with the specific recommendations or instructions of Company. EXCEPT FOR THE FOREGOING WARRANTY, COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCT(S), INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY, (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.
 - b. The warranty provided herein is not transferable by Buyer to any third party.

- c. Goods, subcomponents and materials not manufactured by Company ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Product. Third Party Products are not covered by the warranty herein set forth. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY, (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Third Party Products shall carry whatever warranty the third-party manufacturer has conveyed to Company and which can be assigned to Buyer.
- d. The warranty provided herein shall not apply to Product that has been altered, modified or repaired by anyone other than the Company or to Product that has been damaged through accident, misuse, neglect or lack of proper maintenance. The effects of corrosion, erosion and normal wear and tear on Product are specifically excluded from this warranty. This warranty shall not apply to wear to Product or wear to any of its parts or components caused by Buyer's feed material or any of Buyer's products.
- e. Unless otherwise specifically stated in the Proposal, all Products will be covered by this exclusive limited warranty for 365 days from the date of shipment with the exception of the following: Suspended Electromagnet (SEMO) Coil – 10 years from the date of shipment.
Magnet and power supply installed in areas with ambient temperatures that exceed 110°F (43°C) require that a chiller or similar device approved in advance by Industrial Magnetics, Inc. be used in order to maintain the integrity of the transformer oil and the IMI Warranty on the product. For installations at elevations in excess of 8,000 feet above sea level consult Industrial Magnetics, Inc. Engineering Department for application-specific product and IMI Warranty options. Transformer oil must be changed annually in order to maintain the IMI Warranty. An Oil Capacity chart is readily available in the SEMO Product Manual, SEMO Tech Sheet and on the IMI Website. In the event of a warranty claim due to product failure, documentation detailing the maintenance on product must be made available to Industrial Magnetics, Inc.
12. **EXCLUSIVE REMEDIES.** THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. IN NO CASE WHATSOEVER, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY OR TORT (INCLUDING COMPANY'S OR BUYER'S NEGLIGENCE OR STRICT LIABILITY) SHALL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES INCURRED BY BUYER OR THIRD PARTY, INCLUDING, BUT NOT LIMITED TO: LOSS OF SALES, PROFIT, REVENUE OR GOOD WILL; LOSS OF USE OF GOODS OR ANY ASSOCIATED EQUIPMENT OR MATERIAL; COST OF CAPITAL; COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES; DOWNTIME COSTS; ATTORNEY'S FEES; OR LOSSES OR CLAIMS OF CUSTOMERS OR BUYER FOR SUCH DAMAGES. BUYER HEREBY AGREES TO INDEMNIFY AND HOLD COMPANY HARMLESS FROM ANY AND ALL SUCH DAMAGES. BUYER FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD COMPANY HARMLESS FROM ANY AND ALL CLAIMS, LIABILITY, DAMAGES OR EXPENSES (INCLUDING ATTORNEY'S FEES) ASSERTED AGAINST COMPANY AS THE RESULT OF PROPERTY DAMAGE, PERSONAL INJURIES OR DEATH, TO BUYER, ITS EMPLOYEES, AND ANY OTHER THIRD PARTIES, RESULTING FROM THE ACTIONS OR INACTIONS OF ANY OTHER PERSON OTHER THAN COMPANY, INCLUDING, WITHOUT LIMITATION, THE ACTIONS OF BUYER, ITS EMPLOYEES, AGENTS AND CUSTOMERS.
13. **Limitation of Liability.** Buyer's remedies set forth herein are exclusive, and the total liability of Company with respect to any Proposal and the Product furnished thereunder, in connection with the performance or breach thereof, or from the manufacture, sale, delivery, installation, repair or technical direction covered by or furnished under a Proposal or these terms and conditions, whether based on contract, warranty, negligence, indemnity, strict liability or otherwise, shall not exceed the total amount paid by Buyer to Company for the Product upon which such liability is based.
14. **Intellectual Property.** Company is not liable to Buyer for any claims or damages of Buyer relating in any manner whatsoever to any infringement of any patent, copyright, trademark, trade secret, or any proprietary right of any third party. Buyer shall indemnify and hold Company harmless against any and all such claims or damages arising out of Buyer's use of the Product. Buyer acknowledges and agrees that: (a) any and all Company's Intellectual Property Rights are the sole and exclusive property of Company or its licensors; (b) Buyer shall not acquire any ownership interest in any of Company's Intellectual Property Rights; (c) any goodwill derived from the use by Buyer of Company's Intellectual Property Rights inures to the benefit of Company or its licensors, as the case may be; (d) if Buyer acquires any Intellectual Property Rights, rights in or relating to any Product (including any rights in any trademarks, derivative works or patent improvements relating thereto) by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Company or its licensors, as the case may be, without further action by either of the parties; and (e) Buyer shall use Company's Intellectual Property Rights solely for purposes of using the Product under this Agreement and only in accordance with these terms and conditions. Buyer shall not: (a) take any action that interferes with any of Company's rights in or to Company's Intellectual Property Rights, including Company's ownership or exercise thereof; (b) challenge any right, title or interest of Company in or to Company's Intellectual Property Rights; (c) make any claim or take any action adverse to Company's ownership of Company's Intellectual Property Rights; (d) register or apply for registrations, anywhere in the world, for Company's trademarks or any other trademark that incorporates Company's trademarks; (e) use any mark, anywhere that is confusingly similar to Company's trademarks; (f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Product or any Company's trademarks; (g) misappropriate any of Company's trademarks for use as a domain name; or (h) alter, obscure or remove any Company's trademarks, or trademark or copyright notices or any other proprietary rights notices placed on the Product, marketing materials or other materials that Company may provide. For purposes hereof, "Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (i) patents; (ii) trademarks; (iii) internet domain names, whether or not trademarks, web addresses, web pages, website and URLs; (iv) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (v) trade secrets; and (vi) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction throughout in any part of the world.
15. **Confidentiality and Non-Solicitation.** Any Proposals, quotes, invoices, order acknowledgments, prints, brochures, drawings or other information furnished to Buyer by Company are intended for confidential use by Buyer, and shall not be disclosed by Buyer or used to the detriment of Company's competitive position. In addition, Buyer hereby agrees that for the 2-year period following any Proposal, Buyer shall not interfere in, or solicit or induce any change in or cessation of, the business relationship between Company and any of its customers, independent contractors, agents, representatives, contract manufacturers, suppliers, or investors; nor solicit or induce any Company employees or other agents to terminate their employment or other relationship with Company.
16. **Buyer's Use and Covenants.** Any safety devices, sensors and guards offered in Company's Proposal are recommended for purchase. Buyer hereby agrees as part of Company's consideration to sell the Product that Buyer hereby covenants to Company that Buyer: (a) will use Product only for its intended uses; (b) will keep Product level and balanced and in good repair; (c) will keep all guards, sensors and safety devices in place; (d) will train all operators, service personnel, other employees and third parties who operate the Product in accordance with the operator's manuals and instruction sheets, within OSHA Regulations and within the applicable National Fire Protection Association (NFPA) and American National Standards Institute (ANSI) standards/recommendations; (e) will implement and enforce a Lockout/Tagout program per OSHA; (f) will conduct a Process Hazard Analysis of its process and will comply with the findings of its analysis; (g) has determined or will determine the proper NFPA classification for the area where the Product will be located and has ordered and will order from the Company and from other suppliers only components that are suitable for that classification; (h) will comply with OSHA regulations, with applicable National Electric Code (NEC), NFPA and ANSI standards/recommendations and with any other applicable state or federal safety laws or regulations; (i) will install fire and explosion detection and suppression equipment appropriate to Buyer's products and process; (j) has determined without reliance on Company that Product is a suitable component in Buyer's process; (k) will not remove or modify any device, warning sign, operator's manual or work handling tools accompanying, installed on or attached to the Product; (l) will comply with the terms of the Proposal including these terms and conditions; (m) notify Company of the name and address of the new owner if ownership of the Product is transferred and furnish the new owner with all manuals, instructions, safety devices, sensors and guards; (n) will, no later than ten (10) days after its occurrence, notify Company in writing of any accident or malfunction involving any Product which results in injury to or death of persons, including Buyer's agents and employees, or damage to property, including Buyer's property, or the loss of use thereof; (o) will cooperate fully with Company in investigating and determining the cause of any such accident or malfunction; (p) will not use or operate any Product which is considered to be defective. Any use of Product in violation of any of the foregoing covenants shall be at Buyer's sole risk and liability.

17. **Indemnification; Waiver of Subrogation.** Buyer agrees that if any damage or injury (including death) to any person or to any property (including loss of use thereof) results, or is alleged to have resulted, in whole or in part from any modification or alteration of the Product (including but not limited to the removal of any guards), from the improper or abnormal operation of the Product, or from Buyer's breach of any covenants herein, then Buyer will defend, indemnify and hold harmless Company and its officers, directors, employees, agents, affiliates, successors and assigns (collectively "Indemnified Parties") from all liability, damages, penalties, fines, settlement and/or compromise payments, costs and expenses (including attorneys' fees and all other costs of litigation and defense) arising from such injury or damage, whether the Indemnified Party's liability or alleged liability be in contract, negligence, strict tort, or otherwise. Buyer covenants that any insurance policies carried by Buyer shall waive any right of subrogation of the insurers against the Indemnified Parties, and Buyer will deliver to Company satisfactory proof that such waivers have been incorporated into such insurance policies.
18. **Fire & Explosion Protection.** The Product may process, handle and/or create fine dusts or powders. As such, there may be a fire and explosion hazard. Buyer agrees to contact its property insurance company and determine what, if any, fire or explosion protection requirements should be met and to inform Company of any such requirements. Fire and explosion detection and suppression systems vary depending on what materials Buyer is processing and using, and they are something that Buyer must coordinate throughout its factory. Buyer is solely responsible for determining what fire and explosion protection is necessary for its particular facility, including the Product, and Buyer must supply any necessary fire and explosion detection and suppression equipment or systems.
19. **Miscellaneous.**
 - a. Applicable Laws; Jurisdiction and Venue. This contract shall be construed in accordance with the laws of the State. Exclusive venue and jurisdiction of any dispute between the parties regarding a Proposal and all related issues shall be with the local and federal courts of the County. The Buyer hereby submits itself to this venue. In the event of a lawsuit, Buyer and Company each agree not to file any motion or defense asserting that the foregoing described courts are not a court of proper venue.
 - b. Force Majeure. Neither party shall not be responsible for any failure to perform the contract formed hereunder due to causes beyond its control, including, but not limited to, acts of God, labor disputes or shortages, acts of government or judicial action, or inability or delay in securing parts or components, provided that such inability or delay is not a result of any action or inaction on the part of Company, all whether foreseen or unforeseen. These items are sold for domestic consumption in the United States. If exported, purchaser assumes full responsibility for compliance with U.S. export controls.
 - c. Assignment. None of the rights, duties or obligations defined herein may be assigned, transferred or delegated without the prior written consent of the other party, and such consent shall not be unreasonably withheld.
 - d. Non-waiver. Neither party's failure to exercise any of its rights for any period shall not constitute or be deemed a waiver or forfeiture of such rights.
 - e. Modification/Controlling Terms of Contract. Any modification of these terms and conditions must be expressly agreed to in writing by authorized representatives of the parties. The applicable Proposal supersedes all previous written or oral commitments, and specifically defines the Product(s) to be delivered and constitutes the complete agreement between Company and Buyer.