

Comtran LLC
Terms and Conditions of Sale

1. **Acceptance.** This document, including these Terms and Conditions (collectively "Agreement"), supersedes all other agreements, oral or written, and all other communications between the parties suggesting additional or different terms. It represents the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties. This Agreement expressly limits acceptance to these terms; no order shall have any force or effect until acknowledged in writing by Seller; and any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the terms hereof is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to the terms and conditions in this Agreement. Unless otherwise stated herein, Buyer's receipt of any portion of the goods ("Goods") shall constitute acceptance of this Agreement and all of its terms and conditions, unless Buyer immediately rejects and returns all such Goods.

2. **Terms of Payment.** Unless otherwise agreed in writing by Seller, terms of sale are net 30 days.

3. **Taxes.** Prices do not include any sales, use, excise, privilege, or other taxes or assessments now or hereafter imposed or levied by or under the authority of any federal, state, or local law, rule, or regulation concerning the Goods sold hereunder or the manufacture or sale thereof are the sole responsibility of Buyer.

4. **Risk of Loss.** All risk of loss or damage to Goods shipped hereunder shall pass to Buyer upon delivery thereof to Buyer, to its designated agent, or to a carrier for delivery to Buyer, whichever occurs first. Unless otherwise stated, all shipments will be made F.O.B. point of manufacture.

5. **Delivery.** All shipping and delivery dates are estimates based upon prompt receipt of all necessary information. Delays in securing Buyer's approval of necessary specifications or samples of products and materials shall, if Seller so chooses extend the date of delivery. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays in delivery.

6. **Limited Warranty.** (a) Seller warrants that the Goods will be free from defects in material, workmanship, and title, and where applicable will conform to the specifications furnished by Seller or, if agreed to in writing by an authorized representative of Seller, specifications furnished by Buyer. Any custom specifications developed by Seller for Buyer must be approved in writing by Buyer before raw materials can be purchased or before Seller can manufacture the Goods. Seller reserves the right, at any time, to make changes in the design of specification of the Goods, or any part thereof, which Seller, in its sole discretion, believes will constitute an improvement in such Goods or parts thereof.

(b) The warranty and remedies set forth herein are conditioned upon proper storage, installation, use and maintenance of the Goods, conformance with any applicable technical requirements of seller and conformance with applicable laws and technical standards, including without limitation, ANSI, ASTM and OSHA. Seller shall not be liable for any alterations made to the Goods by others.

(c) Buyer is responsible for testing the Goods before installation. Seller shall, in its sole discretion, and as Buyer's exclusive remedy for any Goods that do not comply with the above warranty within one (1) year from the date of shipment of the applicable Goods, (i) replace the goods, (ii) give the Buyer credit on a future order, or (iii) refund the purchase price, provided that Buyer gives Seller prompt written notice and satisfactory proof of such non-compliance and, at Seller's option, affords Seller the opportunity to examine and test the non-conforming Goods.

(d) THE FOREGOING OBLIGATIONS ARE IN LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES WITH RESPECT TO THE GOODS, INCLUDING WITHOUT LIMITATION ANY CLAIMS BASED UPON CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY. ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE OR COMPLIANCE OF THE GOODS WITH ANY APPLICABLE LAWS OR REGULATIONS, WHETHER EXPRESS OR IMPLIED IN FACT OR BY LAW ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED. THE FOREGOING WARRANTY SETS FORTH SELLER'S ENTIRE AND EXCLUSIVE LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR ANY CLAIM OF DAMAGES IN CONNECTION WITH THE SALE OR FURNISHING OF PRODUCTS, GOODS AND PARTS, AND THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION OR OPERATION.

7. **Limitation of Liability.** Seller's liability to Buyer or anyone claiming through or on behalf of Buyer, with respect to any claim or loss arising out of this transaction or alleged to have resulted from an act or omission of Seller, whether negligent or otherwise, and whether in tort, contract, or otherwise, including failure to deliver, delay in delivery, or breach of warranty, shall be limited to an amount equal to the purchase price of the Goods with

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respect to which such liability is claimed or, where appropriate and at the option of Seller, to replacement of the Goods thereof. In no case will Seller be liable for any bodily injury, death, or property damage resulting from or in any way arising out of the Goods or their sale, use, or manufacture. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOSSES, OR EXPENSES WHATSOEVER ARISING OUT OF OR RELATING TO THIS TRANSACTION.

EXCEPT AS SPECIFICALLY PROVIDED HEREIN, BUYER ASSUMES ALL RISKS AND LIABILITIES ARISING FROM THE HANDLING, STORAGE, SALE, DELIVERY, INSTALLATION, REPAIR AND USE OF THE GOODS, AND BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AND ITS AFFILIATES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, DAMAGES AND EXPENSES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES, ARISING FROM OR RELATING THERETO, INCLUDING WITHOUT LIMITATION ALL CLAIMS WITH RESPECT TO PERSONAL INJURY, DISEASE OR DEATH, DAMAGE TO OR LOSS OF PROPERTY OR THE ENVIRONMENT OR VIOLATION OF APPLICABLE LAWS OR REGULATIONS.

8. Intellectual Property. Seller shall defend any third party suit or proceeding brought against Buyer to the extent based on a claim that any Goods, or any part thereof, furnished hereunder infringes any United States patent, so long as Seller is notified promptly in writing and given authority, information and assistance (at Seller's sole cost and expense) for the defense of same, and Seller shall pay all damages and costs awarded therein against Buyer. Seller will not indemnify Buyer if the claim of infringement is caused by Buyer's modification of the Goods or use of the Goods other than as reasonably contemplated by the parties; Buyer's failure to use modifications made available by Seller; Buyer's use of the Goods in combination with any goods or products not provided by Seller; or information, directions, designs, specifications or materials provided by Buyer. If the Goods, or any part thereof, are in such suit held to infringe a United States patent and the use of said Goods or part is enjoined, Seller shall, at its own expense and option, either procure for Buyer the right to continue using said Goods or part; replace same with a non-infringing product or part; modify the Goods or part so it becomes non-infringing; or remove said Goods or part and refund the purchase price and the transportation cost thereof. The foregoing states the entire liability of the Seller for intellectual property infringement by the Goods or any part thereof. Buyer shall defend, indemnify and hold Seller harmless from any expenses or loss resulting from alleged intellectual property infringement arising from compliance with Buyer's designs or specifications or other information, as well as from any directions or materials furnished by Buyer.

8. Returns. (a) Any Goods to be returned to Seller must have a Return Material Authorization (RMA) number issued by Seller before being returned. Any Goods returned without proper RMA number will not be accepted and will be returned to Buyer at Buyer's expense.

(b) Any Goods returned for Buyer's convenience must be returned as originally shipped. Damaged Goods cannot be returned. All transportation and other applicable charges for returns at Buyer's convenience returns shall be responsibility of Buyer. Returns for customer convenience are limited to Goods shipped within six months prior to the return request date and are subject to restocking charges.

(c) Non-standard and specialty manufactured Goods will not be considered for return. Goods which are deemed non-conforming by seller may be returned provided a RMA number is issued.

9. Cancellations. Order cancellations are subject to cancellation charges as calculated by the seller to cover all costs and expenses incurred prior to the cancellation of said order. Cancellation charges may include, but are not limited to, all costs and expenses incurred in producing the Goods (both completed and in process) and the cost of all items and special materials purchased for such order. Cancellation charges may be the total cost of manufacturing the Goods.

10. Force Majeure. Seller shall not be liable for any delay in or failure of performance hereunder due to any contingency beyond its reasonable control, including without limitation: an act of God; war; civil commotion; sabotage; labor dispute; explosion; fire; accident; power or equipment failure; inability to obtain suitable or sufficient labor, fuel, power, or material; delay of carrier; embargo; or any law, ordinance, rule, or regulation, whether valid or invalid.

11. Applicable Law. This agreement shall be construed and interpreted in accordance with the laws of the State of Massachusetts.