

TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS GOVERN THE SALE OF PRODUCTS BY SELLER (DEFINED BELOW) AND APPLY NOTWITHSTANDING ANY CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN ANY PURCHASE ORDER OR OTHER DOCUMENT, INSTRUMENT OR COMMUNICATION FROM BUYER. THESE TERMS AND CONDITIONS MAY ONLY BE WAIVED OR MODIFIED IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NEITHER SELLER'S ACKNOWLEDGMENT OF A PURCHASE ORDER NOR SELLER'S FAILURE TO OBJECT TO CONFLICTING, CONTRARY OR ADDITIONAL TERMS AND CONDITIONS IN A PURCHASE ORDER SHALL BE DEEMED AN ACCEPTANCE OF SUCH TERMS AND CONDITIONS OR A WAIVER OF THE PROVISIONS HEREOF.

1. **DEFINITIONS.** "Buyer" means the person or entity identified as such on the front side of the Seller's invoices, quotations, or order confirmations. "Products" means the items described on the front side of any invoice, quotation or order confirmation which Buyer has purchased or may purchase. "Purchase Order" means purchase order from Buyer on Seller's form and incorporating these Terms and Conditions by which Buyer indicates its intent to purchase Products. "Seller" means EMX Industries Inc., an Ohio corporation with its principal offices in Cleveland, Ohio.

2. **PROPRIETARY RIGHTS.** Notwithstanding anything contained in these Terms and Conditions or in any agreement between the parties to the contrary, Buyer acknowledges that Seller owns all patent, copyright, trademark, trade secret and other intellectual property or proprietary rights (collectively, the "Proprietary Rights") in and to the item or items of equipment being purchased by Buyer, including without limitation, all software applications embedded therein (the "Software") and all other components and elements thereof (collectively, the "Equipment"), and all manuals, drawings and technical information which describes the Equipment or demonstrates how to control, use or modify the Equipment (collectively, the "Documentation") and any and all know-how, methodologies and processes related to the Equipment, Documentation and Software, all of which shall remain the sole and exclusive property of Seller.

3. **RESERVATION OF RIGHTS.** Notwithstanding anything to the contrary contained in these Terms and Conditions or any purchase order or agreement between the parties, Seller reserves to itself all Proprietary Rights and other rights not expressly granted to Buyer hereunder and is not selling, assigning or otherwise transferring to Buyer, and Buyer is not purchasing or otherwise acquiring or obtaining, any of Seller's Proprietary Rights or other rights in or to the Equipment, Documentation or Software. In the event of any conflict or inconsistency between these Terms and Conditions and any purchase order or other agreement, document or instrument between the parties, these Terms and Conditions shall govern and control. Buyer may not remove any proprietary notice of Seller from the Equipment, Documentation or Software. All improvements, updates, derivative works, modifications, customizations or enhancements, whether made, created or developed by Seller or Buyer relating to or concerning the Software or Equipment and, whether or not conceived or made under a Change Order (as provided in Section 5 below) or otherwise (including, but not limited to, in the course of, or as a result of, Buyer's use of the Software or Equipment) (collectively, "Revisions"), are and shall remain the property of Seller, and Buyer acknowledges and expressly agrees that any contribution in the form of (i) Revisions, or (ii) services, suggestions, ideas, reports, identification of defects or deficiencies, expenditures, or other contributions by Buyer to any Revisions, shall not give or grant Buyer any right, title or interest in the Software, Equipment or in any such Revision. Buyer agrees to allow Seller to incorporate into any commercial product any Buyer-suggested Revisions of any kind, without compensation and without retention by Buyer of any proprietary claim. Buyer hereby assigns any and all right, title, and interests (including, but not limited to, any copyright, patent, trade secret, trademark, show-how, know-how, moral rights, and any and all other intellectual property rights) that Buyer may have in and to any and all Revisions to Seller. Upon request by Seller, Buyer will execute any document, registration or filing required to give effect to the foregoing assignment, and Buyer agrees that if Seller is unable to secure the signature of Buyer to give such effect, Buyer hereby irrevocably designates and appoints Seller as Buyer's agent and attorney in fact to execute any such documents, registrations and filings.

4. **RESTRICTED USE.** The item or items of Equipment being purchased by Buyer contains material that is protected by United States copyright law, patent law, trademark law and/or trade secret law, and by international treaty provisions. Accordingly, Buyer may not, directly or indirectly, publish, display, disclose, alter, modify, distribute or create derivative works based on the Equipment, Documentation, or Software. Further, Buyer may not reverse engineer, decompile, translate, adapt, or disassemble the Equipment or Software, nor shall Buyer attempt to create the source code for the object code of the Software, or transmit the Software over any network or between devices.

5. **MODIFICATIONS.** Any revisions or modifications to the Equipment, Documentation or Software shall be made only by Seller. If Buyer wishes to implement any revisions or modifications to the Equipment, Documentation or Software, Buyer shall submit to Seller a written change order setting forth (1) in reasonable detail, the revisions or modifications desired; and (2) a request for a price quote for such revisions or modifications (collectively, the "Change Order"). Seller shall promptly evaluate the Change Order and submit to Buyer for its written acceptance a proposal for undertaking the applicable tasks and a price quote reflecting all additional fees associated with the Buyer's Change Order which price quote shall remain valid for a period of thirty (30) days from the date delivered to Buyer during which period Buyer shall accept or reject Seller's proposal in writing. If Buyer accepts Seller's proposal to undertake the work necessitated by the Change Order, Seller shall proceed within a time period upon which the parties mutually agree to implement such revisions or modifications. Buyer shall indemnify, defend and hold Seller and its officers, directors, shareholders, employees, agents, representatives, successors and assigns harmless from and against any loss, damage, liability, cost or expense (including reasonable attorneys' fees) arising from or in connection with, or relating to the revision or modification of the Equipment, Documentation or Software in violation of these Terms and Conditions.

6. **CONFIDENTIALITY.** Buyer acknowledges that the Equipment, Documentation and Software embody proprietary trade secrets of Seller including, without limitation, technical and non-technical information regarding the Equipment, Documentation and Software and the development and manufacture of the same. Buyer hereby agrees to maintain the confidentiality of such trade secrets using at least as great a degree of care as Buyer uses to maintain the confidentiality of its own most confidential information. Buyer shall communicate these Terms and Conditions to those employees and agents of Buyer who come into contact with the Equipment, Documentation or Software, and shall use its best efforts to ensure their compliance with all restrictions contained in these Terms and Conditions applicable to Buyer.

7. **EXPORT RESTRICTIONS** THESE TERMS AND CONDITIONS ARE EXPRESSLY MADE SUBJECT TO ANY AND ALL LAWS, REGULATIONS, ORDERS, OR OTHER RESTRICTIONS WITH RESPECT TO THE EXPORT FROM THE UNITED STATES OF AMERICA OF THE EQUIPMENT, DOCUMENTATION OR SOFTWARE (INCLUDING, WITHOUT LIMITATION, LAW, REGULATIONS, ORDES OR OTHER RESTRICTIONS PERTAINING TO THE EXPORT OF ENCRYPTION). BUYER SHALL NOT EXPORT THE EQUIPMENT, DOCUMENTATION OR SOFTWARE WITHOUT FULL COMPLIANCE WITH SUCH LAWS, REGULATIONS, ORDERS OR OTHER RESTRICTIONS AND WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER.

8. **ORDERS.** Orders shall be initiated by Buyer issuing a Purchase Order or otherwise placing an order by electronic means acceptable to Seller. Purchase Orders shall identify the Products, specifications of the Products, quantity of the Products, method of packing and shipment and required delivery dates. All orders are subject to acceptance by Seller by either acknowledgment to Buyer or commencement of performance.

9. **PRICES.** Prices are exclusive of taxes, impositions and other charges, including: sales, use, excise, value added and similar taxes or charges imposed by any government authority, international shipping charges, forwarding agent's and broker's fees, consular fees, document fees and import duties. If Seller shall be liable for or shall pay any of the foregoing, the same shall be paid by Buyer to Seller in addition to the price of the Products. In the event the Buyer claims an exemption from any tax, a valid tax exception certificate must be furnished to the Seller.

10. **PAYMENT.** All payments under the terms herein, unless otherwise noted, are due and payable in United States funds at Seller's office in Cleveland, Ohio, net 30 days from date of invoice. In case payment is not made as agreed, Buyer agrees to pay; (a) Interest on past due amounts from the time they are due at the rate equal to the lesser of (i) 18% per annum, or (ii) the maximum rate permitted by law, (b) an administrative service and overhead charge (and not Interest) equal to ten (10%) percent of any past due amounts and (c) any and all costs and expenses of collection including reasonable attorneys' fees incurred by the Seller in its efforts to recover such amounts so due and owing. The Seller shall have no obligation to extend credit or grant deferred payment terms with respect to any order except as may be specifically in writing agreed by the Seller prior to acceptance of such order. If Seller believes in good faith that Buyer's ability to make payments may be impaired or if Buyer shall fail to pay any invoice when due, Seller may suspend delivery of any order or any remaining balance thereof until such payment is made or cancel any order or any remaining balance thereof, and Buyer shall remain liable to pay for any Products already shipped and all work in process on Products. Buyer agrees to submit such financial information from time to time as may be reasonably requested by Seller for the establishment and/or continuation of credit terms.

11. **DELIVERY AND TITLE.** All shipments by Seller are FCA point of origin and all transportation charges shall be paid by Buyer in addition to the price of

the Products unless otherwise agreed in writing by Seller. Subject to Seller's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. Selection of the carrier and delivery route shall be made by Seller unless specified by Buyer. Seller shall use reasonable efforts to initiate shipment and schedule delivery as close as possible to Buyer's required delivery dates. Buyer acknowledges that delivery dates provided by Seller are estimates only and that Seller is not liable for failure to deliver on such dates. Seller reserves the right to make deliveries in installments. Delivery of a quantity which varies from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.

12. ACCEPTANCE OF PRODUCTS AND PRODUCT RETURNS. Inspection and acceptance of the Products shall be Buyer's responsibility. Buyer is deemed to have accepted the Products unless written notice of rejection is received by Seller within ten (10) days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity or damage within ten (10) days after delivery thereof.

13. CHANGES. Buyer may request order changes with respect to quantity or packaging of the Products prior to actual shipment of the Products by Seller. If such changes result in increased cost or time to complete the manufacture of the Products or if there is a decrease in the quantity requested which invalidates any discounts offered by Seller, then the price and timing of the original order shall be adjusted accordingly and the Buyer agrees to pay any such increased cost. Unless otherwise agreed, prices for the Products are based on standard specifications of Seller. Once orders have been accepted by Seller, no changes with respect to specifications will be made or allowed unless they are requested by the Buyer and accepted by Seller in writing and the new price and delivery time resulting therefrom are agreed upon in writing. Additional costs for the changes, including costs for additional engineering, will be reflected in the new price.

14. CANCELLATION. Buyer may make requests for cancellation or suspension of orders after they have been accepted by providing such request to Seller; provided, however, that no orders will be accepted by Seller with the understanding they may be later canceled and Seller reserves the right to refuse such requests for cancellation or suspension of orders. If and when cancellations are approved by Seller, Buyer agrees it will immediately and fully reimburse Seller for cancellation charges which are determined in the sole discretion of Seller.

15. LIMITED WARRANTY. Seller warrants to Buyer that upon delivery to Buyer the Products shall conform to the specifications, description or samples, provided by Seller to Buyer. **EXCEPT FOR THE FOREGOING WARRANTY, SELLER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF (A) MERCHANTABILITY, (B) FITNESS OF PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER OR THE END-USER, SELLER FURTHER DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (C) ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, (D) CONDITION, DESIGN, QUALITY, DURABILITY OR SUITABILITY OF ANY GOODS SUBMITTED TO SELLER FOR BUYER'S PURPOSES AND (E) NONINFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.** Buyer's sole and exclusive remedy for nonconforming Products shall be, at Seller's option, the replacement or repair of the Products or refund of purchase price (without interest). No repair or replacement shall extend any warranty period.

16. LIMITATION OF LIABILITY. BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED BUYER'S PURCHASE PRICE FOR THE PRODUCT GIVING RISE TO SUCH CLAIM, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE. SELLER SHALL NOT BE LIABLE FOR AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON SELLER'S COMPLIANCE WITH BUYER'S DESIGNS, SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY PRODUCTS BY PARTIES OTHER THAN SELLER, OR USE IN COMBINATION WITH OTHER PRODUCTS.

17. DISCLAIMER OF DAMAGES. BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL AND/OR REINSTALLATION COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, LOSS OF DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION OR LOSS OF CUSTOMERS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18. INDEMNITY. Buyer agrees to release, hold harmless, indemnify and defend the Seller, its officers, employees, agents or representatives from and against any and all claims, demands, liabilities, losses, suits, expenses and costs, of any kind or nature (including attorneys' fees) arising from the acts or omissions of Buyer, its employees, appointees, legal representative, and agents, whether based upon breach of contract, negligence, strict liability, or otherwise

19. FORCE MAJEURE. No party shall be responsible for any failure to comply with the terms of this Agreement, or for any delay in performance of, or failure to perform under this Agreement where such failure or delay is due to causes beyond the control of the party sought to be charged. The parties' obligations shall be suspended during any such period to the extent of any such inability to perform but the term of the Agreement shall not be extended. Events beyond the control of a party shall include, but not be restricted to, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, terrorism, war (declared or undeclared), rebellion, insurrection, sabotage, epidemic, quarantine restrictions, lock-outs, labor disputes, labor shortages, transportation embargoes or failures or delays in transportation, inability to secure at a reasonable price or in a commercially reasonable manner necessary raw materials or machinery, acts of God, acts (including laws, regulations, disapprovals or failure to approve) of any government.

20. DEFAULT. Each of the following shall constitute an event of default (hereinafter "Event of Default") hereunder, (a) Buyer shall fail to remit any payment due to the Seller when due, (b) Buyer shall become insolvent, make, an assignment for the benefit of creditors or any petition in bankruptcy or any action under any reorganization, insolvency or moratorium law, or any other law or laws relating to or for the relief of debtors shall be commenced or filed against or for Buyer or, (c) any receiver, trustee, custodian or similar official shall be appointed to take possession of the properties of Buyer. If any Event of Default shall occur, the Seller, at its option, may (a) proceed by appropriate court action or actions either at law or in equity to enforce performance or to recover damages for the breach by Buyer, or (b) immediately, by notice in writing to Buyer terminate all pending orders, whereupon all rights of Buyer shall terminate, but Buyer shall remain liable to the Seller for all obligations set forth herein, including payment and cancellation costs. The remedies herein provided shall be cumulative not exclusive, and shall be in addition to all other remedies in its favor existing at law or in equity.

21. MISCELLANEOUS. No rights, duties, agreements or obligations hereunder may be assigned or transferred by Buyer without the prior written consent of the Seller. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their respective successors and assigns. The waiver of any provision hereof or of any breach or default hereunder shall not be deemed a waiver of any other provision hereof or breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction. These Terms and Conditions and the Purchase Order to which they are affixed contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings (oral or written) with respect to such subject matter. These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Ohio excluding any law or principle which would apply the law of any other jurisdiction. Jurisdiction and venue with respect to any claim or dispute arising under these Terms and Conditions shall be in the federal and state courts located in Cuyahoga County, Ohio. The parties consent to such jurisdiction and venue and to service of process.