

TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale ("**Terms and Conditions**") shall apply to the sale by Former Associates LLC ("**Seller**") of products, equipment and parts ("**Products**") to the customer placing the purchase order with Seller ("**Purchaser**").

1. **Contract.** Each sale of Products and the acceptance of any purchase order submitted by Purchaser is expressly made conditional on Purchaser's assent to these Terms and Conditions, and Seller agrees to furnish the Products only upon these Terms and Conditions. Any additional, different, or conflicting terms and conditions set forth in any documents issued by Purchaser at any time, including without limitation any purchase orders and any specifications, are hereby objected to by Seller, shall be wholly inapplicable to any sale of Products and shall not be binding in any way on Seller. No waiver or amendment to these Terms and Conditions shall be binding on Seller unless made in a writing expressly stating that it is such a waiver or amendment and signed by Seller. A contract for the supply of Products by Seller to Purchaser is formed when Seller accepts Purchaser's order. Seller reserves the right to reject or otherwise not accept any order for any reason or no reason at all. These Terms and Conditions, together with the terms and conditions of any other quotation, confirmation, acknowledgement and/or invoice prepared by Seller, constitute the agreement between the parties (the "Contract").
2. **Prices.** All prices are subject to change without notice.
3. **Taxes.** The purchase price for the Products does not include sales, use, excise or similar taxes. Consequently, in addition to the purchase price for the Products, the amount of any present or future tariffs, duties and sales, use, excise or other tax applicable to the sale or use of the Products sold hereunder shall be paid by Purchaser, or in lieu thereof, Purchaser shall provide Seller with a tax-exemption certificate acceptable to Seller and all applicable taxing authorities. Purchaser shall indemnify, defend and hold Seller harmless from all such tariffs, duties and taxes and any related interest, penalties or other damages (including but not limited to attorneys' fees) resulting from nonpayment of any such tariffs, duties and/or taxes.
4. **Delivery.** Any delivery dates or other schedule of performance by Seller are approximations, and the sole obligation of Seller with respect to the schedule of delivery or performance will be to use commercially reasonable efforts to deliver the Products, or otherwise to perform consistent with the reasonable demands of its business. In any event, Seller will have no liability to Purchaser or any other person for delays in performance due to strikes or labor disputes of any type; accidents, fire, floods, acts of God, or actions by governmental authorities; acts, omissions, or delays of Purchaser, any governmental agency, or any other third party; nonpayment of tariffs, duties or taxes; shortages of labor; or without limitation of the above, for any causes reasonably beyond the control of Seller.
5. **Title and Risk of Loss.** Title to and risk of loss or damage to the Products will pass to Purchaser upon tender of delivery F.O.B. manufacturing facility unless otherwise agreed in a writing signed by Seller, except that a security interest in the Products shall remain in Seller until full payment has been made therefor.
6. **Rejection and Revocation.** Products shall be deemed to be accepted and Purchaser's right to reject or cancel such Products because of defect shall expire on the fifteenth (15th) day following the date of receipt by Purchaser of the Products. If Purchaser retains the Products in its possession after said date without rejecting them, this shall constitute irrevocable acceptance of the Products by Purchaser. Any delivery date expressed by Seller is an estimate only, and any delivery of Products after the expressed delivery date does not entitle Purchaser to reject Products.
7. **NON-SOLICITATION. PURCHASER AGREES THAT PURCHASER SHALL NOT, DIRECTLY OR INDIRECTLY, EMPLOY OR SOLICIT FOR EMPLOYMENT ANY PERSON CURRENTLY OR HEREAFTER EMPLOYED BY SELLER WHO, WHILE PHYSICALLY AT ANY LOCATION OWNED, OCCUPIED OR CONTROLLED BY PURCHASER, PROVIDES SERVICES TO PURCHASER, INCLUDING, BUT NOT LIMITED TO, INSTALLATION, EVALUATION, ENGINEERING, TRAINING, REPAIRS, SERVICING, DEMONSTRATIONS, OR INFORMATION GATHERING. THIS PARAGRAPH SHALL BE EFFECTIVE FOR A PERIOD OF ONE (1) YEAR AFTER THE LATEST DATE THE EMPLOYEE OF SELLER PROVIDES SUCH SERVICES TO PURCHASER. PURCHASER AGREES AND ACKNOWLEDGES THAT IN THE EVENT OF A BREACH OF THIS PARAGRAPH, SELLER WILL SUFFER A SUBSTANTIAL INJURY THAT IS DIFFICULT OR IMPOSSIBLE TO ACCURATELY ESTIMATE. ACCORDINGLY, IN AN EFFORT TO LIQUIDATE IN ADVANCE THE SUM THAT SHOULD REPRESENT THE DAMAGES WHICH WOULD ACTUALLY BE SUSTAINED BY SELLER, THE AMOUNT CALCULATED IN THE MANNER SPECIFIED BELOW IS A REASONABLE ESTIMATE OF SELLER'S PROBABLE LOSS FOR WHICH PURCHASER**

SHALL PAY TO SELLER AS LIQUIDATED DAMAGES: IN THE EVENT THAT SUCH AN EMPLOYEE OF SELLER TERMINATES HIS OR HER EMPLOYMENT WITH SELLER AND WITHIN ONE YEAR THEREAFTER ACCEPTS EMPLOYMENT WITH PURCHASER (WHETHER AS AN EMPLOYEE, INDEPENDENT CONTRACTOR OR OTHERWISE), PURCHASER AGREES THAT PURCHASER WILL WITHIN 90 DAYS OF THE DATE THE EMPLOYEE COMMENCES WORK FOR PURCHASER PAY SELLER AN AMOUNT EQUAL TO TWO HUNDRED PERCENT (200%) OF THE ANNUAL WAGE OR SALARY, AS APPLICABLE, THAT THE EMPLOYEE WAS EARNING AT THE TIME THE EMPLOYEE'S RELATIONSHIP WITH SELLER WAS TERMINATED.

8. **Property Rights.** Seller retains and is the exclusive owner of any and all property rights, including but not limited to all intellectual property rights in all jurisdictions, in and to all designs, engineering details and other data pertaining to any Products manufactured by Seller. Purchaser will not, and will not permit others to, copy, duplicate, remanufacture or reverse engineer all or any part of the Products or remove from any Product any logo, trademark, trade name or other information identifying the Product as a Product manufactured or sold by Seller.
9. **Warranty.** Except as otherwise agreed to by Seller in writing, warranties for the Products are set forth at formerequipment.com, as amended and in effect at the time of sale. Warranties cannot be registered and are not valid until Purchaser attends training classes at Former Equipment.

EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, SELLER DISCLAIMS AND EXCLUDES ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE.

This section sets forth Purchaser's sole and exclusive remedies for any nonconformity in the Products. The warranty provided to Purchaser herein is non-transferable. Neither Purchaser nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the Products. Any statements to the contrary are hereby rendered null and void unless made in a writing signed by an authorized officer of Seller.

10. **Limitation of Liability.** **IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, INTEREST, LOST GOODWILL, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, LOSS BY REASON OF SHUTDOWN OR NON-OPERATION, OR INCREASED EXPENSES OF OPERATION, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY OR NEGLIGENCE), PATENT OR TRADEMARK INFRINGEMENT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.** Seller will have no liability for any claims arising from use of any Product that is not in accordance with Seller's instructions and specifications. Similarly, Seller will have no liability for any claims arising from Products that have been modified in any way from the condition in which it was shipped by Seller, improperly installed, abused, or misused by any person other than Seller.
11. **Remedies of Seller.** In the event of Purchaser's default as to any terms or provisions of these Terms and Conditions, or in the performance of any contract or purchase order with Seller, Seller shall have available all rights and remedies set forth in these Terms and Conditions and/or available at law or in equity. Purchaser agrees to pay Seller all costs and expenses, including attorneys' fees, incurred by Seller in exercising any of its rights and remedies. No failure on the part of Seller to exercise and no delay in exercising any right or remedy shall operate as a waiver thereof. No waiver by Seller of any default shall constitute a waiver by Seller of any additional or subsequent default.
12. **Safety Precautions.** Purchaser shall not, and shall not allow any other person to, remove, modify or allow anything to cover or remove from view any safety device, guard or warning sign relating to a Product. Purchaser shall comply with the provisions of applicable standards and regulations of the Federal Occupational Safety and Health Act and other safety materials provided in relation to the Products.
13. **Indemnity.** Purchaser shall indemnify, defend and hold harmless Seller and its shareholders, employees, agents, officers, directors, affiliates, volunteers, independent contractors, insurers and all other persons or entities acting in any capacity on Seller's behalf, together with their respective successors and assigns, against all claims, costs, expenses, damages and liabilities, including but not limited to attorneys' fees, of whatever nature (including but not limited to personal injuries) and wheresoever and by whomsoever brought, arising out of or related to (a) the manufacture, selection, use, operation, possession, maintenance, repair and/or delivery of the Products, or (b) Purchaser's breach of any of Purchaser's obligations under the Contract. The

parties agree that the language used herein shall be accorded the broadest possible interpretation in favor of indemnity.

14. **Terms of Sale.** Unless otherwise specified in writing by Seller, all purchases are cash on delivery. Purchaser will pay to Seller a time price differential of 1-1/2% per month on any past due amount from the date due to the date of payment. In the event that Purchaser fails to pay Seller all sums when due, Purchaser shall pay Seller all of Seller's actual attorneys' fees and costs in connection with any efforts to collect delinquent amounts owed.
15. **Security Interest in Products.** Seller retains and Purchaser consents to (and to the extent necessary, grants) a purchase money security interest in the Products and the proceeds therefrom to secure all obligations owed by Purchaser to Seller. Purchaser agrees that this agreement constitutes a security agreement, and Purchaser authorizes Seller to file Uniform Commercial Code financing statements and to take such other actions as Seller determines to be appropriate to perfect its security interest, including but not limited to notifying Purchaser's other secured creditors. Failure to make any payment as provided herein or any other amounts due Seller from Purchaser, or any other credit concerns of Seller, shall entitle Seller to cease and stop shipments without notice to Purchaser, and Purchaser consents that Seller, its successors and assigns, shall be and are hereby authorized to retake possession and custody of any Products already shipped and/or received by Purchaser and upon written notice to Purchaser, cancel the balance and/or unexecuted portion of any order and hold Purchaser liable for any and all damages incurred as a result of or in any manner growing out of the default or failure to so pay on the part of Purchaser.
16. **Time for Bringing Action.** Any action that Purchaser brings against Seller for breach of the Contract or for any other claim that arises out of or relates to the Products or their design, manufacture, sale or delivery must be brought within one (1) year after the cause of action accrues or such shorter time as provided in the Contract.
17. **Governing Law.** The Contract shall be governed by, construed and enforced in accordance with the internal laws of the State of Michigan without reference to its conflict of law's provisions. Purchaser hereby submits to the exclusive jurisdiction of courts in Kent County, Michigan, with respect to any claim or controversy arising out of or relating to the Contract, or the breach or non-performance of any provision thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.
18. **Entire Agreement.** If Purchaser has not otherwise agreed to these Terms and Conditions, then Purchaser's acceptance of, delivery of, or payment for, the Products shall constitute Purchaser's agreement to these Terms and Conditions. The Contract will not be amended or supplemented by additional or inconsistent terms contained in a purchase order or another standard form. The Contract contains the entire agreement between Purchaser and Seller with regard to the subject matter thereof. Any change in the Contract must be by a writing signed by an authorized officer of Seller.
19. **Severability.** In the event any provision of these Terms and Conditions is held or determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect.