

### **1. General Conditions**

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Products and services furnished by PaR are sold on the terms and conditions stated herein. Notwithstanding any terms or conditions on Customer's order or other form, PaR's quotes and performance of any contract are expressly made conditional on Customer's agreement to PaR's following terms and conditions, unless otherwise specifically agreed to in writing by PaR. In the absence of such specific agreement, commencement of performance and/or delivery by PaR shall be for Customer's convenience only and shall not be deemed or construed to be a waiver of any of the terms and conditions set forth herein or as acceptance of any of Customer's terms and conditions. If a contract is not earlier formed by mutual agreement in writing, acceptance of any Product or service by Customer shall be deemed acceptance of the terms and conditions stated herein.

### **2. Prices/Payment Terms**

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Unless otherwise agreed in writing, prices set forth in the contract are F.O.B. PaR's place of manufacture and are exclusive of all expenses of shipment and delivery, including but not limited to, freight charges, export fees, packing, insurance, taxes, duties, tariffs and other special items ("Shipment Expenses"). All prices and other charges are quoted and shall be paid in United States currency free of all expense to PaR for collection charges.

Payment terms are set forth in the Contract and are subject to PaR's approval of Customer's credit.

No payment by Customer, or acceptance by PaR, at any time of a lesser amount than shall be due from Customer to PaR, or pursuant to a qualified endorsement, shall be treated other than as payment on account.

Customer shall pay interest to PaR on any delinquent payment from the due date thereof until paid, at the rate of one and one-half per cent (1-1/2%) per month or such lesser amount as may be established by applicable law.

Customer shall pay any future or present sales, use, privilege, occupation, excise or other tax, custom duties, fee or charge of any kind whatsoever, including but not limited to those imposed upon or with respect to the production, sale, purchase, delivery, storage, manufacture, processing, use or consumption or any of the Products or services to be performed, imposed by any governmental authority on the transaction set forth in the Contract.

### **3. Shipping**

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Unless otherwise provided in the Contract, Customer shall be responsible for and pay all Shipment Expenses. If PaR shipments are made from a U.S. origin to a Customer U.S. destination, the shipment terms will be F.O.B. PaR's facility, City and State. If shipments are made from a PaR U.S. origin to an overseas Customer destination, the shipment terms will be FCA (INCOTERMS 2000) PaR facility, City, State and Country. Subject to the security interest of PaR, if any, under Paragraph 10 below, the risk of loss of the Products shall pass to the Customer at the F.O.B. or FCA point. Delivery to Customer shall be deemed complete at such F.O.B. or FCA point.

Unless otherwise agreed in writing, the Products will be packed, crated and/or labeled in accordance with PaR's customary methods and procedures.

The shipping schedule for the Products shall be computed from the date PaR receives Customer's acceptance together with, if applicable, complete information, samples, or other items needed to proceed with the design, manufacture and test of Products ordered. All delivery dates specified by PaR are approximate and not guaranteed. PaR and Customer may mutually agree in writing to changes in the shipping schedule.

If the Contract provides for installation of the Products, Customer agrees to unload all products and place them adjacent to the place of installation, assist as required in the installation, to prepare necessary foundations and supports, to cut and patch walls, floors and ceilings where needed and to have required electrical service available and located where necessary, all of the foregoing at Customer's sole risk and expense.

In the event that PaR incurs any additional costs due to the inability of Customer to accept delivery of the Products or to permit normal and unrestricted installation of the Products, when such installation is required under the Contract, such additional costs shall be reimbursed immediately to PaR by Customer.

### **4. Excusable Delays**

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PaR shall not be liable for any delay, failure, loss or damage resulting from any delay in, failure or inability to complete any manufacturing, shipment, delivery or installation of the Products, performance of the services referred to herein or PaR's obligations, which directly or indirectly arise out of or result from any cause not reasonably within the control of PaR, including but not limited to; (i) an act of God; (ii) the inability to obtain

necessary labor, materials, equipment, utilities, services or facilities; (iii) any negligence, act, failure to act, or delay in acting caused by or on the part of Customer or any governmental authority; (iv) governmental priorities or embargo; (v) strikes or other labor difficulties arising from any cause whatsoever, whether or not the employees' demands are reasonable or within PaR's power to concede; (vi) accidents or destruction such as fire, explosion, flood, epidemics, war or civil disturbance; (vii) breakdown or unavailability of essential machinery or equipment for any reason; (viii) delays or shortages in transportation; (ix) failure of, or refusal by, Customer to cooperate with PaR in the performance of PaR's obligations; or, without limiting any of the foregoing, other circumstances of like or different character beyond the reasonable control of PaR (all of the foregoing collectively referred to as "Excusable Delay"). In the event of any Excusable Delay time for PaR, performance shall be extended by a period equal to the time lost by reason of such Excusable Delay or such other period as is reasonable under all the circumstances.

## **5. Warranty**

PaR warrants for one (1) year after commencement of the warranty period that all parts, manufactured by PaR are free from defects in material and workmanship.

The warranty period shall begin upon the first of the following events to occur (i) the completion of Installation; (ii) Customer Acceptance; or (iii) ninety (90) days after delivery, whichever comes first; provided, however, in the event Customer never takes actual delivery of such part(s), the warranty period shall begin ninety (90) days after successful factory acceptance testing.

The warranty will be fulfilled by repair, or at the option of PaR, replacement of the defective part and covers the cost of the parts only. The cost of labor will be covered only if the part is returned to PaR for repair.

For components which are purchased by PaR, the original manufacturers warranty will be passed on to the Purchaser.

The warranty is subject to fulfillment by Purchaser of all of the following conditions, which Purchaser agrees to observe in all respects:

- a) Give PaR written notice of any claimed defect immediately upon discovery
- b) Provide easy access for PaR to (i) inspect the claimed defective part in the configuration that the defect was discovered; and (ii) repair or replace the part.
- c) Purchaser must install, operate, use and maintain the "covered equipment" (which includes the entire system and associated sub-components and discrete parts) in accordance with all provided and available instructions, guidelines and rules for the

installation, operation, use and maintenance of the covered equipment.

This warranty applies only to the original Purchaser. Parts shall not be returned without PaR's prior approval. All parts replaced shall be the property of PaR.

With respect to warranty services, PaR's sole liability for any defect therein shall be to perform again, at PaR's expense such services. No warranty is made with respect to:

- a) Parts normally designated as consumables or those subject to normal wear and tear
- b) Failures or damage due to accident, abuse, improper operation, or abnormal environmental conditions
- c) Systems not installed by PaR or systems installed without PaR supervision, unless Customer has PaR's prior written consent

NO OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO ANY EQUIPMENT, PARTS OR SERVICE OR SOFTWARE SOLD OR DELIVERED HEREUNDER, AND THE FOREGOING SHALL CONSTITUTE THE CUSTOMER'S SOLE RIGHT AND REMEDY UNDER THESE STANDARD SALES TERMS AND CONDITIONS.

## **6. Limitation Of Remedy / Liability**

THE FOREGOING ARE PaR's SOLE AND EXCLUSIVE OBLIGATIONS AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES ON ACCOUNT OF THE EQUIPMENT, PARTS OR SERVICE THAT DO NOT CONFORM TO THE WARRANTIES ABOVE. LIABILITY FOR THE WARRANTIES MADE HEREIN SHALL NOT EXCEED THE COST OF CORRECTING DEFECTS IN THE PARTS OR RE-PERFORMING THE SERVICES. NOTWITHSTANDING ANY PROVISION OF THE CONTRACT TO THE CONTRARY, IN NO EVENT SHALL PaR BE LIABLE UNDER WARRANTY OR ANY OTHER PART OF THIS AGREEMENT FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, EVEN IF PaR WAS ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF ANY SUCH DAMAGES. NOTWITHSTANDING ANY PROVISION OF THE CONTRACT TO THE CONTRARY, PaR's TOTAL LIABILITY SHALL NOT EXCEED THE LESSER OF 1) THE PRICE PAID BY THE CUSTOMER FOR THE PRODUCTS OR SERVICES SOLD UNDER THE CONTRACT OR 2) ONE MILLION US DOLLARS (\$1,000,000).

## **7. Cancellation**

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No contract, or any part thereof, shall be cancelled by Customer without prior written notice by Customer to PaR.

Customer shall make payment in full for and accept shipment of Products scheduled for shipment within thirty (30) days of receipt by PaR of such cancellation notice.

For Products scheduled for shipment in excess of thirty (30) days from the date of receipt by PaR of such cancellation notice, Customer shall pay PaR within thirty (30) days of such cancellation, charges computed according to the schedule of such charges expressly provided in the Contract, if such schedule is provided, or if no such schedule is provided in the Contract, all costs and expenses incurred prior to receipt or such notice of cancellation, including such costs and expenses incurred for all labor, supplies and material, engineering work, services, pertinent overhead expenses and all commitments made to PaR's suppliers, subcontractors and others, plus a cancellation charge equal to twenty percent (20%) of the total of all such costs and expenses; provided that in the event that the total of such costs and expenses plus the cancellation charge exceed the price set forth in the Contract, Customer shall be liable for the price set forth in the Contract.

## **8. Changes In Details Of Design**

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The specifications incorporated into the Contract are a standard form covering PaR's Products of substantially identical type and character and there may be immaterial variations therefrom in the details of design and construction of any particular Products. PaR reserves the right to make such changes in details of design, construction, arrangement or accessories of the Products to be furnished, which shall, in its judgment, constitute an improvement over such former practice as may be shown or described in the specifications. Descriptive matter drawings, if any, furnished by PaR are not binding as to detail unless certified correct by PaR in writing.

## **9. Patent Indemnity**

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PaR shall defend or settle any suit or proceeding brought against Customer to the extent that it is based on a claim that any Products furnished hereunder made to PaR design infringe any existing United States patent, provided that PaR is notified in writing by Customer within ten (10) days of Customer's knowledge of such claim or service of process in such infringement action, whichever is earlier, and PaR is given complete authority, information, and assistance for defense of same. PaR shall pay all damages awarded therein against Customer on account of any infringement or any such patents, but PaR shall not be responsible for any cost, expense or compromise incurred by Customer without PaR's prior written consent.

If any product is, in PaR's opinion, likely to or does become the subject of a claim for patent infringement, or in case any such Product in such suit is held to constitute infringement and the use of such Product is enjoined, PaR may at its expense and option either (i) procure for Customer rights to continue using the infringing Product; (ii) replace the infringing Product with a non-infringing product; (iii) modify the infringing Product so that it becomes non-infringing; or (iv) accept return of the Product and refund to Customer the amount paid for the Product, less depreciation or a reasonable rental for past use. The foregoing state PaR's entire liability for patent infringement by Products.

The two preceding paragraphs of this Paragraph 9 shall not apply to, and PaR shall have no responsibility respecting infringement (i) by use of Products furnished hereunder in a manner or for a purpose other than that specified in the Contract or in PaR published literature or other materials furnished by PaR to Customer; (ii) by alteration or additions to the Products by Customer; (iii) by use of Products furnished hereunder in combination with other Products in a system not designed by PaR; (iv) by use of Products furnished hereunder for practice of a method not designed by PaR; or (v) by any equipment manufactured by PaR in accordance with the design or specification specified by Customer.

No license is granted or patent indemnity made and neither of the foregoing are to be implied with respect to the patent rights third parties which pertain to methods or processes which may be performed by the Products furnished hereunder or to articles which may be manufactured by the use of such Products.

## **10. Title Retention And Insurance**

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Notwithstanding that the Products referred to herein may be shipped F.O.B. or FCA (if international shipment), PaR place of manufacture and that risk of loss will pass to Customer at such time as PaR makes the Products available to the carrier, it is the intention of PaR and Customer that the Products described in the Contract and any Products added by amendments hereto are and shall remain personal property after installation whatever may be the mode of attachment, if any, of such Products to realty or other property, and title to right to possession of said Products shall remain with PaR until, and Customer shall have the right to title when, the entire purchase price, whether represented by notes, open account or otherwise, is paid in cash. If contrary to such intention, title to the Products at any time prior to payment in full of the purchase price is construed or held to have passed to Customer, it is the intention of PaR and Customer that PaR shall have, and Customer hereby grants to PaR in such event, a security interest in said Products and all proceeds thereof. Customer shall cooperate with PaR in complying with all applicable laws and regulations and perform all acts deemed necessary or advisable by PaR to perfect and ensure PaR's security interest in said Products. If requested by PaR, either prior to shipment

or at any time when any part of the purchase price remains unpaid, Customer shall give to PaR in PaR's usual form, a financing statement or such other document as may be required to perfect such security interest, and without limiting the generality of the foregoing, the Contract or copies thereof, may be filed or otherwise used so to perfect such security interest.

In case of any default of the Customer (as set forth in Paragraph 11 below) it is expressly understood that PaR shall have the remedies of a secured party under the Uniform Commercial Code including but not limited to, the right to take exclusive possession of the Products wherever found and remove same without legal process, and that any payment which may have been made on account of same shall be retained by PaR as liquidated damages, without prejudice to its right of recovery of further or other damage it may suffer from any cause. As long as PaR has a security interest in the Products and until the Products are fully paid for, Customer shall:

- 1) Maintain the Products in good operating condition and keep the Products free from liens and encumbrances, permit inspection by PaR at all times, not use or permit use of Products in any manner injurious to them, not remove or permit removal of the Products from their original installation location, not make or permit any alteration to the Products without the prior written consent of PaR; and
- 2) Obtain and maintain at Customer's sole cost and expense, fire, hazard, extended coverage, vandalism and malicious mischief insurance covering the Products in an amount sufficient to protect PaR interest in the Products and such policies of insurance are to be made payable to PaR as its interest may appear at the time of loss, and the Customer shall assume all resulting loss that PaR may not recover through such insurance.

## **11. Customer's Default**

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If Customer fails to make any payment when due of any amount due hereunder before the purchase price for the Products or services to be provided hereunder shall have been paid in full, or breaches any covenant or obligation under the Contract, or fails to provide credit assurances when required by PaR, or files or has filed against it any petition or other proceeding for Customer's receivership, bankruptcy or insolvency, or injuries or removes the Products, or sells, pledges, or in any way transfers the Products or Customer's interests in them, or suffers or permits any lien to be placed on the Products, or suffers or permits such Products to be seized on any writ or process of law:

The entire unpaid balance of the purchase price shall, at PaR's option, become immediately due and payable without notice; and

To the extent permitted by applicable law, without demand, PaR may (i) enter the premises where the Products are located, take possession and remove the Products with or without legal process and retain all payments previously made as compensation for use or reduction in value thereof; or (ii) resell the Products at public or private sale; and in the case of a public sale, PaR or any other person may purchase same. From the proceeds of such sale PaR may pay or reimburse itself for all repossession, repair, storage and selling expenses and attorneys' fees and apply the remaining amount to any balance Customer owes PaR. To effectuate the provisions of this subparagraph and Paragraph 10 above, Customer shall assemble the Products and make them available to PaR at a place which is reasonably convenient to both parties and permit and assist PaR in effecting the retaking and removal of the Products; and

PaR may recover any resulting deficiency from Customer as liquidated damages or otherwise, provided, however, that no remedy given herein shall be applicable where not permitted by law; and

PaR may defer shipment hereunder, and under any other contract with Customer, until such default, breach or repudiation is removed; and

PaR may cancel any undelivered portion of the Contract or any other contract with Customer, in whole or in part, in which event Customer shall pay PaR cancellation charges in accordance with Paragraph 7 hereof; and

PaR may take possession of any Products Customer has failed or refused to receive, with the right to hold or sell the same, as above specified; and

PaR may at its option effect a stoppage of Products in transit at the time of such default or occurrence or at the time PaR learns of such default or occurrence.

PaR may cancel or suspend service under any other contract or agreement between PaR and Customer, without liability to Customer or any other entity.

## **12. Confidential Information**

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All specifications, drawings, designs, data, information, ideas, methods, patents, technical matter, samples and/or inventions made, conceived, developed or acquired by PaR, incident to procuring or carrying out the or any Contract (collectively "Confidential Information") is and shall be the property of PaR and will be disclosed to Customer only to assist Customer, and such disclosure will be made only on a confidential basis and in no way shall impair the confidential nature thereof. Without the prior written consent of PaR, Customer shall not at any time disclose, or cause or permit any employee, agent or affiliated, controlled or controlling entity of Customer to disclose to any person, firm, corporation, or other entity, or use for its own or their benefit, or reproduce, the Confidential Information, or any information concerning the business affairs of PaR which PaR may from time to time specify as being confidential. Confidential

information shall not include any information which is (a) otherwise in the public domain or (b) disclosed without violation of the terms of these Standard Terms and Conditions of Sale, the Contract or any other agreement between Customer and PaR relating to the Products. Upon cancellation or termination of the Contract the Customer shall promptly return to PaR all confidential information and service data instructions or any other information or materials furnished by PaR including all copies of any such confidential information.

### **13. Waiver**

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No waiver by a party shall be effective unless in writing and signed by a duly authorized representative of that party. No waiver shall be inferred from a party's conduct.

### **14. Severability**

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In the event any provision contained herein is invalid as applied to any fact or circumstances, its invalidity shall not affect the validity of any other provisions or of the same provision as applied to any other fact or circumstances.

### **15. Dispute Resolution**

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Except for claims for equitable relief, prior to engaging in any formal dispute resolution with respect to any dispute, controversy or claim arising out of or in relation to the Contract and/or these Terms and Conditions or the breach, termination or invalidity of the Contract and/or these Terms and Conditions, an executive officer of each party shall attempt to resolve such dispute for a period of not less than thirty (30) days. Failing an amicable settlement pursuant to such negotiation process, any dispute will finally be settled by binding arbitration before Judicial Arbitration and Mediation Services, Inc. ("JAMS"). JAMS shall administer the arbitration proceedings utilizing its comprehensive rules. The arbitration will be held in Minneapolis, Minnesota. Each party will have discovery rights as provided by the United States Federal Rules of Civil Procedure within the limits imposed by JAMS; provided, however, that all such discovery will be commenced and concluded within sixty (60) days of the submission to JAMS. It is the intent of the parties that any arbitration will be concluded as quickly as reasonably practicable. Once commenced, the hearing on the disputed matters will be held four (4) days a week until concluded, with each hearing date to begin at 9:00 a.m. and to conclude at 5:00 p.m. JAMS will use all reasonable efforts to issue the final written report containing award or awards within a period of five (5) business days after closure of the proceedings. Failure of JAMS to meet the time limits of this Paragraph 15 will not be a basis for challenging the award. JAMS will not have the authority to award punitive damages to either party. Each party will bear its own expenses, but the parties will share equally the expenses of JAMS. JAMS shall award attorneys' fees

and other related costs payable by the losing party to the successful party as it deems equitable. The Contract and/or these Terms and Conditions will be enforceable, and any arbitration award will be final and non-appealable, and judgment thereon may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, claims for injunctive relief may be brought in a state or federal court in Minneapolis, Minnesota.

### **16. Captions**

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The captions herein are for convenience and reference only and shall not affect the meaning.

### **17. Governing Law; Venue; Jurisdiction**

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The Contract and these Terms and Conditions shall be governed and interpreted in accordance with the laws of the State of Delaware, without regard to its conflicts of law principles. Specifically excluded are the provisions of the UN Convention on the International Sale of Goods (1980) and the UN Convention On the Limitation Period In The International Sale of Goods, as Amended By Protocol. Subject to Section 15 above, each of the parties hereby (a) agrees that any litigation, action or proceeding arising out of or relating to this Agreement shall be instituted in state or federal court located in Minneapolis, Minnesota; (b) waives any objection which it might have now or hereafter to the venue of any such litigation, action or proceeding; (c) irrevocably submits to the jurisdiction of any such court in any such litigation, action or proceeding; and (d) waives any claim or defense of inconvenient forum. Each of the parties hereby consents to service of process by registered mail, return receipt requested, at such party's address.

### **18. Non-Exclusive Remedies**

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All rights and remedies of PaR shall be cumulative and the rights and remedies provided herein are in addition and not in lieu of any rights and remedies PaR may have under law. The exercise by PaR of any one right or remedy shall not exclude any other right or remedy allowed by law.

### **19. Assignment**

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The Contract shall not be assigned without the written approval of duly authorized representatives of both PaR and Customer, except that the Contract may be assigned by PaR without the approval of Customer to a person, firm or corporation controlling or controlled by PaR or acquiring all or substantially all of the business and assets of PaR which relate or pertain to the Products or services which are the subject of the Contract. Notwithstanding the foregoing, PaR reserves the right, in its sole discretion, to subcontract all or any part of the Contract.

**20. Notices**

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Whenever by the terms of the Contract, or these Standard Terms and Conditions of Sale, notice, demand or other communication shall or may be given by one party to the other, it shall be in writing and shall be delivered personally, sent by certified or registered mail, return receipt requested, postage prepaid, or by telex, telecopy or telegram addressed to the party for which it is intended at the address provided on the Contract or at such address or addresses as either party shall designate by like notice to the other. All notices shall be deemed to be effective upon receipt or refusal of delivery.

**21. Entire Agreement/Amendments**

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The terms and conditions contained herein and in the Contract constitute the entire agreement and understanding between PaR and the Customer with respect to the Products and services, if any, to be sold or performed hereunder. The terms and conditions contained herein and those contained in the Contract shall supersede and prevail over (i) all prior communications between PaR and Customer, including but not limited to any oral or written proposals, purchase orders or other documents; and (ii) all future purchase orders and other documents.

Approval by PaR of any "acceptance" by Customer which is contained in a sales contract or other document of Customer shall not be construed as consent by PaR to any terms or conditions proposed by Customer which are inconsistent with, add to, or conflict with the terms and conditions of the Contract.

All amendments or modifications to the Contract must be in writing and signed by authorized representatives of both PaR and Customer.