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## USA RETAIL EQUIPMENT

### TERMS AND CONDITIONS of SALE and STATEMENT OF LIMITED WARRANTY

**PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY:**

**THESE TERMS AND CONDITIONS ARE EXPRESSLY MADE A PART OF ALL SALES OF SELLER EQUIPMENT, PARTS, AND SERVICE PROJECTS.**

You (as "Buyer") accept these Terms and Conditions by your order, order acknowledgement, or accepting delivery of the equipment, parts, and services provided by seller. Buyer agrees to fully comply with the terms and conditions of purchase set forth in this document. In all communications, Buyer and Seller may employ their standard forms, but nothing in those forms will be construed to modify or amend the terms and conditions of this Agreement, and, in the case of any conflict therewith, the terms and conditions of this Agreement will control. Any terms and conditions set forth in any Buyer purchase order, acceptance, form, or any other correspondence from Buyer, that are in addition to, inconsistent with, or in conflict with, this Agreement are expressly rejected by Seller and will be of no force or effect unless specifically agreed to in a writing signed by Seller that expressly references such terms. Acceptance or performance by Seller of any purchase order is expressly limited to the terms and conditions of this Agreement and Buyer may not order, accept, or receive any goods purchased hereunder under reservation. This Agreement along with Buyer's purchase order (in accordance with this paragraph) constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes any prior or contemporaneous agreement or understanding between the parties. No course of dealing, no usage of trade and no course of performance shall be used to supplement or explain any term, condition or instruction in this purchase order, nor be deemed to effect any amendment. For purposes of this Agreement, a "purchase order" is any document by which Buyer orders goods or services from Seller, whether or not on standard or customary forms.

These terms and conditions may be amended, modified, and changed from time to time after the date of the Agreement or purchase order, and the parties agree that such changes are part of the Agreement provided Buyer is provided prior notice of such changes (either directly or by reference to the web site location of such changed terms and conditions).

TERMS AND CONDITIONS OF SALE FOR ANY SHIPMENT MADE OUTSIDE THE UNITED STATES WILL BE GOVERNED BY SEPARATE TERMS AND CONDITIONS; HOWEVER, IN THE ABSENCE OF ANY SUCH SEPARATE TERMS AND CONDITIONS THESE TERMS AND CONDITIONS SHALL APPLY AND BE CONSTRUED CONSISTENT WITH NON-U.S. LAWS TO MAXIMUM EXTENT POSSIBLE. ANY EQUIPMENT SOLD IN THE UNITED STATES AND EXPORTED TO AN INTERNATIONAL COUNTRY WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER WILL VOID ALL WARRANTY AND RETURN PROVISIONS, AND MAY VIOLATE OTHER PROVISIONS OF THESE TERMS AND CONDITIONS AS WELL AS APPLICABLE LAW.

### **Operation Manuals:**

One set of manuals are included with each machine, a second set of electronic manuals are available (upon request) at no charge. Additional printed manuals may incur a charge to the Buyer.

### **Delivery and Storage:**

The quoted prices are F.O.B. our factory, Auburn, WA. This means that title to the equipment is transferred to the Buyer once the equipment is placed on our dock for pickup by the carrier. Risk of loss, damage or shortage shall pass from Seller to the Buyer upon delivery to and receipt by the freight carrier from Seller at Seller's facility. Transfer of ownership for the products purchased occurs at the time of shipment upon transferring freight carrier at Factory, Auburn, Wa. Although Seller will use all reasonable efforts to meet quoted and acknowledged delivery date(s), they are approximate and not guaranteed. Seller reserves the right to make partial shipments unless otherwise agreed to prior to the purchase. Buyer will designate the shipping location, which shall be the Buyer's installation site or Buyer's storage facility if the installation site is not or cannot be ready to receive and install the equipment pursuant to this agreement. The Buyer will bear all storage and handling expenses if shipment is to the Buyer's storage facility, as well as transfer of the equipment to the installation site when ready.

Damaged Shipment -- As a matter of customer service, Seller will assist in filing damage or shortage claims, provided the equipment was shipped prepaid. If the shipment was sent Freight Collect, 3<sup>rd</sup> Party, or any other shipping method designated by the Buyer, the Buyer has the full responsibility of filing the claim against the freight company. In all cases, the Buyer has the responsibility to inspect the shipment for completeness and to assure it is free of any visible damage. If the order does not appear complete or there is visible damage, the Buyer must mark "shipment not complete" or "visible damage upon receipt" on the Bill of Lading and notify Seller and freight carrier no later than one (1) day after the shipment was received. To make resolution of the claim easier, Seller recommends that the Buyer photograph all visible damage and forward copies to Seller and freight carrier. All concealed freight damage claims must be submitted to the freight carrier no later than fifteen (15) calendar days after receipt of the shipment. In any event, acceptance will be deemed to have occurred no later than thirty (30) days after shipment absent rejection by the Buyer.

### **Insurance:**

All equipment shipped via prepaid freight, the shipment damage claims must be made by the Seller in order to be eligible for damage compensation. In order for a claim to be filed, the Buyer or his agent is responsible to inspect all equipment as it arrives and fully document (including digital pictures) of any visible damage to the equipment and/or crating / packaging. Further, all documented damage must be noted on the trucker's Bill of Lading. If the damage is excessive the Buyer is instructed not to accept delivery of that item and note on the Bill of Lading "refused shipment due to excessive damage." All damage claims including documentation and pictures must be submitted to the Seller within twenty-four (24) hours so that an insurance claim can be made by the Seller on behalf of the Buyer.

Further, for any equipment that damage has been noted it should not be uncrated or altered in any way until the Insurance Adjuster has seen the shipment. Failure to do this could result in the claim being denied.

Lastly, should the Buyer or his agent fail to document any damage or note it on the Bill of Lading then this will void the right to make an insurance claim, **NO EXCEPTIONS.**

**Installation:**

Where applicable, the Buyer at its own expense shall arrange for timely completion of all necessary preparations for installation, including permits and utilities (water, gas, electricity, HVAC, etc.) for the purchased equipment. All utilities must conform to equipment requirements as provided by Seller. The Buyer is solely responsible for the suitable construction of foundations or flooring under the equipment. The Buyer shall provide safe, suitable working conditions for the installation of the equipment. The Buyer is solely responsible for the cost of modifying equipment sold by Seller in order to comply with federal, state and local codes. If installation, trial run or start-up cannot begin, continue or be accepted due to a cause for which Seller has no control, the Buyer shall pay Seller for any delays, waiting time or travel expenses incurred as a result of this at Seller's then-current rates or actual out-of-pocket expenses, as the case may be.

**Sales Tax:**

It is the responsibility of the Buyer to collect and/or pay all sales, use or other applicable taxes to the local state taxing authority, as required by law. The Buyer must submit a signed Resale Certificate for equipment purchased for resale or a signed Manufacturer's Sales and Use Tax Exemption Certificate for equipment engaged in manufacturing product for resale. The manufacturing exemption regulations vary from State to State; please consult your tax consultant for your exemption qualification. Further, the Buyer shall indemnify and hold harmless Seller for all costs, expenses and/or penalties for the failure to pay sales, use or other applicable taxes.

**UCC Filings:**

Where applicable, the Buyer agrees that as part of the sales contract they will be required to sign a Security Agreement. Notwithstanding anything herein to the contrary, the Buyer agrees that Seller may make any filings under the Uniform Commercial Code (as applicable to Buyer and/or Seller) with respect to the Equipment or this Agreement including, but not limited to, financing statements, financing statement amendments, correction statements, information requests, and addendums to the full extent allowed by law (hereinafter collectively the "UCC Filings").

By executing this Agreement, the Buyer represents that the Buyer is fully authorized, as either a principal of the Buyer or a personal guarantor of the Buyer, to enter into all obligations related to the UCC filings, and to grant Seller the rights related to making UCC filings contemplated herein.

In states where permissible, the Buyer explicitly authorizes the filing and recording of UCC financing statements showing Seller's interest in the Equipment as a secured party and grants Seller the right to execute Buyer's name as debtor thereto. The Buyer further agrees to provide Seller any and all requested information necessary for any UCC Filings. This information includes but is not limited to all current address, contact information, organization identification number, and any other information as required.

**Credit Information:**

The Buyer further authorizes Seller and its actual or potential affiliates, successors, designees, or assignees to obtain consumer credit reports relating to the Buyer's credit history and/or creditworthiness. The Buyer's authorization shall extend to obtaining a credit profile in considering this application and subsequently for the purposes of update, renewal or extension of such credit or additional credit and for reviewing or collecting the resulting account. The Buyer also authorizes Seller trade references and financial institutions the right to release credit information.

For Buyers wishing to pay by credited card, a 3% processing fee will be applied for any orders over \$10,000.

### **Limited Warranty:**

THIS PROVISION IS A SUMMARY OF THE MAJOR FEATURES OF SELLER'S WARRANTY. PLEASE REFERENCE SELLER'S LIMITED WARRANTY DOCUMENT FOR COMPLETE DETAILS OF OUR WARRANTY PROGRAM.

Seller warrants its equipment to be free from defects in workmanship and material which result in equipment failure under normal use and service. Seller's entire liability under this Limited Warranty is limited to repairing or replacing free of charge (at Seller's factory or at Buyer's premises as determined by Seller) any equipment or parts thereof which are determined to be defective by Seller. Unless otherwise specified or agreed to by Seller, all equipment carries a parts and labor warranty for a period of one (1) year from the date of shipment, with the following limitations:

- Consumable parts and wear items (i.e., lights, gaskets, seals, O-rings, etc.) are not warranted.
- Routine general maintenance, preventative maintenance, periodic adjustments and/or de-liming is not warranted.
- Equipment or component failures resulting from out-of-specification utilities (i.e., improper water quality, incorrect power input, etc.), improper installation, improper maintenance, or use of third party parts, are not warranted.
- Warranty coverage only applies to equipment sold to the original Buyer and/or End User at its original place of installation. This warranty is not transferable.
- Shipping damage is not warranted.
- Seller has sole and final discretion in determining whether a warranty claim is due to defects in workmanship or material. No warranty shall apply in the event of modifications, abuse, improper use, improper installation, abnormal operating conditions or failure to follow all specified maintenance and cleaning procedures. Should any equipment require repairs or replacement under this warranty, Seller may use later-generation or equivalent parts with the same functions or features as the parts being repaired or replaced. Repair and replacement materials and labor not covered by warranty shall be at the Buyer's expense.
- To initiate a warranty service claim, Buyer must contact Seller for warranty authorization number and the name of an authorized service provider. Any warranty service work completed without a warranty authorization number from the Seller and/or outside of the Seller's authorized service network may result in the warranty claim rejection.

THIS LIMITED WARRANTY IS PROVIDED BY SELLER WITH RESPECT TO EQUIPMENT OR PARTS AND IS IN LIEU OF AND EXPRESSLY EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION, LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHETHER OR NOT SELLER'S EQUIPMENT IS SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR THE BUYER'S USE OR PURPOSE.

### **Return Restrictions:**

**Defective "Non-Usable" Equipment or Parts** – The Buyer may return most defective "non-usable" equipment or parts directly to Seller within thirty (30) calendar days from the date of invoicing. Seller has the sole discretion on which option applies -- credit, repair, replacement or exchange. After this thirty (30) calendar day period only Seller's warranty applies.

**Non-Defective Equipment or Parts** – The Buyer may return most non-defective equipment or parts, unless they are specified as special order or custom, directly to Seller within sixty (60) calendar days from the date of invoicing. In this situation Seller will impose a mandatory restocking fee which will reduce the value of any credit or exchange by 25% of original invoice amount.

**Shipment of Returned Parts:**

**Return Goods Authorization (RGA) Number** -- No return of any type will be accepted by Seller unless accompanied by a unique RGA number, which the Buyer must obtain by providing the following information to Seller's Customer Service Agent. The required information is your customer number, applicable invoice number, equipment serial number, and details of the Buyer's reason for the return. The Buyer has thirty (30) calendar days to return the part from the date that the applicable RGA is issued. After such date, the RGA issued is invalid and Seller reserves the right to refuse the return. Seller will not accept the return of any equipment or part that has not been assigned an RGA number.

**Returned Parts Must Be Complete, Clean and Free of Damage** -- All equipment or parts MUST be returned 100% complete, including all original boxes, packing materials, manuals, blank warranty cards and other accessories provided by Seller. They MUST be clean, free of any damage and in the same condition as delivered to the Buyer. Seller reserves the right to refuse the return of any equipment or part that does not conform to this provision. If accepted, the cost of reconditioning and the aforementioned restocking fee will be charged.

**Responsibility for Shipping Costs and Risk** -- The Buyer is responsible for the cost of shipping all returned items; Seller is responsible for the cost of shipping replacements or exchanges of returned items and will match Buyer's shipping method provided the returned items are not due to Seller's fault. Buyer must adequately pack or crate the returned equipment to protect from damage in transit.

**Buyer Shipping Insurance** -- The Buyer must provide (at its expense) full insurance to cover loss and damage in transit for shipments of returned parts and to always use a carrier or shipping method that provides proof of delivery. Seller is not responsible for damage or loss during shipment.

**Limitation of Liability:**

THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE AND CUMULATIVE. UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL SELLER, ITS AFFILIATES, OR ITS OR THEIR SUPPLIERS, EMPLOYEES, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, OR LOST OPPORTUNITY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST BUYER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH BUYER'S IMPLEMENTATION OF ANY CONCLUSIONS OR RECOMMENDATIONS BY SELLER OR ITS AFFILIATES BASED ON, RESULTING FROM, ARISING OUT OF OR OTHERWISE RELATED TO THE EQUIPMENT OR SERVICES; OR (D) ANY UNAVAILABILITY OF THE EQUIPMENT FOR USE. IN THE EVENT OF ANY LIABILITY INCURRED BY SELLER OR ANY OF ITS AFFILIATES, THE ENTIRE LIABILITY OF SELLER AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY BUYER FOR THE EQUIPMENT(S) GIVING RISE TO THE CLAIM OR THE SPECIFIC SERVICES GIVING RISE TO THE CLAIM; OR (B) \$50,000.00.

**Indemnification:**

The Buyer agrees to indemnify and hold Seller, its officers, directors, employees, affiliates, successors, and assigns harmless against all losses, damages, or expenses of whatever form or nature, including attorney's fees and other costs of legal defense, whether direct or indirect, that they, or any of them, may sustain or incur as a

result of any acts or omissions of the Buyer or any of its directors, officers, employees, or agents, including, without limitation, (1) breach of any of the provisions of these terms and conditions or the sales contract, (2) negligence or other tortious conduct, (3) representations or statements not specifically authorized by Seller herein or otherwise in writing, (4) violation by the Buyer or by any of its directors, officers, employees, or agents of any applicable law, regulation, or order affecting its representation of Seller Products or (5) failure of Products or damage to the Buyer's or their Buyers' personnel or property due to the Buyer's faulty operation, improper training, misrepresentation or improper use.

**Loss of Product or Sales:**

Unless otherwise agreed to in the final Contract of Sale, the Seller will not be liable for the Buyer's loss of product or sales and any associated labor costs that may result from equipment malfunction, break-down, or any other reason the equipment may be out of service.

**Applicable Law:**

The validity, interpretation and performance of these terms and conditions and any purchase order made hereunder shall be governed exclusively by the laws of the State of Washington in force at the date of this purchase order. The United Nations Convention on Contracts for the International Sale of Goods is deemed waived and shall not apply. Where not modified by the terms herein, the provisions of Washington's enactment of Article 2 of the Uniform Commercial Code shall apply to the purchase of goods hereunder. Any disputes arising under or related to this Agreement, its interpretation, the rights and obligations of the parties hereunder, or the transactions contemplated hereby, shall be resolved in the state and federal courts located in King County, State of Washington, USA, and each party hereby irrevocably submits to the exclusive jurisdiction of such courts.

**Export and Import Requirements:**

Buyer represents and warrants that it will comply with all applicable laws and regulations relating to import and export of goods, including, without limitation, obtaining all necessary import and export licenses and clearances. At Seller's request, Buyer shall supply to Seller requested information related to export or import of goods. Buyer has and at all times will comply in all respects with the Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, et seq., as amended).

**Confidentiality:**

Seller agrees that any information it obtains about Seller's existing or proposed products, manufacturing facilities or processes, and any other non-public information of Seller is Seller's confidential information. Seller agrees that it will maintain Seller's confidential information in confidence, will not disclose or disseminate the information to any third party, without Seller's express, prior written consent, and will use the information only for the purposes of fulfilling its obligations under this Agreement or any purchase order. Seller agrees that it will disclose the confidential information provided by Seller only to Seller's employees, officers, directors, and consultants who (1) have signed agreements obligating them to keep the information in confidence, (2) have been advised of the confidential and proprietary nature of the information, and (3) have a need to know the information. The foregoing limitations shall not apply to information which Seller can demonstrate (by its written records) was (1) in the public domain at the time of its disclosure by Seller, (2) in Seller's possession at the time of its disclosure by Seller and was not acquired directly or indirectly from Seller, (3) published or became part of the public domain after its disclosure by Seller through no act or failure on Seller's part, or (4) obtained by Seller from a third party not owing obligations of confidence to Seller. Seller agrees that the

information disclosed shall not be deemed to be in the public domain or in Seller's possession merely because it is embraced by more general information in the public domain or in Seller's possession, or merely because individual items of the information are in the public domain or Seller's possession.

**Attorney's Fees:**

In the event either party to this Agreement or any purchase order brings suit to enforce or interpret any part of this Agreement or the purchase order, the party determined to be the party prevailing shall be entitled to recover as an element of costs of suit, and not as damages, in addition to all other sums that either party may be called on to pay, a reasonable sum for attorney's fees.

**Force Majeure:**

Delay or failure of Seller to perform any contract in accordance with the terms shall be excused by (a) sabotage, fire flood, labor dispute, riot, insurrection, war, act of terrorism, act of any governmental authority, priorities granted at the request or for the benefit, directly or indirectly, of any government or agency thereof, shortage of raw material, inability to meet current sales requirements, act of God, act of Buyer, or (b) any causes beyond the reasonable control of Seller. Any of the foregoing conditions resulting in delay or failure to perform any contract shall excuse such delay or failure whether the condition exists now or arises hereafter. In case of such delay or failure to perform for any of the above causes which continue, for more than thirty (30) days, the date of delivery or time for completion will be extended by a period of time necessary to overcome the effect of such delay, or either party may cancel the contract upon notice in writing given to the other.

an Ali Group Company



The Spirit of Excellence