

PAPER MACHINERY CORPORATION
TERMS AND CONDITIONS OF SALE - Form DB-97-1115

1. **CONTRACT FORMATION.** Issuance of any proposal by Paper Machinery Corporation ("Seller") is not an offer to make a sale, but a solicitation of an order. Seller shall have no obligation to make any sale unless and until it agrees to do so in a writing signed by an officer of Seller at Seller's home office in Milwaukee, Wisconsin, U.S.A. Any such agreement to sell is expressly conditioned upon Purchaser's assent to these terms and conditions. Purchaser will be deemed to have assented to these terms and conditions when: (a) Purchaser signs and delivers to Seller an acknowledgment copy of any of Seller's sales, quotation or order acknowledgment forms; (b) Purchaser has taken delivery of the whole or any part of the machinery ordered; or (c) Purchaser has otherwise assented to the terms and conditions hereof. No additional or different terms or conditions will be of any force or effect. Seller hereby objects to any such additional or different provisions contained in any purchase order or other communication heretofore or hereafter received from Purchaser.

2. **PRICES.** All prices quoted are payable in United States Dollars, and are Seller's prices for the machinery described with all of these terms and conditions, including the exclusive warranty and the various disclaimers and limitations of liability, enforceable against Purchaser. If Purchaser desires for Seller to provide a greater or additional warranty, and/or to be liable for some or all of the disclaimed or limited liability, Purchaser must notify Seller before Purchaser places its order. Seller will then make a new offer containing prices reflecting that additional exposure. Absent such notification, all of the terms in this form shall be enforceable. Purchaser understands that it is foregoing the possibility of, among other things, recovery of consequential damages from Seller and of indemnity for tort liability in exchange for Purchaser obtaining a lower sales price for the machinery ordered.

3. **TERMS OF PAYMENT.** Unless otherwise specified by Seller, payment is due, at Seller's option, either upon presentation of shipping documents or 30 days from date of invoice, subject to Seller's approval of Purchaser's credit. Seller may at any time change credit or payment terms or require payment in advance. If, in the judgment of Seller, the financial condition of Purchaser at any time does not justify continuing any terms of payment, Seller may require full or partial payment in advance. Invoices will be dated as of the time Seller is prepared to make shipment. Delays or deferments of delivery, for any reason, whether or not at the request of Purchaser, shall not extend the terms of payment.

Interest will be charged at the rate of 1½% per month, or the highest rate permitted by applicable law (whichever is less) on accounts past due. Notwithstanding the above, at its option at any time, Seller may require Purchaser to make payment by irrevocable letter of credit, and may defer shipment or cancel any order if Purchaser does not promptly provide such a letter of credit. Any such letter of credit shall be issued for Seller's benefit by a prime U.S. bank, shall be subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 600, 2007 Revision), shall provide for payment against Seller's invoice and bill of lading, and shall be in form and substance satisfactory to Seller.

4. **TITLE AND SECURITY INTEREST.** Until Seller collects in full all amounts owed by Purchaser to Seller under all contracts between Seller and Purchaser, Seller retains title to the machinery shipped, and Purchaser grants to Seller a continuing security interest in and a lien upon the machinery sold and the proceeds thereof (including insurance proceeds), as security for the payment of all such amounts and the performance by Purchaser of all of its obligations to Seller pursuant to all such contracts, and Purchaser shall have no right to sell, encumber or dispose of that machinery. Seller is authorized to file any and all financing statements and other documents and instruments and do and perform any and all other acts and things which Seller may consider necessary, desirable or appropriate to establish, perfect or protect Seller's title, security interest and lien.

5. **TAXES AND OTHER CHARGES.** Customs duties are included in the prices specified only if specifically stated, and then only in an amount determined by the rate in effect on the date of Seller's proposal; otherwise customs duties paid by Seller are for Purchaser's account. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value-added tax, inspection or testing fee, or any other tax, fee or charge of any kind imposed by any governmental authority, on or measured by the transaction between Seller and Purchaser shall be paid by Purchaser in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Purchaser shall reimburse Seller therefor. At Seller's request, Purchaser shall deliver to Seller proof of payment of all such taxes, fees or charges or evidence of exemption therefrom.

6. **DELIVERY.** All prices hereunder are FOB. Seller's Milwaukee, Wisconsin dock, for domestic shipments or, for international shipments, DDP Seller's Milwaukee, Wisconsin dock (as that term is defined in *Incoterms 2010*). Delivery of machinery to any carrier constitutes delivery to Purchaser; thereafter, regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by Purchaser. Seller reserves the right to make delivery in installments. All such installments may be separately invoiced, and shall be paid for when due per invoice, without regard to subsequent deliveries. Any deliveries not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered merchandise. Delay in delivery of any installment shall not relieve Purchaser of its obligations to accept remaining deliveries. Method and route of shipment shall be at the discretion of Seller unless Purchaser shall specify otherwise; any additional expense of the method or route of shipment specified by Purchaser shall be borne entirely by Purchaser.

7. **ACCEPTANCE.** All of Seller's Products are quoted on the basis of machinery acceptance immediately following successful inspection and testing in Seller's Milwaukee, Wisconsin facilities, in accordance with Seller's standard testing protocols. All materials used in testing are to be supplied by Purchaser, FOB. Seller's Milwaukee, Wisconsin dock, for domestic shipments or, for international shipments, DDP Seller's Milwaukee, Wisconsin dock (as that term is defined in *Incoterms 2010*).

8. **CLAIMS.** Purchaser shall inspect the machinery sold immediately upon arrival and immediately file with the delivering carrier claims for loss or damage during transportation; Seller must be notified immediately in writing of any such claims. All claims for other shortages must be made in writing to Seller within ten days from receipt of the machinery sold. Purchaser's failure to give such notice shall constitute a waiver of all such claims by Purchaser.

Seller shall not be responsible or liable for any damage due to improper storage or handling prior to installation and start-up.

9. **DELAYS.** All delivery dates are approximate. Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any act of God, act of Purchaser, embargo or other governmental act, regulation or request, fire, flood, accident, sabotage, strike, slowdown or other labor difficulties, war, riot, act of terrorism, delay in transportation, defaults of common carriers, inability to obtain necessary labor, materials or manufacturing facilities or, without limiting the foregoing, any other delays beyond Seller's reasonable control. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Purchaser's exclusive remedy for other delays and for Seller's inability to deliver for any reason, including Seller's inability to produce machinery which meets the requirements of this contract, shall be rescission of this agreement. In no event shall Seller be responsible for any delay after delivery of the machinery to a carrier at any point of shipment.

10. **STORAGE.** If the machinery sold is not shipped within fifteen (15) days after notification to Purchaser that it is ready for shipping, for any reason beyond Seller's reasonable control, including Purchaser's failure to give shipping instructions, Seller may store such machinery at the Purchaser's risk and expense in a warehouse or yard or upon Seller's premises. During any period of delay or deferment requested by Purchaser, Purchaser shall pay all handling, transportation and storage charges at the prevailing commercial rates upon submission by Seller of invoices therefor.

Purchaser may not obtain any delay or deferment of delivery unless Seller agrees thereto in writing. In no event will Seller agree to any such delay or deferment unless Purchaser establishes good and sufficient cause therefor, to the satisfaction of Seller, and unless Purchaser agrees in writing to terms acceptable to Seller. No period of delay or deferment at the request of Purchaser may exceed 60 days.

11. **CHANGES AND CANCELLATION.** Seller may at any time make such changes in design and construction of machinery sold as Seller deems appropriate, without notice to Purchaser. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.

No order may be altered by Purchaser except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. In the event Purchaser requires and Seller agrees to any change in the machinery, Seller may, in its sole discretion, adjust the order or the prices specified to compensate Seller for any increases in cost to Seller, and may likewise adjust the specified delivery schedules to compensate for any increases in the time required to manufacture or procure the machinery.

12. **LIMITED WARRANTY.** Seller warrants to Purchaser that the machinery manufactured by Seller and supplied hereunder: (a) conforms to the dimensions and specifications of Seller's standard products as described in Seller's catalog, proposal or, if different from the foregoing, Purchaser's print dimensions, tolerances and material specifications,

if provided to and accepted by Seller; and (b) is free from defects in materials and workmanship appearing within the first 6,000 hours of operation or one year following date of delivery (whichever expires first). Seller's obligation in this Section 12 is limited, however, to a refund of the purchase price or, at Seller's option, the repair or replacement of any machinery which is nonconforming or defective. Such credit, repair or replacement shall be Seller's sole obligation and Purchaser's exclusive remedy hereunder and shall be conditioned upon Seller's receipt of notice of any nonconformity within 10 days after receipt of shipment or, as the case may be, notice of any alleged defect within 10 days after its discovery and, at Seller's option, return of such machinery to Seller, FOB Seller's Milwaukee, Wisconsin dock, for domestic shipments or, for international shipments, DDP Seller's Milwaukee, Wisconsin dock (as that term is defined in *Incoterms 2010*).

Seller's warranty obligations apply only to machinery which is properly installed, operated and maintained in accordance with Seller's instructions and operating manuals and under normal conditions and proper supervision.

Machinery or components supplied by Seller hereunder which are obtained by Seller from a third party supplier are not warranted by Seller in any way, but Seller agrees to assign to Purchaser any warranty rights in such machinery or components that Seller may have from the original manufacturer or third party supplier.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS, OBLIGATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER SELLER NOR ANY OF ITS SUPPLIERS ASSUMES, OR AUTHORIZES ANY PERSON TO ASSUME ON ITS BEHALF, ANY OTHER WARRANTY OR OBLIGATION.

Any description of the machinery sold, whether in writing or made orally by Seller or its agents, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Purchaser's order are for the sole purpose of identifying the machinery and shall not be construed as an express warranty except as otherwise set forth in this Section 12. Any suggestions by Seller or its agents regarding use, application or suitability of the machinery sold shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

When production figures are given, it is understood that they are estimates only, are based on Seller's understanding of the limits of accuracy required, the nature and specifications of the material to be used, and the handling facilities provided, and are subject to proper performance of any tooling furnished by Purchaser. In the event that the material or other specifications are changed from that specified by Seller's proposal, production rates may be affected. Production rates and/or estimates mean only that the machinery is capable of continuous operation at stated cyclic rates; and the estimate may not represent actual net product to be realized. Such estimates further depend on the operator's efficiency.

13. **COMPLIANCE WITH LAWS.** Seller certifies that the machinery sold was produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and all regulations and orders of the United States Department of Labor issued under Section 14 thereof.

14. **RETURNS.** Machinery sold may be returned to Seller only when Purchaser obtains in advance Seller's written permission, signed by duly authorized personnel of Seller. Returned machinery must be securely packaged and reach Seller without damage. Any cost incurred by Seller to put the machinery in marketable condition, together with Seller's normal mark-up, will be charged to Purchaser.

15. **PATENTS, TRADEMARKS AND COPYRIGHTS.** To the best of Seller's knowledge, the design and construction of the machinery sold (except as the result of incorporating a design or modification in the machinery at Purchaser's request) does not infringe any valid United States patent. Seller shall indemnify Purchaser and its customers against any final judgment awarded in any suit against Purchaser or its customers to the extent that such judgment is based upon a finding that Seller breached the foregoing representation, provided that Purchaser, in writing, promptly notifies Seller of the commencement of such suit and the assertion of the claims on which such suit is based, and affords Seller the opportunity, at Seller's option and expense, to settle and defend such suit and claims. If Seller elects to defend any such suit and claims, Purchaser agrees to give Seller all information, assistance and authority Seller deems necessary to do so. If the result of such suit or proceeding is that Purchaser is enjoined from using any of the Products due to such claim, Seller will, at its option and expense: (i) procure for Purchaser's the right to continue using such Products, (ii) replace the same with non-infringing equipment/software having functionality similar to that of the Products, (iii) modify the Products to make them non-infringing, or (iv) if (i)-(iii) are not commercially practicable, refund to Purchaser the purchase price of the affected Products in exchange for their return, after deduction of depreciation calculated on a straight-line basis over a period of 7 years. This Section sets forth, with respect to infringements, Seller's exclusive liability to Purchaser, its successors, assigns and customers and users of the machinery sold.

Notwithstanding the foregoing, Seller shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the machinery in combination with other products or materials not furnished by Seller. The foregoing states the entire liability of Seller for infringement, and in no event shall Seller be liable for consequential damages attributable to any infringement. The sale of machinery hereunder may in no way be construed as an inducement by Seller of any infringement by Purchaser.

As to any machinery furnished by Seller to Purchaser manufactured in accordance with drawings, designs, instructions or specifications proposed or furnished by Purchaser or any claim of contributory infringement resulting from the use or resale by Purchaser of machinery sold hereunder, Seller shall not be liable, and Purchaser shall indemnify Seller and hold Seller harmless from and against any and all loss, liability, damage, claim or expense (including but not limited to Seller's reasonable attorneys' fees and other costs of defense) incurred by Seller as a

result of any claim of patent, trademark, copyright or trade secret infringements, or infringements of any other proprietary rights of third parties.

16. INSTALLATION AND OPERATION OF MACHINERY; INDEMNIFICATIONS.

Purchaser shall install, operate and maintain the machinery sold, and shall require its employees and agents to operate the machinery sold, in compliance with Seller's instructions and operating manuals and under normal conditions, safe operating procedures and proper supervision. Seller is not responsible for providing or installing wiring and protective conduit from the machinery sold to the remote console, the power plant supply or any guards or safety devices, whether or not required or recommended under the Occupational Safety and Health Act or the safety regulations of any jurisdiction. These remain the responsibility of Purchaser. Purchaser shall provide, install and use, and shall require its employees and agents to use, all such guards and safety devices and shall maintain such guards and safety devices in proper working order. In the event Purchaser shall fail to do so, Purchaser shall indemnify and hold Seller free and harmless of and from any and all claims, liabilities and obligations with respect to any personal injuries or property damage directly or indirectly related to the operation or use of the machinery sold. Purchaser shall also notify Seller promptly, and in any event not later than 10 days after Purchaser has notice or knowledge thereof, of any accident or malfunction involving the machinery sold resulting in any personal injury or property damage and shall cooperate fully with Seller in investigating and determining the causes of such accident or malfunction. In the event Purchaser fails to give such notice to Seller or to cooperate with Seller, Purchaser shall indemnify and hold Seller free and harmless of and from any and all claims, liabilities and obligations relating to such accident or malfunction.

17. EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY; PURCHASER'S INDEMNITY.

Seller's liability with respect to breaches of warranty shall be limited as provided in Section 12 hereof. With respect to other breaches of contract, Seller's liability shall in no event exceed the price paid for the part, unit or component of the machinery sold on which the claim is based. **SELLER SHALL NOT BE SUBJECT TO AND DISCLAIMS: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO MACHINERY SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.** Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or business, revenues or goodwill, loss of use of machinery or any associated equipment, cost of capital, facilities or services, downtime, shut-down or slowdown costs, spoilage of material, or for any other types of damage to property or economic loss. All the limitations and disclaimers contained in this section and in the rest of these Terms and Conditions shall apply to claims of Purchaser's customers or any third party asserted by Purchaser against Seller for indemnity or contribution, as well as direct claims of Purchaser against Seller.

Purchaser shall indemnify Seller against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which Seller may incur as a result of any claim by Purchaser or others arising out of or in connection with the machinery sold hereunder and based on defects not proven to have been caused solely by Seller's negligence.

18. **TECHNICAL INFORMATION.** Any sketches, models, samples or designs submitted by Seller shall remain the property of Seller, and shall be treated as confidential unless Seller has indicated in writing a contrary intent. Purchaser shall not, without the express written consent of Seller, use or disclose such sketches, models and samples, or any design or production process or techniques revealed thereby.

19. **PURCHASER'S PROPERTY.** Any property of Purchaser placed in Seller's custody for performance of any contract is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of Seller.

20. **MANUALS, BROCHURES, INSTRUCTIONS.** Any and all operating manuals, instructions, brochures, warnings or the like concerning the machinery supplied hereunder shall be written in the English language and are supplied as an aid to Purchaser and are not represented to be accurate, complete or sufficient. Purchaser warrants that it will accurately translate such manuals, instructions, brochures or warnings to appropriate languages and dialects so that its employees and all third party users of the machinery sold will be properly informed of all the contents thereof. Purchaser will indemnify and hold harmless Seller against all liabilities and expenses (including attorney fees) arising out of the use of said machinery by Purchaser or a third party in any case where Purchaser fails to make available adequate warnings, labels, manuals and instructions concerning the proper and normal use of the machinery sold.

21. **SELLER'S REMEDIES.** In the event that Purchaser fails to make any payments when due, fails to take delivery at the specified time or destination or, by any action or inaction, prevents or frustrates any delivery or any shipment to effect delivery, or otherwise defaults in the performance of these terms, Seller may cancel or terminate the associated contract of sale. In the event of any such cancellation or termination, Purchaser shall pay to Seller (a) the prices specified for all machinery completed prior to such cancellation or termination; (b) the amount of Seller's expenditures and financial obligations in connection with all unfinished machinery, including without limitation, any cancellation charges paid by Seller or for which Seller may be liable with respect to commitments made by Seller in connection with the machinery; and (c) the amount of Seller's loss of profits, as determined by Seller, arising out of such cancellation or termination. The rights and remedies of Seller hereunder are not exclusive but are in addition to any other rights and remedies which shall be available to Seller under applicable law.

22. **GOVERNING LAW. WHEN A CONTRACT HAS BEEN FORMED PURSUANT TO SECTION 1 ABOVE, THESE TERMS AND CONDITIONS, AS SUPPLEMENTED BY SELLER'S WRITTEN, SIGNED PROPOSAL, SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND PURCHASER, AND SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF**

WISCONSIN AND OF THE UNITED STATES OF AMERICA (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

23. **TOOLING.** Any dies, jigs or tools that Seller manufactures or acquires in connection with its performance described in these Terms and Conditions shall remain the property of Seller, notwithstanding any charges to buyer therefor. Any such charges convey to Purchaser the right to have the tools, dies or jigs used by Seller for performance hereunder, but do not convey title or right of possession or any other right.