

TERMS AND CONDITIONS

1. **ENTIRE CONTRACT.** THE TERMS AND CONDITIONS SET FORTH BELOW AND ON THE FACE SIDE HEREOF CONSTITUTE THE EXPRESSION OF ALL THE TERMS OF THIS AGREEMENT AND A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND SELLER. ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF SELLER, OR CONTAINED IN ANY SAMPLE, BROCHURE, SALES LITERATURE, TECHNICAL DATA SHEET, CORRESPONDENCE OR OTHER DOCUMENT, THAT DIFFER IN ANY WAY FROM THE TERMS AND HEREOF SHALL BE GIVEN NO EFFECT OR FORCE AND SHALL NOT CONSTITUTE ANY PART OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. Any additional, contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the goods described on the face hereof are hereby objected to. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to the approval by Seller at its offices in Ashville, New York. No waiver or alteration of terms herein shall be binding unless in writing, signed by an executive officer of Seller.
2. **PRICE.** All prices are F.O.B. Seller's plant, Ashville, New York, unless otherwise specifically set forth on the face side hereof. Prices stated are subject to change without notice in the event of: (i) alterations in specifications, quantities, designs, or delivery schedules; (ii) increases in the cost of fuel, power, material, supplies, or labor; and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the goods purchased hereunder. No discount will be allowed unless specifically set forth on the face side hereof. Buyer agrees to pay a delinquency charge of 1 1/2 % per month, or if such rate shall exceed the maximum rate allowed by applicable law, then a delinquency charge calculated at such maximum rate, on the outstanding balances not paid when due, from the date such balances were due until payment is made in full. Until the purchase price and all other sums due pursuant hereto are paid in full, Seller retains a security interest in the materials described on the face hereof (sometimes referred to hereinafter as "Goods") and in all proceeds of said Goods. Buyer shall execute financing statement(s) on request and irrevocably authorizes Seller to execute and file same.
3. **WARRANTY.** a. **Warranty on Goods other than Miraclean® Systems.** The warranty in this Section 3.a applies to all Goods manufactured or compounded by Seller except for any Miraclean® System, which is covered under the warranty set forth in Section 3.b hereof. Seller warrants that Goods manufactured or compounded by it will be fit for the ordinary purposes for which such Goods are used in the metal finishing industry. If any of the Goods are found by Seller to be nonconforming, such Goods will, at Seller's option, be replaced or repaired without charge to Buyer. Any claim by Buyer with reference to the Goods covered under the warranty set forth in this Section 3.a shall be deemed waived by Buyer unless submitted in writing to Seller within ninety (90) days following the date of shipment. At Seller's request, Buyer will send, at Buyer's sole expense, any allegedly nonconforming Goods to Seller F.O.B. Seller's plant or other location specified by Seller.
- b. **Miraclean® System Warranty.** The warranty in this Section 3.b applies exclusively to the Miraclean® System, if any, described on the face hereof, including any component parts and subassemblies of the Miraclean® System which are manufactured by Seller. The Miraclean® System is warranted against defects in materials and workmanship for a period of one (1) year following date of shipment. Component parts and subassemblies of the Miraclean® System which are not manufactured by Seller are not warranted by Seller, but are sold only with the warranties, if any, of the original manufacturers thereof. Goods covered under this Miraclean® System Warranty which are returned to the factory and found upon Seller's inspection to be nonconforming will, at Seller's option, be replaced or repaired without charge to the Buyer. Seller's warranty of the Miraclean® System does not apply to erosion of tank or transducer radiating surfaces due to ultrasonic cavitation. This is a normal occurrence which develops in time as a result of the operation of ultrasonic equipment. Any claim by Buyer with reference to Goods covered by this Miraclean® System Warranty shall be deemed waived by Buyer unless submitted in writing within the earlier of (i) thirty (30) days following the date Buyer discovered or by reasonable inspection should have discovered any claimed breach of the Miraclean® System Warranty, and (ii) thirteen (13) months following the date of shipment. Miraclean® System Warranty claims shall be submitted in accordance with the following procedure: (a) Buyer shall notify Seller in writing of the claim, upon which Seller will assign an "RMA" number to Buyer's claim; (b) Buyer shall pack the Goods as to which a claim is being made securely for shipping; and (c) Buyer shall ship such Goods to Seller prepaid and insured, F.O.B. Seller's plant or other location specified by Seller. Upon receipt, Seller will conduct a thorough inspection and make a warranty determination. This determination will be communicated to Buyer in writing. Any repaired or replacement Goods will be shipped to Buyer freight collect, F.O.B. Seller's plant or other location specified by Seller.
- c. **Other General Warranty Terms.** The following terms apply to all Goods manufactured by Seller, whether covered under the warranty set forth in section 3.a or the Miraclean® System Warranty set forth in Section 3.b. THE PARTIES HERETO EXPRESSLY AGREE THAT BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER SHALL BE FOR THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS AS PROVIDED HEREIN. The sole purpose of the stipulated exclusive remedy shall be to provide the Buyer with free repair and replacement of nonconforming Goods in the manner provided herein. The exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace nonconforming Goods in the prescribed manner. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE NOT EXPRESSLY SET FORTH HEREIN. THE FOREGOING WARRANTIES EXTEND ONLY TO THE ORIGINAL BUYER OF THE GOODS AND ARE NOT TRANSFERABLE. No affirmation of Seller, by words or action, other than as set forth in this Section 3 shall constitute a warranty or become any part of the basis of the bargain between the parties. Goods which may be sold by Seller but which are not manufactured or compounded by Seller are not warranted by Seller, but are sold only with the warranties, if any, of the original manufacturers thereof. The foregoing warranties do not cover labor or other costs or expenses to remove or install any nonconforming, repaired or replaced Goods. Seller's warranties do not apply to (i) any Goods which have been subjected to or have failed as a result of careless use, misuse, mishandling, misapplication, neglect (including but not limited to improper maintenance), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments), all as determined by Seller, or (ii) any Goods which have been subjected to modification, adjustment or repair performed by anyone (including Buyer) other than Seller or one of Seller's authorized agents. Buyer acknowledges that its failure to pay any sum due to Seller pursuant hereto strictly in accordance with the terms hereof shall be considered a material breach of the terms hereof. UNLESS SELLER EXPRESSLY AGREES OTHERWISE IN WRITING, ALL WARRANTIES HEREUNDER SHALL BE NULL AND VOID AND OF NO FORCE OR EFFECT IN THE EVENT THAT BUYER FAILS TO MAKE ANY PAYMENT DUE TO SELLER STRICTLY IN ACCORDANCE WITH THE TERMS HEREOF; AND IN NO EVENT SHALL SELLER BE LIABLE WITH RESPECT TO ANY CLAIM OR CAUSE OF ACTION BROUGHT UNDER ANY OF THE FOREGOING WARRANTIES FROM AND AFTER THE DATE OF SUCH A MATERIAL BREACH. Any cause of action for breach of any warranty set forth in this Section 3 shall be brought within one (1) year from the date the alleged breach was discovered or should have been discovered, whichever occurs first.
4. **LIMITATION OF LIABILITY.** Seller's liability (whether under the theories of breach of contract or warranty, negligence, or strict liability) for its Goods shall be limited to repairing or replacing Goods found by Seller to be nonconforming, or, at Seller's option, to refunding the purchase price of such Goods and parts thereof.
5. **DISCLAIMER OF INCIDENTAL AND CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH) OR THE USE, STORAGE OR HANDLING OF THE GOODS SOLD HEREUNDER. INCIDENTAL AND CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, INCREASED EXPENSE OF INSPECTION, OPERATION OR DOWN-TIME, OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING BUT NOT LIMITED TO PROPERTY HANDLED OR PROCESSED BY THE USE OF THE GOODS). BUYER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.
6. **INDEMNIFICATION AND ASSUMPTION OF RISK.** BUYER ASSUMES ALL RISK AND LIABILITY FOR LOSS OR DAMAGE RESULTING FROM THE HANDLING, USE, STORAGE, DISPOSAL OR APPLICATION OF THE GOODS DELIVERED HEREUNDER, AND THE CONTAINERS IN WHICH SUCH GOODS ARE SHIPPED. Buyer agrees to familiarize itself and keep informed (without reliance on Seller except as to the accuracy of specific safety information actually furnished by Seller) with regard to any hazards to persons and/or property involved in handling, using and disposing of such Goods and the containers in which such Goods are shipped. Buyer shall advise its employees, customers, independent contractors and others who handle and use such Goods of any such hazards. Buyer shall take such action as is necessary to so advise its employees, customers, independent contractors and any other persons or firms who are foreseeably ultimate users of such Goods. Buyer hereby assumes and agrees to indemnify, defend and hold Seller harmless from and against all liability, loss, cost, damage and expense (including reasonable attorneys' fees) arising out of or in connection with claims by Buyer, its employees, customers, independent contractors and any third parties (except where Seller is proven to be solely negligent) based upon or resulting from the handling, use, storage, disposal or application of the Goods delivered hereunder or the containers in which such Goods are shipped, whether or not such Goods or containers are used in combination with other articles or substances or are used in any manufacturing process.
7. **ACCEPTANCE AND TRANSPORTATION.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim for shortages of or defects in the Goods within forty-eight (48) hours after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer. In absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expense and valuation.
8. **TITLE AND RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer (i) in the case of shipment via common carrier, upon delivery by Seller to carrier, and any claims for losses or damage shall be made by Buyer directly with such carrier, and (ii) in all other cases, upon delivery by Seller to Buyer.
9. **CREDIT TERMS.** Seller reserves the right of declining to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of contract in whole or in part.
10. **TAXES.** Unless otherwise specifically provided on the face hereof, the price for the Goods purchased is net and does not include sales, use, excise or similar taxes, whether Federal, state or local. The amount of any such taxes applicable to the Goods shall be paid by Buyer in the same manner and with the same effect as if originally included in the purchase price.
11. **PACKAGING.** Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer.
12. **DELAYS.** Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by (a) strikes, fires, disasters, riots, acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor delay, or (f) any other cause or condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

13. TERMINATION, CANCELLATION AND CHANGES. Orders cannot be terminated, canceled or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to conditions then agreed upon which shall indemnify Seller against liability and expense incurred and commitments made by Seller and which shall provide for profit on work in process and contract value of products or parts completed and ready for shipment.

14. PATENTED PROCESS. The purchase of the Goods does not entitle Buyer to employ the same with any patented process owned by Seller or others.

15. PATENT INFRINGEMENT. Except in the case of articles, materials and designs furnished or specified by Buyer, Seller, at its own expense, shall defend any suit brought against Buyer on the ground that use of the Goods furnished hereunder by Seller infringes any United States Letters Patent existing on the date of this Agreement, and shall pay the amount of any judgment that may be awarded against Buyer in any such suit, provided and upon condition that Buyer shall have made all payments due under this Agreement and shall (i) promptly deliver to Seller all infringement notices and other papers received by or served upon Buyer, (ii) permit Seller to take complete charge of the defense of such suit and to compromise the same, if deemed advisable, and (iii) assist in every reasonable way in the conduct of such defense.

In the event that Buyer shall be enjoined by a court of competent jurisdiction from which no appeal can be taken from using the Goods for the intended purpose on the ground that use of the Goods infringes any such United States patent, or if it is established to Seller's satisfaction, upon due investigation, that use of the Goods infringes any such United States patent, Seller at its option, may either (w) procure for Buyer a license to continue using the Goods, (x) modify the Goods so as to make them noninfringing without seriously impairing its performance, (y) replace the Goods with goods which are substantially the equivalent but noninfringing, or (z) remove the Goods from Buyer's plant, in which event Seller shall refund to Buyer the purchase price less depreciation at the rate of 20 percent per year. The foregoing sets forth Seller's entire liability to Buyer for patent infringement based on the possession and use of the goods by Buyer. Seller shall have no obligation whatsoever arising out of any patent infringement claims directed to a process or a method.

Buyer agrees to defend and indemnify Seller against any claims or liabilities for, or by reason of, the infringement of any United States Letters Patent arising from the manufacture of any of the Goods in accordance with specifications furnished by Buyer or from the sale thereof.

16. ADDITIONAL CHARGES. If substitute or additional Goods, or repair parts, are purchased by Buyer from Seller, the terms and conditions of this Agreement shall be applicable thereto, the same as if such substitute or additional Goods or repair parts had been originally purchased hereunder.

17. GENERAL CONDITIONS. No agent, salesman or other party is authorized to bind Seller by any agreement, warranty, statement, promise or understanding not herein expressed.

The sale of Goods pursuant to this order shall be governed by the laws of the State of New York.

In addition to the rights and remedies conferred upon Seller by law, Seller shall not be required to proceed with the performance of any order or contract if Buyer is in default in the performance of any order or contract with Seller, and in case of doubt as to Buyer's financial responsibility, shipments under this order may be suspended or sent sight draft with bill of lading attached by Seller.

Any clerical errors are subject to correction.

No delay or omission by Seller in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be constituted as a bar to or a waiver of any such right or remedy on any future occasion.

This agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller; provided, however, that Buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of Seller.

18. ENTIRE CONTRACT. Upon Seller's acceptance of Buyer's order the terms and provisions set forth herein shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, sample or other term shall modify or affect the terms hereof.