

# CMI, INC.

## CONDITIONS OF SALE

1 **WARRANTIES:** Seller warrants to Buyer that products and any service furnished hereunder will be free from defects in material, workmanship and title and will be of the kind and quality specified in Seller's quotation. The foregoing shall apply only to failures to conform with said warranties (excluding any defects in title) which appear within one year from the date of shipment hereunder.

The conditions of any tests shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that may be made. The warranties and remedies set forth herein are conditioned upon (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of Seller and (b) Buyer promptly notifying Seller of any defects and, if required, promptly making the product available for correction.

If any product or service fails to conform with the foregoing warranties (except title), Seller shall thereupon have the absolute right to cure or correct any such defect either, at its option, (i) by repairing any defective or damaged part or parts of the products, or (ii) by making available, F.O.B. Seller's plant or other point of shipment, any necessary repaired or replacement parts. Where a failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price.

The preceding paragraph sets forth the exclusive remedies for claims (except as to title) based on defect in or failure of products or services, whether claim is in contract or tort (including negligence) and however instituted. Upon the expiration of the warranty period, all such liability shall terminate. Except as set forth in Article 2, "Patents", the foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. SELLER HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Seller does not warrant any products or services of others which the Buyer has designated.

2. **PATENTS:** (a) Seller warrants that products furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, Seller shall defend, or may settle, at its own expense, any suit or proceeding against Buyer so far as based on a claimed infringement which would result in a breach of this warranty and Seller shall pay all damages and costs awarded therein against Buyer due to such breach. In case any product or part thereof is in such suit held to constitute such an infringement and the use for the purpose intended of said product or part is enjoined, Seller shall, at its own expense and option, either procure for Buyer the right to continue using said product or part, or replace same with a non-infringing product or part, or modify same so it becomes non-infringing, or remove the product and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by Buyer. The foregoing states the entire liability of Seller for patent infringement by said products or any part thereof.

(b) The preceding paragraph shall not apply to any product or part specified by Buyer or manufactured to Buyer's design, or to the use of any product furnished hereunder in conjunction with any other product in a combination not furnished by Seller as a part of this transaction. As to any such product, part, or use in such combination, Seller assumes no liability whatsoever for patent infringement and Buyer will indemnify and hold Seller harmless against any infringement claims arising there from.

3. **DELIVERY, TITLE AND RISK OF LOSS:** Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise specified by Seller, delivery will be made and title will pass F.O.B. point of shipment to Buyer. Risks of loss or damage pass to buyer on delivery.

4. **EXCUSABLE DELAYS:** Seller shall not be liable for delays in delivery or performance for failure to manufacture, deliver or perform, due to (i) a cause beyond its reasonable control, or (ii) an act of God, act of Buyer, act of civil or military authority, Governmental priority, strike or other labor disturbance, flood, epidemic, war, riot, delay in transportation or car shortage, or (iii) inability on account of a cause beyond the reasonable control of Seller to obtain necessary materials, components, service or facilities. Seller will notify Buyer promptly of any material delay excused by this article and will specify the revised delivery date as soon as practicable. In the event of any such delay, there will be no termination and the date of delivery or of performance shall be extended for a period reasonably related to the time lost by reason of the delay.

5. **PAYMENTS AND FINANCIAL CONDITION:** Except to the extent otherwise specified by Seller in its quotation, pro rata payment shall become due without setoff as shipments are made. Payment terms are net 30 days from date of invoice. If Seller consents to delay shipments after completion of any product, payment shall become due on the date when Seller is prepared to make shipment. In the event of any such delay, title shall pass and products shall be held at Buyer's risk and expense.

Any order for products shall constitute a representation that Buyer is solvent and has the ability to pay for the product ordered. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency and financial ability at any time prior to shipment.

If, in the sole opinion of Seller, Buyer's financial condition at any time does not justify continuance of the work to be performed by Seller hereunder on the agreed terms of payment, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its proper cancellation charges. Seller's rights under this article are in addition to all rights available to it at law or in equity.

6. **DISCLOSURE OF INFORMATION:** Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as proprietary secret or submitted in confidence except as may be otherwise provided in a writing signed by a duly authorized representative, of Seller.

7. **TAXES:** In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or delivery of any products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

8. **LIMITATIONS OF LIABILITY AND INDEMNITIES:** (a) In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall Seller or its suppliers be liable for any special consequential, incidental or punitive damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, down time costs, or claims of Buyer's customers for such damages. If Buyer transfers title to or leases the products sold hereunder to any third party, Buyer shall obtain from such third party a provision affording Seller and its suppliers the protection of the preceding sentence.

(b) Except as provided in Article 2, "Patents", in no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall Seller's liability to Buyer for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the products or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim. Except as to title, any such liability shall terminate upon the expiration of the warranty period specified in Article 1, "Warranties".

(c) If Seller furnished Buyer with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

(d) The invalidity, in whole or part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this article.

9. **GENERAL:** Any products delivered by Seller hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended and applicable. Seller will comply with applicable Federal, state and local laws and regulations as of the date of any quotation which relate to (i) non-segregated facilities and equal opportunity (including the seven paragraphs appearing in §202 of Executive Order 11246, as amended), (ii) workmen's compensation, and (iii) the production in Seller's manufacturing facilities of products furnished hereunder. Price and, if necessary, delivery will be equitably adjusted to compensate Seller for the cost of compliance with any other laws or regulations.

The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void.

Any representation or assignment by Buyer of any or all of its duties or rights there under without Seller's prior written consent shall be void.

Any representation, warranty, course of dealing or trade usage not continued or referenced herein will be not binding on Seller. No modification, amendment, rescission, waiver or other change shall be binding on Seller unless assented to in writing by Seller's authorized representative.

The validity, performance and all matters relating to the interpretation and effect of this agreement and any amendment hereto shall be governed by the law of the State of Kentucky.

The provisions of this agreement are for the benefit of the parties hereto and not for any other person except as specifically provided herein with respect to Seller's suppliers.