

**STANDARD TERMS AND CONDITIONS FOR THE PURCHASE
AND SALE OF SPARK INDUSTRIES LLC PRODUCTS AND/OR SERVICES**

1. Definitions. As used in this Terms and Conditions ("Agreement"), the terms (a) "Seller" shall mean Spark Industries Products, (b) "Buyer" shall mean the party executing this Agreement to purchase the Products or Services specified on the reverse side of this Agreement and/or the party accepting delivery of Seller's Products or Services hereunder, (c) "Products" shall mean, but not be limited to, the software programs ("Software"), pumps, molds, manifolds, elements, sensors, temperature controls, equipment and goods provided by Seller under this Agreement, and (d) "Services" shall mean all installation, relocation, maintenance or other services provided by Seller in connection with the sale, use or installation of the Products.

2. Acceptance, Merger and Integration. Seller will be deemed to have accepted this Agreement when Buyer returns an acknowledged and executed copy of this Agreement, or, at Seller's option, when Seller begins substantial performance under this Agreement. Buyer accepts this Agreement by acknowledging and executing a copy of this Agreement, by confirming this Agreement by its purchase agreement or confirmation, or by acceptance of delivery of the Products or Services hereunder. Buyer has no right to cancel or defer manufacture, shipment, delivery or installation unless agreed to in writing by Seller. Notwithstanding the manner in which Buyer accepts, Buyer's acceptance is limited exclusively to the acceptance of Seller's terms and conditions set forth in this Agreement only. Seller hereby objects to and rejects any proposal by Buyer for additional or different terms in connection with the Products or Services provided. Buyer may acknowledge this Agreement by its purchase agreement, but any and all terms, conditions and provisions contained in said purchase agreement, acknowledgment form or other communications with respect to the transaction contemplated by this Agreement, or subsequent to the date hereof, are agreed to be superfluous and without any force and effect. This Agreement, which includes all of the terms and conditions hereunder, and all exhibits, riders or limited warranties attached hereto, is intended to be the exclusive and final statement of the terms and understandings relative to the subject matter hereof, merging herein and superseding all negotiations and prior written or oral agreements between the parties as to the subject matter of the purchase of the Products or Services hereunder.

3. Payment. Payment shall be net thirty (30) days from the date of shipment. It is agreed that with respect to Buyer's payment obligation, time is of the essence. All payment terms are expressed in U.S. dollars. Seller reserves the right to determine, at its sole discretion, the parties and extent of any credit approval, if applicable. Failure to make prompt and full payment hereunder constitutes a material breach of this Agreement and affords Seller the right to suspend its performance without liability to Buyer and cancel this Agreement and any Purchase Orders. Buyer has no right of setoff.

4. Taxes and Import Duties. The price of the Products or Services specified does not include federal taxes, state or local sales taxes, use taxes, occupational taxes, or import duties. Unless prohibited by law, Buyer is responsible for and shall pay all applicable sales, use, occupational, excise, value added or other similar taxes or import duties applicable to the manufacture, sale, price, delivery or use of the Products or Services provided by Seller, or in lieu thereof, Buyer shall provide Seller with a tax-exemption certificate acceptable to and considered valid by the applicable taxing authorities.

5. Delivery and Risk of Loss. All sales are FOB/ICA Seller's U.S. dock. Risk of loss, destruction or damage to the Products shall be Seller's until delivery of the Products to a common carrier at the Seller's U.S. dock. Thereafter, title shall pass to Buyer and Buyer shall be fully responsible for and assume all risk of loss, destruction or damage to the Products. Loss or damage to the Products after risk of loss has passed to Buyer will not release or excuse Buyer from its obligations under this Agreement to Seller, including the obligation to make full payment of the purchase price.

6. Delivery Delays. Seller shall use reasonable efforts to make prompt deliveries in a commercially reasonable manner. Delivery dates and estimates are, however, not guaranteed. Seller disclaims any liability or responsibility for the late or non-delivery of Products hereunder. Seller shall additionally not be liable for failure to deliver or delays in delivery of the Products or Services covered by this Agreement if such failure or delay is due, in whole or part, to any cause or conduct beyond the reasonable control of Seller. Buyer has no right to delay or defer delivery or acceptance.

7. Tooling. Seller retains all right, title and interest in and to tooling, blueprints, sketches or other data in connection with the sale, design and manufacture of the Products.

8. Rejection and Revocation of Acceptance. Any rejection or revocation of acceptance by Buyer must be made within thirty (30) days of delivery and any attempted rejection or revocation of acceptance made thereafter shall be null and void unless agreed to in writing by Seller.

9. Limited Warranty and Disclaimer of All Other Warranties. (a) **SELLER WARRANTS FOR A PERIOD SET FORTH IN SECTION 9(c) COMMENCING ON THE DATE OF DELIVERY THAT THE PRODUCTS AND SERVICES (I) MEET OR EXCEED THE WRITTEN SPECIFICATIONS SET FORTH ON THE REVERSE SIDE HEREOF, AND (II) ARE FREE OF MATERIAL DEFECTS IN DESIGN OR WORKMANSHIP. BUYER'S EXCLUSIVE REMEDY IN CONNECTION WITH THESE EXPRESS WARRANTIES AND THIS AGREEMENT IS THE REPAIR OR REPLACEMENT OF THE PRODUCTS OR SERVICES OR, AT SELLER'S OPTION, A REFUND OF THE PURCHASE PRICE, IF ANY, ACTUALLY PAID BY SELLER FOR THE NONCONFORMING PRODUCTS OR SERVICES. IN THE EVENT THAT BUYER OBTAINS A REFUND OF THE PURCHASE PRICE, BUYER SHALL FIRST SHIP THE PRODUCTS SUBJECT TO THE REFUND TO SELLER AND TRANSFER TITLE TO SAID PRODUCTS TO SELLER AS SOON AS PRACTICABLE.**

(b) **EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN THIS SECTION 9, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES IN THIS AGREEMENT OR OTHERWISE. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER DISCLAIMS ALL WARRANTIES, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. SELLER EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY TO BUYER FOR ANY CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF USE, LOSS OF PROFITS, INCOME, OR REVENUE, LOSS OF TIME OR INCONVENIENCE, LOSS OR DAMAGE TO ASSOCIATED EQUIPMENT, UPTIME, COST OF SUBSTITUTED OR REPLACEMENT EQUIPMENT, LOSS TO FACILITIES, LOSS OF CAPITAL, LOSS OF SERVICES OR COST OF REPLACEMENT POWER, OR ANY OTHER INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGE ARISING OUT OF THIS AGREEMENT OR THE OPERATION, FUNCTION OR CHARACTERISTICS OF THE PRODUCTS OR SERVICES PURCHASED HEREUNDER OR OTHERWISE PROVIDED BY SELLER. IT IS EXPRESSLY UNDERSTOOD THAT THE LIMITED WARRANTY AFFORDED BUYER IS THE SOLE AND EXCLUSIVE REMEDY OF BUYER.**

(c) **WARRANTY PERIODS:**

TEMPERATURE CONTROLLERS, DIAGNOSTICS AND PARTS: TWO (2) YEARS FROM DATE OF INVOICE (SERVICE, PARTS AND LABOR)

ALL OF THESE LISTED WARRANTIES DO NOT COVER ELECTRICAL CONTACT POINTS, FUSES, POWER SUPPLIES, T/Cs, TIPS, "O" RINGS, VALVE PINS, OR TRIAC CIRCUITRY

10. Limitation of Liability. To the fullest extent permitted by law, the parties waive and relinquish any claims, demands, causes of action or recoveries for punitive damages, exemplary damages, or statutory damages. In no event will Seller be liable for indirect, special, incidental or consequential damages arising under this Agreement or otherwise with respect to the sale of the Products or provision of Services, including any lost revenues or profits, consequential and/or incidental damages, business interruption or damage to business reputation, regardless of the theory upon which any claim may be based, including any tort or statutory causes of action. Notwithstanding the terms of any limited warranty, and/or in the event any limited warranty provided to Buyer fails of its essential purpose, in no event will Seller's entire liability to Buyer (in tort, contract, for intellectual property infringement, or otherwise) exceed the purchase price actually paid by Buyer for the Products and/or Services subject to the contract or Agreement in dispute, or any defective or nonconforming portion thereof, whichever is the lesser amount.

11. Default. The failure of Buyer to perform any obligation hereunder, including without limitation, the breach of this Agreement, the prompt and complete payment of the purchase price for Products or Services and all other amounts due hereunder, the failure to materially perform other agreements between Buyer and Seller, or Buyer's bankruptcy, insolvency, fraud or inability to pay its debts as they mature, shall constitute a default under this Agreement and shall, in addition to any other remedies at law or in equity, afford Seller all of the remedies of a secured party under the Uniform Commercial Code of the State of Illinois. In the event of default, Seller may, in addition to pursuing any of the remedies provided by law, equity or as set forth in this Agreement, refuse to provide warranty, repair and/or maintenance Service and/or deliver Products under this or any Service or maintenance agreement relating to the Products, and may also cancel this Agreement and any pending orders without liability to Buyer. In the event of default, Seller may also, without limiting its other remedies, terminate this Agreement and apply any and all payments received hereunder or otherwise from Buyer to any damages that Seller may have as a result of the breach of this Agreement or otherwise. To the fullest extent permitted by law, all of Seller's rights and remedies under this Agreement shall be cumulative and not exclusive.

12. Waiver and Severability. No claim or right arising out of a breach of this Agreement can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. If any term, covenant, warranty, remedy or condition of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be held or deemed invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or provision, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or provision of this Agreement shall be deemed valid and enforced to the fullest extent permitted by law.

13. Force Majeure. Seller shall have no liability or obligation to Buyer of any kind, including, but not limited to, any obligation to deliver Products or provide maintenance or Services, arising from any delay or failure to perform all or any part of this Agreement as a result of causes, conduct or occurrences beyond Seller's reasonable control, including, but not limited to, commercial impracticability, fire, flood, act of war, terrorism, civil disorder or disobedience, act of public enemies, problems associated with transportation (including car or truck shortages), acts or failure to act of any state, federal or foreign governmental or regulatory authorities, labor disputes, strikes, or failure of suppliers to make timely deliveries of materials, goods or services to Seller.

14. Indemnification. To the fullest extent permitted by law, Buyer shall defend, indemnify and hold Seller harmless from any and all claims, demands, subrogation claims by Buyer's insurers, causes of action, controversy, liabilities, fines, regulatory actions, seizures of Product, losses, costs, expenses (including, but not limited to attorneys' fees, expert witness expenses and litigation expenses) (hereinafter "Claim"), arising from or in connection with any Claim asserted against Seller for any damage, environmental liability, patent or intellectual property infringement caused by Buyer's unintended use, modification or alteration of the Products, injury, death, loss, property damage, delay or failure in delivery of Seller's Products or any other Claim, whether in tort, contract, or otherwise, relating to this Agreement, the business relationship between the parties, the Products or Services provided hereunder, or Buyer's breach of this Agreement. Notwithstanding the foregoing, Buyer has no indemnity obligation to Seller with respect to any Claims that result solely from the negligence of Seller and this indemnity provision does not purport to indemnify Seller solely for its own negligence, but rather for the negligence or conduct, whether sole or concurrent, of Buyer. Buyer, for itself and its insurers, expressly waives any and all limitations or liability caps, if any, on Buyer's contribution liability to Seller, and any and all statutory or common law lien rights or Claims against Seller arising from any applicable workers compensation or disability acts, which Buyer might or could assert against Seller or Seller's insurers in the event of the personal injury or death of Buyer's employees, representatives or servants. Without limiting the foregoing, Buyer, for itself and its insurers, also waives any liens, Claims or other rights it may have as a result of being subrogated to any rights of its employees, representatives or servants.

15. Relationship. The relationship between Seller and Buyer shall be that of independent contractors and Seller, its agents and employees, shall under no circumstances be deemed the employees, distributors, franchisees, agents or representatives of Buyer.

16. Assignment and Modification. The rights and obligations of the parties under this Agreement shall not be assignable unless consent to the assignment is in writing and signed by the parties. This Agreement shall not be modified, altered or amended in any respect except by a writing signed by the parties. Any variation, modification, or addition to the terms set forth in this Agreement shall be considered a material modification and shall not be considered part of this Agreement.

17. Governing Law. This Agreement and all claims and causes of action shall be governed by and subject to the internal laws (exclusive of the conflicts of law provisions) and decisions of the courts of the State of Illinois. The sole and exclusive venue for all claims and causes of action between the parties shall be the state court located in DuPage County, Illinois or the federal court located in Chicago, Illinois.

18. Pricing: All Prices either herein named or heretofore quoted or agreed upon are subject to adjustment to Spark Industries' prices in effect at the time of shipment. Changes or addition of new requirements to the existing agreement will be subject to price re-negotiation. Pricing may be subject to adjustment if actual volume is not at least 75% of the quoted estimated annual volumes. Pricing will be subject to adjustment, either through product pricing or surcharges for raw material market fluctuations.

19. Custom & Non-Standard Products: Acceptance of this quotation or order implies your responsibility to 1) give Spark Industries ample written notice of part balance out/obsolescence and 2) to purchase our inventories unique to your product.