



The South's Leading Distributor of Fabrication and Robotic Welding Equipment

## TERMS & CONDITIONS

All proposals, quotations and orders for the sale of CAPITAL MACHINE TECHNOLOGIES ("CMT") products, or for the rendering of services by CMT, are subject to the following terms and conditions.

1. **DEFINITIONS.** For purposes hereof; (i) The term "BUYER" means the person or company purchasing as indicated on the front hereof or otherwise on the Agreement; (ii) The term "Products" means machine tools or related equipment, parts or accessories or combinations or components thereof specified on the front hereof or otherwise sold by CMT; (iii) The term "Non-customized Products" shall mean those Products that CMT determines, in its sole discretion, to be of a standard type routinely sold by CMT and for which there is relatively continuous purchaser demand; (iv) The term "Customized Products" shall mean those Products that CMT determines, in its sole discretion, to be of a non-standard type, specially manufactured for a specific number of orders, or for which there is not relatively continuous purchaser demand; and (v) The term "Agreement" means these terms and conditions and those expressly referenced herein and (a) any CMT proposal, bid or similar document setting forth the prices of any Products and (b) any CMT Sales Order Confirmation, Acknowledgment or Installation Form provided by CMT and relating to the Products, and (c) any document evidencing or relating to the purchase of any Product.

2. **ACCEPTANCE OF AGREEMENT.** ACCEPTANCE BY CMT OF BUYER'S ORDER OR BUYER'S ACCEPTANCE OF CMT'S PROPOSAL OR AGREEMENT, IS EXPRESSLY LIMITED TO AND CONDITIONED UPON BUYER'S ACCEPTANCE OF AND ASSENT TO, THESE TERMS AND CONDITIONS AND THOSE REFERRED TO HEREIN. ANY ADDITIONAL, INCONSISTENT OR DIFFERENT TERMS AND CONDITIONS CONTAINED IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENTS SUBMITTED BY BUYER TO CMT AT ANY TIME, WHETHER BEFORE OR AFTER THE DATE HEREOF, ARE HEREBY EXPRESSLY REJECTED BY CMT. BUYER ACKNOWLEDGES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ITS PURCHASE ORDER OR OTHER DOCUMENTS, RECEIPT AND ACCEPTANCE BY BUYER OF PRODUCTS SOLD BY CMT SHALL CONSTITUTE ACCEPTANCE BY BUYER OF THESE TERMS AND CONDITIONS. ALL ORDERS ARE SUBJECT TO ACCEPTANCE BY CMT AT ITS OFFICE AT 911 US HWY 301 S, TAMPA, FL 33619.

3. **Payment.** a) A nonrefundable deposit detailed in the CMT proposal will be required at the time of order, unless otherwise provided in CMT's proposal. b) Customer agrees to pay for all goods purchased upon delivery of the goods to Customer, unless otherwise stated in CMT's proposal or invoice for the goods purchased. c) All payments are due and payable to CMT at its office in Tampa, Florida. d) There shall be no extension of or change in the time for payment due to delays in installation and/or operation of goods caused by damage, warranty service or warranty replacement of parts. e) If payment is not made when due, or if Customer otherwise violates this agreement, Customer shall pay CMT a late charge at the rate of eighteen percent (18%) per annum on the amount due, plus CMT's reasonable attorney's fees for all matters including but not limited to appeals, mediation, and bankruptcy proceedings, plus other costs of collection (including but not limited to costs of enforcing or contesting CMT's security interest in the goods, costs of removing, repairing and reselling the goods, long distance, copies, postage, filing fees, storage, and other expenses). f) The place of sale of all goods is CMT's place of business in Tampa, Florida, even if the place of delivery is elsewhere.

4. **PRICES; TAXES; DELIVERY.** Prices are subject to change by CMT due to increases in costs or otherwise without notice to BUYER. Prices do not include taxes, which are separately itemized. BUYER shall pay all excise, sales, occupation, use or similar taxes, levies, governmental charges or surcharges applicable to the Products, or the sale or use thereof, whether now in effect or hereafter imposed. Unless otherwise mutually agreed upon in writing, all Products shall be shipped F.O.B. point of origin, except that (i) Products shipped from outside the continental United States shall be shipped F.O.B. Port of Entry and "Port of entry" shall mean any port at the borders of the continental United States at which a customs-house or revenue office is established for the execution of U.S. laws imposing duties on vessels and imported goods. Where the scheduled delivery of Products is delayed by BUYER or by reason of any contingency referred to in Section 16 hereof, CMT may deliver such Products by moving them to storage and BUYER shall be liable for any storage charges or price increases in effect at the date of shipment to BUYER. Should the carrier designated by BUYER fail to pick up the Products within two (2) days after being given notice, CMT reserves the right to select and make shipment by an alternate carrier and charge BUYER for such shipment.

5. **RISK OF LOSS; TITLE; SECURITY INTEREST.** Notwithstanding Section 3 hereof, all risk of loss or damage shall pass to BUYER, and delivery shall be deemed to be completed, upon delivery of the Products to the carrier, its agent or designee, or upon moving the Products into storage, whichever shall occur first, at the point of shipment. CMT reserves and BUYER hereby expressly grants to CMT, a purchase money security interest in the Products until the purchase price has been fully paid. BUYER agrees to execute, and hereby appoints CMT as its attorney-in-fact to execute on BUYER's behalf, any documents requested by CMT which are necessary for attachment and perfection of its security interest. If BUYER defaults, CMT will have all the rights of a secured creditor under the Uniform Commercial Code as enacted in the State of Illinois. If any Products are placed on any real property subject to any mortgage, lien or encumbrance, BUYER shall ensure that the Products shall be expressly excluded from the terms of such mortgage, lien or encumbrance.

6. **SHIPMENT ESTIMATES.** The shipping date is estimated upon the basis of immediate receipt by CMT of BUYER's acceptance of the Agreement or of CMT's acceptance of BUYER's purchase order and all information required to be furnished by BUYER. CMT shall, in good faith, endeavor to ship by the estimated shipping date but reserves the right to vary such date free of any liability to BUYER, notwithstanding any commitment or representation to the contrary.

7. **INSTALLATION AND ACCEPTANCE.** Installation by CMT shall be deemed to have occurred upon the execution of the CMT Installation Form by a CMT Service Engineer. Except as otherwise set forth in this Section 8 or in CMT's Installation Form, CMT shall have no obligation to provide any erection or installation services in respect of the Products. BUYER shall be solely responsible for timely site preparation for any erection, installation, warranty or other services that CMT may provide. In the case of proper and timely written notice to CMT from BUYER, then BUYER's acceptance shall be deemed to have occurred on the date CMT reasonably corrects such incomplete order or defect. Notwithstanding the foregoing, any assignment of the Products by Buyer to a bank or other financing company for the purpose of an equipment lease or other financing transaction shall be deemed to be an acceptance of the Products.

8. **CANCELLATION BY CMT; REMEDIES FOR BREACH.** CMT may, by written notice to BUYER and without any liability, cancel BUYER'S order if BUYER (i) fails to perform any of the terms and conditions hereof and does not cure such failure within a period of ten (10) days after receipt of written notice from CMT specifying such failure, provided, that, no such cure period shall apply to BUYER's failure to pay in a timely manner; (ii) in CMT's opinion, has not established or maintained credit to meet promptly the payment terms of CMT's Standard Terms of Payment or has defaulted on the payment terms of any other transaction with CMT; (iii) becomes insolvent, makes an assignment in favor of creditors, or becomes subject to any bankruptcy, dissolution or similar proceedings; or (iv) is merged into, or all or a substantial part of its assets are sold to, another company. Upon any such cancellation, BUYER shall be liable to CMT for a cancellation charge in accordance with Section 10 below. As a nonexclusive alternative to cancellation, CMT may, for any reason referenced in subsections (i)-(iv) of this Section 9, without any liability, (a) suspend any of its obligations hereunder (including CMT's warranty obligations), (b) physically render the Product unusable and/or (c) exercise any and all of its rights as a secured creditor under the Uniform Commercial Code.

9. CANCELLATION BY BUYER. (a) Non-Customized Products. BUYER may, by prior written notice to CMT, (i) if within thirty (30) days of CMT's acceptance of BUYER's order and prior to shipment, cancel an order for Non-Customized Products, subject to a cancellation charge to be paid to CMT equal to twenty five percent (25%) of the purchase price of such Products or (ii) if more than thirty (30) days has elapsed from the date of CMT's acceptance of BUYER's order, cancel an order for Non-Customized Products, subject to a cancellation charge to be paid to CMT equal to thirty five percent (35%) of the purchase price of such Products plus payment of any costs incurred by CMT in performing its obligations hereunder. (b) Customized Products and products already shipped. BUYER shall not cancel any order with CMT for Customized Products or orders already shipped, (or any order for Non-Customized Products which includes any customized or specialized modifications, tooling, options, parts or accessories or added services or runoff that CMT has agreed to provide) without CMT's prior written consent.

10. **CMT MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR OTHERWISE, WITH RESPECT TO ANY PRODUCT OR LABOR FURNISHED IN CONNECTION WITH THE SALE, DELIVERY OR SERVICING OF ANY PRODUCT. GOODS AND MATERIALS SOLD BY CMT CARRY THE STANDARD GUARANTEE OF THE MANUFACTURER THEREOF, IF ANY, AND CMT SHALL NOT BE RESPONSIBLE FOR ANY DEFECTIVE PART THEREOF. LIMIT OF CMT'S LIABILITY; CUSTOMER'S REMEDY. IN NO EVENT SHALL CMT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES FOR INJURY TO PERSON OR PROPERTY, LOST PROFITS OR REVENUE, LOST SALES OR LOSS OF USE OF ANY PRODUCT. BUYER'S SOLE AND EXCLUSIVE REMEDY IS AGAINST THE MANUFACTURER OF THE PRODUCT AND SHALL BE THE REPAIR OR REPLACEMENT OF DEFECTIVE PARTS AS PROVIDED BY THE MANUFACTURER.** The sole purpose of the stipulated exclusive remedy provided for herein shall be to provide BUYER with repair or replacement of defective Products in the manner provided by the manufacturer.

11. NO RIGHT OF SET OFF. BUYER has no right to deduct or set off from the purchase price of the Product any damages or costs incurred by BUYER as a result of any action on the part of CMT or otherwise.

12. INDEMNIFICATION. BUYER agrees to indemnify, defend and hold CMT harmless from and against all judgments, decrees and costs (including attorneys' fees) resulting from BUYER's use and/or resale of the goods delivered hereunder. Further, without limiting the generality of the foregoing, if the goods delivered hereunder are to be prepared for manufacture according to BUYER's specifications, BUYER shall indemnify, defend and hold CMT harmless against any claims or liability for patent or trademark infringement on account of such preparation or manufacture.

13. FORCE MAJEURE. Except with respect to the payment of monies due hereunder and BUYER's obligations under Section 12 hereof, neither party hereto shall be responsible for failure to perform hereunder or for any loss or damage due to causes beyond its reasonable control, including but not limited to acts of God, fires, civil disobedience, war, acts of terrorism, riots, strikes, work stoppages, floods, water/elements, changes in governmental requirements or inability to secure equipment, raw materials or transport. Notice to this effect ("Notice of Force Majeure") shall be given at once to the other party. Performance shall be resumed as soon as practicable after the cessation of the cause of a delay.

14. ENTIRE AGREEMENT. The entire agreement between CMT and BUYER with respect to BUYER's order is embodied solely within the Agreement, which supersedes all prior agreements, understandings, representations or warranties, whether oral or written, between CMT and BUYER relating to such order. No statement, recommendation or assistance made or offered by CMT through its representatives in connection with suitability, capacity, performance or compliance with customer's specification of the Products sold shall be or constitute a waiver by CMT of any provision hereof. No statements subsequent to the acceptance of the Agreement and these terms and conditions shall be binding upon CMT, nor shall the Agreement or such terms or conditions be amended or modified, unless consented to in writing by a duly authorized officer of CMT in a document referencing these terms and conditions. These terms and conditions of sale shall remain effective as between CMT and BUYER, regardless of any arrangement or agreement for financing of BUYER's purchase of the Product, whether such financing is provided by CMT, any subsidiary of CMT or any entity related to CMT.

15. ATTORNEY'S FEES. In the event of any litigation or collection action arising out of BUYER's purchase of Products, CMT shall be entitled to reimbursement from BUYER for its actual reasonable attorney's fees and costs.

16. NON-WAIVER. Failure by CMT to enforce any rights under or to insist upon strict performance of any provision in the Agreement shall not constitute a waiver of any breach or a waiver of such provision, irrespective of the length of time for which such failure continues.

17. SURVIVAL; SEVERABILITY; ASSIGNMENT. Notwithstanding any expiration or cancellation of BUYER's order, BUYER shall remain obligated under all those provisions of the Agreement which expressly or by their nature extend beyond and survive such expiration or cancellation. If any provision or any portion of any provision in the Agreement shall be held to be void or unenforceable, the remaining provisions hereof and the remaining portions of any provisions of the Agreement held void or unenforceable in part shall continue in full force and effect. The Agreement shall not be assigned, subcontracted, or delegated, in whole or in part, without CMT's prior written consent.

18. GOVERNING LAW; FORUM; CMT'S ARBITRATION OPTION. The Agreement, and BUYER's purchase of Products, shall be governed by and interpreted in accordance with the laws of the state of Florida, U.S.A.. AT THE SOLE OPTION OF CMT, ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCT MAY BE REFERRED TO BINDING ARBITRATION, WHICH SHALL BE ADMINISTERED BY, AND CONDUCTED IN ACCORDANCE WITH THE COMMERCIAL RULES OF, THE AMERICAN ARBITRATION ASSOCIATION, WITH THE HEARING THEREIN TO BE HELD IN THE STATE OF FLORIDA.

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