



TERMS OF SALE RIDER - STANDARD TERMS AND CONDITIONS OF SALE

These Standard Terms and Conditions of Sale ("Terms") apply to the sale of all ProCal Innovations, LLC.'s products. In these Terms, "Seller" means ProCal Innovations, LLC., and the "Customer" means the buyer of the goods.

- 1. Acceptance of Seller's Terms and Conditions of Sale.** Customer has read and understands these Terms. Customer agrees that (i) Customer's written acceptance of these Terms (including Customer's issuance of a purchase order), (ii) Customer's acceptance of any goods or services from Seller, or (iii) Customer's payment for any goods or services from Seller constitutes Customer's acceptance of these Terms as the sole terms and conditions governing the sale by the Seller to Customer. Customer expressly acknowledges and agrees that all terms and conditions proposed by Customer which are different from or in addition to these Terms are unacceptable to Seller, are hereby expressly rejected by Seller, and shall not become a part of the contract between Customer and Seller. No variation of these Terms shall be effective unless expressly agreed to by the Seller's President or his designated representative in writing.
- 2. No Consumer Sales.** Customer acknowledges that Seller is not in the business of selling its Equipment to consumers. Customer warrants and represents to Seller that (a) it is purchasing the Equipment solely for business or commercial purposes, and (b) it is not a "consumer" as defined by any applicable law or regulation.
- 3. Quotations.** All quotations are for information only and are not an offer by the Seller. An order by a Customer shall not constitute a contract between it and the Seller unless it has been accepted by the Seller in writing, which acceptance shall be deemed to occur at Seller's offices in Alpena, Michigan.
- 4. Prices.** (a) Published prices are not unconditional offers to sell, and are subject to change without notice. (b) Seller's stated prices are F.O.B. shipping point and, unless otherwise specified, do not include the cost of delivery, documentation, the cost of special packaging, unloading, uncrating, installation and/or final on-site adjustment. Such costs may be prepaid and billed as a separate invoice item. (c) Seller's prices do not include any privilege, occupation, personal property, value-added, sales, excise, use, income, or any other tax. Seller may add the amount of any such tax to the invoice. Customer shall be liable for all such taxes, whether or not invoiced by Seller. If an exemption certificate provided by Customer is determined to be invalid, or if Customer fails to timely furnish a valid exemption certificate, notarized affidavit, or other necessary documentation, any resulting sales, use, import, export, or similar excise tax may be billed to Customer. (d) Prices quoted by Seller are subject to change thirty (30) calendar days after quotation. Seller reserves the right to withdraw quoted prices by written notice. (e) In the event of late payment, the Seller reserves the right to charge interest at the lesser of 1.5% per month or the highest nonusurious rate permitted under applicable law. (f) The Customer shall not be entitled to set off, and Customer expressly waives and releases any right of set off, against monies due to the Seller, any sums claimed by or due to the Customer from the Seller under the contract or any other contract between the Seller and the Customer, including, without limitation, any and all claims for damages.
- 5. Payment Terms.** All orders are subject to Seller's evaluation of Customer's credit. Provided the Seller in its sole discretion deems the Customer to be credit worthy, standard terms are net 30 days. Seller reserves the right to reject and/or suspend delivery of any order at any time if Seller determines the Customer's credit to be unfavorable. If Seller for any reason in its sole discretion feels insecure about the Customer's willingness or ability to perform, Seller shall have the unconditional right to require payment in full in advance of delivery.
- 6. Late Delivery at Customer's Request.** In the event Customer postpones delivery, requests that Seller suspend manufacture, fails to give Seller sufficient information to process Customer's order, or otherwise fails to take delivery, the Seller shall be entitled, without prejudice to any other rights it may have, to treat the contract at an end and to resell the Equipment, or to submit an invoice for the Equipment in which event payment in full shall immediately become due. In either case the Seller shall charge Customer for the handling and storage of the Equipment from the date of the invoice to the date of delivery to the Customer or of disposal elsewhere.
- 7. Delivery; Installments; Force Majeure; Nonacceptance.** (a) Except where specifically agreed to the contrary in writing by Seller, delivery to Customer shall be F.O.B. shipping point and risk of loss shall pass to Customer upon delivery to the carrier. (b) Delivery dates are estimates only, and time is not of the essence. Although Seller shall



endeavor as far as practicable to deliver the Equipment adhering to the delivery schedule, Seller may in its sole discretion cancel or modify all delivery dates and Seller shall not be liable to Customer for any loss or damage whatsoever, including loss of profit or any direct, indirect, special, incidental, consequential or other damages, caused by such cancellation, modification, late delivery or failure to deliver.

8. Solvency; Security. (a) Customer represents that Customer is financially solvent. (b) To secure any unpaid portion of the purchase price, or any other indebtedness from Customer to Seller, Customer hereby assigns to Seller and grants Seller a security interest in the Equipment. Customer agrees to execute such financing statements or additional documents, or take such other action, as Seller may reasonably require to perfect such interest and Customer hereby appoints Seller its attorney-in-fact for the purpose of executing such documents or taking such action.

9. Substitutions and Charges. (a) Unless otherwise agreed in writing, Seller reserves the right to substitute the latest superseding design and/or manufactured equivalent equipment based on form, fit, and function, for the Equipment. (b) Customer may, with the express written consent of Seller, make changes in the specifications for equipment or work covered by the contract. In such event the parties will adjust the contract price and delivery dates. Seller shall be entitled to a reasonable profit plus costs and expenses incurred for work and materials rendered unnecessary as a result of such changes, and for work and materials required to effect said changes.

10. Customer's Obligations. Customer agrees that (i) before ordering the Equipment, Customer shall determine the suitability of the Equipment for Customer's intended use and shall assume all risk and liability whatsoever in connection with that determination; (ii) Customer shall use the Equipment properly and according to Seller's instructions, complying with all safety requirements; (iii) Customer shall not remove or change any instructions or warnings placed on the Equipment, or remove or modify any safety devices installed by Seller; and (iv) Customer shall use, and install the products in accordance with all applicable laws and codes. Customer shall indemnify and hold harmless the Seller, and, if so requested, defend the Seller, from any and all costs, claims, damages, judgments and expenses (including reasonable attorney fees) suffered or incurred by Seller that arise out of, or as a result of or in connection with, any act, omission, or use of the Equipment by Customer or its employees, agents, or customers, or any breach by Customer of these Terms. Customer shall notify the Seller promptly, and in any event within thirty days, of any accident or malfunction involving the Equipment which results in personal injury or damage to property and shall cooperate fully with the Seller in investigating and determining the cause of such accident or malfunction.

11. Cancellation. Customer may cancel undelivered parts of any order only with the written approval of Seller. If the Seller for any reason in its sole discretion feels insecure about the Customer's willingness or ability to perform, Seller shall have the unconditional right to cancel this sale. In the event of any cancellation by either party, Customer shall pay to Seller the reasonable costs and expenses (including engineering expenses and all commitments to Seller's suppliers and subcontractors) that Seller has incurred prior to such cancellation, plus the Seller's usual rate of profit for similar work.

12. Seller's Compliance with Regulatory Laws. Seller makes no promise or representation that the Equipment will conform to any national, provincial, federal, state or local laws, ordinances, regulations, codes, or standards.

13. Disclaimer of Warranties; Customer's Exclusive Remedy. THE WARRANTIES HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE. SELLER MAKES NO OTHER WARRANTIES EITHER EXPRESS OR IMPLIED. IN PARTICULAR, SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL HAVE NO LIABILITY TO CUSTOMER FOR DIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, PROPERTY DAMAGES, LOST PROFITS, OR OTHER ECONOMIC INJURY DUE TO ANY DEFECT IN THE EQUIPMENT, ANY USE OR INABILITY TO USE THE EQUIPMENT, OR ANY OTHER BREACH BY SELLER OF THIS CONTRACT. SELLER SHALL HAVE NO LIABILITY TO CUSTOMER IN TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE) FOR ANY PRODUCT LIABILITY CONCERNING THE EQUIPMENT, OR FOR THE OMISSION OF ANY WARNING THEREFROM. THE FOLLOWING REMEDY SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF CUSTOMER UNDER THIS CONTRACT AND IS EXPRESSLY MADE IN SUBSTITUTION OF ANY AND ALL OTHER REMEDIES.



The Seller warrants that the Equipment will be free of defects in workmanship and material (if properly installed, operated and maintained) for a period of one year or 2080 hours of use, whichever is sooner, from date of shipment to Customer, subject to the limitations hereunder set forth. If within the one year warranty period, the Seller receives from the Customer written notice of any alleged defects in the Equipment and if the Equipment is not found to be in conformity with this warranty (the Customer having provided the Seller a reasonable opportunity to perform any appropriate tests thereon) Seller will, at its option, either repair the Equipment or supply a replacement therefore.

The Seller under either option shall have the right to require Customer to deliver the Equipment to Seller's designated service center and the Customer shall pay all charges for in-bound and out-bound transportation and for services of any kind, diagnostic or otherwise, excepting only the direct and actual costs of repairing or replacing the Equipment. If after reasonable effort the Seller cannot correct said deficiencies, the Seller will make an equitable price adjustment based on actual performance, provided that such adjustment shall under no circumstances exceed the purchase price. The Seller further warrants that the parts, and components supplied by the Seller and forming a part of the Equipment will be free from defects in material and workmanship for a period of one year or 2080 hours of use, whichever is sooner, from date of shipment to the Customer. The Seller's liability shall be solely limited to the supplying of replacement parts and materials.

14. General Warranty Conditions. The foregoing warranties are subject to the following general conditions:

- A. For purposes of these Terms, the Equipment will be deemed defective only if (i) the defect materially impairs the value of the Equipment to Customer, (ii) the Equipment was defective on the date of original shipment, and (iii) the Customer notifies Seller in writing of the claim within the warranty period.
- B. If the Customer requests and the Seller agrees to the performance of warranty work during any time other than Seller's ordinary business hours and work periods, the Customer shall be required to pay for all premium time.
- C. If the Customer requests and the Seller agrees to the performance of warranty work, the Customer shall be required to pay for the travel time, living and travel expenses of any personnel of Seller required to perform such warranty work.
- D. Equipment sold but not manufactured by the Seller will be warranted against defects in material and workmanship consistent with the warranty policy of the original manufacturer of the equipment.
- E. All warranties shall be null and void where the Equipment has been subjected to accident, altered, misused or abused, or Customer has failed to ensure proper storage, installation, operation and/or maintenance of the Equipment. Use of the Equipment in improper or non-recommended applications (including operation above rated load capacity), or use of parts or components not meeting the Seller's specifications or quality standards (e.g., non-ProCal Innovations, LLC. parts or components) renders all warranties null and void.
- F. The foregoing warranties do not apply to any product or part thereof which has a life, under normal usage, shorter than the indicated warranty period such as, but not limited to, belts and bearings.
- G. All production figures, throughput rates, production rates, capacity figures and cost figures contained in Seller's proposals, printed literature, advertising, drawings and/or quotes are based on tests Seller believes are reliable and on Seller's understanding of the Customer's project and are not warranted or otherwise guaranteed.
- H. If the Seller provides Customer with assistance or advice concerning the Equipment or any parts/service supplied hereunder or any system or equipment in which any such part/service may be installed and which is not required pursuant hereto, the furnishing of such assistance or advice shall not subject Company to any liability, whether based in contract, warranty, tort (including negligence) or otherwise.

15. Remedies for Customer's Default. (a) The Seller shall have the option (without prejudice to any of its other rights against the Customer) by notice in writing to the Customer to cancel any order or to suspend delivery in the following events: (i) should any sum owing by the Customer to the Seller be overdue; (ii) should the Customer be in any breach of any term of the contract with the Seller; (iii) should the Customer enter into any arrangement with, or for the benefit of, its creditors or file a petition in bankruptcy, or have a receiver appointed over all or part of its



assets, or if any order is made against the Customer for the preservation, safeguarding, or regulating the use of, the Customer's property or assets; or (iv) Seller determines in its sole discretion that the Customer is not creditworthy. (b) If litigation or other legal action is commenced by Seller to enforce its rights under these Terms, Seller shall have the right to collect all of the expenses of such litigation or other action, including reasonable attorneys' fees, from Customer. (c) In addition to the foregoing, Seller shall have all the rights and remedies given to sellers by applicable law. Seller's rights and remedies shall be cumulative and may be exercised from time to time. Seller shall not lose any right because it has not exercised it in the past.

16. No Waiver. Forbearance or indulgence by the Seller shown or granted to the Customer whether in respect of these Terms or otherwise shall not affect or prejudice the rights of the Seller against the Customer or be taken as a waiver of any of these Terms.

17. Interpretation.

a. Headings. The headings to these Conditions have been inserted for convenience and shall not affect their construction.

b. Severability. If any of these Terms is found to be invalid or unenforceable, the provision shall be ineffective to the extent of such invalidity or unenforceability, but the remaining provisions shall be unaffected.

18. Applicable Law and Jurisdiction. The contract between Seller and Customer shall be considered to have been made in the State of Michigan and shall be governed by and interpreted according to Michigan law. Any action or suit arising hereunder must be brought within one (1) year from the date the cause of action accrues. Any lawsuit arising out of this contract shall be brought in the federal or state court having jurisdiction over Alpena County, Michigan. Customer consents to personal jurisdiction in such court and waives any other jurisdiction that might be available by reason of presence or otherwise.