



## TERMS AND CONDITIONS OF SALE

1. **GENERAL:** The terms and conditions of sale contained herein constitute the entire agreement (the "Agreement") between Buyer and Seller with respect to the order and supersede all prior agreements regarding the order. Seller's acceptance of the order is expressly limited to and conditioned upon Buyer's acceptance of these terms and conditions. These terms and conditions cannot be superseded by any different or additional terms proposed by Buyer and Seller objects and rejects any such terms. Any modifications to or waiver of these terms and conditions must be mutually agreed in writing. "Seller" is Wabash Metal Products, Inc., a Wisconsin corporation, doing business as Carver and Fred S. Carver and Wabash MPI. "Buyer" is the individual or entity submitting orders for Equipment and/or Services (each as hereinafter defined).
2. **DEFINITIONS:**
  - (a) Unless the context requires otherwise, the term "Equipment" as used herein means the equipment, parts, accessories sold and all software or software documentation, if any, licensed to Buyer by Seller as set forth in the order.
  - (b) Unless the context requires otherwise, the term "Services" as used herein means all labor, supervisory technical, engineering, installation, repair and other services Seller is to provide as set forth in the order.
3. **AFFILIATES:** Buyer acknowledges and agrees that its purchase order may be fulfilled by Seller or assigned to and fulfilled by Sterling Products, Inc., a Delaware corporation, doing business as ACS Group, ACS Auxiliaries Group, AEC, Cumberland Engineering Enterprises or any of Seller's other subsidiaries or affiliates without notice to Buyer.
4. **PRICES QUOTED:** Prices quoted are valid for sixty (60) days unless otherwise stated in the quote or extended in writing at the discretion of Seller. Any changes requested by Buyer affecting the scope of the order must be accepted by Seller in writing and may result in adjustments to price, schedule and warranties agreed to prior to the implementation of the change. Prices do not include provisions for taxes, charges, duties, freight, insurance or levies of any kind imposed on the sale of Equipment or Services.
5. **STANDARD DOMESTIC PAYMENT TERMS (US and Canada):** Payment terms hereunder shall be in force unless other terms are mutually accepted in writing.
  - (a) All payment terms are subject to credit review and approval
  - (b) For sales orders less than \$25,000 USD, payment terms are Net 30 days commencing with invoice date
  - (c) Equipment sales orders that exceed \$25,000 USD payment terms are 35% down payment due upon order acceptance, 35% pre-shipment payment due 14 days before scheduled shipment date, 30% balance due net 30 days after shipment. Buyer's request to delay shipping date shall not change the due date of the pre-shipment payment, unless by explicit written agreement of Seller.
  - (d) Freight for all shipments shall be considered to be FOB Origin, prepay and add, unless customer provides a freight account number or otherwise specifies in the order.
  - (e) Payment for the Equipment shall not be delayed because Buyer requires Seller to delay shipment or completion of the work under an order.
6. **STANDARD INTERNATIONAL PAYMENT TERMS:** Payment terms hereunder shall be in force unless other terms are mutually accepted in writing.
  - (a) All payment terms are subject to credit review and approval
  - (b) For sales orders less than \$10,000 USD, payment terms are CASH IN ADVANCE due upon order acceptance.
  - (c) For sales orders that exceed \$10,000 USD, payment terms can be either (i) due upon order acceptance or (ii) are 35% down payment due upon order acceptance, balance due 14 days before scheduled shipment date. Buyer's request to delay shipping date shall not change the due date of the pre-shipment payment, unless by explicit written agreement of Seller.
  - (d) All prices are stated in U.S. dollars unless otherwise specified.
  - (e) Freight is included as a separate line item on the quote and charged as a line item on the invoice, unless customer provides a valid freight account number to charge.
  - (f) Payment for the Equipment shall not be delayed because Buyer requires Seller to delay shipment or completion of the work under an order.
7. **COOPERATION:** Buyer acknowledges that Equipment and Services provided by Seller to satisfy the order require information and cooperation from Buyer. Buyer shall, at its own expense, provide complete, timely and accurate information regarding its requirements and all other data and information reasonably necessary for the performance by Seller of its obligations. Buyer shall ensure the material accuracy of all such documents, data, materials or other information upon which Seller will rely.
8. **ORDER CANCELLATION:** Unless Seller otherwise agreed in writing, Buyer may cancel all or any part of the order by written notice received by Seller no later than 45 days before the scheduled shipping date. On receipt of such cancellation notice, all work on the order or part thereof cancelled will be stopped as promptly as is reasonably possible. Buyer will then be invoiced for and will pay to Seller as liquidated damages a cancellation charge. Cancellation invoice will be due upon receipt. The parties acknowledge and agree the amount of actual damages would be difficult to determine, but the following liquidated damages are reasonable estimates thereof: (a) for completed items where the product has been customized to any degree for the Buyer, the cancellation charge will be equal to the established prices; (b) for items not completed, the cancellation charge will be equal to 130 percent of Seller's cost as determined by Seller in accordance with Seller's standard accounting practices, plus a charge for any packing and storage as reasonably determined by Seller.

9. **STOP WORK:** In the event that Seller or an affiliate of Seller is unable to proceed with the manufacture and shipment of Buyer's order, either due to Buyer's request (within 45 days before scheduled shipping date) or as a direct or indirect result of any governmental action or regulation, Seller shall promptly notify Buyer and:
- Stop all work on the order as promptly as reasonably possible and store all finished and unfinished items at Buyer's risk.
  - Seller shall invoice Buyer and Buyer shall pay the cancellation costs pursuant to paragraph 8 above.
  - Reinstate Buyer's order at the earliest possible date, subject to Buyer's acceptance of prices, terms and shipping schedule quoted preliminary to such reinstatement. Seller shall allow Buyer appropriate credit for parts held in storage by Seller as Buyer's property if such parts can still be used in filling Buyer's reinstated order.
  - In the event Seller is not permitted to reinstate Buyer's order within 30 days of Seller's notification of stop work, Seller shall scrap Buyer's stored order.
10. **RETURNS:** Seller does not generally accept any returns and Equipment may not be returned except with the prior consent of and subject to the terms specified by Seller. In the rare instance Seller agrees, in its sole discretion, in writing to accept a return of Equipment a restocking fee of up to 100% will be charged and invoiced to Buyer, due upon receipt. Any freight or incidental charges associated with such return is the responsibility of the Buyer.
11. **LATE CHARGE:** If Buyer does not make full payment when due, Buyer shall pay a 2% delinquency charge on any unpaid balance of the Price for each additional thirty (30) day period, or any portion thereof, that elapses before full payment of the amount due and reasonable costs of collection, including attorney's fees and legal expenses.
12. **DELIVERY:**
- Unless otherwise agreed, all sales with Seller routed freight are FOB origin (incoterms FCA factory) and all risk of loss or damage transfers to Buyer upon tender to the carrier at the factory or warehouse of Seller.
  - Unless otherwise agreed, all sales with Buyer routed freight will have incoterms EXW point of manufacture and all risk of loss or damage transfers to Buyer when the goods are complete and at the disposal of the Buyer at the factory or warehouse of Seller.
  - Shipping and delivery dates are contingent upon Buyer's timely delivery of any documentation required for Seller's performance hereunder, and Seller's acceptance of same.
  - Shipping and deliver dates are contingent upon Buyer's timely pre-shipment payment when applicable.
  - Claims of shortages or other errors in delivery must be made in writing to Seller within ten (10) days of delivery.
  - Claims raised by Buyer for damage occurring during delivery shall be made directly by Buyer to the carrier.
  - Buyer will be responsible for reasonable warehousing, insurance, and premium shipping charges where applicable for any Equipment that is ready for shipment on or after the scheduled shipping date and cannot be shipped within 7 days due to Buyer's delay or request.
13. **FORCE MAJEURE:** Seller shall not be liable for any delay in performance or nonperformance which is due to war, fire, flood, acts of God, acts of third parties, acts of governmental authority or any agency or commission thereof, accident, breakdown of equipment, strikes, differences with employees or similar or dissimilar causes beyond Seller's reasonable control, including but not limited to, those acts interfering with Seller's production, supply or transportation.
14. **BUYER OBLIGATION TO PREPARE:** Buyer is to prepare the premises and provide proper size openings to receive the Equipment, and except when stated specifically to the contrary, Buyer is also to furnish and install, where required, and in accordance with local codes the following: lighting, electric wiring and clean electric power, water, sewer, and drain connections; steam supply and exhaust connections; compressed air; cutting and patching; foundations; all permits, certificates of inspection and fees thereof. Buyer is to provide sufficient space at the location where the Equipment is installed so that Seller's agents may service such Equipment if Seller elects to do so.
15. **LIMITED WARRANTY:**  
 Seller warrants to the original Buyer against defects in material or workmanship in the Equipment for a period of one year from date of shipment. In the event Buyer makes a written claim for breach of this warranty during the warranty period, Seller will, at its option, (i) repair the Equipment or (ii) replace the Equipment with the same or functionally comparable alternatives. In the event Seller provides Services whereby Seller installs the Equipment pursuant to the order from the Buyer in which the Equipment was also ordered, the warranty expires one year from the date of the start-up or 18 months from shipment, whichever occurs first. Buyer's exclusive remedy is expressly limited to this limited warranty. Buyer agrees to promptly notify Seller in writing of any claimed warranty breach and allow Seller reasonable access and opportunity to cure such breach. The limited warranty contained in this Section 15 shall not be binding upon Seller unless all payments required under the terms of the order and this Agreement, are and continue to be timely paid in accordance with this Agreement.
- The warranty does not apply, if in the Seller's sole discretion, the Equipment has been subjected to misuse, negligence, faulty installation, operation in excess of recommended limits, including but not limited to freezing, transient voltages, or other electrical anomalies, or repairs or alterations made without the Seller's express written authorization. The warranty does not cover any labor charges for replacement of parts, adjustment repairs, or any other work. Missing or defaced serial numbers void the warranty. Defective parts become the property of the Seller and are to be returned immediately (at Buyer's expense) without any further use or handling.
16. **LIMITATION OF LIABILITY:**
- In no event shall Seller or its affiliates be liable for special, indirect, punitive, incidental or consequential damages, whether in contract, tort or otherwise, including but not limited to loss of profits or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers of Buyer or third parties for any damages. Seller's liability for any claim for any loss or damage arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any Equipment or from any Services rendered shall in no case exceed the purchase price of that Equipment or cost of Services which gives rise to the claim.
  - All causes of action against Seller arising out of or relating to the order or the performance by Seller or breach of warranty or contract by Seller shall expire unless brought within one (1) year of the time of the act or omission resulting in breach.
  - For international transactions, the parties expressly agree that Section 27 of this Agreement applies and the United Nations Convention on Contracts for the Sale of Goods does not apply.

- (d) Seller's obligation for parts or equipment not furnished as components of its manufactured Equipment is limited to the warranty of the manufacturers of said parts, to the extent such warranty is assignable. Seller neither assumes nor authorizes any other persons to assume for it any liability in connection with the sale of its Equipment not expressed in the limited warranty set forth in Section 15. No person, agent, manufacturer, distributor, dealer, installer, or company is authorized to change, modify, or extend the terms of such warranty in any manner whatsoever.
- (e) In no event shall Seller be responsible for liability arising out of Buyer's violation of any state, local or federal law, rule, regulation, order or ordinance ("Law"), including applicable workplace safety and environmental Laws, relating to or caused by Buyer's design, location, operation, or maintenance of the Equipment, its use in association with other equipment of Buyer, or the alteration of the Equipment by any party other than Seller. Buyer is solely responsible for compliance with all Laws related to the installation and use of the Equipment.

17. **BUYER RESPONSIBILITIES:**

Buyer shall be fully and exclusively responsible for payment of any taxes, charges, duties, freight, insurance or levies incident to the replacement of parts under the limited warranty described in Section 15. If, for any reason, Buyer fails or refuses to allow Seller to perform repair services during Seller's initial service visit, Seller's obligations under Section 15 shall be considered satisfied, and Seller shall not be required to return for additional service visits.

18. **FULFILLMENT OF LIMITED WARRANTY:**

Any labor associated with claims under Section 15 will be performed either at the site of the Buyer or Seller's authorized service location, which shall be determined solely at the discretion of Seller. Warranty repairs will be scheduled during Seller's normal business hours. Any replacement part shall be warranted for the remainder of the unused portion of the limited warranty described in Section 15.

**THE LIMITED WARRANTY CONTAINED IN SECTION 15 IS THE ONLY WARRANTY MADE BY SELLER OR ANYONE ELSE WITH RESPECT TO THE EQUIPMENT [AND SERVICES] BEING SOLD HEREUNDER AND ARE IN LIEU OF ANY OTHER WARRANTIES, EXPRESSED OR IMPLIED. ANY OTHER WARRANTY INCLUDING A WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NONINFRINGEMENT ARE HEREBY DISCLAIMED. NO ORAL WARRANTIES OR GUARANTEES OF ANY KIND HAVE BEEN MADE TO BUYER.**

19. **SECURITY INTEREST:** Seller hereby reserves a purchase money security interest in each unit of Equipment sold or to be sold under this Agreement and all additions and accessories thereto, and proceeds thereof. This interest will be satisfied by payment in full for each unit of Equipment by Buyer. The parties agree that this document shall serve as a security agreement in order to perfect and secure Seller's security interest in the Equipment. The responsibility of filing such security interest shall be that of Seller. Buyer explicitly agrees that Seller may file financing statement(s) and other instruments necessary to perfect and maintain a security interest in the Equipment for their purchase price. At the request of Seller, Buyer will join with Seller in executing one or more financing statements or other documentation deemed by Seller to be filed pursuant to the Uniform Commercial Code which shall be in form and substance satisfactory to Seller, and Buyer hereby appoints Seller its attorney in fact to execute such financing statements on its behalf, so that the statements will be signed by Buyer as debtor, said power being one coupled with an interest and not revocable.

20. **OWNERSHIP/TITLE:** Ownership and title to the Equipment shall pass to Buyer in accordance with delivery terms outlined in Section 12.

21. **TAXES:**

- (a) Prior to Payment in Full. Buyer will pay when due all taxes on the Equipment or for its use and will keep the Equipment free of any adverse lien or encumbrance and in good order and repair and will not waste or destroy the Equipment, or permit it to be attached by legal process or used in violation of any statute or encumbered, misused or abused until full payment of the price and other amounts due hereunder have been received by Seller. Prior to such payment in full, Seller may, at its option, pay taxes, discharge encumbrances and pay for insurance, repairs and maintenance on the Equipment, and any sums so paid by Seller or for which it shall become obligated shall be repaid by Buyer to Seller upon demand, or in lieu of such payment.
- (b) Tax exempt. In the event Buyer provides Seller at the time the order is submitted a valid exemption certificate or other document acceptable to the authority imposing the tax, fee or charge Seller will not impose such tax, fee or charge. For the avoidance of doubt, if the proper exemption certificate or other acceptable document is not submitted at the time of order nor is on file with the Seller's tax department Buyer will be responsible for all applicable fees, taxes and charges. To the extent Buyer provides an exemption certificate that is not accepted by the authority imposing the tax the Buyer will be responsible for all applicable taxes, charges, interest fees and penalties arising during the tax audit.

22. **BUYER DEFAULT FOR FAILURE TO PAY:** Buyer shall be in default for failure to pay if Buyer defaults on any payment or any other obligation hereunder, or there occurs the death, dissolution, termination of existence, insolvency or business failure, or appointment of a receiver of any part of the property of, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency or business failure, or appointment of a receiver of any part of the property of, assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Buyer or any guarantor or surety for Buyer. Upon such event of default and at any time thereafter, Seller may declare all obligations hereunder immediately due and payable and shall have all of the rights of a secured party under the Wisconsin Commercial Code as it is in effect at the time of exercise of such right. Seller may require Buyer to assemble the Equipment and make it available to Seller at a place to be designated by Seller that is reasonably convenient to both parties. Seller may sell the Equipment subject to the security interest created hereby at public or private sale following repossession at which sale Seller may be a purchaser. In the event of such sale, Seller shall be entitled to reasonable attorneys' fees and legal expenses. No waiver by Seller of any default shall operate as a waiver of any other default or of the same default on a future occasion.

23. **LAWS AND REGULATIONS:** Seller does not assume any responsibility for compliance with any Law except as expressly set forth herein, and compliance with all Laws relating to the operation or use of the Equipment is the sole responsibility of Buyer. Nothing contained herein shall be construed as imposing responsibility or liability upon Seller for obtaining any permits, licenses or approvals from any agency required in connection with the supply, installation or operation of the Equipment. Buyer acknowledges and agrees that the Equipment and Services may be subject to export or resale restrictions or regulations under applicable Law (including, without limitation, the U.S. Export Administration Regulations and any foreign equivalents) and Buyer will comply with such Laws. Any statement as to product country origin, Export Control Classification Number or compliance with applicable Law is provided to Seller by its suppliers or based on Seller's historical classifications and Seller does not warrant the accuracy of such classification and Buyer uses such information at its own risk. Buyer, on behalf of itself, its subsidiaries and affiliates, warrants and agrees to abide by all applicable Laws relating to the export and re-export of the Equipment and Services and Buyer further

warrants that the Equipment and Services will not be sold, exported, or incorporated into products or services for use by military, police or intelligence entities or for any aerospace applications. Buyer indemnifies Seller for any actions that are contract to applicable export Laws.

24. **BUYER APPROVAL:** If requested by Seller, Buyer will give its written approval of the Equipment after installation or delivery, but in any event, the Equipment shall be deemed approved by Buyer unless Buyer notifies Seller in writing, by registered mail, at Seller's office within ten days after delivery of the Equipment to Buyer, or if installation is specifically called for by this contract, then within ten (10) days after start-up, that the Equipment fails to meet the Requirements of this contract specifying the failings. If Buyer notifies Seller that it does not approve of the Equipment, Seller shall then have reasonable time to make necessary repairs and adjustments. If Equipment then fails to fulfill the Requirements herein specified, Seller may, at its sole option, remove the Equipment upon refunding all moneys paid therefore and thereafter no liability whatever shall exist in favor of either party as against the other and this Agreement shall thereupon be terminated.
25. **CHANGES:** In the event that changes in the requirements of the Equipment are made by Buyer after the acceptance hereof, the terms and conditions contained herein including the limitations of warranty and the grant of a security interest shall apply to such substituted or additional Equipment.
26. **INDEMNITY:**
  - (a) Intellectual Property Indemnity. In the event the Equipment is made substantially in accordance with drawings, samples, specifications or manufacturing processes designated by Buyer, Buyer agrees to indemnify, defend and hold harmless Seller and its affiliates from and against any and all damages, costs, liabilities, and expenses (including attorneys' fees, other professionals' fees and court costs) relating to any claims, suits, or proceedings alleging that such Equipment and any related documentation or communication (including the aforementioned drawings, samples, specifications or manufacturing processes) constitute an infringement or misappropriation of any right of any third party, including any copyrights, mask work rights, patent rights, trademark rights, trade secret rights, trade dress rights, confidentiality rights or other property rights. If Seller so elects, Buyer agrees at its own expense to undertake the defense of any claim, suit or proceeding against Seller brought upon such claim or claims, provided upon such election Seller shall have the right to participate at Seller's expense and Seller must consent to any compromise or negotiation where judgement is entered against Seller or its affiliates.
  - (b) In addition to the foregoing, Buyer agrees to indemnify, save harmless and defend Seller or its affiliates from and against any and all liabilities, claims, penalties, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), which Seller or its affiliates may hereafter incur, become responsible for or pay out as a result of: (a) Buyer's breach of this Agreement; or (b) the death or bodily injuries to any person, destruction or damage to any property, or any violation of governmental laws, regulations or ordinances due to the negligence of the Buyer, its affiliates, or agents. The duty to defend stated herein is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Buyer, Seller and any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Buyer. Buyer's obligation to indemnify and defend hereunder will survive until it is determined by final judgment that an action against the Seller or an indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.
27. **VENUE:** Buyer hereby irrevocably submits to the jurisdiction of any Wisconsin court sitting in Waukesha County, Wisconsin and the United States District Court for the Eastern District of Wisconsin, Milwaukee Division over any action or proceeding arising out of or relating to this Agreement, the Equipment or Services and agrees that all claims in respect of such action or proceeding shall be heard and determined in any such court. Buyer further agrees that venue for any such action shall lie exclusively with courts sitting in Waukesha County, Wisconsin and the United States District Court for the Eastern District of Wisconsin, Milwaukee Division, unless Seller agrees to the contrary in writing.
28. **CHOICE OF LAW:** The law of the State of Wisconsin will be deemed to apply to all disputes regarding the order, this Agreement or any claim of breach of contract or breach of warranty arising out of the order or this Agreement.
29. **ASSIGNMENT:** Any assignment of this Agreement by Buyer or of any rights or obligations under the Agreement by Buyer without prior written consent of Seller shall be void. Buyer shall be deemed to have assigned its interest in this Agreement in the event Buyer experiences a change of control where an entity or person directly or indirectly acquires by merger, acquisition, operation of law or otherwise a controlling interest in Buyer.
30. **RIGHTS AND OBLIGATIONS:** All rights and obligations of each party hereunder shall inure to the benefit of and be binding upon the successors and permitted assigns of each party.
31. **INDEPENDENT PARTIES:** Seller and Buyer are independent parties and nothing in this Agreement shall make either party an agent, partner, joint venture, or legal representative of the other. No party shall hold itself out contrary to the terms of this Section and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof.
32. **NO THIRD PARTY RIGHTS:** This Agreement is for the sole and exclusive benefit of the parties hereto and their permitted successors and assigns. Nothing expressed or referred to in this Agreement will be construed to give any other person any legal or equitable right, remedy or claim under or with respect this Agreement.
33. **MODIFICATION OR WAIVER:** No addition to or modification of this Agreement shall be binding upon Seller, and Seller shall not be deemed to have waived any provision of this Agreement, except pursuant to a written document signed by a duly authorized officer of Seller. In the event a party waives a default in writing, such written waiver shall only be applicable to the instant default or breach of this Agreement and shall not be deemed a waiver of said default or any other provision of this Agreement on a go-forward basis.
34. **SEVERABILITY:** If any provision of this Agreement is held to be unenforceable by final order of any court of competent jurisdiction, that provision shall be severed from this Agreement, and shall not affect the interpretation or enforceability of the remaining provisions of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding of the court.
35. **HEADINGS/ INTERPRETATION:** The headings contained in these items and conditions are for convenience only and do not in any way interpret, limit or amplify the scope, extent or intent of any of the provisions. Masculine pronouns include the feminine as well as masculine gender and words used in the singular include the plural and vice-a-versa, as appropriate. The term including shall be understood to mean "including, without limitation". References to Seller's sole discretion shall be understood to mean Seller's discretion to be withheld or granted in Seller's sole and absolute discretion.