



## **TERMS AND CONDITIONS** **(SALES)**

### **I. DEFINITIONS**

In this document the following words shall have the following meanings:

1. "Buyer" means the organization or person who buys Goods
2. "Goods" means the articles to be supplied to the Buyer by the Seller;
3. "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
4. "Seller" means Tallman Equipment Co., Inc.

### **II. GENERAL**

1. These Terms and Conditions shall apply to sales of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
2. Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

### **III. PRICE AND PAYMENT**

1. The price shall be as presented by Seller on Sales Order and/or invoice, less any agreed discount, unless otherwise agreed in writing between the parties.
2. Credit terms may be offered subject to satisfactory credit vetting of the Buyer by the Seller. The offer of credit will be at the sole discretion of the Seller.
3. If credit is offered, payment of the entire invoice or purchase order, and any other applicable costs shall be due within 30 days of the date of the invoice supplied by the Seller, unless otherwise agreed in writing. In cases where credit is not offered payment will be required before release of goods by the Seller.
4. The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 18% per annum.
5. If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
  1. require payment in advance of delivery in relation to any Goods not previously delivered;
  2. refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;
6. Payment for the Goods shall at all times constitute acceptance of the Goods.
7. Waiver of time period at sole discretion of Seller does not constitute change of time period or future enforcement of this section.

### **IV. DESCRIPTION**

Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.

#### **V. SAMPLE**

Where a sample of the Goods is shown to and inspected by the Buyer or during any evaluation period, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process. These samples or models create no warranty that the goods will conform to the samples or models.

#### **VI. DELIVERY**

1. Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer on, or as close as possible to the date required by the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
2. If the Seller is unable to deliver the Goods because of actions or circumstances under the control of the Buyer, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.
3. Any damages, shortages, over deliveries and duplicated orders should be reported to the Seller within 3 days of signed receipt to enable replacement or refund.

#### **VII. RISK**

Risk in the Goods shall pass to the Buyer upon shipping and shall be FOB shipping point. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

#### **VIII. TITLE**

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods.

#### **IX. RETURN OF GOODS**

1. All goods are sold on a firm sale basis, i.e. the Seller will not take back any goods not required or sold by the Buyer, unless otherwise agreed, in which case the following terms apply:
  - a. Any returns must be authorized by an authorized representative of the Seller before any credit may be given.
  - b. Where the Seller agrees to accept the return of goods that are not damaged, the Buyer will be responsible for the cost of carriage and may be subject to a restocking fee at discretion of the Seller and will ensure that they are carefully packaged to avoid any damage in transit.
  - c. The Seller will not be obliged to accept any goods or packaging that is damaged in any way.
  - d. Credit of amounts due or paid shall be at sole discretion of the Seller and will only be given for goods that are in saleable condition.

#### **X. LIMITATION OF LIABILITY**

The Seller shall not be liable for any and all loss or damage suffered by the individual Buyer in excess of the product's invoice price.

#### **XI. INTELLECTUAL PROPERTY RIGHTS**

All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties.

**XII. FORCE MAJEURE**

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

**XIII. RELATIONSHIP OF PARTIES**

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

**XIV. ASSIGNMENT AND SUB-CONTRACTING AND BINDING EFFECT**

The agreement between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns.

**XV. WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

**XVI. SEVERABILITY**

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

**XVII. GOVERNING LAW, VENUE AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana and the parties hereby submit to the exclusive jurisdiction and venue of the courts located within Bartholomew County, State of Indiana.

**XVIII. ATTORNEY'S FEES**

In the event of any action, arbitration or other proceeding between or among the parties to this Agreement with respect to this Agreement, the non-prevailing party or parties to such action, arbitration or proceeding shall pay to the prevailing party or parties all costs and expenses, including reasonable attorneys' fees, incurred in the defense or prosecution of the action, arbitration or proceeding by the prevailing party or parties. The party which is a "prevailing party" shall be determined by the arbitrator(s) or judge(s) hearing the matter and shall be the party who is entitled to recover its costs of suit, whether or not the matter proceeds to a final judgment, decree or determination. A party not entitled to recover its costs of suit shall not recover attorneys' fees. If a prevailing party or parties shall recover a decision, decree or judgment in any action, arbitration or proceeding, the costs and expenses awarded to such party may be included in and as part of such decision, decree or judgment.

**IX. ENTIRE AGREEMENT**

This Agreement constitutes the full and complete agreement and understanding between the parties to this Agreement concerning the subject matter of this Agreement and shall supersede any and all prior written and oral agreements with regard to such subject matter. This Agreement may be modified or amended only by a written instrument executed by all of the parties to this Agreement.

**XX. NOTICE AND DEMANDS**

Service of all notices under this agreement shall be sent by United States registered or certified mail addressed to the party involved at its respective address set forth above or to such other address as the parties may substitute by written notice.

**XXI. LIMIT OF WARRANTY**

1. OTHER THAN MANUFACTURER'S WARRANTY, IF ANY, SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE.

2. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH REGARD TO PRODUCTS MODIFIED BY BUYER, OR WITH REGARD TO PRODUCTS NOT USED FOR ITS INTENDED PURPOSE OF THE PRODUCT.

3. Neither party shall be liable for special, indirect, or consequential damages. The remedies set forth in this instrument are exclusive, and the liability of seller with respect to any contract or sale or anything done in connection with the same, whether in contract, in tort, under any warranty, or otherwise, shall not, except as expressly provided in this instrument, exceed the price of the Goods or part on which such liability is based.