

TERMS & CONDITIONS

General: Emerson Swan, Inc. ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the goods identified on the face hereof ("Products") on the express condition that the Buyer agrees to accept and be bound by the terms and conditions set forth herein. All prior purchase orders, offers to purchase, or any other interaction between the Buyer and Seller that is capable of being construed as an offer are expressly rejected. This Agreement set forth the entire agreement between the Seller and Buyer and supersedes any prior and/or inconsistent agreement between the Seller and Buyer. This Agreement shall not be explained, supplemented, or superseded by: (i) any prior, contemporaneous, or subsequent purchase order, invoice, acknowledgement form, or other document sent by the Seller or Buyer; (ii) any prior, contemporaneous, or subsequent verbal agreement; (iii) any industry custom or practice; or (iv) any course of dealing and/or course of performance between the Seller and Buyer. Seller objects to and shall not be bound by any additional or different terms and conditions contained in any subsequent document or form submitted by the Buyer. The Seller expressly limits the Buyer's acceptance of the Seller's offer to sell Products and Buyer's agreement to purchase Products to the exact terms of this Agreement. Buyer's receipt of Products provided hereunder will constitute Buyer's acceptance of this Agreement.

Price: All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices for Products will be as specified by the Seller. If no price has been specified or quoted, the price shall be the Seller's price in effect at the time of shipment or at the time that the Buyer picks up the Products.

Warranties: Seller's sole liability with respect to the Products and accompanying equipment, materials, and/or parts shall be limited to the assignment by Seller to Buyer of any manufacturer's warranties to the extent such warranties exist and are assignable. In no event shall Seller have any obligation to make repairs, corrections, or replacements, in whole or in part, as the result of: (i) normal wear and tear; (ii) accident, disaster, or force majeure; (iii) misuse, fault, or negligence of the Buyer or any third-party to which the Buyer sells or otherwise transfers the Products; (iv) any use of the Products in a manner that is inconsistent with the purpose for which the Products were designed; and (v) improper storage of Products.

Indemnity: Buyer shall defend and indemnify Seller (with Seller's choice of counsel) against all claims, liabilities, losses, damages, and expenses (including attorney's fees and litigation costs) that Seller may at any time sustain arising out of: (i) the Buyer's use, further sale, distribution, or transfer of possession of the Products; (ii) any defect in the Product that is allegedly attributable to the Buyer's actions or inactions (whether or not such allegations of defectiveness are or ultimately prove to be meritorious); (iii) any defect in the installation of the Product that is allegedly attributable to the Buyer's actions or inactions (whether or not such allegations of defectiveness are or ultimately prove to be meritorious); and (iv) any breach by the Buyer of any provision of this Acknowledgement Form.

Insurance: Buyer shall maintain insurance coverage that includes Seller as an additional insured on such policy and that covers the Buyer's indemnity obligations set forth herein.

Limitation of Remedy: The Buyer's remedies shall be limited to the return and repayment of any non-conforming Products. The Buyer is expressly excluded from recovering any consequential damages for any commercial loss.

DISCLAIMER OF IMPLIED WARRANTIES: ALL PRODUCTS THAT THE BUYER AGREED TO PURCHASE UNDER THIS ACKNOWLEDGEMENT FORM ARE SOLD AS IS AND WITH ALL FAULTS. THERE ARE NO WARRANTIES IMPLIED OR OTHERWISE EXTENDED BY THE SELLER. THE IMPLIED WARRANTY OF MERCHANTABILITY IS EXPRESSLY DISCLAIMED.

Governing Law: This agreement and the obligations imposed on Seller and Buyer shall be deemed entered in the Commonwealth of Massachusetts and shall be construed according to the laws of the Commonwealth of Massachusetts.

Miscellaneous: (a) The Buyer shall not assign this agreement without the Seller's written consent. (b) In the event that any one or more provisions contained herein shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions contained herein shall remain in full force and effect. (c) To the extent that any term or provision is deemed ambiguous or otherwise in conflict with any other provision herein, this Agreement shall be interpreted in favor of the enforceability of this Agreement. (d) Seller's failure to enforce, or Seller's waiver of a breach of any provision contained herein shall not constitute a waiver of any other breach or of such provision.