

# TERMS AND CONDITIONS OF SALE

All sales, agreements for sale, offers to sell, proposals, acknowledgements and contracts of sale, including but not limited to purchase orders, installment sale contracts, leases, and subsequent purchases of spare parts or change parts for the item of sale (herein IOS) are subject to the following terms and conditions: in addition the terms of installment sale contracts and leases shall prevail when such terms conflict with the terms herein.

**1. PRICES:** All prices are subject to change without notice except those written proposals which shall expire without notice at Midnight EST thirty (30) calendar days from date issued except such proposals can be terminated by prior written notice.

**2. PAYMENT:** Terms of payment are set forth herein. No discount. In the event machinery is the IOS and Prime Global Group Inc ("PGG") cannot demonstrate that the machine performs according to specifications herein, PGG shall have the right to adjust the IOS so that the same shall perform to specifications. Purchaser shall, at PGG's option have the right to withhold a maximum of ten (10%) percent of the purchase price without interest until such adjustments are completed. Any delinquent payment by Purchaser shall bear interest at the highest legal rate. If shipment is delayed by the Purchaser, or by anyone not a party hereto, payment shall become due on the date PGG is prepared to make shipment. If the work covered by the purchase is delayed by the Purchaser, payment shall be made forthwith based on the full purchase price or the percentage of completion to be determined at PGG's option. If the Purchaser defaults in any payment when due, then the full contract price shall become due and payable upon demand, and/or PGG may, without prejudice to other lawful remedies, defer delivery or cancel the agreement and seek damages. Products held for the Purchaser shall be at risk and expense of the purchaser. If the financial condition of the purchaser at any time does not, in the judgment of PGG, justify continuance of the work to be performed, PGG may require full or partial payment in advance, and in the event of bankruptcy or insolvency laws, PGG shall be entitled to cancel any agreement then outstanding, and PGG shall receive reimbursement for its damages.

**3. ACCEPTANCE:** No order, sale, agreement for sale, accepted proposal offer to sell and/or contract of sale, shall be binding upon PGG unless accepted by an Officer of PGG at its office in the Town of Ormond, Volusia County, Florida on PGG's standard "Order Acknowledgment" form.

**4. TAXES:** Any taxes, including but not limited to turnover taxes, duties, fees, or other specific assessments which may be levied against the IOS shall be extra and borne by Purchaser. If PGG is required to pay any of the above, purchaser shall reimburse PGG upon notice, or furnish documents with the order which exempts such payment. Purchaser's failure to timely reimburse any such costs shall constitute a material breach of this Agreement.

**5. CHANGES:** No change of this agreement shall be binding without the written consent of all parties.

**6. COPYING:** Purchaser recognizes that the IOS has been designed and built through expenditure of substantial time and money by PGG, and purchaser agrees not to make drawings of the IOS or any portions thereof, or permit others to do so, and will not duplicate or conspire in the duplication of the IOS.

**7. SHIPMENT:** Shipments are made F.O.B. PGG's plant of manufacture.

## **8. FORCE MAJEURE**

**1.** Force majeure is defined for purposes of these Terms and Conditions as any event outside PGG's control which impedes performance of any obligation. Insofar as they render performance impossible or unreasonably onerous, events of force majeure include but are not limited to:

- a. Strikes in company's other than PGG;
- b. A general shortage of raw materials, generators and/or aggregates or other goods or services required to perform as agreed;
- c. Any other circumstances beyond the respective party's reasonable control, including without limitation, acts of God, acts of public enemies, wars, other hostilities, blockades, insurrections, riots, epidemics, quarantine restrictions, floods, unavailability of components or supplies, lightning, fire, storms, earthquakes, severe weather, blizzard, washouts, arrests, restraints of rulers and people, civil disturbances, acts of any governmental or local authority, and any other acts and causes, not within the control of the party claiming excuse from performance, which by the exercise of due diligence and reasonable commercial effort, that party shall not have been able to foresee, avoid or overcome.

**2.** During the period of any Force Majeure condition, the parties shall cooperate to perform under the Contract to the best of the parties' abilities

**3.** PGG may also invoke an event of force majeure if the event impeding (further) performance occurs after PGG should have performed.

**4.** During an event of force majeure, all delivery and other obligations of PGG shall be postponed without PGG consequently being in default towards the Customer. If the event of force majeure exceeds a period of six months, the contract may be rescinded by either party without liability to pay damages.

**5.** To the extent that PGG already performed part of its obligations or can perform only part of its obligations on the occurrence of an event of force majeure, PGG may separately invoice the Purchaser for the relevant part and the Purchaser shall pay that invoice as if

it concerned a separate contract, provided that no such obligation shall exist if the part delivered or to be delivered has no value in and of itself.

**9. CANCELLATION:** Orders acknowledged per paragraph 3 above are not cancelable by Purchaser.

**10. ERRORS:** Stenographical and clerical errors are subject to correction.

**11. DELIVERY:** Shipping dates submitted are approximate. PGG will use its best efforts to meet the approximated shipping date provided the purchaser supplies all necessary information, but PGG shall not be held responsible for failure to do so. Shipping date is based upon construction to normal PGG standards (unless otherwise specified herein) and further dependent upon vendor and subcontractor's delivery commitments. Any delays due to Department of Defense priorities, shortages of labor and/or materials, may change the shipment date herein set forth. PGG shall be subject to no penalty or liability for failure to meet a shipping date and shall in no event be held responsible for loss of profits, damages incurred by the purchaser, its customers, or other consequential damages that may result therefrom.

**12. TESTING MATERIALS:** Purchaser shall furnish to point of manufacture at its expense sufficient product, sample packages, packaging materials, complete manufacturing data and other material necessary for full testing of IOS.

**13. DAMAGE OR LOSS IN SHIPMENT:** PGG shall not be responsible for damage or loss in transit and all claims must be made by the purchaser direct to the carrier. Claims for shortages or incorrect IOS must be made in writing within fifteen (15) days after receipt of the shipment by the purchaser, and failure to give PGG written notice within that period shall be unqualified acceptance of the IOS and a waiver of all claims.

**14. WARRANTY:** PGG warrants that the IOS will be constructed in accordance with normal PGG methods of manufacture and attached specifications. The IOS is warranted to be free from defects in material and workmanship for a period of one (1) year or 2,500 hours of use, whichever first occurs, from the date of shipment, and PGG agrees to replace, free of charge, any part or parts which fail, through defect in material or workmanship, within such period. All equipment a part of the IOS but not manufactured by PGG is limited in warranty and guarantee to the warranty and/or guarantee of the manufacturer and expires upon the expiration of such warranty. If the purchaser within the warranty period gives PGG written notice of any alleged defect, PGG will, at its option repair or replace the same free of charge F.O.B., its manufacturing plant, installation extra. Equipment replaced under the warranty shall have the same warranty as new equipment, but does not extend the warranty of the original IOS. No warranty is made with respect to: (A) Failures not reported to PGG within the warranty period. (B) Failures or damage due to misapplication, improper use, lack of proper maintenance, abuse, improper installation or abnormal conditions of temperature, moisture, dirt or corrosive matter, etc.. (C) Failures due to operation, either intentional or otherwise, above the rated capacities, or in an otherwise improper manner. (D) Any IOS which has been altered by anyone other than an authorized representative of PGG. (E) Any IOS damaged without fault of PGG, PGG shall not be liable for any expenses incurred by the purchaser in an attempt to correct any allegedly defective IOS.

**15. SOFTWARE LICENSE** If any software programs are deliverable as IOS, Purchaser shall have a temporary license to such software only, until full payment has been made whereupon Purchaser shall receive a full license to the use of the software in accordance with the terms and conditions of that license and as set forth below. The temporary license can be suspended or terminated by PGG at any time without notice to Purchaser after the period for payment by Purchaser has expired. For the sake of clarification, Purchaser understands and acknowledges that failure to pay for the IOS in accordance with the Agreement may result in the termination of the temporary software license and disruption of operation and service. In addition, such license of PGG, and any licenses procured by PGG on Buyer's behalf are not transferrable without notice to Seller and payment of the required transfer fee. Upon PGG's receipt of full payment and subject to purchaser's compliance with all material obligations under the Agreement, PGG hereby grants to Purchaser a nonexclusive, perpetual, nontransferable right and license to use copies of software programs embedded in, or used in connection with, Equipment which Purchaser has purchased hereunder, in Object Code only, for use by the Purchaser only, in conjunction with the Equipment, line and system. No modification, download, transfer, or preparation of derivative works of such software whatsoever is permitted. PGG will not supply any Source Code under the Agreement. Subject to Purchaser's compliance with the terms of the Agreement, PGG grants to Purchaser a non-exclusive, limited license to use PGG's intellectual property that is incorporated in the Equipment for its own account for the purposes intended in operating the Equipment. Notwithstanding the foregoing, PGG is, and shall be, the exclusive owner of such intellectual property and retain all right, title and interest in such intellectual property.

**16. PURCHASER'S PRODUCT:** Purchaser shall hold PGG harmless from any action arising by reason of the alleged design and construction of the products handled by the IOS or the method or process carried out thereon.

**17. CONFIDENTIALITY:** The parties shall hold in strictest confidence any information and material which is related to either Purchaser or PGG's business or is designated by either Purchaser or PGG as proprietary and confidential, herein or otherwise. It is understood that this confidentiality clause does not include information which: (i) is now or hereafter in the public domain through no fault of the party being provided the confidential information; (ii) prior to disclosure hereunder, is property within the rightful possession of the party being provided the confidential information; (iii) subsequent to disclosure hereunder, is lawfully received from a third party with no restriction on further disclosure; or (iv) is obligated to be

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produced under order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order in connection with such proceeding, which the parties in all cases will attempt to obtain. Purchaser and PGG hereby covenant that each shall not disclose such information to any third party without prior written authorization of the other. Company further covenants not to disclose or otherwise make known to any party nor to issue or release for publication any articles or advertising or publicity matter relating to this Agreement in which the name of Buyer or any of its affiliates is mentioned or used, directly or indirectly, unless prior written consent is granted by Buyer. Purchaser expressly acknowledges that all information, including quotations, specifications, drawings, prints, schematics, IOS, and any other engineering, technical, software or pricing data or information submitted by PGG to Purchaser in a Quotation or the Contract are the confidential and proprietary information of PGG; and Purchaser and its employees, agents or other parties for whom Purchaser is responsible may not disclose PGG's confidential and proprietary information to any third party, or use PGG's confidential and proprietary information for its own account or that of any third party, except in the performance of the Contract. No transfer of ownership of any information provided by PGG to Purchaser shall take place pursuant to fulfillment of the Contract.

**18. PURCHASER'S OPERATION:** It is understood that PGG has no special knowledge of the purchaser's operation or requirements and purchaser agrees that the IOS is purchased because of the independent determination by the purchaser of its suitability for intended use.

**19. LIABILITY:** The use of all guards, interlocks, electrical devices, and other safety devices on the IOS and the operation of the IOS in accordance with PGG operating instructions is essential to the safe use of the machine, and, therefore, the purchaser agrees that it will keep in legible condition all warnings or operating instructions affixed to the IOS or parts of the IOS by PGG, and that it will not remove or render inoperable any guards, interlocks, electrical devices, and other safety devices that are part of the IOS, and that it will not add any devices that will render the machine unsafe and that it will operate the machine in accordance with PGG operating instructions. The purchaser agrees to pay in behalf of PGG all sums which PGG becomes legally obligated to pay because of bodily injury or property damage caused by or resulting from the use or misuse of the IOS, including reasonable attorney's fees and legal expenses. The purchaser agrees to indemnify and hold PGG harmless from all actions, claims or demands by any person, firm or corporation arising out of or in any way connected with the IOS, its operation, use or misuse, or the design, construction or composition of any product made or handled by the IOS, including all such actions, claims, or demands based in whole or in part on the default or negligence of PGG. If the purchaser allows the IOS to be used by any other party, then the purchaser agrees to indemnify and hold PGG harmless from any and all claims; actions or demands whatsoever arising thereafter by reason of the use or misuse of the IOS.

**20. LIMITATIONS:** PGG shall not be liable for any losses, costs, forfeitures and all other consequential damages (including loss of profits, liabilities of the purchaser to its customers or third (persons) whether direct or indirect, and whether or not resulting from or contributing by the default or negligence of PGG, its agents, employees and subcontractors, which might be claimed as the result of the use or failure of the IOS. THERE IS NO FURTHER WARRANTY EITHER EXPRESS OR IMPLIED IN CONNECTION WITH THE DESIGN, SALE, MERCHANTABILITY OR USE OF THE IOS AND/OR SERVICES EXCEPT AS TO TITLE, AND PGG'S LIABILITY ON ITS WARRANTY SHALL IN NO EVENT EXCEED THE COST OF THE IOS.

**21. PATENT INDEMNITY:** PGG agrees that it shall defend any suits that may be instituted by any party against purchaser for an alleged infringement of any U.S. patent relating to the structure of the IOS as originally furnished, provided purchaser shall have made all payments due and gives to PGG immediate written notice of the institution of such suits, and permits PGG, through its counsel, to defend the same, and gives all needed information, assistance, and authority to enable PGG to do so. PGG's obligation to meet the expenses of defending such suit and for payment of any award for infringement is expressly limited to an amount no greater than the purchase price of the IOS. Subject to the foregoing and in case of final award or damages in such suit, PGG at its option may pay such award or remove said IOS and refund the purchase price so that PGG's total liability shall not exceed the purchase price of the IOS. In case the structure of the IOS in suit is held to infringe any U.S. patent and its use thereof is enjoined, PGG may at its option:

- a. Obtain for the purchaser the right to continue using the IOS, or
- b. Replace the same with non-fringing equipment, or
- c. Modify the IOS so that it is non-fringing, or
- d. Remove the IOS and refund the purchase price reduced by a factor of use allowance of twenty percent (20%) per year.

Because PGG cannot know or control the nature and character of products produced on the IOS, PGG assumes no responsibility for any damages or expenses which may be incurred in the defense of infringement actions brought by third parties against the purchaser and/or his customers for infringement of patent claims directed to: (1) the package manufactured by the IOS, (2) the design and construction of the products handled by the IOS, and (3) the method or process carried out on the IOS. Purchaser shall indemnify and hold PGG harmless with respect to all infringement actions brought by third parties against PGG for infringement of patent claims relating to (1) the package manufactured by the IOS, (2) the design and construction of the products handled by the IOS and (3) the method or process carried out on the IOS, including, but not limited to all infringement actions against PGG for patent infringement or as a contributory infringer.

**22. LOCAL LAW:** If national or local laws, regulations, orders etc., or unusual climate controls require modification of the IOS not within the PGG standard specifications, the purchaser shall specify in detail and pay for such modifications according to PGG's normal pricing policy in addition to the purchase price stated.

If such modifications alter the performance or prevent the IOS from performing according to specifications, PGG shall not be liable therefore and shall not be required to meet these specifications to the extent the performance may be adversely affected.

**23. PERFORMANCE:** The IOS will be deemed acceptable under the terms and conditions of this contract if the purchaser has not given written notification to PGG to the contrary within sixty (60) days from the date of shipment or in the event the purchaser continues to use the IOS.

**24. WAIVER OF JURY TRIAL AND SUBMISSION OF ALL DISPUTES TO ARBITRATION.** The parties each expressly waive the right to a jury trial for any and all issues Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- a. Within 14 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within 10 days of their appointment.
- b. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association.
- c. The arbitrators will be selected from a panel of persons having experience with and knowledge of mechanical engineering and/or computer software, and at least one of the arbitrators selected will be an attorney.
- d. The place of arbitration shall be Volusia County, Florida.
- e. This agreement shall be governed by and interpreted in accordance with the laws of the State of Florida and administered by the applicable provisions of Chapter 682, Florida Revised Arbitration Code.
- f. The parties acknowledge that this agreement evidences a transaction involving interstate commerce. The United States Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this agreement.
- g. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).
- h. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrators, which determination shall be conclusive. All discovery shall be completed within 60 days following the appointment of the arbitrator(s).
- i. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute.
- j. The award shall be in writing, shall be signed by a majority of the arbitrators, and shall include a statement setting forth the reasons for the disposition of any claim.
- k. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

**25. ENTIRE AGREEMENT:** This document constitutes the entire agreement between the purchaser and PGG for the IOS and is not an acceptance of Purchaser's purchase order or subject to purchaser's delivery order, and inures only to the benefit of the purchaser.

**26. Captions and heading in the Contract are strictly for the purpose of convenience and general reference only, and shall not affect the meaning or interpretation of any of the provisions of the Contract.**

**27. All PGG products are thoroughly tested to meet the agreed specifications as specified herein. Installation instructions will be provided, which the buyer is responsible to follow, however, it is specifically understood that PGG is not obligated to participate in the actual installation or training of customer personnel unless specifically agreed to in this acknowledgement.**

**28. Customer support services.** PGG shall provide order support consultation, instruction, technical discussion and technical support services to purchaser representative as quoted (the "Quoted Hours"). Any such services provided by PGG in excess of the Quoted Hours hour shall be billable to purchaser at the standard senior engineering rates of PGG, as determined by PGG. Such rates are subject to increase from time to time, typically on an annual basis. Such extra service shall be payable by customer on a net 10 day basis. In the absence of Quoted Hours, purchaser will be entitled to 1 hour of support per \$100,000.00 (one-hundred-thousand US dollars) of order amount, i.e., if the purchase's order totaled, \$500,000, purchaser shall be entitled to 5 hours of support, if not quoted otherwise.