

Pioneer Breaker & Control Supply

Terms and Conditions of Sale

1. Entire Agreement. This Agreement is made between Seller and Buyer for the sale and purchase of goods. This Agreement is comprised of this document, Buyer's Application for Credit, Seller's Order Acknowledgements and Invoices for the goods, and, if Buyer has ordered the goods through Seller's website, the provisions of that website to the extent not inconsistent with the provisions of the remainder of this Agreement. This Agreement constitutes the complete and exclusive statement of the understanding and agreement of the parties with respect to the sale and purchase of the goods. No representations, condition, usage of trade, course of dealing or course of performance explain or supplement its terms or conditions.
2. Modification, Amendment and Waiver. Except as otherwise noted, this Agreement may NOT be altered, supplemented, or amended by the use of any other document, including, but not limited to, any acknowledgement, acceptance, contract, or shipping instruction form containing terms or conditions at variance with or in addition to those set forth in this document. Any attempt to alter, supplement or amend this document or to enter and order for goods that are subject to additional or altered terms and conditions will be null and void, unless otherwise agreed to in a written instrument signed by both Buyer and Pioneer. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any breach or default or of any right or remedy unless such waiver is expressed in a writing signed by the party to be bound.
3. Deliveries. Delivery dates, if any are specified in Seller's Order Acknowledgements or Invoices, are approximate and are based upon prompt receipt of all necessary information concerning packaging, routing and shipping. Each delivery under this Agreement shall be treated, for the purpose of payment only, as a separate contract.
4. Title and Risk of Loss. If the goods sold pursuant to this Agreement are delivered to Buyer at Seller's premises, title to and risk of loss of the goods shall pass to upon Buyer's receipt of the goods. Otherwise, title to and risk of loss of the goods shall pass to Buyer upon delivery of the goods to the location specified on the face of this Agreement.
5. Taxes and Freight Charges. Buyer shall reimburse Seller for (a) all taxes and other charges (except franchise or income taxes) that Seller may be required to pay to any government entity upon the production, sale, transportation, or delivery of the goods and (b) all freight charges. Seller may add such taxes, duties and other charges, if any, to its invoices.
6. Payments. Payments shall be made to Seller at the address shown on Seller's invoice for the goods. Unless otherwise indicated on Seller's Order Acknowledge or Invoice for the goods, all payments shall be due in full, without any setoff or withholding for any reason, immediately upon Seller's delivery of the goods sold pursuant to this Agreement.
7. Buyer's Credit. If Buyer fails to pay for any one delivery when it becomes due, Seller, in Seller's sole discretion, may terminate this Agreement or suspend further deliveries under it. Further, should Buyer's financial condition become unsatisfactory to Seller, Seller, in Seller's sole discretion, may require cash payment or security satisfactory to Seller for future deliveries. Any action taken pursuant to this paragraph shall be without prejudice to any other rights and remedies Seller may have.
8. Interest on Late Payments. Interest shall accrue on all sums due or found to be due under this Agreement at the lower of the rate of 18% per annum or the maximum rate then permitted by applicable law, until such sums are paid.
9. Excuse of Performance. Seller shall not be liable to Buyer for any delay in performance or nonperformance that is caused in whole or part by an event or circumstance beyond Seller's reasonable control, including, but not limited to, fire, flood, accident, labor trouble, strike, lockout or injunction, compliance with government requests, regulations, orders or actions, riot, sabotage, or war. The quantity of goods so effected may be eliminated from this Agreement, but this Agreement otherwise shall not be effected.
10. Limited Warranty. Seller warrants title to the goods sold pursuant to this Agreement. Seller transfers and assigns to Buyer all of Seller's right, title and interest in, under and to any manufacturer's warranty in respect of each of the goods sold to Buyer under this Agreement, to the extent the same are provided by the manufacture and assignable. Seller agrees to execute and deliver such further instruments as may be reasonably necessary to enable Buyer to obtain warranty service furnished for each item by the manufacturer there of. SELLER MAKES NO ADDITIONAL OR INDEPENDENT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION AS TO MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS.
11. Inspection and Claims. Within 10 days after receipt of each delivery of the goods, Buyer shall examine the goods for any damage, defect or shortage. All claims for any cause whatsoever (whether based in contract, negligence, strict liability, other tort or otherwise) shall be deemed waived unless made in writing and received by the Seller within 30 days after Buyer's receipt of the

goods with respect to which the claim is made, or, if the claim is for non-delivery of goods, within 45 days after the date upon which the goods were to be delivered. Buyer's failure give written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim.

DIVISION) AND ACKNOWLEDGES THAT SUCH COURTS SHALL CONSTITUTE PROPER AND CONVENIENT FORUMS FOR THE RESOLUTION OF ANY ACTION AMONG BUYER AND SELLER WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND AGREES THAT SUCH COURTS SHALL BE THE SOLE AND EXCLUSIVE FORUMS FOR THE RESOLUTION OF ANY ACTIONS AMONG BUYER AND SELLER WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT.

12. Limitation of Liability. Buyer's exclusive remedy with respect to any claim concerning this Agreement or any goods sold pursuant to this Agreement shall be for damages. Seller's liability with respect to any claim concerning the goods shall not exceed the purchase price of the particular goods with respect to which the claim is made, or, at Seller's option, the repair or replacement of those goods. These amounts are agreed upon as liquidated damages and not as penalties. It is intended and expressly agreed that the purpose of the preceding provisions is to set upper limits to the amount recoverable by Buyer. These liability limitations shall apply whether the claim is based in contract, negligence, strict liability, other tort, or any other cause. In no event shall Seller be liable for indirect, special, incidental, consequential or punitive damages, even if it has been advised of the possibility of such damages. Further, Seller shall not be required to pay transportation charges for the return of any goods unless Seller authorizes such return in advance. If Buyer desires that Seller assume a greater liability than what is provided for in this paragraph, Seller will amend this Agreement by attaching an addendum setting forth the additional liability and an additional amount to be paid by Buyer for Seller's assumption of that additional liability. No such amendment shall be effective unless signed by Buyer and Seller. Seller is not an insurer, and nothing in such addendum shall be construed to hold Seller as an insurer. No suit shall be brought against Seller more than one (1) year from the date the cause of action accrues.
13. Third Party Claims. Buyer shall indemnify, hold harmless and defend Seller for, from and against any and all damages, expenses, costs and attorney fees arising from any demand, claim, allegation or lawsuit made or filed by or on behalf of any third party concerning the goods (whether based in contract, negligence, strict liability, other tort or any other cause), including, but not limited to, any demand, claim, allegation or lawsuit concerning the failure of the goods in any respect.
14. Assignment. Buyer shall not assign (by operation of law or otherwise) its rights or delegate its performance under this Agreement to anyone without Seller's prior written consent. Any attempted assignment or delegation without such consent shall be void.
15. Attorneys Fees and Costs. Buyer shall pay to Seller all reasonable attorneys' fees, costs and expenses incurred by Seller in collecting any amounts due with respect to the goods sold under this Agreement or in otherwise enforcing Seller's rights under this Agreement, whether or not by prosecution of a claim against Buyer in an action at law.
16. Choice of Law and Forum. THIS AGREEMENT, AND THE APPLICATION AND INTERPRETATION OF THE TERMS OF THIS AGREEMENT, SHALL BE GOVERNED EXCLUSIVELY BY THE TERMS OF THIS AGREEMENT AND BY THE LAWS OF THE STATE OF TEXAS AND APPLICABLE FEDERAL LAW OF THE UNITED STATES, EXCLUDING ANY CONFLICT-OF-LAWS PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OF THIS AGREEMENT OR THE PARTIES' RELATIONS WITH EACH OTHER TO THE LAW OF ANOTHER JURISDICTION. BUYER AGREES AND CONSENTS TO THE JURISDICTION OF THE STATE COURTS OF TRAVIS COUNTY, TEXAS, AND OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS (AUSTIN