

TERMS AND CONDITIONS

1. **ACCEPTANCE.** Unless the Customer has another valid agreement with Market Central, Inc ("Market Central"), the terms of which apply to the products which are the subject matter hereof, the following Market Central Terms and Conditions shall apply and govern Market Central's sale of such products. Market Central shall not be bound by any customer order unless and until such order is accepted. At such time, both Market Central and customer (the "Customer") shall be bound and a contract (the "Contract") shall exist in accordance with Market Central's underlying quotation (which quotation is incorporated herein by reference), and these Terms and Conditions. The Contract shall constitute the entire agreement of the parties relating to the sale of the products described in the Contract. Any reference to purchase orders, technical specifications, requests for quotations or other documents are for purposes of description only, and any terms contained therein, or in any document incorporated by reference therein, shall not become part of the Contract. The Contract shall supersede all prior agreements and understandings whether oral or written, and all negotiations, letters, emails, other papers and proposals, other requests for products, and all purchase orders and requests shall be subject to these Terms and Conditions, regardless of the provisions of any such purchase orders or requests, and regardless of the method of ordering. No returns will be accepted without an authorization number issued in advance by Market Central, in its sole and absolute discretion. Unauthorized returns will be refused or returned to the sender; and resulting shipping and handling charges will be the responsibility of Customer.
2. **CONFLICTING TERMS.** Any terms of Customer's purchase order or other documentation pertaining thereto, or in any other communication from Customer, which add to, are different from, or conflict with these Terms and Conditions are objected to and shall be void. Market Central's failure to confirm it's objection to any such additional or conflicting terms shall not be construed as a waiver of these Terms and Conditions, nor as Market Central's acceptance of any such additional or conflicting term.
3. **WARRANTY.** Market Central warrants to the original purchaser only that the products which are the subject of this Contract will be free of defects in workmanship and materials, under normal service and use, for a period of one (1) year from date of sale. Products which have been changed or altered in any manner from their original design, or which are improperly or defectively installed, tested, serviced or used, are not covered by this warranty. If any alleged failure to conform to this warranty shall arise during a period of one (1) year from date of sale, Market Central shall, upon prompt, written notice and compliance by Customer with such instructions as Market Central shall provide with respect to the return of allegedly defective products or parts, correct such non-conformity by repair or replacement, or by the refund of the purchase price or applicable portion thereof, at Market Central's sole discretion. Correction in the foregoing manner shall constitute a complete fulfillment of all obligations and liabilities of Market Central with respect to said products. **THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND MARKET CENTRAL EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
4. **LIMITATION OF REMEDY.** If any claim shall arise with respect to any alleged non-conforming product, Market Central's sole obligation and Customer's sole and exclusive remedy shall be the repair or replacement of said allegedly defective product or component or the refund of the applicable portion of the purchase price, at Market Central's sole discretion and at no cost to Customer, in accordance with the warranty provisions of the preceding paragraph. **SAID REMEDY SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY ALLEGED NON-CONFORMING PRODUCT OR OTHER CLAIM AS TO THE CONDITION OF ANY PRODUCT OR COMPONENT, WHETHER IN THE NATURE OF A CLAIM FOR BREACH OF WARRANTY, NEGLIGENCE, TORT, STRICT LIABILITY, PRODUCT LIABILITY WITH RESPECT TO DESIGN AND/OR MANUFACTURE, OR OTHERWISE.**
5. **LIMITATIONS OF LIABILITY.** In no event will Market Central be liable for any incidental, consequential, special or indirect losses or damages arising out of or in connection with the Contract, its performance or breach thereof, including without limitation any and all losses and damages arising out of or related to costs of removal and reinstallation of any item, loss of goodwill, loss of profits, delay and loss of use. **MARKET CENTRAL'S LIABILITY WITH RESPECT TO ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE SHALL NOT IN ANY EVENT EXCEED THE PRICE ALLOCABLE TO THE PRODUCT OR UNIT THEREOF WHICH GIVES RISE TO THE CLAIM; AND MARKET CENTRAL SHALL NOT BE LIABLE FOR ANY PENALTIES, PUNITIVE DAMAGES OR EXEMPLARY DAMAGES OF ANY KIND OR DESCRIPTION.**
6. **PROPRIETARY RIGHTS.** The sale of the products hereunder to Customer shall not create or confer in Customer, and shall not be deemed to create or confer in Customer, any title, right, interest or license in or to any patents, patent applications, trademarks, designs and design copyrights of Market Central, whether expressly, impliedly, by estoppel or otherwise. Market Central expressly retains to itself any and all proprietary rights in and to all designs and engineering details, and to any and all proprietary rights of any nature whatsoever with respect to any such products.
7. **EXPORT CONTROLS.** Customer represents and agrees that it will not export or transfer for re-export any product sold hereunder in violation of any laws or regulations of the United States, nor transfer any such product to any prohibited person, entity, or embargoed country in violation of such laws and regulations.
8. **UNITED STATES GOVERNMENT CONTRACTS.** IF ANY PRODUCTS OR SERVICES TO BE FURNISHED HEREUNDER ARE TO BE USED IN THE PERFORMANCE OF A UNITED STATES GOVERNMENT PRIME CONTRACT OR SUBCONTRACT, THEN IN SUCH EVENT EACH AND EVERY FEDERAL ACQUISITION REGULATION (FAR) AND EACH AND EVERY DEPARTMENT OF DEFENSE FAR SUPPLEMENT (DFAR) AND ANY OTHER APPLICABLE UNITED STATES GOVERNMENT PROCUREMENT REGULATION REQUIRED TO BE INCLUDED IN UNITED STATES GOVERNMENT SUBCONTRACTS SHALL BE DEEMED TO BE INCORPORATED HEREIN BY REFERENCE WITH THE SAME FORCE AND EFFECT AS IF SET FORTH HEREIN IN THEIR ENTIRETY. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN ANY SUCH FAR, DFAR OR OTHER UNITED STATES GOVERNMENT REGULATION AND THESE TERMS AND CONDITIONS, THE FAR, DFAR OR OTHER UNITED STATES GOVERNMENT REGULATION SHALL CONTROL.
9. **MISCELLANEOUS.** In the event of any default or breach by Customer, Market Central shall be authorized to refuse to make further shipments. Market Central's failure to enforce at any time or for any period of time any of the provisions of the Contract shall not constitute a waiver of such provisions or a waiver of the right of Market Central to enforce each and every provision of the Contract. The validity, construction and performance of this Contract and the transactions to which it relates shall be governed by the internal laws of the Commonwealth of Pennsylvania, without giving effect to the choice of law or conflict of laws provisions thereof. All actions, claims or legal proceedings in any way pertaining to the Contract shall be commenced and maintained in the Court of Common Pleas of Allegheny County, Pennsylvania or the United States District Court for the Western District of Pennsylvania; and Market Central and Customer shall submit to the jurisdiction of such courts, and shall not bring any action arising out of or relating to the Contract in any other court. **MARKET CENTRAL AND CUSTOMER EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY DISPUTE ARISING OUT OF OR BASED UPON THE CONTRACT.** This Contract is binding upon, and inures to the benefit of, the parties hereto and their respective successors and assigns. Nothing in this contract shall inure to the benefit of or be deemed to give rise to any rights in any third party whether by operation of law or otherwise. If any of these Terms and Conditions shall be declared invalid or unenforceable by a court, agency, commission or other tribunal or entity having jurisdiction thereof, the application of such provisions to parties or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term not so declared invalid or unenforceable shall be valid and be enforced to the fullest extent permitted by law and the rights and obligations of the parties shall be construed and enforced as though a valid commercially reasonable term consistent with the undertakings of the parties under the Contract has been substituted in place of any invalid or unenforceable provisions. Customer may not set-off any amount owing from Market Central to Customer against any amount payable by Customer to Market Central whether or not related to the Contract. No addition to or modification of any provision of the Contract will be binding upon Market Central unless signed by an officer of Market Central.

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