

**1. GENERAL:**

Tolomatic Inc. is the seller and is referred to herein as "Tolomatic". Any person buying or offering to buy Products from Tolomatic is the "Buyer." The products, including replacement products, sold by Tolomatic are the "Products."

**2. ACCEPTANCE APPLICATION OF THESE TERMS AND CONDITIONS**

- a. The placing by a Buyer of a purchase order with Tolomatic shall be deemed an offer made to Tolomatic to purchase Products. Where Tolomatic accepts a purchase order, it shall be subject to these terms and conditions.
- b. No order placed by the Buyer shall be deemed to be accepted by Tolomatic until a written acknowledgment of order, which may include email or facsimile, is issued by Tolomatic or, if earlier, Tolomatic delivers the Products to the Buyer.
- c. Where Tolomatic proposes to sell Products to Buyer quoting prices, delivery dates or specifications different than those set out in Buyer's purchase order, or where Tolomatic otherwise provides a price quotation at Buyer's request, Tolomatic may invite Buyer to place a new purchase order the acceptance of which by Tolomatic will form a contract for the sale of the Product to Buyer, subject to these terms and conditions. Tolomatic may also provide a quotation or offer to sell Products to Buyer which Buyer may accept. In that case, Buyer's acceptance of the offer or quotation will form a contract for the sale of the Product to Buyer, subject to these terms and conditions.
- d. The placing of a purchase order by the Buyer, the confirmation by the Buyer of Tolomatic's acceptance of a purchase order, the acceptance of the delivery of Products and payment by the Buyer of the price or any down payment or any security for payment and any other confirmation of the purchase order on the part of the Buyer (including any agreed variations of the purchase order) shall be deemed to be an acceptance and/or confirmation by the Buyer of these terms and conditions.

Tolomatic hereby rejects any additional or different terms contained in any purchase order or other communication previously or hereafter presented by Buyer to Tolomatic. No additional or different terms or conditions other than the terms and conditions set out herein (together with the content of the purchase order accepted by Tolomatic) will have any force or effect, except where specifically agreed by Tolomatic in writing.

- e. These terms and conditions together with the details of any accepted purchase order form the entire agreement between Tolomatic and Buyer in relation to the sale and supply of Products by Tolomatic to Buyer, and there are no conditions to that agreement that are not expressly contained in these terms and conditions.
- f. Any variation, cancellation or waiver of these terms and conditions shall only be effective if made in writing and signed by a duly authorized representative of Tolomatic.

**3. CHANGES AND CANCELLATION**

Once Tolomatic has accepted Buyer's order, Buyer cannot modify or cancel the order, in whole or in part, without Tolomatic's written consent.

**4. MATERIALS FURNISHED BY TOLOMATIC**

Catalogs and other materials furnished by Tolomatic and other information provided in connection with Products, including price lists, are subject to modification by Tolomatic and are provided for information only. Prices are binding only on acceptance of purchase orders (or if Tolomatic provided Buyer a full quotation which was accepted by Buyer).

**5. PRICES, TAXES, FREIGHT AND HANDLING**

- a. The prices for Products will be those set out in an accepted purchase order or (if relevant) in Tolomatic's quotation/proposal accepted by Buyer.
- b. If Buyer orders any installation or similar services, unless a fixed price or rates are specifically agreed, Buyer shall pay for such services on a labor plus materi-

als basis at the standard rates charged by Tolomatic from time to time.

- c. Unless Tolomatic specifies in writing that any quotation is binding for a specified period of time, quoted prices are subject to change at any time prior to acceptance of a purchase order. Price quotations shall expire automatically without notice thirty (30) days from the date thereof (unless otherwise specified in the quotation/proposal).
- d. Prices quoted by Tolomatic assume that the entire quantity of Products ordered will be shipped at completion of manufacture in accordance with the purchase order or in accordance with a delivery schedule accepted by Tolomatic. If the Buyer requests partial shipment or requests variations in quantities, the original price quotation will no longer apply.
- e. Unless otherwise agreed in writing by the parties, shipping, custom shipping containers, freight and insurance costs are not included in the price, nor are any customs, duties, sales, use, value added or similar taxes which shall be payable by the Buyer at its sole responsibility. If notwithstanding the above, Buyer and Tolomatic agree that Tolomatic should bear any such costs or pay such taxes, they shall be added to the price payable by the Buyer.
- f. If prices are quoted including any taxes, duties, third party fees, freight or insurance costs, Tolomatic may adjust the price if such costs or rates of tax or fees increase after acceptance of the purchase order.
- g. If Tolomatic is required by law to charge Buyer any sales tax, value added tax or other taxes, charges or levies, such amounts shall be in addition to quoted prices and shall be added to invoices payable by Buyer.

**6. MINIMUM BILLING**

Orders amounting to less than \$35.00 net will be billed at \$35.00.

**7. DELIVERY, SCHEDULE AND INSPECTION**

- a. Unless agreed otherwise in writing by Tolomatic, Products shall be delivered

to Buyer Ex Works (Incoterms 2010), Tolomatic's facilities at 3800 County Road 116, Hamel, Minnesota 55340. Title and all risk or loss or damage in transit shall pass to Buyer at that time.

- b. Any delivery dates furnished by Tolomatic are estimates only and do not bind Tolomatic to deliver the Products on the dates indicated. Tolomatic reserves the right to make partial shipments and to submit separate invoices to Buyer for each such shipment.
- c. Where Products are delivered Ex Works, Buyer may specify the carrier or indicate its preferred transportation method (which shall be at Buyer's costs) by giving written notice to Tolomatic which must be received at least 5 working days prior to the expected date of shipment by Tolomatic to the Ex Works delivery point. In the absence of a notice requesting a particular carrier or method of delivery, transportation shall be by any method of transport and any carrier chosen by Tolomatic and shall in any event be at the sole risk and expense of Buyer.
- d. If the quantity of products received by Buyer is less than the quantity shown in the purchase order or invoice or if the products received by Buyer are damaged in transit or missing, Buyer will be responsible to notify the carrier and insurer and to file any necessary claims.
- e. If Buyer requires Products to be inspected by Buyer's representative or nominee before shipment, such inspection shall be performed with reasonable advance notice, during normal working hours on working days and be limited to plant areas designated by Tolomatic.
- f. If a purchase order accepted by Tolomatic does not contain a firm shipment schedule for all the Products ordered, and Tolomatic has not received a substantial shipping order (as determined by Tolomatic in its sole discretion) within 30 days of the date the purchase order is placed, then Tolomatic has the right to give written notice to Buyer that Buyer must send Tolomatic, within such date as may reasonably be indicated in the notice, a shipping

order for at least the quantity of Products specified in the notice. Unless Tolomatic receives a shipping order as specified in the notice within the specified period, Tolomatic may terminate the purchase order without liability.

### 8. PAYMENT

- a. Unless orders are accepted on a prepayment basis, in which case payment for the Products shall be due in advance of delivery, payment for Products shall be due and payable within thirty (30) days from the date of invoice to the Ex Works delivery point. Tolomatic reserves the right to withdraw or change any credit terms at any time for purchase orders that have not yet been accepted by Tolomatic.
- b. Prices shall be quoted and payable in U.S. dollars (unless agreed otherwise). All bank charges for wire transfers, letters of credits or other methods of payment shall be paid by Buyer.
- c. Buyer shall pay invoices in full and shall have no right to assert any credit, set-off or counterclaim against any amount invoiced for the sale or supply of Products.
- d. All amounts payable to Tolomatic shall be paid in full without any withholding or deduction on account of any taxes, duties, levies or charges, unless Buyer is required by law to make such deduction or withholding. If it is so required it shall duly deduct or withhold the amount as required by law and shall, when making the payment to which the withholding or deduction relates, pay Tolomatic such additional amount as will ensure that (after the deduction or withholding) Tolomatic receives the same total amount that it would have received if no such withholding or deduction had been required.
- e. Buyer shall notify Tolomatic of any invoice discrepancy within fourteen (14) days of receipt of the invoice after which time the invoice shall be deemed accepted by Buyer.
- f. Tolomatic reserves the right to charge interest at the rate of 2% per month (or at the maximum rate permitted by law, if lower) on amounts not paid within 30 days

of the due date of payment. Interest shall accrue from the due date for payment.

- g. Tolomatic reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order. In such event, Buyer will grant a security interest in all Products to be delivered by Tolomatic to Buyer and will take all additional steps requested by Tolomatic and as otherwise necessary to enable Tolomatic to create and perfect a security interest, including if so designated by Tolomatic a purchase money security interest, in all Products delivered by Tolomatic to Buyer, including obtaining necessary consents from creditors of Buyer and executing and delivering to Tolomatic all documents related thereto.
- h. If Buyer defaults in its payment obligations in regard to any shipment of Products, Tolomatic may suspend any additional shipments until Buyer cures such default and may terminate the purchase order in relation to any remaining shipments.

### 9. LIMITED WARRANTY

- a. Tolomatic warrants that at the time of delivery, Products shall be in good condition, free from defects in material and workmanship and that Products made to order shall conform to applicable drawings or specifications as referenced in the quotation or accepted purchase order ("**Product Warranty**"). The Product Warranty shall expire one year from date of shipment (the "**Warranty Period**"). Tolomatic warrants that Buyer shall acquire good title to the Products free from third party rights. These warranties are given only to Buyer and not to any third party.
- b. The Product Warranty excludes any defects or non-conformance resulting (wholly or in part) from: (i) accidental damage, mishandling, incorrect installation, negligence or other circumstances arising after delivery; (ii) the repair or alteration of the Product by any party other than Tolomatic or its authorized representative; (iii) the failure by Buyer to provide a suitable storage, use, or operating environment for the Products; (iv) Buyer's use of the Products for a purpose or in a manner other than that for

which they were designed; and (v) other abuse, misuse or neglect of the Products by Buyer or any third party.

- c. The Product Warranty excludes any Products not manufactured by Tolomatic. Insofar as any Products are manufactured by third parties, Tolomatic shall, insofar as it can, pass to the Buyer the benefit of all warranties given by the supplier of such Products.
- d. The Product Warranty shall be limited to defects of which Tolomatic is notified within twenty-one (21) days from the date of shipment to Buyer or, in the event of latent defects, within twenty-one (21) days of the defect being discovered and provided that such notice is received within the Warranty Period. As sole remedy for the breach of the warranty in paragraph (a) above, provided that (if required by Tolomatic) all non-conforming Products are returned to Tolomatic at Buyer's cost, and provided that Tolomatic confirms the defect or non-conformance, Tolomatic shall at its option (i) replace or repair the defective or non-conforming items, or correct any defective work or non-conformance, or (ii) refund to Buyer the original purchase price of the defective or non-conforming item and reimburse to Buyer any transportation and insurance charges incurred by Buyer.
- e. Any claim by Buyer against Tolomatic alleging the breach of the Product Warranty must be commenced within twelve (12) months following the date of the alleged breach.
- f. In the event the parties disagree whether or not a breach of the Product Warranty has occurred, Tolomatic may (but shall not be obliged to) undertake any repairs or replacement requested by Buyer pending final settlement of the matter. If it is determined that no such breach has occurred, Buyer shall pay Tolomatic upon demand the reasonable price of the repairs, corrections, or replacements made by Tolomatic including allowances for overheads and a reasonable profit margin.
- g. THE WARRANTIES EXPRESSLY MADE UNDER THESE TERMS ARE EXCLUSIVE AND GIVEN IN LIEU

OF ALL OTHER REPRESENTATIONS, WARRANTIES AND COVENANTS THAT MAY BE IMPLIED BY LAW, BY CUSTOM OF TRADE, BY THESE TERMS, BY THE PURCHASE ORDER OR OTHERWISE WITH RESPECT TO THE PRODUCTS. TO THE FULL EXTENT PERMITTED BY LAW, TOLOMATIC DISCLAIMS AND BUYER WAIVES ALL SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. BUYER'S SOLE REMEDY FOR BREACH OF WARRANTY IS STATED IN PARAGRAPH (d) ABOVE.

- h. No Products shall be returned without Tolomatic's prior written consent. Products which Tolomatic consents to have returned shall be shipped by Buyer at Buyer's risk and expense, freight prepaid, to such location as Tolomatic designates.

#### 10. LIMITATION OF LIABILITY

- a. Tolomatic shall in no event be liable to Buyer or any third party, whether in contract, tort (including negligence), misrepresentation, strict liability or otherwise, for any incidental, punitive, consequential, indirect or special damages, including any loss of profits or savings or anticipated profits or savings, loss of data, loss of opportunity, loss of reputation, loss of goodwill or business or potential business, however caused, even if Tolomatic has been advised of the possibility of such damages in advance.
- b. Under no circumstances shall Tolomatic's liability to Buyer in connection with any purchase order or Products supplied to Buyer exceed an amount equal to the amount paid by Buyer for such Products.
- c. Buyer agrees and understands that it is solely Buyer's responsibility to ensure that Products are suitable for Buyer's requirements and for the environment, facilities or machinery for which they are intended by Buyer or by its end-customer to be fit-

ted or used. Even if Tolomatic is advised of Buyer's intended use, Tolomatic makes no representation or warranty that the Product will be suitable for that purpose. Any technical advice furnished by Tolomatic relating to the intended use of the Products is given for information only and Tolomatic assumes no obligation or liability for the advice given or the results obtained. Except insofar as specifications or drawings form part of a purchase order and the Product Warranty, to the full extent permitted by law, Tolomatic disclaims and Buyer waives all representations, warranties and covenants that may be implied from the provision by Tolomatic of technical advice or information about Product. All such advice and information are accepted by Buyer at its risk.

- d. Insofar as any liability or warranty of Tolomatic cannot be limited or excluded under applicable law, including any laws that do not permit limitations on liability relating to death or personal injury, the provisions of these terms and conditions shall be construed as being subject to such legal limitations, but only if those legal provisions have effect in relation to Tolomatic's liability notwithstanding the governing law provision in Section 18 below.

#### 11. BUYER'S RESPONSIBILITIES

- a. Buyer shall be responsible for complying with any laws relating to the exportation of the Products from the United States of America and their importation into any other country and shall be solely responsible for all import duties or other relevant charges and for all costs of shipment, freight (whether by air, sea or otherwise) and insurance from the point of delivery.
- b. Without limitation to paragraph (a) above, Buyer shall be responsible to ensure that the exportation of any Products to any country outside the United States of America complies with all relevant export control laws, orders, regulations and restrictions applicable to the Products, including all applicable statutory and regulatory requirements under the Arms Export Control Act (22 U.S.C. 1778), the International Traffic in Arms Regulations, the Export



Administration Regulations and associated executive orders, the Laws implemented by the Office of Foreign Assets Control, U.S. Department of the Treasury, U.S. Customs Regulations, and equivalent laws in any jurisdiction to which the Products are imported (collectively, "Export and Import Laws"). Upon the request of Tolomatic, Buyer will provide certificates signed by an authorized representative certifying compliance with applicable Export and Import Laws, as indicated by Tolomatic.

- c. Buyer shall be responsible for the collection, remittance and payment of any or all taxes, duties, charges, levies, assessments and other fees of any kind imposed by any authority in the country of import or use of the Products in respect of the purchase, importation, sale or other use of the Products.
- d. Buyer shall be responsible at its cost and expense for obtaining any import licenses or permits necessary for the entry of the Products into any territory outside the United States of America and for any import procedures. If Buyer requires Tolomatic to produce any documentation in relation to Products for any administrative or regulatory purposes, Buyer shall inform Tolomatic of the requirement as early as possible and shall provide all necessary details to Tolomatic. Tolomatic cannot guarantee that all required documentation or certifications can be provided. Tolomatic may charge Buyer for the costs of producing such documentation.
- e. Paragraphs (a) to (d) above shall apply notwithstanding any agreement by Tolomatic to deliver Products to Buyer under terms other than Ex Works (except in relation to the payment of importation duties, freight and insurance if Tolomatic expressly agrees to the alteration of such terms).
- f. If Buyer believes or becomes aware that a recall or other corrective action relating to Products purchased by Buyer is desirable or required by law, it shall immediately notify Tolomatic. Buyer shall cooperate with Tolomatic in carrying out any recall of Products required by law or by any reg-

ulatory authority or deemed necessary by Tolomatic, including by communicating with end-users of the Products. Tolomatic shall have sole control over the implementation of any recall or other corrective action.

- g. Buyer shall maintain appropriate records to enable the tracking of Products purchased by Buyer, where required for the purpose of any testing, recall or corrective action.

## **12. INTELLECTUAL PROPERTY RIGHTS AND USE OF PRODUCTS**

- a. Buyer acknowledges that the Products, including but not limited to designs and drawings created by Tolomatic, embody valuable intellectual property rights. As between Buyer and Tolomatic, all such intellectual property rights, including all trademarks displayed on Products or their packaging or on any documentation, are solely and exclusively owned by Tolomatic.
- b. Buyer acknowledges and agrees that the purchase of the Products by Buyer shall not give effect to the transfer of any title, right or interest over any such intellectual property rights or the grant of any rights in and to such intellectual property rights.
- c. No license is granted or shall be implied for the use of any such intellectual property rights, and no warranty is made that use of the Products or of such intellectual property will not infringe the intellectual property rights of third parties.

## **13. DEFAULT**

Tolomatic may, without prejudice to any other rights it may have, by notice in writing to Buyer, terminate any contract or purchase order immediately if: (a) Buyer breaches any of these terms and conditions (including any payment default), provided that if the breach can be remedied in Tolomatic's reasonable judgment, Tolomatic shall allow Buyer seven (7) days from the date of the notice to cure the breach; (b) Buyer becomes unable to pay its debts as they become due or if any bankruptcy, receivership, administration, liquidation or similar proceedings are issued or commenced against Buyer, or if

Buyer makes an assignment for the benefit of creditors or has a receiver appointed for any of its assets, or permits judgment against it to remain unsatisfied for seven (7) days, or if the business or assets of Buyer are confiscated, expropriated, seized or taken over by any government agency.

## **14. RETURNS**

No Products may be returned without first obtaining prior authorization from Tolomatic and according to Tolomatic's instructions. If accepted, all Product returns shall be subject to a minimum service charge of 35% of the invoice price and all transportation charges shall be prepaid by Buyer. Without derogation from the above, assembled Products which have been modified beyond what is offered as a standard product or built as a "Customer Special" (product that currently does not reside in Tolomatic's list of available standard products), shall in no event be returnable to Tolomatic.

## **15. INDEMNITY**

Buyer shall defend, indemnify, and hold Tolomatic harmless from any and all liabilities, penalties, losses, damages, costs and expenses, including attorney fees, resulting from any acts or omissions of Buyer in connection with the use, installation or onward sale of Products sold by Tolomatic to Buyer, except where the claim, loss or liability arises predominantly out of a breach of the Product Warranty.

## **16. FORCE MAJEURE**

- a. Tolomatic shall not be liable to Buyer in respect of any delay or failure in the delivery of Products where such delay or failure is due to circumstances beyond its reasonable control, including but not limited to shortages of supplies, actions of government agencies, acts of nature, acts of Buyer (including any failure by Buyer to discharge its responsibilities under these terms and conditions), fire, strike, or labor dispute, war, hostilities or terrorist acts, embargoes, equipment breakdown, power failure, failures in telecommunications systems, or the inability to obtain necessary labor, material or manufacturing facilities. If any such circumstances prevent a pur-

chase order from being performed for more than forty-five (45) days from the anticipated date of delivery, either party may terminate the purchase order by written notice to the other (provided that such notice is not received after Tolomatic confirms that it is ready to make delivery).

b. In the event of such delay, and assuming that Buyer chooses not to cancel due to such cause, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

#### **17. SEVERABILITY**

If any of these terms and conditions are held by a court or tribunal of competent jurisdiction to be illegal or unenforceable, this shall not affect the validity or enforceability of any other term, and Tolomatic and Buyer shall use all reasonable efforts to agree to modify the relevant term insofar as necessary to render it lawful and enforceable and shall replace the unlawful or unenforceable term with such modified term.

#### **18. MISCELLANEOUS**

a. Buyer acknowledges that it has not been induced to purchase the Products from Tolomatic by any representation or warranty not expressly set forth herein. These terms and conditions may not be modified except by a written document signed by an authorized representative of Tolomatic and Buyer. The paragraph headings are intended for convenience of reference only and shall not affect the interpretation of any provision.

b. These terms and conditions and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the state of Minnesota, USA, without reference to its conflict of laws rules. The parties disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods to these terms and conditions.

c. Buyer shall not have the right to assign or otherwise transfer its rights or obligations under these terms and conditions except with the prior written consent of Tolomatic. These terms and conditions shall be binding on the parties and their respective suc-

cessors and permitted assigns. Any prohibited assignment shall be null and void.

d. No failure by either Party to take any action or assert any right hereunder shall be deemed to be a waiver of such right. The parties are independent contractors and not agents of each other. If a copy of these terms and conditions is translated into another language, the official and binding version shall be the English language version, which shall prevail in all instances.

e. Notices shall be deemed given on the third day following domestic mailing or the seventh day following international mailing, if mailed registered or certified mail, postage prepaid, return receipt requested, or on receipt if delivered by private courier service, or by facsimile, addressed to the respective addresses of the receiving party.