

## General Terms and Conditions of Sale and Delivery of Machines

July 2016

### 1. Acceptance and Governing Provisions

1.1. No purchase order, proposal, quote or offer (collectively, "Order") submitted by Optima Machinery Corporation ("Supplier") shall be binding upon Supplier until accepted in writing by an authorized representative of the customer identified on the Order ("Customer"). Supplier's performance of its obligations under any Order is conditioned upon Customer's acceptance of the terms and conditions set forth herein and Customer's agreement to be bound by and comply with these terms and conditions ("Terms and Conditions") and such acceptance and agreement shall be deemed to have occurred upon acceptance of the Order by the Customer as set forth above. These Terms and Conditions, the terms on the Order and all referenced attachments constitute the entire agreement between Customer and Supplier, and no amendment or modification shall be binding on Supplier unless signed by an authorized representative of Supplier. The failure of Supplier to object to provisions contained in any purchase order, proposal or other document of Customer shall not be construed as a waiver by Supplier of these Terms and Conditions or an acceptance of any such provisions. Any conflicting or additional terms and conditions set forth by Customer in a purchase order, proposal, quote, offer or other document prepared by or proposed by Customer are not binding upon Supplier, and Supplier hereby expressly objects thereto.

1.2. Supplier delivers the machine and services identified in the Order subject to the following Terms and Conditions, unless other specific written agreements between Supplier and Customer have been made. The Customer automatically recognizes these conditions as binding without requiring special instructions to this effect. These conditions remain valid even if Orders are placed on the basis of price lists or verbal offers. Supplier's written acknowledgment of an Order shall determine the content of any respective agreement and any performance due thereunder. There shall be no oral ancillary agreements.

### 2. General

The acceptance of Orders, as well as any amendments or modifications thereof or of any other agreement entered into between the parties, are not valid until confirmed in writing by Supplier. The fitting of Supplier's deliveries with special safety devices or a special type of protection shall only be undertaken, if the parties have specifically agreed thereto in writing. All Orders placed are irrevocable and may not be canceled by Customer for any reason, including, without limitation, delayed delivery, without Supplier's approval.

### 3. Illustrations; Drawings; Dimensions

3.1. Customer recognizes that the ordered machine have been designed and built through expenditure of substantial time and money by Supplier, and Customer agrees not to make or reproduce any illustrations, drawings, designs, layouts, plans or specifications of such machine or any portions thereof. Any use of (a) any such illustrations, drawings, designs, layouts, plans or specifications or (b) any illustrations, drawings, designs, layouts, plans or specifications prepared by Supplier, for any purpose shall be prohibited. Customer agrees not to make available to third parties and not to permit others to make, reproduce or use the aforementioned illustrations, drawings, designs, layouts, plans or specifications, as well as, any catalogs and samples, and will not duplicate or conspire in the duplication of the ordered machine, without Supplier's prior written consent. Title and any and all intellectual property rights to any and all illustrations, drawings, designs, layouts, plans, specifications and any other documents created by Supplier shall remain in Supplier and all such information and documentation shall solely remain the property of Supplier.

3.2. Illustrations, drawings, designs, layouts, plans, specifications and dimensions of Supplier's machine only serve as general representations and are not necessarily authoritative for their design. In addition, the dimensions and weights identified thereon are rough standards only and not binding unless the parties agree thereto in writing. All illustrations, drawings, designs, layouts, plans, specifications and any other documents created by Supplier shall be returned by Customer to Supplier immediately on demand by Supplier, including any such information in electronic format or any other medium or, upon demand of Supplier, Customer shall destroy any or all such information identified by Supplier and provide Supplier with written certification of such destruction.

3.3. Customer shall defend, indemnify and hold Supplier harmless from any claims, demands, causes of action, damages, losses, liabilities and expenses (including, without limitation, attorney's fees) in any way related to or resulting from any claims of infringement of patents, trademarks or copyrights arising from Supplier's compliance with Customer designs or specifications.

### 4. Prices

All prices shall be FCA (Incoterms 2010) Supplier's facility/ramp, shall exclude packaging and shall be subject to alteration. Prices do not include freight, transport insurance, customs duties, domestic or foreign sales, use, excise or similar taxes or other transportation costs, or any installation costs, all of which shall remain the sole responsibility of Customer. If wages, salaries, material costs or manufacturing costs rise during the execution of the Order, Supplier reserves the right to increase the sale price accordingly. Unless other terms have been expressly stated by Supplier in writing, Supplier's prices set forth in the Order are valid for thirty (30) days from the date the Order was proposed to Customer. All quoted prices are subject to correction for clerical errors.

### 5. Terms of Payment

Payment must be made in full to Supplier as described below, subject to any specially agreed upon conditions set forth in the Order or in such other written agreement between the parties. Payment terms are net thirty (30) days. If Supplier agrees to any of the following varying payment terms as requested by Customer, then Customer shall pay an administrative finance charge equal to a percentage of the sale price as follows: (a) net ninety (90) days - one percent (1%), (b) net one hundred twenty (120) days - two percent (2%), (c) net one hundred fifty (150) days - three percent (3%) and (d) net one hundred eighty (180) days - four percent (4%). If Customer pays the sale price via credit card, Customer shall pay Supplier a processing fee equal to four percent (4%) of the invoiced amount paid by Customer. If any payment is not received by the expiration of the applicable payment period, Supplier shall charge interest at 1.5% per month on the unpaid balance without any written notice to this effect. Retention of the payment due to any counterclaims by the Customer is not permitted, nor shall Customer offset any payments. Payments via letter of credit, check, or bank transfer are not deemed to be valid until Supplier has received the credit advice from its bank. Payment by bill may only take place after special agreement by Supplier. No guarantee can be undertaken for prompt protest of an invoice.

### 6. Delivery Periods

6.1. The delivery periods quoted by Supplier are subject to alteration and are not binding. The delivery period shall be calculated utilizing a commencement date of the last date the Customer has fulfilled any prepayment obligations and has created and provided to Supplier all the technical and other prerequisites for the beginning of production. Supplier shall use its best efforts to adhere to the given times of delivery, which are estimates only based on Supplier's best judgment. Customer shall not have the right to make any claims for damages, compensation or cancellation of the Order because of the delivery period being exceeded. In the case of new designs or special versions, Supplier cannot guarantee that execution by the expiration of the delivery period will be possible, and in the case of cancellation of the Order, as agreed to by Supplier, Customer shall not have the right to make, and hereby waives, any claims for compensation or damages.

6.2. Supplier shall not be liable for any delay beyond its reasonable control or any delay caused by accident, bad weather, embargo, act of Customer or third parties, labor disputes, transportation shortages, national emergency, riots, non-delivery of suppliers of Supplier, delays of carriers or delivery agents, inability to obtain labor, materials or manufacturing facilities, acts of God or government restrictions, prohibitions or requirements. In the event of any such delay, Supplier's time period for delivery or performance shall be extended accordingly. REGARDLESS OF THE CAUSE, SUPPLIER SHALL HAVE NO LIABILITY FOR PENALTIES OF ANY NATURE AS A RESULT OF A DELAY. The same shall apply if sub-suppliers are affected by such circumstances.

Commencing one month after notice of readiness for delivery has been given by Supplier to Customer, Customer shall be charged any accruing storage costs, amounting to no less than 0.5% of the amount of the pertinent invoice if such storage is performed at Supplier's facility, provided that delivery has been delayed due to any event or occurrence outside of Supplier's reasonable control.

### 7. Passing of Risk and Acceptance of Delivery

7.1. Risk of loss or damage shall pass to Customer, at the latest, when any respective ordered machine are made available at Supplier's ramp.

7.2. Supplier shall have the right to make partial deliveries.

7.3. The passing of the risk of loss and damage upon any respective ordered machine being made available at Supplier's ramp shall occur when partial deliveries are made, or when Supplier has agreed to perform additional services for Customer.

7.4. In any case of delay of a delivery due to circumstances beyond the reasonable control of Supplier, the risk of loss and damage shall pass to Customer on the day Supplier is ready for delivery. Upon Customer's request, and at Customer's cost, Supplier shall obtain insurance coverage for the ordered machine as requested by Customer.

7.5. The ordered machine shall be deemed acceptable under these Terms and Conditions and in compliance with the specifications provided in the Order, if the Customer has not given written notification to Supplier to the contrary within five (5) days from the date of delivery or in the event the Customer continues to use the machine. Any delivered machine showing only non-material defects shall be accepted by Customer, without prejudice, however, to any of Customer's rights under Section 11 hereof or under law.

### 8. Testing Material

Supplier uses its best efforts to test every machine before delivery. Customer shall furnish all material required for testing to Supplier at Supplier's request and without charge to Supplier. Supplier shall have no responsibility for the return of this material or for any damage to or depreciation of this material. If the testing material sent to Supplier does not correspond in all components and in composition to the material to be used in operation of the machine at Customer's facility, then functioning of the machine within the specifications agreed to by the parties cannot be assured. If alterations or modifications of the delivered machine are required due to special manufacturing conditions or issues which arise after delivery but, which did not appear when Supplier tested the machine in the Supplier's facility and despite the correct usage of the testing material by Supplier, then the costs related to all such alterations and modifications shall not be covered by Supplier's warranty and shall be the sole responsibility of Customer.

### 9. Packing, Dispatch and Transport Insurance

In the absence of any special written agreements between the parties, the ordered machine shall be correctly packed and dispatched in accordance with Supplier's previous experiences in this field. Packing is charged to Customer at Supplier's cost and cannot be returned. Dispatch by Supplier is undertaken in all cases at Customer's cost and at the Customer's risk. Transport insurance shall be provided by Customer, unless otherwise agreed to by the parties in writing.

### 11. Warranty

11.1. Supplier warrants that the ordered machine will be constructed in accordance with normal Supplier methods of manufacture and specifications set forth in the Order. Supplier's machine is warranted to be free from defects in material and workmanship for a period of twelve (12) months from the date of delivery FCA (Incoterms 2010) ("Warranty Period"), provided that Supplier's machine has been properly maintained in accordance with the Supplier maintenance manual and properly lubricated, and further, provided, the machine has not been abused, misused, neglected or damaged accidentally. Wear due to highly abrasive or corrosive atmosphere shall not be considered a defect. Subject to the terms set forth herein, Supplier agrees to replace, free of charge, any part or parts of the machine which fail, through defect in material or workmanship, within the Warranty Period. If the Customer, within the Warranty Period, gives Supplier written notice of any alleged defect, Supplier will, at its option, repair or replace the same free of delivery charge from Supplier's facility, installation extra. Any components of Supplier's machine under warranty shall have the same warranty as new equipment or components of Supplier's machine, but any such replacement does not extend the warranty of the original machine. No warranty is made with respect to: (A) consumable items within Supplier's machine, such as silicone grease, Teflon or other coatings, Teflon belts, sealing ribbons, cutting knives, etc.; (B) failures not reported to Supplier within the Warranty Period; (C) failures or damage due to misapplication, lack of proper maintenance, abuse, improper installation or abnormal conditions of temperature, moisture, dirt, or corrosive matter, etc.; (D) failures due to operation, either intentional or otherwise, above the rated capacities, or in an otherwise improper manner; (E) any machine which has been altered by anyone other than an authorized representative of Supplier; (F) any machine damaged without fault of Supplier; and (G) the impairment of the functioning of the machine or the quality of packing material or packaged goods due to special climatic conditions or other locational or operational conditions at the installation site. Supplier shall not be liable for any expenses incurred by the Customer in an attempt to correct any allegedly defective machine or part thereof. Failure to make any payment of the sale price as it becomes due hereunder shall cancel this warranty and a re-commencement of payments shall not operate to extend the Warranty Period or expand the terms of this limited warranty or any other warranty imposed by operation of law. Supplier assumes no responsibility for unauthorized repairs of its machine even though defective, or for the failure of the machine due to jamming or overload, improper refuse removal or improper tooling, even though unintentional. All returned equipment, machine or components of Supplier must be authorized by Supplier in advance and returned, prepaid, for credit. Supplier is not liable for losses, damages or delays beyond the delivery of the machine in good order. All machine and components of Supplier's machine, which are not manufactured by Supplier, are limited in warranty to the warranty of the manufacturer.

11.2. Supplier shall only be liable for material defects, if Supplier should have recognized the defect by using expert care. Supplier cannot warranty machine or parts thereof which, due to their material quality or to the type of usage, are subject to premature wear e.g. springs, seals and belts. For electrical appliances and other parts and components not produced by Supplier, Supplier's liability is limited to the transfer of any liability claims to which Supplier is entitled vis-à-vis the manufacturer of said items.

## 12. Supplier's Liability; Exclusion of Claims for Damages

- 12.1. Unless otherwise provided under these Terms and Conditions, Supplier shall only and exclusively be liable to the extent set out hereinafter:
- 12.2. Supplier shall only be liable for damages or expenses incurred by Customer as a result of the gross negligence of Supplier – including gross negligence caused by Supplier's vicarious agents or representatives, provided, Supplier culpably violated a material contractual duty, as well as in cases of violation of life, body or health.
- 12.3. Damages for breach of a material contractual duty shall be limited to actual damages only. Any further claims for damages, regardless of the legal nature of asserted claim, shall be excluded and Supplier shall not be liable for any damages not having occurred to delivery item itself.
- 12.4. As far as Supplier's liability is excluded or limited herein, such exclusions and limitations shall apply to the liability of Supplier's employees, staff, representatives and agents.
- 12.5. Customer has been informed and hereby acknowledges that by operation of law and pursuant to these Terms and Conditions, Supplier's warranty and any and all of Customer's claims thereunder shall be void if and at such time that Customer modifies any of the ordered machine or parts thereof delivered under any and all sales and/or delivery agreement(s). The foregoing voidance specifically, but not exclusively, applies to software components of any and all delivered machine. Supplier hereby informs Customer and Customer acknowledges that any and all of the aforementioned modifications may also constitute an infringement of Supplier's intellectual property rights.
- 12.6. Prior to any startup and/or operation of any machine which is subject to the Order, Customer shall be fully liable for ensuring (a) that the ordered machine is clean and in proper order for purposes of startup and operation of such machine, and (b) that the area surrounding such machine is clean and in proper order. Supplier shall not be liable for any damage or negative impact to or losses related to the machine or any products manufactured by such machine due to Customer's failure to comply with any of the foregoing.
- 12.7. Except as set forth above, Supplier shall not be liable for any actual damages, losses, costs, or forfeitures nor any incidental, special or consequential damages (including loss of profits, liabilities of the Customer to its customers or third persons), whether direct or indirect, and whether or not resulting from or contributed to by the default or negligence of Supplier, its agents, employees and subcontractors. **EXCEPT FOR THE WARRANTY PROVIDED HEREIN, THERE IS NO FURTHER WARRANTY EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, SALE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE PARTS, MACHINES AND/OR SERVICES, EXCEPT AS TO TITLE; AND SUPPLIER'S LIABILITY ON ITS WARRANTY SHALL IN NO EVENT EXCEED THE AMOUNT OF THE SALE PRICE PAID BY CUSTOMER TO SUPPLIER.**

## 13. Indemnification

- 13.1. The Customer agrees to defend, indemnify and hold Supplier harmless from all causes of action, losses, claims, demands, damages, liabilities and expenses (including, without limitation, attorney's fees), incurred by or made against Supplier with respect to any claims or demands made by any person or entity arising out of or in any way connected with the ordered machine, its operation, use or misuse, or the design, construction or composition of any product made or handled by the ordered machine for which the ordered machine was supplied and/or installed, including all such causes of action, losses, claims, demands, damages, liabilities and expenses (including, without limitation, attorney's fees) based in whole or in part on the default or negligence of Supplier. If the Customer allows the ordered machine to be used by any other party, then the Customer agrees to defend, indemnify and hold Supplier harmless from any and all claims, demands, causes of action, losses, damages, liabilities and expenses (including, without limitation, attorney's fees) whatsoever arising thereafter by reason of the use or misuse of such machine by such third party. Furthermore, Customer shall defend, indemnify and hold Supplier harmless from and against all damages, claims, demands, losses, causes of action, liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from (a) any breach of Customer's obligations under the Order and (b) any other act or omission of Customer related to the Order. This provision shall survive the termination of the Order or Supplier's obligation.
- 13.2. It is expressly agreed that if any action is taken by Supplier to enforce part or all of the accepted Order and/or the Customer's obligations thereunder and under these Terms and Conditions, Customer shall be liable for any and all actual costs and attorneys' fees incurred by Supplier.

## 14. Reservation of Ownership

- 14.1. The ordered machine delivered to Customer shall remain the property of Supplier until the price demanded has been paid in full. Upon the passing of risk of loss as set forth in Section 7 above, the Customer shall insure such machine, at Customer's sole expense, against fire, water and other damage. The Customer hereby transfers to Supplier the claim for insurance payments in advance to the amount of the sale price. Reassignment of the insurance payments shall take place automatically as soon as the Customer has paid the sale price in full.
- 14.2. If the machine delivered by Supplier is resold to a third party by Customer, either individually or with other equipment, before payment of the full sale price by the Customer, whereby the Customer undertakes to reserve ownership at all times, the Customer hereby transfers to Supplier all claims against the third party purchaser arising from the resale, both for payment and for delivery, to the amount of our invoiced price. Supplier retains the right to collect these debts if the Customer is not prompt in making the agreed payments to Supplier.
- 14.3. If Customer has not paid the entire sale price prior to delivery, the accepted Order shall constitute a security agreement, as defined in Section 9-105 of the Uniform Commercial Code, between Customer, as debtor, and Supplier, as secured party. Pursuant to that security agreement, Supplier shall have a continuing purchase money security interest in the ordered machine and all cash and non-cash proceeds thereof for (a) any unpaid amount of the sale price, (b) any additional amounts which the Customer may owe Supplier under these Terms and Conditions, (c) Supplier's expenses incurred in order to preserve and protect its collateral and to collect any amounts due under these Terms and Conditions, including without limitation, the costs of any court proceeding and (d) Suppliers reasonable attorney's fees. Supplier shall have the rights and remedies of a secured party under the Uniform Commercial Code. Customer hereby authorizes Supplier to take all actions required by Supplier to perfect and protect its security interest, including the filing of such financing statements, continuation statements, and such other documents as Supplier may deem necessary and Customer shall comply with Supplier with respect thereto. A failure by Customer to do so shall constitute a breach of the Order and these Terms and Conditions and a default under such security agreement.

- 14.4. The parties agree that at the time the Order is accepted by Customer, the anticipated damages in the event of a breach by Customer are incapable of accurate estimation. Therefore, Customer's failure to make any of the payments as herein specified on a timely basis, shall entitle Supplier, at its option, to retain any and all partial payments which have been made, as liquidated damages and to take possession of the subject machine. If permitted by applicable law, Supplier shall be free to enter the premises where said machine may be located and to remove the same as its property without further legal processes and without prejudice to any further claims on account of damage which Supplier may suffer from such default. The Customer shall bear all risk of loss of, or damage to, the machine sold hereunder until full payment has been made and shall provide and maintain, for the benefit of Supplier, adequate insurance for loss or damage following departure of such machine from Supplier's facility. Customer agrees that the provisions of the Uniform Commercial Code for the State of Wisconsin shall govern the rights, responsibilities and remedies of the parties set forth in this Section.

## 15. Miscellaneous

- 15.1. For all obligations arising from the transaction between Supplier and Customer as contemplated by the Order, the place of fulfillment for both Supplier and Customer shall be Green Bay, Wisconsin.
- 15.2. The contract resulting from the acceptance of the Order shall be interpreted in accordance with the laws of the State of Wisconsin. Customer irrevocably submits to the exclusive jurisdiction of the Circuit Court of Brown County, Wisconsin, or the federal District Court for the Eastern District of Wisconsin, as selected by Supplier, for any action or proceeding relating to the Order. No waiver of any of the provisions contained in the Order shall be valid unless made in writing and executed by Supplier. Failure of Supplier to insist upon strict performance of the terms of the Order shall not constitute a waiver of any of the provisions of the Order or waiver of any other default. The Order and these Terms and Conditions contain the entire understanding between the parties related to the transactions contemplated therein and supersede all prior or contemporaneous agreements or understandings. No modification, amendment, discharge or change of the Order shall be valid unless set forth in writing and signed by both parties. Neither party shall be deemed the draftsman of the accepted Order or these Terms and Conditions and such shall not be construed against one party in favor of the other by reason of draftsmanship. The Order is not assignable by Customer.
- 15.3. Should any of the terms and conditions of the Customer's purchase order or any other document of Customer be at variance with the accepted Order or any of these Terms and Conditions, it is understood and agreed by Customer that Supplier's accepted Order and these Terms and Conditions will prevail and govern.
- 15.4. If any particular provision of these Terms and Conditions is or becomes invalid, such invalidity hereto shall not affect the validity of the other provisions hereof. The parties shall agree upon a new provision serving the purpose pursued by the provision having become invalid.
- 15.5. These Terms and Conditions shall only apply to the supply and delivery of machine by Supplier and such other services identified in the Order. Supplier's "General Terms and Conditions of Sale and Delivery of Parts – USA" shall apply to any sales of parts by Supplier to Customer and any related repair and installation services to be performed by Supplier for Customer with respect to any such parts.