

TERMS AND CONDITIONS OF SALE

1. ENTIRE AGREEMENT:

These terms and conditions apply to the sale of Despatch branded products by ITW Electronics Assembly Equipment, a division of Illinois Tool Works Inc. (referred to herein as "Despatch"). All sales by Despatch are conditions set forth on Buyer's purchase order, specifications, or any other document issued by Buyer. Any additional, different, or conflicting terms or conditions of any such document issued by Buyer, either before or after Despatch's offer to sell, are hereby objected to by Despatch, and any such document shall be wholly inapplicable to any sale made by Despatch to Buyer and shall not be binding in any way on Despatch. No waiver of any of the provisions of these Standard Terms and Conditions of Sale shall be binding on Despatch unless made in a writing expressly stating that it is such a waiver and signed by an officer of Despatch. These Terms and Conditions of Sale can be modified only in a Despatch proposal, in a Despatch issued order acknowledgement or other written document signed by an officer of Despatch.

These terms and conditions, along with the documents incorporated by reference herein (but expressly excluding any of the terms and conditions of Buyer's purchase order) constitutes the entire agreement between Buyer and Despatch with regard to the equipment ("Equipment") and/or services ("Services") listed on the face of any order acknowledgement or provided in Despatch's proposal or other separate document delivered with these Terms and Conditions of Sale, and expressly supersedes and replaces any prior or contemporaneous agreements, written or oral, relating to such Equipment and Services.

2. WARRANTIES & DESPATCH LIABILITY:

A. **Limited Warranty.** Despatch warrants the Equipment manufactured by Despatch, to be free from defects in workmanship and material under normal use and service for a period of (1) year from the date of Installation. Use or service with corrosive or abrasive chemicals or materials is not deemed normal. Components manufactured by others, including expendable items, are warranted only in accordance with the warranty, if any, and issued by such other manufacturer.

B. **Notice and Liability.** Buyer shall give Despatch written notice of any defects in Equipment with fourteen (14) days after discovery thereof during the warranty period, specifying each particular defect discovered. If requested by Despatch, Buyer shall return the defective Equipment or part of the Equipment, to Despatch at Buyer's expense. Despatch's SOLE LIABILITY to Buyer in the event that the Equipment is demonstrated to Despatch's satisfaction to be defective, will be, at Despatch's sole option, to repair or replace such defective Equipment or parts or refund the portion of the purchase price paid for such defective Equipment. Despatch's choice of one of these remedies shall be Buyer's SOLE REMEDY for breach of this limited warranty. All work of removal and reinstallation of the Equipment or parts, whether or not found

defective, and shipping charges for defective or replacement Equipment or parts shall be at the sole expense of Buyer.

C. **Exclusions from Limited Warranty.** The foregoing limited warranty shall not apply to (i) any Equipment or parts not manufactured by Despatch, (ii) work done or materials furnished by others in connection with installation work performed without supervision by Despatch installation supervisors, or (iii) Equipment repaired or altered by others unless such repairs or alterations were specifically agreed to in writing by an officer of Despatch. Despatch shall not be liable for damages of any kind which result from the use or misuse of the Equipment by Buyer, its employees or others.

The foregoing limited warranty shall be valid and binding upon Despatch if and only if Buyer loads, operates and maintains the Equipment in accordance with the instruction manual to be provided upon delivery of the Equipment. Despatch does not provide any warranty whatsoever regarding the results of the use of the Equipment, including, without limitation, the quality of product to be produced by the Equipment supplied hereunder.

D. **Disclaimer of Warranty.** EXCEPT AS EXPRESSLY STATED IN SECTION 2(A), DESPATCH MAKES NO REPRESENTATION OR WARRANTY REGARDING THE EQUIPMENT OR SERVICES PROVIDED BY DESPATCH TO BUYER AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR ANY OTHER MATTER. Only a corporate officer of Despatch has the authority to bind Despatch to any warranty or representation that is different from or in addition to the limited warranty set forth above and then only in a written document signed by both parties.

3. TAXES:

Despatch prices do not include customs duties or any sales, use, excise, value-added or other similar taxes. Buyer shall pay, in addition to the prices quoted, the amount of any present or future customs duties or any sales, use, excise, value-added or other similar tax applicable to the sale of the Equipment and Services covered by these Standard Terms and Conditions of Sale, or in lieu thereof Buyer shall supply Despatch with an appropriate tax exemption certificate.

4. DELIVERY, INSPECTION AND ACCEPTANCE:

A. **Delivery.** All prices are quoted for delivery of the Equipment (a) F.O.B. Origin. If the location of requested delivery is within the United States, or (b) FCA Origin (as defined in Incoterms 2010 published by the International Chamber of Commerce

B. **Liability for Loss or Damage in Shipment.** Despatch shall not be held responsible for loss, damage or breakage after having received "in good order" receipt from the carrier. The carrier shall

be deemed to be Buyer's agent and Buyer will make all claims regarding loss, damage or breakage in transit against the responsible carrier.

C. Inspection/Acceptance. Buyer agrees to thoroughly inspect each shipment as soon as received and shall notify Despatch in writing within fourteen (14) days after receipt of any shortages, noncompliance with the performance specifications or any other failures to conform to an accepted order which are reasonably discoverable upon arrival. Any shortages and other discoverable nonconformance or other failures not reported within such fourteen (14) day period shall be forever waived by Buyer.

Within ten (10) days after delivery of the Equipment (if Despatch is not providing installation services), Buyer shall accept the Equipment, or notify Despatch in writing of anything believed required to make the Equipment conform to the order. If Despatch is providing the installation services for the Equipment the provisions of Section 17 herein shall apply to acceptance of the Equipment. If the Equipment meets the requirements of Despatch proposal or any accepted order, Buyer shall accept the Equipment immediately. Buyer shall be deemed to have accepted the Equipment if Buyer commences using the Equipment for production purposes.

5. SHIPPING SCHEDULES AND DELAYS:

A. Shipping Dates. All quoted shipping schedules are approximate and will depend upon prompt receipt from Buyer of any drawings and other information necessary for the design and manufacture of the Equipment by Despatch. Delay time in return of approved drawings will extend the proposed shipping date(s). Seller shall not be liable for failure to meet shipping schedules, including, without limitation any penalty or liquidated damages claim, unless such timely delivery of the Products is specifically agreed to in writing by an officer of Seller.

B. Shipments delayed by customer will require an additional storage fee equal to \$250 per month or 3% of total order value, whichever is greater. On the date Despatch is notified of delay, Buyer may be billed for work in progress, including engineering, fabrication and equipment, and components purchased from Despatch suppliers.

6. CHANGES:

Despatch reserves the right to change the details of the design specifications of the Equipment if such changes would be in the best interest of both parties. In the event Buyer requires a change in specifications for the Equipment after engineering has started, after materials have been ordered, or after production has started, a written order modification request will be required. Buyer's written order modification request should address the changes proposed to the statement of work, price, delivery schedule, and any other affected terms of the order. Despatch shall not be obligated to accept any order modification request submitted by Buyer and any such request may only be accepted by an authorized officer of Despatch in writing.

7. CANCELLATION:

Buyer may cancel its order by delivery of written notice to Despatch. In such event, any items which upon receipt of such notice are 90% or more complete will be completed and paid for by Buyer in full as provided herein. Other items (those less than 90% complete), either shall be completed and paid for in full, if Buyer so directs, or all work thereon shall be stopped and Buyer shall pay for the same on the basis of the actual costs of labor, materials, and supplies applied to the production of such items, and proper overhead expenses determined in accordance with generally accepted accounting principles, plus 12% of such cost and expenses, provided that such cost and expenses plus 12% in no case shall exceed 100% of the quoted price of such items. The cancellation fee charged to Buyer shall in no case shall exceed 100% of the quoted price of such items. The cancellation fee charged to Buyer shall in no event be less than ten percent (10%) of the total price of the cancelled order.

8. PRICES AND PAYMENT:

A. Prices. The price for the Equipment and Services to be performed by Despatch shall be the prices set forth in Despatch written proposal or on the face of this document. Any typographical errors in stated Equipment prices shall be subject to correction. If Buyer delays the delivery of the Equipment by sixty (60) days or more, the price for the Equipment shall be adjusted as provided in Section 5 above.

B. Payment. Unless otherwise specified in Despatch proposal or on the face of this document, all payments are due in full within twenty (20) days of the date of invoice. The purchase price is payable in immediately available funds of the United States. Despatch retains title to all Equipment sold to Buyer until the applicable invoices are paid in full. Buyer agrees to execute such documents as reasonably requested by Despatch to give effect to such retained title in the Equipment. Despatch may file a copy of this document to accomplish the same.

C. Payment of Undisputed Invoices/Offsets. Buyer will pay invoices rendered by Despatch covering the Equipment and/or Services not in dispute regardless of disputes relating to other invoices. Buyer waives the right to assert offsets or counter-claims with respect to such invoices.

D. Late Payment Fee/Collection Costs. Any amounts not paid when due will be subject to a late payment fee computed daily at a rate equal to the lesser of one percent (1.0%) per month or the highest rate permissible under applicable usury law. In addition, Buyer shall be liable to Despatch for all costs incurred by Despatch in its collection of any amounts owing by Buyer which are not paid when due, including collection agencies' and attorneys' fees and expenses, regardless whether an actual lawsuit is commenced.

9. DEFAULT:

Any one of the following acts by Buyer shall constitute a default by Buyer hereunder:

a) Failure to make payment for any Equipment or Services when due.

b) Failure to accept conforming Equipment or Services supplied hereunder.

c) The filing of a voluntary or involuntary petition in bankruptcy against Buyer, the institution of any proceedings in insolvency or bankruptcy (including reorganization) against Buyer, the appointment of a trustee or a receiver of Buyer, or an assignment for the benefit of creditors of Buyer.

d) Any other act by Buyer in violation of any of the provisions of these Terms and Conditions of Sale.

In the event of any default by Buyer, Despatch may, in addition to any and all other remedies provided by law, (i) suspend in transit any shipment of Equipment to Buyer; (ii) decline to make further shipments; (iii) postpone any further performance under any agreement with Buyer until such default is corrected; (iv) immediately cancel any open order or other agreement with Buyer; and (v) declare all amounts owed by Buyer under any order or any other agreement with Buyer to be due and payable immediately. Buyer shall pay all costs, including reasonable attorney's fees and expenses, incurred by Despatch in any action brought by Despatch to enforce its rights under any order or other agreement which incorporates these Terms and Conditions of Sale.

10. SELLER'S SECURITY:

In the event of a default by Buyer as provided in Section 9 above, Despatch may at its option repossess the Equipment supplied hereunder and all additions thereto wherever found and shall not be liable in any action at law or in equity on the part of Buyer for such reclamation of its property or for the repayment of any money which may have been paid by Buyer in partial payment for said Equipment. In addition, Despatch may recover from Buyer its reasonable expenses, including attorneys' fees and expenses, incurred in repossessing the Equipment from Buyer. The foregoing shall not be construed as affecting the right of Despatch at its option to recover the purchase price from Buyer or any other rights of Despatch may have against Buyer.

11. PATENT INDEMNITY:

A. Despatch Indemnification Obligations. Despatch shall, at its own expense, defend any suit that may be instituted against Buyer for any alleged infringement of any United States patent, trademark or copyright related to the Equipment being sold by Despatch to Buyer under the terms of these Standard Terms and Conditions of Sale (except Equipment covered by Section 9(B) below) provided that: (i) such alleged infringement does not arise from use of such Equipment as a part of or in combination with any other devices or parts; (ii) Buyer gives Despatch immediate notice in writing of any such suit and permits Despatch, through counsel of its choice, to answer the charge of infringement and defend such suit, and (iii) Buyer gives Despatch all the needed information, assistance and authority, at Despatch's expense, to enable Despatch to defend such suit. In the case of a final award

of damages in any such suit, Despatch shall pay such award (to the extent not excluded above), but shall not be responsible for any settlement made without its prior written consent.

THIS SECTION 11 STATES DESPATCH'S SOLE RESPONSIBILITY AND LIABILITY, AND THE BUYER'S SOLE REMEDY, FOR ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT BY ANY EQUIPMENT DELIVERED HEREUNDER OR ANY PARTS THEREOF. THIS SECTION 11 IS IN LIEU OF AND REPLACES ANY OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTY AGAINST INFRINGEMENT.

B. Buyer's Indemnification Obligations. Buyer shall, at its own expense, indemnify and hold Despatch harmless from and against any liability, loss, expense or cost incurred by Despatch, including, without limitation, attorneys' fees and expenses, resulting from any infringement of any patent, trademark or copyright arising as a result of Despatch's compliance with any of Buyer's designs, specifications or instructions. Buyer shall defend Despatch at Buyer's own expense any suit brought against Despatch alleging any such infringement, provided that Despatch (i) gives Buyer prompt notice of any such suit and permits Buyer, through counsel of its choice, to defend such suit, and (ii) gives Buyer all needed information, assistance and authority, at Buyer's expense, necessary for Buyer to defend any such suit.

12. GOVERNMENT CONTRACTS:

If the Equipment and/or Services furnished under these Terms and Conditions of Sale are to be used in the performance of a Government contract or subcontract and a Government contract number appears on Buyer's purchase order, those clauses of the applicable Government Procurement Regulations which are mandatorily required by federal statute to be included in Government subcontracts shall be incorporated herein by reference.

13. POLLUTION CONTROL DEVICES:

Unless specifically included in Despatch's written proposal, Despatch does not undertake to provide any devices that might be required by any local, state or federal laws, ordinances or regulations for pollution control in order to operate the Equipment. Compliance with any such requirements is the responsibility of Buyer.

14. FORCE MAJEURE:

Despatch shall not be liable for any damage or extra costs as a result of any delay or failure of delivery or any other performance cause in whole or in part by any contingency beyond Despatch reasonable control, including, without limitation, any Act of God, act of Buyer, embargo or other government act, regulation or request, acts of terrorists, fire, war, riot, flood, accident, strike, jurisdictional dispute, slow down, delay in transportation, and inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

15. LIMITATION OF LIABILITY:

DESPATCH SHALL HAVE NO LIABILITY TO BUYER OR ANY PERSON CLAIMING THROUGH BUYER FOR, AND BUYER HEREBY EXPRESSLY WAIVES, ANY INDIRECT, INCIDENTAL,

CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY DESCRIPTION, WHETHER ARISING OUT OF WARRANTY OR OTHER CONTRACT, NEGLIGENCE OR OTHER TORT, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, FORESEEABLE BUSINESS LOSSES, LOSS OF PROFITS AND RELIANCE DAMAGES. UNDER NO CIRCUMSTANCES SHALL DESPATCH'S LIABILITY HEREUNDER FOR ANY CAUSE EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE EQUIPMENT AND SERVICES.

16. INSTALLATION:

A. Where Buyer contracts for "Start-up or Installation Supervision" from Despatch, Buyer shall furnish and pay for necessary labor, tools, rigging, scaffolding, blocking, cranes and all other services and utilities required for complete installation of the Equipment.

If completion of work is delayed or stopped by Buyer due to circumstances beyond the reasonable control of Despatch, Buyer is responsible for delay time on a calendar day basis plus travel time and transportation costs if necessary for the start-up/installation supervisor to leave the job site and return.

B. Where Buyer contracts for supervision and installation labor from Despatch, Despatch will promptly proceed with installation of the Equipment and will maintain a competent person at the installation site as appropriate to superintend and direct the work, and the person, in the selection and direction of the crew, will observe Buyer's interests and those of other contractors. Despatch will supply necessary tools for installation of the Equipment.

Buyer shall provide compressed air at 80# pressure, electricity at 120V for drilling and 230V or 460V for welding operations, fuel, water, heat and light as may be needed for installation. Buyer shall allow Despatch to use any elevators, cranes or other lifting service available at the installation site. Buyer shall provide dry, lighted and heated working area, drinking water, toilet facilities and fire watch and fire protection equipment if required in hazardous areas.

Despatch reserves the right to start installation immediately upon receipt of a substantial portion of the installation materials and Equipment at the installation site. If Buyer delays installation beyond thirty (30) days thereafter, the full purchase price for the Equipment and installation service, less charges, will become due and payable immediately. Installation charges are subject to adjustment at the time of rescheduling.

Installation labor proposed to be performed by Despatch is based upon the prevailing straight time hours in the locality of the installation site. No Saturday, Sunday or holiday work is included. It is also based on doing all of the installation work in a single continuous operation with a crew of reasonable size. If delays for which Despatch is not responsible prevent the work from being accomplished expeditiously and additional travel or job

mobilization costs are incurred, the same shall be paid by Buyer. If overtime or premium time work is desired, Buyer shall request the same in writing, and shall pay the cost thereof plus twenty percent (20%) to cover overhead expense.

17. EXAMINATION AND TESTING WHEN DESPATCH SUPPLIES INSTALLATION:

Within ten (10) days after completion of installation, Buyer shall accept the Equipment, or notify Despatch in writing of anything believed required to make the Equipment conform to the order. Provided, however, if the Equipment meets the requirements of Despatch's proposal or any accepted order, Buyer shall accept the Equipment immediately. If installation has been completed, as specified in Despatch's proposal or in the accepted order, but Buyer fails to have available and connected the utilities (fuel, power, etc.) required for testing, Buyer agrees to make payment in full immediately. Buyer further agrees to pay Despatch for any additional expense incurred to complete testing at a later date.

Buyer shall not use Equipment for regular production, whether full or limited, until the Equipment has been accepted and a written acceptance delivered to Despatch. If Buyer proceeds to use the Equipment for regular production without delivering a written acceptance to Despatch, the Equipment will be deemed to be accepted without delivery of such document.

18. OTHER OBLIGATIONS OF BUYER WHEN DESPATCH PERFORMS INSTALLATION:

A. Buyer shall provide and pay for all necessary building and installation permits, public inspections, pollution control approvals and licenses required for installation of Equipment.

B. Buyer shall (i) prior to Despatch's proposed shipping date, clear installation site and thereafter maintain same free from water, debris and all other obstructions, (ii) make required alterations in building, including cutting necessary holes in the walls, floor and roof in accordance with Despatch's drawings or specifications and repair the same after completion of installation, and (iii) provide all required construction, including excavations, foundations and foundation bolts, concrete work and installation of flashings. Free access to all areas where work is to be performed by Despatch must be maintained at all times. Any installation time lost by having to wait for such access or for completion of any preparatory work which is the responsibility of Buyer or its contractors will be charged for as an extra at the prevailing rate.

C. Buyer shall provide for careful unloading of the Equipment and safe dry storage on the installation site and at the actual installation location. Buyer shall strictly comply with all instructions and loading limitations contained in any bill of lading, shipping order or other document.

D. Buyer shall provide for the transportation of the Equipment and other materials, including Despatch installation tools, between points of delivery by carrier and the appropriate installation locations on the installation site.

E. Buyer shall provide suitable insurance against any loss or damage by fire, explosion, the elements or any other cause to the Equipment or to Despatch installation tools after receipt thereof, said insurance to be payable to Despatch and Buyer as their interests may appear.

F. Buyer shall install necessary fuel, compressed air, electric current and water facilities, provide all piping and wiring from source to point of connection on the equipment and provide any piping or wiring to interconnect all valves, control equipment, motor switches, motors and other electrical equipment required. Unless included in Despatch's proposal, Buyer shall provide all motor starters and switches, fuel pressure regulators and ventilating stacks or hoods.

G. Buyer shall supply any and all fire protection or safety devices, belt or chain guards and ladders, except as specified in Despatch' proposal.

19. ASSIGNMENT:

Buyer may not assign its rights or obligations under these Terms and Conditions of Sale and any related order without the prior written consent of Despatch and any purported assignment without such consent shall be of no effect.

20. MODIFICATION AND WAIVER:

No purported amendment, modification or waiver of any provision of these Standard Terms and Conditions of Sale or of any related Despatch written proposal shall be binding unless set forth in a written document signed by an officer of Despatch. Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term of this Agreement or of the same circumstance or event upon any recurrence thereof. The failure of Despatch to enforce any provision contained herein at any time shall not be construed to be a waiver of such provision nor of the right of Despatch thereafter to enforce such provision.

21. SEVERABILITY:

If any provision hereof is held to be unenforceable by final order of any court of competent jurisdiction, such provision shall be severed here from and shall not affect the interpretation or enforceability of the remaining provisions hereof.

22. NOTICES:

All notices required or permitted to be given hereunder shall be in writing in the English language and shall be deemed to have been duly delivered (i) when received, if hand delivered, (ii) the next business day after placement with a reputable express delivery service for delivery during the morning of the following business day, or (iii) three (3) days after deposit in the U.S. mails for delivery by certified or registered mail, return receipt requested, postage prepaid and addressed to the appropriate party at the addresses set forth on the first page hereof. However, if the notice is being sent to or from a party located outside of the United States of America, such notices shall be deemed to be duly delivered (i)

when received, if hand delivered, (ii) three (3) business days after placement with a reputable international express delivery service for immediate delivery or (iii) ten (10) days after deposit in the mails for registered, airmail delivery, return receipt requested, postage prepaid and addressed to the appropriate party at the addresses provided on the purchase order. All notices to Despatch shall be delivered to the attention of the President. Addresses may be changed by giving written notice to the other party pursuant to the terms hereof, but any such change shall not be effective until actually received.

23. TIMING OF CLAIMS:

All suits or other actions against Despatch claiming breach of warranty or other contract and/or violations of other legal duties owed by Despatch to Buyer must be commenced within 366 days after such action has occurred, or be forever barred.

24. APPLICABLE LAW AND JURISDICTION:

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota, USA, without application of its conflict of law provisions. The U. N. Convention on Contracts for the International Sale of Goods shall not apply to any orders submitted by Buyer. Any and all disputes relating to the purchase of the Equipment and/or Services by Buyer, the interpretation, execution, or enforcement of these Standard Terms and Conditions of Sale and related orders arising from the dealings between Buyer and Despatch, or among Buyer, Despatch and third parties relating to the Equipment and/or Services, shall be dealt with under the exclusive jurisdiction and venue of the state and federal courts located in the State of Minnesota, to the exclusion of all other courts. Each party expressly agrees to submit to the jurisdiction of such courts.