

TERMS AND CONDITIONS

PURCHASE ORDERS FROM DANFOSS DRIVES ARE SUBJECT TO THE INSTRUCTIONS APPEARING ON OUR PURCHASE ORDER DOCUMENT, AND TO THE FOLLOWING TERMS AND CONDITIONS AND NO OTHERS:

1. ACCEPTANCE OF PURCHASE ORDER: ALTERATION OF TERMS AND CONDITIONS

OUR PURCHASE ORDER SHALL BE ACCEPTED BY BUYER'S RECEIPT OF THE ORDER CONFIRMATION DULY EXECUTED BY SELLER. IN THE ABSENCE OF SUCH ACKNOWLEDGEMENT, COMMENCEMENT OF DELIVERY OF THE PRODUCTS BEING PURCHASED HEREUNDER (THE "PRODUCTS") AND ACCEPTANCE OF ANY SUCH DELIVERY BY BUYER SHALL CONSTITUTE A FIRM CONTRACT ON THE TERMS AND CONDITIONS HEREOF. NONE OF THE TERMS AND CONDITIONS OUR PURCHASE ORDER MAY BE ADDED TO, MODIFIED, SUPERSEDED OR OTHERWISE ALTERED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BUYER AND TRANSMITTED BY BUYER TO SELLER NOTWITHSTANDING ANY TERMS AND CONDITIONS THAT MAY BE CONTAINED IN ANY ACKNOWLEDGEMENT, INVOICE OR OTHER CORRESPONDENCE FROM SELLER OR BUYER'S ACCEPTANCE OF ANY SHIPMENT OR PAYMENT THEREON. NO PREVIOUS COURSE OF DEALING OR TRADE USAGE MAY BE USED TO INTERPRET, LIMIT OR OTHERWISE IMPAIR THE OPERATION OF THIS PARAGRAPH 1.

2. WARRANTIES

IN ADDITION TO ALL WARRANTIES WHICH MAY BE PRESCRIBED BY LAW, SELLER WARRANTS THAT THE PRODUCTS WILL BE DELIVERED FREE OF ANY CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR OTHERWISE, THAT THE PRODUCTS WILL BE OF MERCHANTABILITY QUALITY, WILL CONFORM TO APPLICABLE DESIGNS, SPECIFICATIONS, DRAWINGS, DESCRIPTIONS OR SAMPLES FURNISHED OR TO BE FURNISHED BY BUYER TO SELLER WILL BE FREE FROM DEFECTS IN DESIGN, MATERIAL, AND WORKMANSHIP, AND WILL BE FIT FOR THE PARTICULAR PURPOSE OR PURPOSES INTENDED BY BUYER. BUYER'S APPROVAL OF ANY DESIGNS, SPECIFICATIONS, DRAWINGS, DESCRIPTIONS OR SAMPLES FURNISHED BY SELLER SHALL NOT RELIEVE SELLER OF ITS OBLIGATIONS HEREUNDER. THE AFORESAID WARRANTIES SHALL EXTEND AND INURE TO THE BENEFIT OF BUYER, ITS SUCCESSORS, ASSIGNS, CUSTOMERS AND TO THE USERS OF THE PRODUCTS.

3. COMPLIANCE WITH LAWS

THE SELLER WARRANTS THAT IT AND THE PRODUCT FURNISHED HEREUNDER SHALL COMPLY WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL LAWS, RULES AND REGULATIONS. AND THAT IS HAS PAID OR IS EXCLUSIVELY LIABLE FOR ALL UNEMPLOYMENT COMPENSATION TAXES ON WAGES OF SUCH OF ITS EMPLOYEES AS HAVE PRODUCED THE PRODUCTS AND SELLER AGREES TO FOREVER INDEMNIFY AND SAVE BUYER HARMLESS AGAINST LIABILITY ON ACCOUNT OF A NON-COMPLIANCE. SELLER ALSO AGREES TO FURNISH ON EACH INVOICE A STATEMENT (IN FORM APPROVED BY THE U.S. DEPARTMENT OF LABOR) CERTIFYING THAT THE AFORESAID PRODUCTS WERE PRODUCED, MANUFACTURED AND DELIVERED IN ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938, AS AMENDED, AND ALL REGULATIONS AND ORDERS ISSUED THEREUNDER.

4. ACCEPTANCE OF PRODUCTS

BUYER'S ACCEPTANCE OF THE PRODUCTS SHALL NOT RELIEVE SELLER OF ANY OBLIGATIONS AND WARRANTIES HEREUNDER. ACCEPTANCE OF THE PRODUCTS SHALL OCCUR AFTER BUYER (1) HAS HAD A REASONABLE OPPORTUNITY TO INSPECT AND TEST THE PRODUCTS AND/OR (2) SIGNIFIES TO SELLER THAT THE PRODUCTS ARE CONFORMING OR THAT IT WILL TAKE OR RETAIN THEM IN SPITE OF THEIR NONCONFORMITY.

5. INFRINGEMENT AND LIABILITY INDEMNITY

SELLER, ITS SUCCESSORS, ASSIGNS OR HEIRS AND LEGAL REPRESENTATIVES SHALL FOREVER INDEMNIFY AND SAVE HARMLESS BUYER, ITS SUBSIDIARIES, AFFILIATED COMPANIES, SUCCESSORS, ASSIGNS, EMPLOYEES, AGENTS, DISTRIBUTORS, CUSTOMERS AND USERS OF THE PRODUCTS OF AND FROM ANY CLAIM, DEMAND, CAUSE OF ACTION, SUIT, JUDGMENT, LOSS, DAMAGE OR OTHER LIABILITY (INCLUDING COSTS, EXPENSES AND ATTORNEY FEES INCURRED IN THE INVESTIGATION, DEFENSE OR SETTLEMENT OF ANY COURT OR OTHER PROCEEDING OR SUIT OR ANY THREATENED COURT OR OTHER PROCEEDING OR SUIT) FOR (A) ACTUAL OR ALLEGED PATENT, TRADE-MARK, COPYRIGHT INFRINGEMENT, DOMESTIC OR FOREIGN, OR INFRINGEMENT OR VIOLATION OF ANY SIMILAR RIGHTS, AND/OR (B) ACTUAL OR ALLEGED DAMAGE, LOSS OR LIABILITY, INCLUDING INCIDENTAL AND CONSEQUENTIAL DAMAGES, TO PERSONS OR PROPERTY BY REASON OF ANY DEFECTS IN SAID PRODUCTS WHETHER ARISING BY BREACH OF WARRANTY OR OTHERWISE UPON THE REQUEST OF THE BUYER, SELLER SHALL, AT ITS EXPENSE, DEFEND ALL CLAIMS, PROCEEDINGS OR SUITS AGAINST BUYER, ITS SUBSIDIARIES, AFFILIATED COMPANIES, SUCCESSORS, ASSIGNS, EMPLOYEES, AGENTS, DISTRIBUTORS, CUSTOMERS OR USERS OF SAID PRODUCTS IN WHICH ANY OF THE AFORESAID CLAIMS ARE ALLEGED. BUYER AGREES TO NOTIFY SELLER PROMPTLY UPON ITS RECEIPT OF NOTICE OF THE AFORESAID CLAIM OR CLAIMS.

6. BUYER-FURNISHED PROPERTY

SELLER SHALL NOT USE, REPRODUCE, OR APPROPRIATE FOR, OR DISCLOSE TO ANYONE OTHER THAN AS REQUIRED FOR THE MANUFACTURE OR PRODUCTION OF THE PRODUCTS, ANY MATERIAL, TOOLING, DIES, DRAWINGS, DESIGNS OR OTHER PROPERTY OR DATA FURNISHED BY BUYER, NOR SHALL SELLER USE THE SAME TO PRODUCE OR MANUFACTURE MORE PRODUCTS THAN ARE REQUIRED HEREUNDER. TITLE THERETO SHALL REMAIN IN BUYER AT ALL TIMES. SELLER SHALL BEAR THE RISK OF LOSS OR DAMAGE TO SUCH PROPERTY. UNLESS BUYER SHALL OTHERWISE DIRECT, ALL SUCH PROPERTY, TOGETHER WITH SPOILED AND SURPLUS MATERIALS, SHALL BE RETURNED TO BUYER AT THE TERMINATION OR COMPLETION OF THIS ORDER.

7. CHANGES

BUYER RESERVES THE RIGHT TO CANCEL OR MODIFY OUR ORDER AT ANY TIME WITHOUT PREJUDICE TO ADJUSTMENTS REASONABLY DUE FOR SPECIAL MATERIALS PURCHASED BY SELLER OR PARTIALLY PROCESSED WORK HEREUNDER.

8. TAXES

UNLESS ITEMIZED SEPARATELY BY SELLER UPON ITS INVOICE, ALL FEDERAL, STATE AND LOCAL SALES, EXCISE OR SIMILAR TAXES SHALL BE FOR SELLER'S ACCOUNT. BUYER SHALL, UPON SELLER'S REQUEST, FURNISH ANY EXEMPTION CERTIFICATE AVAILABLE TO BUYER.

9. RISK OF LOSS

UNLESS OTHERWISE NOTED, THE RISK OF LOSS SHALL NOT PASS TO BUYER UNTIL THE PRODUCTS ARE ACCEPTED IN ACCORDANCE WITH PARAGRAPH FOUR (4) HEREOF.

10. DELEGATION OF DUTIES: ASSIGNMENTS OF RIGHTS

WITHOUT BUYER'S PRIOR WRITTEN CONSENT, SELLER SHALL NEITHER DELEGATE IN ANY MANNER TO ANY OTHER PERSON, FIRM OR CORPORATION, THE PERFORMANCE OR ANY WORK OR THE MANUFACTURE OF ANY PRODUCTS NOR ASSIGN ANY AMOUNT WHICH MAY BE OR MAY BECOME DUE HEREUNDER.

11. REMEDIES

THE RIGHTS AND REMEDIES OF BUYER HEREUNDER SHALL NOT BE EXCLUSIVE, BUT SHALL BE CUMULATIVE AND IN ADDITION TO ANY OTHER RIGHTS AND REMEDIES PROVIDED BY ANY AND ALL OTHER CLAUSES AND PARAGRAPHS OF THIS PURCHASE ORDER AND TO ALL OTHER RIGHTS AND REMEDIES IN LAW OR EQUITY INCLUDING, BUT NOT LIMITED TO, THE RIGHT OF BUYER TO SET-OFF AMOUNTS PAYABLE TO SELLER HEREUNDER AGAINST ANY AMOUNTS OTHERWISE OWED TO BUYER BY SELLER.

12. ENTIRE AGREEMENT

THE PROVISIONS CONTAINED HEREIN CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES, HERETO AND SUPERSEDE ALL PREVIOUS COMMUNICATIONS, REPRESENTATIONS, AND AGREEMENTS, EITHER VERBAL OR WRITTEN, BETWEEN THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY CHANGES OR ADDITIONS TO THIS AGREEMENT MUST BE IN WRITING AND SIGNED BY BOTH PARTIES.

13. ILLINOIS LAW; SEVERABILITY

THIS AGREEMENT SHALL BE SUBJECT TO, CONSTRUED UNDER AND ENFORCED ACCORDING TO THE LAWS OF THE STATE OF ILLINOIS. SHOULD ANY PORTION OF THIS AGREEMENT BE DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE UNENFORCEABLE, SUCH DETERMINATION SHALL NOT AFFECT THE ENFORCEABILITY OF ANY TERMS AND CONDITIONS, WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.

14. VENUE

ANY ACTION ARISING OUT OF THE TERMS AND CONDITIONS HEREOF SHALL BE INSTITUTED AND LITIGATED IN THE COURTS OF WINNEBAGO COUNTY, STATE OF ILLINOIS AND NO OTHER. IN ACCORDANCE HEREWITH, SELLER HEREBY SUBMITS TO THE JURISDICTION AND VENUE OF THE COURTS OF WINNEBAGO COUNTY, ILLINOIS.

15. DAMAGES, COSTS AND ATTORNEYS FEES

IN THE EVENT OF ANY DISPUTE ARISING OUT OF THE TERMS OF THIS AGREEMENT, IN ADDITION TO AN AWARD OF DAMAGES, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER: (1) PRE-JUDGMENT INTEREST ON ANY AMOUNT AWARDED AT A RATE OF TWO POINTS OVER THE PRIME RATE, (2) ALL EXPENSES OF LITIGATION, INCLUDING WITHOUT LIMITATION ALL FILING FEES AND COURT COSTS; AND (3) ALL ATTORNEY FEES REASONABLY INCURRED TO ENFORCE THE RIGHTS WHICH ARE THE SUBJECT OF THE DISPUTE, REGARDLESS OF WHETHER THEY ARE INCURRED BEFORE OR AFTER THE INITIATION OF LITIGATION.