

TERMS AND CONDITIONS

(1) **ACCEPTANCE** Huestis Machine Corporation ("Seller") is pleased to offer for sale the articles listed on the face hereof, on the express condition that the buyer named on the face hereof ("Buyer") agrees to accept and be bound by all the terms and conditions set forth herein. Acceptance on Buyer's part shall be evidenced by any of the following: (a) written, telephone or other electronic means of communication acceptable to Seller, received by Seller within sixty (60) days from the date hereof (including receipt of Buyer's purchase form); or (b) shipment by Seller, and Buyer's acceptance of, or payment for, all or any of the articles listed on the face hereof. Acceptance by Buyer in the foregoing manner shall constitute acceptance of this document and all the terms hereof.

(2) **FULL AGREEMENT** The agreement between the Seller and Buyer with respect to the articles shall consist of the terms and conditions contained herein together with any additions to, or revisions of, such terms mutually agreed to in writing by Seller and Buyer. Seller shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller unless specifically agreed to by Seller in writing. Prior courses of dealing, usage's of the trade, and verbal agreements not reduced to writing and signed by Seller, to the extent that they alter this document, shall not be binding on Seller.

(3) **MODIFICATION** Except as herein provided, the terms of this document may not be modified, terminated or repudiated, in whole or in part, except by a writing signed by Seller and Buyer. Seller may, at its option, treat any attempted modification, termination or repudiation to which it does not assent as a breach of this entire document and claim all proper damages. If this document, or any part thereof, is terminated by agreement of the parties and there is no contrary written agreement between Seller and Buyer, Buyer shall pay termination charges as follows: (a) the price provided in such order for all articles assembled prior to the agreement by Seller to termination, plus (b) the actual expenditures made and liabilities incurred by Seller in connection with the uncompleted portion of the order, plus (c) a reasonable estimated profit on the uncompleted portion of the order.

(4) **PURCHASE PRICE AND DELIVERY** Unless otherwise specified in Seller's order acknowledgement, payment terms for U.S. customers are net 30 from the date of invoice, in U.S. dollars, subject to approved credit at the time of order invoicing. Deposits or down payments, if any, are non-refundable, and no discount for early payment is authorized without Seller's written consent. Orders from outside the U.S. require advance remittance by wire transfer. Alternate international payment terms are considered upon request. Visa, MasterCard, Discover and American Express are accepted. Payment terms shall not be affected by any delay in delivery, installation, or acceptance. Seller reserves the right to modify payment terms or require prior payment, letter of credit or COD when, in the opinion of Seller, Buyer's financial condition or previous payment record so warrants. Terms are F.O.B. Seller's plant in Bristol, Rhode Island. Seller has no obligation to install any articles. Unless the contrary appears on the face of this document, Buyer shall pay all shipping costs and bear the risk of loss after Seller completes delivery to the carrier.

(5) **TAXES OR DUTIES** The price shown on the face hereof does not include any tax, duty or other domestic or foreign governmental charges upon the sale, shipment or use of the articles which Seller is required to pay or collect from Buyer. Any such tax, duty or charge, whether domestic or foreign, shall be paid by the Buyer to Seller, unless Buyer furnishes Seller with exemption certificates acceptable to the appropriate taxing authority.

(6) **TIME OF DELIVERY SHIPMENT SCHEDULES ARE APPROXIMATE AND ARE BASED ON CONDITIONS AT THE TIME OF ACCEPTANCE. SELLER, IN GOOD FAITH, SHALL ATTEMPT TO EFFECT DELIVERY BY THE DATE SPECIFIED, BUT SHALL NOT BE RESPONSIBLE OR LIABLE FOR DELAYS OR FAILURE TO MAKE DELIVERIES DUE TO ITS CEASING TO MANUFACTURE ANY ARTICLES, OR TO STRIKES, ACCIDENTS, FIRE, AVAILABILITY OF MATERIALS OR OTHER CAUSES BEYOND ITS CONTROL AND NOT OCCASIONED BY ITS NEGLIGENCE.** In such cases, Seller reserves the right to terminate the order or to reschedule delivery within a reasonable time. **IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM FAILURE TO MEET REQUESTED DELIVERY SCHEDULES.**

(7) **WARRANTY** Unless provided to the contrary in this document, Seller warrants to the original Buyer only that the articles delivered under this document shall be fit for the ordinary purposes for which such articles are used and be free from defects in material and workmanship for a period of twelve (12) months from the date of shipment (or, in the event any shipment is delayed or postponed by or at the request of Buyer, for a period of twelve (12) months from the later of the scheduled shipment date or the date at which Seller is prepared to make shipment).

This warranty is limited to the purchase price of the article or articles and shall not apply to any article which (1) has been altered outside Seller's factory in any way so as, in Seller's judgment, to affect such article's reliability; (2) has been subject to misuse, negligence or accident; (3) has been used other than in accordance with any printed instructions prepared by Seller and provided by Seller with the article. With respect to standard components or parts of other manufacturers in the articles, Seller shall extend such manufacturers' warranties to the Buyer and any claim by Buyer that such components are defective or do not conform to any such manufacturers' warranties shall be addressed to and made against the appropriate manufacturer(s) and not the Seller.

24 MONTH WARRANTY MODIFICATION FOR SIMULATORS: Warranty period noted in this section of Terms and Conditions shall be for up to twenty-four (24) months from date of clinical acceptance of product but in no event more than twenty-seven (27) months from date of shipment by Seller; provided, however, with respect to glassware components (i.e.; image intensifier and X-ray tube) Seller's warranty obligation during the second twelve (12) months of the warranty period shall be reduced by one-twelfth (1/12) for each month or portion thereof which shall have expired.

THE WARRANTY GIVEN IN THIS SECTION IS EXCLUSIVE. EXCEPT AS SET FORTH HEREOF, SELLER DOES NOT WARRANT MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR MAKE ANY OTHER WARRANTY OR AGREEMENT EXPRESS OR IMPLIED WITH RESPECT TO ANY ARTICLES DELIVERED UNDER THIS DOCUMENT. NO IMPLIED WARRANTY ARISING BY USAGE OR TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE IS GIVEN BY SELLER OR SHALL ARISE BY OR IN CONNECTION WITH THIS DOCUMENT AND/OR BUYER'S CONDUCT IN RELATION THERETO OR TO EACH OTHER.

(8) **SELLER'S EXCLUSIVE OBLIGATIONS** Buyer shall inspect all products upon arrival and provide written notice to Seller for any claim for shortage or other nonconformance. Seller's obligations with respect to any articles delivered to Buyer under this document are limited exclusively to Seller's choice of repair, replacement or refund of purchase price of any articles or parts thereof which shall be returned to Seller in the manner set forth in this clause, which Seller's examination shall disclose to its satisfaction not to have conformed to the contract or to have been defective as specified in the Warranty clause. Failure by Buyer to notify Seller of such articles within thirty (30) days after Buyer's discovery of such alleged defect or nonconformity and, subject to Seller's prior authorization, to promptly return such articles to Seller, shall constitute a waiver by Buyer of any and all claims of any kind with respect thereto.

Subject to Seller's prior authorization, all such articles shall be returned to Seller's place of shipment, freight prepaid, accompanied or preceded by a particularized statement of the claimed defect or nonconformity. The risk of loss and freight charges to and from Seller shall be borne by Buyer, but Seller shall bear the cost of repair or replacement and the risk of loss while the articles are in Seller's possession at its plant. If articles are returned without having been preceded or accompanied by a statement of the claimed defect, Seller shall hold the articles pending receipt of Buyer's instructions or statement of defect, provided that prior to such receipt, risk of loss of the articles shall remain with Buyer.

THIS REMEDY PROVIDED IN THIS SECTION IS THE EXCLUSIVE REMEDY FOR BUYER UNDER THIS DOCUMENT. SELLER SHALL NOT BE RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES CAUSED BY ARTICLES DELIVERED UNDER THIS DOCUMENT, NOR SHALL ANY LIABILITY OR OBLIGATION OF SELLER ARISING FROM THE WARRANTY CLAUSE OR OTHERWISE EXCEED THE PURCHASE PRICE OF THE ARTICLE OR ARTICLES.

(9) **INFRINGEMENT** The Buyer will indemnify and hold Seller harmless against all damages, costs, expenses or attorneys' fees arising from claims of infringement of patents, designs, copyrights or trademarks with respect to all articles manufactured or assembled either in whole or in part to Buyer's specifications. Seller further reserves the right to cancel any order for articles the manufacture, sale, and/or use of which, in the opinion of Seller, would infringe upon any United States or foreign patent, design, copyright, trademark or other form of protected intellectual property.

(10) APPLICABLE LAW This document shall be governed by the laws of the State of Rhode Island. In the event any litigation arises out of this document, suit may be brought against Seller only in the courts of Bristol County, Rhode Island or the United States District Court for the District of Rhode Island.

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