

ORBIT INDUSTRIES, INC.

Standard Terms and Conditions of Sale

1. **Definitions.** Capitalized terms used in these Standard Terms and Conditions of Sale shall have the following meanings:
 - (i) “Buyer” means Seller’s customer.
 - (ii) “Buyer Documents” means Buyer’s Request for Quotation, Request for Proposal, Purchase Order, Purchase Agreement, any documents or communications, in any form or medium, pertaining to Buyer’s purchase of Products from Seller and all Buyer websites (including without limitation all documents, terms, conditions and information on all such websites).
 - (iii) “Equipment” means goods sold by Seller, or equipment manufactured by Seller for sale, to the Buyer.
 - (iv) “Losses” means any and all losses, liabilities, damages, deficiencies, judgments and expenses (including without limitation reasonable legal expenses and costs).
 - (v) “Products” means, collectively, Equipment and Services.
 - (vi) “Seller” means Orbit Industries, Inc., an Ohio corporation, or its affiliates as applicable.
 - (vii) “Seller Documents” means Seller’s Quotation, Certifications, Invoice, all other Seller documents or communications, in any form or medium, pertaining to Seller’s sale of Products to Buyer and Seller websites (including without limitation all documents, terms, conditions and information on all such websites).
 - (viii) “Services” means nondestructive testing performed by Seller for the Buyer.
2. **Entire Agreement.** These Standard Terms and Conditions of Sale (the “Orbit Terms”), and all of the Seller Documents in connection with the Services and/or Equipment rendered or sold by Seller constitute the final written expression of the entire agreement between Seller and Buyer, and are a complete and exclusive statement of that agreement. No part of the agreement between Seller and Buyer may be waived, modified or supplemented in any manner whatsoever (including a course of dealing or of performance or usage of trade) except by a written instrument signed by duly authorized officers of both Seller and Buyer. The Orbit Terms shall control the sale and supply of Services and/or Equipment by Seller to Buyer. The Orbit Terms shall supersede and replace the terms, conditions and agreements in all Buyer Documents. To the extent that there are additional or different terms and conditions in the Buyer Documents or otherwise referenced by Buyer in any manner whatsoever in connection with Services and/or Equipment, Seller hereby expressly objects to, and rejects, those additional or different terms and conditions. Any such proposed additional or different terms and conditions from Buyer shall be void and the Orbit Terms, and Seller Documents, shall constitute the complete and exclusive statement of the terms and conditions of the contract between the Seller and Buyer for the sale of Products by Seller to Buyer.

3. **Price/Terms of Payment.** Unless otherwise expressly agreed in a writing signed by an authorized representative of Seller, the price for the Products shall be the price described on Seller's Quotation. Terms of payment are net ten (10) days from the date of Seller's invoice. In case Buyer shall fail to make payments in accordance with the terms and conditions stipulated herein, Seller may defer its performance of Services or shipment of Equipment until such payments are made or may, at its option, cancel the balance of the order. A one percent (1%) per month payment late charge will be assessed on all payments that are not made in accordance with Seller's payment terms.

4. **Warranty, Disclaimer, Limitation of Liability and Remedy.** Seller warrants that Equipment sold hereunder will be free from defects in material and workmanship under normal use for a period of ninety (90) days after first use by Buyer provided that the Equipment shall not have been altered or repaired after shipment to Buyer by anyone except Seller's authorized employees. Components or equipment manufactured by others but furnished by Seller are not covered by this warranty, but are limited to the original manufacturer's warranty. Seller must be given an opportunity to make an investigation and inspection of any asserted defects in Equipment which must be reported promptly in writing within ten (10) days of discovery and not later than ten (10) days after the expiration of the applicable warranty period. Seller warrants that Services performed by Seller shall be completed in accordance with specifications for testing provided by Buyer and agreed to by Seller in writing. In the event that Seller breaches the warranties above with respect to Equipment sold hereunder, and provided that Buyer complies with the terms of this Paragraph, Seller shall, at its option (i) repair the defective or nonconforming Equipment by repair or replacement at no charge to Buyer, or (ii) refund the purchase price for such Equipment to Buyer. In the event that Seller breaches the warranties above with respect to Services, Buyer must report such breach no later than ten (10) days after its receipt from Seller of the goods for which Seller performed the Services. In the event that Seller breaches the warranties above with respect to Services, and provided that Buyer complies with the terms of this Paragraph, Seller shall, at its option (x) again perform the Services for the goods which were inspected and were the subject of such breach, or (y) refund the price for such Services paid by Buyer to Seller. EXCEPT AS SPECIFICALLY PROVIDED IN THIS PARAGRAPH, NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTY, EXPRESS OR IMPLIED OR STATUTORY, IS MADE BY SELLER HEREUNDER REGARDING EQUIPMENT OR SERVICES. SELLER DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO EQUIPMENT AND SERVICES. SELLER'S ENTIRE AND EXCLUSIVE LIABILITY FOR DEFECTIVE EQUIPMENT, OR FOR BREACH OF WARRANTY WITH RESPECT TO SERVICES, AND UNDER THIS PARAGRAPH 4, WHETHER FOUNDED ON WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE, AND BUYER'S EXCLUSIVE AND SOLE REMEDY, IS LIMITED TO REPAIR OR REPLACEMENT OF DEFECTIVE EQUIPMENT, FOB SELLER'S FACTORY, REPERFORMANCE OF THE SERVICES IF THE BREACH OF WARRANTY RELATES TO SERVICES, OR AT SELLER'S OPTION THE RETURN OF THE PURCHASE PRICE. SELLER SHALL IN NO EVENT BE LIABLE TO BUYER FOR (i) ANY OTHER DIRECT DAMAGES, OR (ii) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE FOR INJURY TO PERSON OR PROPERTY, LOSS OF SALES, LOSS OF PROFITS, INCREASED COSTS OR EXPENSES OR BUYER'S LIABILITIES TO THIRD PARTIES, RESULTING FROM, ARISING OUT OF, OR IN CONNECTION WITH DEFECTIVE EQUIPMENT, SERVICES PROVIDED BY SELLER AND/OR SELLER'S BREACH OF THE WARRANTIES IN THIS PARAGRAPH 4. AS USED HEREIN, "DEFECTIVE EQUIPMENT" MEANS EQUIPMENT WHICH IS DEFECTIVE OR NONCONFORMING IN ANY MANNER OR FOR WHICH SELLER HAS BREACHED ITS WARRANTIES HEREIN.

5. **Indemnification.** Buyer shall indemnify and defend Seller, its affiliates and its and their respective shareholders, subsidiaries, officers, directors, employees, agents, successors and assigns,

and hold them harmless, from and against any Losses sustained or incurred in connection with or as a result of claims or causes of action by third-parties for the death or personal injury to persons or damage to property caused by the negligence of Buyer and/or arising out of Buyer's sale of goods. Buyer shall, at its sole cost, upon receipt of notification from Seller, promptly assume the defense of any and all suits, actions, claims or proceedings which may be brought against Seller for which Buyer is obligated to indemnify Seller.

6. **Limitation of Liability.** Seller shall not be liable to Buyer for (i) direct damages, other than those specifically described in these Orbit Terms as obligations of Seller (and such direct damages shall not, in any event, exceed the amount Buyer paid Seller for the Products), or (ii) any indirect, incidental, special or consequential damages, including without limitation any damages for lost sales, loss of production, lost profits, loss of goodwill, increased costs or expenses or for obligations or liabilities of Buyer or Buyer affiliates to its or their customers or any third parties, whether founded on warranty, contract, negligence or any other theory of liability, resulting from, in connection with or arising out of (1) Seller's breach of or failure to perform its agreement with Buyer, including any of the Orbit Terms, and/or (2) Seller's breach of the terms of Paragraph 4 of the Orbit Terms, and/or (3) Seller's delay in performance of, or failure to perform, Services, and/or (4) Seller's delay in delivery of or failure to manufacture Equipment.

7. **Assignment.** Neither Seller nor Buyer may assign its respective rights or duties without the prior written consent of the other party. Notwithstanding the foregoing, Seller may assign its rights and duties under its agreement with Buyer, without the consent of Buyer, to a successor of Seller or an assignee that purchases all or substantially all of the assets of the Seller or otherwise becomes the owner of a majority of the voting securities of the Seller.

8. **Governing Law, Venue, Actions.** The agreement between Seller and Buyer shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to any choice or conflict of law rules or provisions (whether of the State of Ohio or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Ohio. Each of Seller and Buyer agrees to bring any action arising out of or related to this agreement in a state or federal court in the State of Ohio. Each of Seller and Buyer waives any defense of inconvenient forum to the maintenance of any action so brought. If any provision of the Orbit Terms, or the agreement between Seller and Buyer, is declared unlawful or invalid, the remaining provisions shall nevertheless continue in full force and effect. Should either Seller or Buyer initiate litigation with respect to the agreement between them, the prevailing party in any such proceeding shall be entitled to receive from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with such proceeding.