

## EBERSPÄCHER VAIREX STANDARD TERMS AND CONDITIONS OF SALE

Eberspächer VAIREX, hereinafter referred to as Seller, hereby offers to supply the items and/or services identified in the quotation, proposal, or acknowledgment expressly conditional upon the Buyer's acceptance of the following terms. Seller, by its commencement of performance, shall not prejudice its rights to enforcement of these conditions.

### 1. FREIGHT AGREEMENT

All products are sold FCA Lafayette, CO, USA (Incoterms® 2020)

### 2. WARRANTY

Seller warrants that each newly manufactured item sold hereunder and such portion of a repaired/refurbished item as has been repaired or replaced by Seller under this warranty, shall be free from defects in material or workmanship at the time of shipment and shall perform during the warranty period in accordance with the specifications incorporated herein. Should any failure to conform to these warranties be discovered and brought to Seller's attention during the warranty period and be substantiated by examination at Seller's factory or by authorized field personnel, then at its own cost Seller shall correct such failure by, at Seller's option, repair or replacement of the nonconforming item or portion thereof or return the unit purchase price of the nonconforming item or component. Any item returned for evaluation for repair that is deemed a non-warranty repair will be subject to a standard evaluation fee unless otherwise negotiated beforehand. Buyer agrees that this remedy shall be its sole and exclusive remedy against Seller and that no other remedy shall be available or pursued by Buyer against Seller. In no event shall the Seller be liable for any costs or expenses in excess of those described in this paragraph and expressly excluding any liability or damages for special, incidental or consequential damages.

The warranty period for newly manufactured items shall extend 12 months from the date of shipment by Seller. The warranty period for repaired/refurbished articles shall extend for the unexpired warranty period of the item repaired or replaced.

This warranty shall not extend to any item that upon examination by Seller is found to have been subject to:

- 1) mishandling, misuse, negligence or accident.
- 2) installation, operation or maintenance that either was not in accordance with Seller's specifications and instructions or otherwise improper.
- 3) tampering as evidence for example by broken seals, damaged packaging containers, etc.
- 4) repair or alteration by any one other than Seller without Seller's express advance written approval.

Failure to promptly notify Seller in writing upon discovery of any non-conforming items during the warranty period shall void the warranty as to such items. Buyer shall describe any such non-conformities in detail, expressing its position as to return of any article under the remedy provided herein. No returns shall be accepted without prior approval by Seller who shall arrange for transportation. The cost of transportation for articles returned to Seller and/or redelivered to Buyer shall be paid by Seller only if Seller is responsible for repair or replacement under this warranty. In the event the item is found to conform to the specifications and requirements of this order, the transportation charges related to the return and re-delivery thereof are for the account of Buyer. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

### **3. PACKAGING**

Buyer agrees to return packaging if requested by Seller. Seller will pay shipping charges.

### **4. CANCELLATION**

In the event of a cancellation or delay, the Seller will make a reasonable effort to stop further work and cancel or delay purchase orders. Seller will invoice for payment of all unrecovered and reasonable costs. In the case of a cancellation, this will serve as the final payment. In the case of a delay, it will serve as an interim payment and the portion that covers direct material costs will become a credit on a prorated basis for each unit shipped for the balance of the order.

In the event of cancellation of this order for breach of the provisions hereof by Buyer, Seller shall have no further liability to Buyer and Seller shall not be liable for any costs of cancellation, special, incidental or consequential damages (including punitive or exemplary damages) for any cause or of any nature whatsoever and such cancellation shall be in addition to any other rights and remedies of Seller under this order or at law. Further, Seller reserves the right to cancel this order or any portion thereof without liability if Buyer fails to make payment as required by the terms of this order or if Buyer is adjudicated bankrupt, files a petition in bankruptcy, makes an assignment for the benefit of creditors or if action under any law for the relief of debtors is taken.

### **5. EXPORT REGULATIONS**

Buyer acknowledges that if the items purchased hereunder are to be exported, they are subject to the U.S. Commerce and/or State Department Export Regulations. Buyer accepts full responsibility for and agrees to comply fully with such regulations, including obtaining export licenses and re-export permission unless otherwise agreed by Seller.

**6. PROPERTY OF SELLER**

All designs, inventions (whether or not patented), processes, technical data, drawings, plans and/or confidential information related to the items or services to be purchased, not furnished by Buyer, are the exclusive property of Seller, and all rights, title and interest in and to such properties shall remain exclusively in Seller notwithstanding Seller's disclosure of any part thereof to Buyer or Buyer's payment to Seller for engineering or nonrecurring charges. Buyer shall not use or disclose such property to any third party or any one not having a need to know, including employees, without the prior written consent of Seller. Title to all tools, test equipment and facilities not furnished by Buyer or specifically paid for by Buyer as a separate line item under any order, shall remain with Seller. Further, Seller does not agree to submit to Buyer as a result of the Consideration paid under this order, any information, technical data or drawings which are proprietary to Seller; nor does Seller agree to grant to Buyer any patent rights, title or license without Seller's expressed prior written consent.

**7. RAW MATERIALS SURCHARGES**

The price for supplies containing precious metals, nonferrous metals, magnetic minerals, and/or alloys thereof shall be subject to application of surcharge(s) at time of shipment, based upon fluctuations in the market value of such raw materials.

**8. CONFIGURATION STATUS AND SUBSTITUTION OF MATERIALS**

If the purchase order referenced on this acknowledgment does not specify the revision level of applicable drawings and specifications, then "NRS" (No Revision Specified) shall be indicated next to the part number(s) on this acknowledgment. NRS shall be interpreted "same as last build" or latest revision in Seller Engineering files, whichever is the most recent revision. Seller reserves the right to make substitution of materials without degrading the quality of product. Customer approval will be solicited when changes affect form, fit or function. Seller further reserves the right to discontinue any items without notice and to change or modify specifications at any time without incurring any obligation to incorporate new or modified features in components or products previously sold or shipped.

**9. LIMITATION OF LIABILITY**

Notwithstanding any other provisions hereof, Seller shall not under any circumstances be liable for any damages greater than the unit price of any item(s) sold hereunder with respect to which any claim is made, including all costs and expenses and attorney fees, special, incidental or consequential damages of any nature whatsoever whether arising from Seller's breach of contract, or breach of expressed or implied warranty, arising in tort, at law or in equity, or any law giving rise to a claim of strict liability or for any other cause.

## **10. INSURANCE**

Buyer shall maintain its usual and customary insurance coverage for automobile, worker's compensation and third-party liability claims during performance of this order and, if requested by Seller, name Seller an insured under its third-party liability coverage.

## **11. NON-WAIVER**

The failure of Seller to enforce at any time any of the provisions of this order shall not constitute a waiver of such provisions or a waiver of the right of Seller to enforce any or all provisions. If any term or provisions of this order is held invalid or unenforceable by any court of competent jurisdiction, the remainder of this order shall continue to be valid and binding upon the parties unless performance thereof is rendered legally impractical and no longer fulfills the intention of the parties under this order.

## **12. APPLICABLE LAW AND FORUM FOR RESOLUTION OF DISPUTES**

This contract shall be deemed to have been made and performed in, and shall be construed, interpreted and the rights and obligations of the parties determined by the law of the State of Colorado excluding choice of law rules. All disputes that cannot be amicably resolved shall be decided by a state or federal court of competent jurisdiction located in the State of Colorado.

## **13. ASSIGNMENT**

Except as otherwise expressly provided herein, no assignment of this order or Buyer's rights under this order shall be made by Buyer without the prior written agreement of the Seller. However, Seller may assign this order and its rights and obligations to any of its affiliates or subsidiaries in its sole discretion at any time and without additional consideration.

## **14. FORCE MAJEURE**

In addition to other liability limitations herein contained neither party shall be responsible to the other for any loss or damage due to failure or delay in performance or delivery of any of the items or services required under this order when such delay or failure is due to causes beyond the failing or delaying party's reasonable control. Such causes shall include without limitation fires, floods, epidemics, quarantines, unusually severe weather, embargoes, wars, political strife, riots, delays in transportation, compliance with any regulation or directives of any national, state or local municipal government or authority and unforeseeable shortages in fuel, power, materials or labor.

## **15. ORDER TERMS EXCLUSIVE**

This order constitutes the entire agreement between the parties concerning the subject matter of this order and the parties acknowledge and agree that none of them has made any representation with respect to the subject matter of this order or any representations including the execution and delivery hereof except as specifically set forth herein.

**16. MODIFICATION**

This order may not be modified except by written instrument executed by the parties with the same formality.

**17. RETURNS**

Unused merchandise may be returned within 30 days of purchase. Buyer is liable for all shipping costs and 15% restocking fee.