

STANDARD TERMS & CONDITIONS FOR SALES (USA)

THE FOLLOWING TERMS AND CONDITIONS APPLY TO ALL SALES TRANSACTIONS BETWEEN SIMONDS INTERNATIONAL, LLC DBA BURTON MILL SOLUTIONS (“SELLER”) AND THE CUSTOMER (“BUYER”) EXCEPT WHERE THE PARTIES HAVE ENTERED INTO A WRITTEN MASTER PARTS AGREEMENT WHICH GOVERNS OVER SUCH SALES.

- a) LIMITED WARRANTY AND DISCLAIMER. SELLER warrants new parts of its own manufacture against defective workmanship and materials for a period of one year of from date of shipment from SELLER’s factory (the results of ordinary wear and tear, neglect, misuse, accident and excessive deterioration due to corrosion from any cause not to be considered a defect). SELLER warrants refurbished or repaired parts for a period of ninety days from the date of shipment from SELLER’s factory (the results of ordinary wear and tear, neglect, misuse, accident and excessive deterioration due to corrosion from any cause not to be considered a defect). SELLER’s liability for defective parts shall in no event exceed the furnishing of replacement parts F.O.B. the factory where originally manufactured. Products that are not manufactured by SELLER shall be covered only by the warranty, if any, of its manufacturer.

THE FOREGOING IS THE EXCLUSIVE WARRANTY AND NO OTHER WARRANTY, EXPRESS OR IMPLIED, EXISTS BETWEEN THE PARTIES. IN PARTICULAR, BUT WITHOUT LIMITATION, THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- b) FORCE MAJEUR. SELLER shall not be liable for any loss or damage suffered, directly or indirectly, as a result of SELLER’s failure to perform, or delay in performing, any term or condition hereof, where such failure or delay is caused by fires, labor troubles (including strikes and lockouts), wars, embargoes, government regulations or restrictions of any and all kinds, expropriation of plant by Federal or State authority, interruption of or delay in transportation, inability to obtain materials and supplies, excess of demand for products over the available supply, accidents, explosions, act of God, or other causes of like or different character beyond SELLER’s control.
- c) INDEMNITY. BUYER shall indemnify and hold SELLER harmless from all claims for bodily injury or property damage including all costs incurred in connection with the investigation and defense of any claims related to or arising out of the design, manufacture, sales, installation, ownership, maintenance or use of the products purchased regardless of the claimant’s theory of recovery including, but not limited to, negligence, breach of warranty and strict liability.
- d) CANCELLATION CHARGES. Orders are subject to cancellation by BUYER only upon payment to SELLER of a reasonable cancellation charge which shall include SELLER’s expenses, anticipated profit and additional expenses SELLER will occur as a result of the cancellation by BUYER.
- e) INCORPORATION IN PURCHASE DOCUMENTS. These terms and conditions herein inure to and become operative in any purchase order or sales document which BUYER offers or accepts with reference to the purchase of parts from SELLER, and any offer or acceptance by SELLER is expressly conditioned on assent to these terms set out herein. Failure to object to these terms or acceptance of goods described herein shall be deemed to be an acceptance by BUYER of such terms and conditions. Any terms or conditions in any documents provided by BUYER, including BUYER’s offer or acceptance or purchase order, that conflict with the terms and conditions set forth herein shall be deemed rejected by SELLER and shall be of no effect. The parties expressly agree that, in event of a conflict between the terms and conditions of any document connected with the sale of products by SELLER to BUYER the terms and conditions set forth herein shall prevail.

- f) OSHA DISCLAIMER. SELLER specifically disclaims any warranty for compliance with the Walsh-Healy Public Contracts Act and the Occupational Safety and Health Act of 1970, and regulations promulgated hereunder.
- g) TAXES. Property taxes assessed against said products, if any, shall be paid by BUYER. Should any tax assessment become delinquent, BUYER shall promptly notify SELLER, and any payment made by SELLER to discharge such assessment shall become part of the purchase price and be secured by and under this agreement. Prices do not include applicable sales, use or like taxes unless specifically stated on the face of the sales agreement. Payment of such taxes to taxing authorities is the responsibility of BUYER except to the extent such taxes are paid by BUYER to SELLER.
- h) PROPRIETARY PROCESSES. The purchase of any products under this agreement does not entitle BUYER to employ the same with any patented process owned by SELLER or others, except where BUYER is expressly authorized to use such process. The purchase of any process control system does not entitle BUYER to employ the same for any other products or in any other location than that for which it was originally purchased. BUYER expressly agrees not to themselves or allow, permit or facilitate others to copy, reverse engineer or duplicate the products and equipment, in whole or in part, purchased from SELLER for any reason.
- i) LIMITATION OF LIABILITY. SELLER shall not be liable to BUYER, directly or indirectly, for loss, damage or injury to persons (including death), or to property or things of whatsoever kind (including, but without limitation, products processed by the use of the products); or for damages of any kind or nature (including, but without limitation, incidental or consequential damages of any kind such as lost profits), occasioned by or arising out of the design, installation, operation, use, misuse, nonuse, repair or replacement of said products, or out of the use of any method or process for which the same may be employed. Notwithstanding the previous sentence, SELLER may be liable to BUYER for BUYER's actual damages incurred as a result of SELLER's sole negligence or intentional tort provided that BUYER did not contribute in any way to the injury. BUYER's exclusive remedy for damage caused by SELLER's sole negligence or intentional tort shall be actual damages. SELLER's total liability shall be limited to the purchase price of the goods and or services involved in the related transaction or order in which such liability arose.

UNDER NO CIRCUMSTANCES SHALL BUYER BE ENTITLED TO OR RECOVER FROM THE SELLER INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS.

- j) GOVERNING LAW; EXCLUSIVE JURISDICTION AND VENUE. These terms and conditions and any transactions are governed by Oregon law and the venue and jurisdiction for any matter arising from or related to a transaction and the performance thereof shall lie exclusively in the courts located in the state of Oregon. The parties hereby submit to the jurisdiction of the state and federal courts in Oregon.