

Baumer hhs Corp.
10570 Success Lane
Dayton, Ohio 45458
USA

Terms and conditions of sale

1. Applicability

(a) These Terms and Conditions of Sale (these "Terms") are the only terms which govern the sale of goods (the "Goods") and services (the "Services") by Baumer hhs Corp. ("Seller") and you ("Buyer"). Any acceptance of Seller's quotations or any purchase order received by Seller (collectively, a "Purchase Order") is an offer by Buyer to purchase the Goods and/or Services listed in the purchase order subject to these Terms. Seller hereby notifies Buyer in advance that Seller objects to any terms and conditions in Buyer's Purchase Order or other document which are additional to or different than these Terms, whether or not the additional or different terms would materially alter the contract. If a contract between Buyer and Seller is established through performance or other conduct, that contract will not be deemed to consist only of terms and conditions as to which the parties' writings agree, but rather these Terms will be a part of that contract and will prevail over the conflicting or different terms or conditions of any other document forming a part of the contract.

(b) Notwithstanding anything to the contrary contained in this Agreement, Seller may from time-to-time revise these Terms in its sole discretion, without the consent of the Buyer, wherein such revised Terms shall, following the date of any revision to the Terms, be applicable to any purchase of Goods or provision of Services ordered by Buyer.

2. Delivery

(a) Seller will deliver the Goods EXW Seller's location (Incoterms 2010), using Seller's standard methods for packaging and shipping such Goods.

(b) Any time quoted for delivery is an estimate only; provided, however, that Seller shall use commercially reasonable efforts to deliver all Goods and Services on or before the requested delivery date. Seller is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver, delay in delivery, or partial delivery. No delay in the shipment or delivery of any Good or provision of any Service relieves Buyer of its obligations under this Contract, including accepting delivery of any remaining installment or other orders of Goods.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the Purchase Order.

(d) Seller shall use reasonable efforts to meet any performance date to render the Services specified in the Purchase Order, and any such dates shall be estimates only. With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodations and other facilities as may be reasonably requested by Seller, for the purpose of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Seller to perform the Services in accordance with the requirements of the Agreement; (iii) provide such customer materials or information as Seller may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

3. Quantity

If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Purchase Order (as modified by Seller's acceptance), Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Purchase Order adjusted pro rata.

4. Cancellations and changes

Buyer may not cancel or change a Purchase Order once accepted by Seller except with Seller's prior written consent and upon terms that will indemnify Seller against any loss. Upon notification and request by Buyer, Seller may correct mathematical or clerical errors. Seller may make any changes to the Goods or manner in which the Services are performed, as Seller may deem necessary, so long as such changes do not change the form, fit or function of the Goods or the quality and purpose of the Services.

5. Title, risk of loss and security agreement

Title and risk of loss passes to Buyer upon delivery of the Goods in accordance with Section 2. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ohio Uniform Commercial Code. Buyer shall execute and deliver any financing statements and other documents that Seller may reasonably require for the protection of the security interest hereby granted to Seller by Buyer, and Buyer authorizes Seller to undertake all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of such security interest. Buyer shall maintain adequate insurance against casualty, loss, fire, or of the Goods for so long as the security interest remains in effect.

6. Inspection and rejection of nonconforming goods

(a) Buyer shall inspect the Goods within five (5) business days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods or Nonconforming Services during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents. "Nonconforming Services" means only those Services that do not conform to any specifications or requirements set forth in the Purchase Order (as modified by Seller's acceptance).

(b) If Buyer timely notifies Seller of any Nonconforming Goods or Nonconforming Services, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods or such Nonconforming Services with Re-performance, or (ii) credit or refund the Price for such Nonconforming Goods and/or Nonconforming Services, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's location. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to Seller's location.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 6(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods or Nonconforming Services. Except as provided under Section 6(b), all sales of Goods to Buyer are made on a one-way basis, and Buyer has no right to return Goods purchased under this Agreement to Seller.

7. Price

(a) Buyer shall purchase the Goods from Seller at the price (the "Price") set forth in the Purchase Order (as modified by Seller's acceptance). If the Price should be increased by Seller before delivery of the Goods, then these Terms shall be construed as if the increased price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price.

(b) All Prices charged by Seller are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

8. Payment terms

(a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer, check, or other immediately available funds and in US dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this contract or at law, Seller shall be entitled to suspend the delivery of any Goods or performance of any Services if Buyer fails to pay any amounts when due hereunder, and such failure continues for fifteen (15) days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

9. Limited Warranty

(a) Seller warrants to Buyer that for a period of one (1) year from the date of shipment of the Goods or complete performance of the Services ("Warranty Period") that (i) the Goods will conform to the agreed upon specifications and will be free from defects in material and workmanship under normal use, maintenance and installation, provided that perishable and consumable Goods (e.g., filters and rubber seals) are not covered by this warranty (the "Goods Warranty"); and (ii) Seller shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement (the "Services Warranty").

(b) The Goods Warranty does not cover: (i) defects to the extent caused by normal wear and tear, abuse or misuse, accident or damage, modification, improper installation or storage, or by Buyer's operation outside of the prescribed performance specifications or alteration or repair of the Goods without the prior written consent of Seller; (ii) accessories or components not supplied by Seller; or (iii) the inclusion of the Goods supplied by Seller into Buyer's manufacturing process. Seller shall, in its sole discretion, either (i) repair or replace the defective Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate. Buyer acknowledges and agrees that Goods purchased by Buyer under this Agreement may contain, be contained in, incorporated into, attached to or packaged together with the products manufactured by a third party ("Third Party Goods"). Third Party Goods are not covered by the Goods Warranty. For the avoidance of doubt, Seller makes no representations or warranties regarding any Third Party Goods.

(c) The Service Warranty does not cover training or advisory services provided by Seller to Buyer. Seller does not warrant to Buyer any result in respect of its provision to Buyer of any training or advisory services. Seller shall, in its sole discretion, either (i) re-perform the defective Services or (ii) credit or refund the price of such Services at the pro rata contract rate.

(d) Expect for the warranties set in forth in section 9(a), Seller makes no warranty whatsoever with respect to the goods and services including any (i) warranty of merchantability; (ii) warranty of fitness for a particular purpose; (iii) warranty of title; or (iv) warranty against infringement of intellectual property rights of a third party; whether express or implied by law, course of dealing, course of performance, usage or trade or otherwise.

(e) Seller shall not be liable for a breach of the warranties set forth in Section 9(a) unless: (i) Buyer gives written notice of the defective Goods or Services, reasonably described, to Seller within fourteen (14) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving notice of the defect to examine such Goods and Buyer returns such Goods to Seller's location at Buyer's cost and risk; (iii) Seller reasonably verifies Buyer's claim that the Goods and/or Services are defective; (iv) Buyer's claim for nonconformity is made within the earlier of twelve (12) months from the date of shipment of the Goods or six (6) months from the date of installation of the Goods or full performance of the Services; and (v) Buyer does not repair the alleged Nonconforming Goods or the Nonconforming Services without the consent of Seller.

(f) All costs in connection with the inspection and diagnosis of defects in the Goods or Services shall be borne by Buyer. Buyer shall bear the costs related to the de-installation and re-installation of Goods.

(g) The remedies set forth in Section 9(a) shall be the buyer's sole and exclusive remedy and seller's entire liability for any breach of the limited warranties set forth in this Section 9. Any warranty repair, replacement or re-performance by seller shall not extend or renew the applicable warranty period.

10. Limitation of liability

In no event shall seller be liable to buyer or any third party for any loss of use, revenue or profit, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not seller has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose. In no event shall seller's liability to buyer under any legal theory or basis exceed the amount paid by buyer under the purchase order giving rise to the claim.

11. Termination

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for fifteen (15) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

12. Seller software license

The sale of Goods hereunder includes Seller granting to Buyer a license to use any software and/or firmware (the "Software") which is preloaded or to be loaded into such Goods. Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

13. Intellectual Property

Buyer acknowledges and agrees that this is an agreement for the sale (or the design, manufacture and sale) of goods and/or services, and that no transfer of any intellectual property rights is intended. All patents and patent rights, copyrights, trade secret rights, and other intellectual property rights throughout the world associated with any ideas, concepts, techniques, know-how, inventions, processes, designs or works of authorship developed or created by Seller or its personnel, alone or in collaboration with Buyer, during the course of performing work hereunder (the "Intellectual Property"), will belong exclusively to Seller. Buyer hereby assigns and agrees to assign, and will cause its personnel to assign, without further consideration, any right, title or interest it or they may have in the Intellectual Property from time to time. Buyer will take such further actions as Seller may reasonably request to give full effect to the assignment. Buyer will defend, indemnify and hold Seller harmless from and against any claim, expense, loss or damage resulting from actual or alleged infringement or violation of any patent, copyright, trademark or other Intellectual Property right as a result of Seller's compliance with Buyer's designs, specifications or instructions.

14. Confidential information

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section without the need for posting bond. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer from a third party with no obligation of confidentiality to Seller.

15. Indemnification

Buyer shall hold harmless, indemnify and defend Seller and its affiliates, directors, officers, employees, agents and subcontractors against any and all losses, damages, liabilities, claims, costs, or expenses of whatever kind, including professional fees and attorneys' fees, arising out of (a) Buyer's breach of the Agreement; (b) Seller's compliance with Buyer's designs, specifications or instructions; (c) Buyer's negligent use or any end-user's negligent use of the Goods or Services; or (d) any claim, action or lawsuit initiated by Buyer against Seller in which Seller prevails.

16. Force majeure

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of one hundred fifty (150) days and after another period of forty-five (45) days, the parties have failed to achieve an agreement on an adjustment of the Agreement, Buyer shall be entitled to give notice in writing to Seller to terminate the Agreement.

17. Relationship of the parties

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of

joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

18. Assignment

Buyer shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under the Agreement.

19. No third party beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

20. Waiver

No waiver by Seller of any of the provisions of the Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from the Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

21. Governing law and jurisdiction

All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply and is expressly disclaimed of application. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Ohio, in each case located in the City of Dayton and County of Montgomery, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. . Nothing contained herein will prevent Seller from bringing any legal suit, action or proceeding arising out of or relating to this Agreement against Buyer or its property within any other state or nation.

22. Notices

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Seller at Seller's principal office addresses and to Buyer at the address provided in the Purchase Order. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

23. Severability

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Survival

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 10, 12, 13, 14, 15, 18, 21, 23 and 24.

Version: March 15th 2019