

TERMS AND CONDITIONS OF SALE

Every product ("Product") sold by or through **MAGNUS PRECISION MANUFACTURING, INC.** ("Seller") to a buyer ("Buyer") is sold subject to the following terms and conditions:

1. **Priority of Terms and Conditions.** Seller hereby notifies Buyer in advance that Seller objects to any terms and conditions in Buyer's purchase order, acknowledgement or other document which are additional to or different than these Terms and Conditions of Sale, whether or not such additional or different terms would materially alter this contract. Any Buyer purchase order, acknowledgement or other document regarding the Products shall constitute acceptance of any agreement by Buyer of these Terms and Conditions of Sale. If a contract between Buyer and Seller is established through performance or other conduct of the parties, the terms and conditions of that contract will not be deemed to consist only of terms and conditions as to which the parties' writings agree, but rather these Terms and Conditions of Sale will be a part of that contract and will prevail over the conflicting and/or different terms and conditions of any other document forming a part of the contract.
2. **Price and Order Acceptance.** All packing charges, shipping charges and applicable taxes (including sales, use, excise and property taxes) are in addition to the purchase price and may be invoiced to Buyer at any time. Prior to acceptance, the price quoted for a Product is subject to change. Once accepted by Seller, orders are not subject to change, cancellation or deferment of shipping date, except with Seller's written consent and upon terms that will indemnify Seller against resulting loss or damage.
3. **Payment.** Payment is due in accordance with any payment schedule agreed to in writing by the parties, or if no such schedule has been agreed to in writing, then within 30 days after the date of Seller's invoice(s) to Buyer. During any design or testing period for a custom Product, separate invoices for portions of the total price may be issued at intervals reasonably determined by Seller. Commencing 30 days after invoice date, interest at the rate of 1½% per month may be added to any unpaid portion of amounts due. All payments will be made without setoff or reduction of any kind. Restrictive endorsements or other statements on checks will not apply to Seller. At any time when, in Seller's sole discretion, Buyer's financial condition warrants concern, Seller may change or revise its payment terms to require immediate payment of all amounts due or to become due and may suspend deliveries and manufacture of the Products until Seller is satisfied, in its sole discretion, that it will be paid for the Products.
4. **Shipping.** Seller will ship Products FOB (Buyer pays freight and insurance) Seller's place of manufacture, unless otherwise agreed in writing by Seller. Any shipping schedule provided by Seller to Buyer is Seller's then current estimate of delivery dates. Seller will use reasonable efforts to deliver the Product in accordance with that schedule but does not warrant or guarantee any particular delivery dates. Seller will not be liable for any damages, including indirect, incidental or consequential damages, in connection with the delivery or non-delivery of any Product, including but not limited to damages incurred during shipment or caused by a delay in delivery. Buyer's acceptance of any Product constitutes a waiver of any claim for delay. Seller will have the right to select the carrier for delivery of a Product unless otherwise agreed to by Seller in writing, and, upon delivery of the Product to the carrier, title and risk of loss will pass to Buyer. The carrier will be deemed to be Buyer's agent, and Buyer bears all risk of loss or damage during transit.
5. **Intellectual Property.** Buyer acknowledges and agrees that this is an agreement for the sale (or the design, manufacture and sale) of goods only, 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 during the course of performing work hereunder ("Intellectual Property") will belong exclusively to Seller. 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, all of which belong exclusively to Buyer.
6. **Cancellation Charges.** Subject to Purchaser's payment of the cancellation charges set forth below, upon Purchaser's request to cancel all or part of any previously placed order, Seller will stop all work on such order as promptly as reasonably possible. Cancellation charges will be determined by Seller based on Seller's full costs plus normal profit on all engineering work, work in process, raw materials supplies and all other commitments made by Seller in connection with the order.
7. **Limited Warranty; Returns.** Seller warrants to the original purchaser only that the Product will be free from defects in workmanship and defective materials for 60 days after the date of invoice (the "warranty period"). Seller's warranty will not extend to any Product that has been subjected to: (a) improper installation or storage; (b) ordinary wear and tear, accident, damage, abuse or misuse; (c) modification by any party other than Sellers; or (d) abnormal or unusual operating conditions or applications, including any application in any way different from that for which the Product was designed. **Seller makes no other warranties, express or implied, regarding the Product, and Seller specifically disclaims the implied warranties of merchantability, fitness for a particular purpose and freedom from infringement claims.** Warranty claims must be made in writing during the warranty period to Seller at the following address: 1912 Route 96, Phelps, New York 14532, Attn: Quality Manager. Products alleged to be defective must be returned during the warranty period to Seller at the above address. Seller, at its option, will either (a) repair or replace a Product found to be defective in workmanship or (b) refund/credit the purchase price paid for the Product, less a reasonable allowance for use. Shipping costs to and from Seller are not covered by this warranty and will be paid by Buyer. The foregoing remedy is exclusive and is granted in lieu of all other remedies. Seller reserves the right to inspect any alleged defect at Buyer's facility before any claim is allowed and before any return is authorized. All returns require a Return Authorization Number from Seller. Authorization of return of Products does not limit Seller's further right to inspect the Products in order to determine the extent of Seller's liability, if any. Custom made Products cannot be returned unless defective.
8. **Limitation of Remedies and Liability.** Except as provided in paragraph 7 above, for any claim of any kind against Seller concerning a Product (including, but not limited to, any claim that Seller has failed to satisfy its repair/replacement obligation under paragraph 7), Buyer will be limited to recovering only its direct damages up to the purchase price paid for such Product (exclusive of any design charges, any training charges, shipping charges, freight, taxes and similar charges). **SELLER WILL NOT BE LIABLE TO BUYER, ITS CUSTOMERS, EMPLOYEES OR AGENTS, UNDER ANY CLAIM OR CIRCUMSTANCES (INCLUDING WITHOUT LIMITATION ANY CIRCUMSTANCE INVOLVING A FINDING THAT A WARRANTY OR REMEDY HAS FAILED OF ITS ESSENTIAL PURPOSE), WHETHER THE CLAIM SOUNDS IN CONTRACT, TORT OR OTHER LEGAL THEORY, FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR REVENUE, LOST SALES, LOST GOODWILL OR LOSS OF USE OF ANY PRODUCT.**
9. **Force Majeure.** Seller will not be liable for delay, failure in performance, loss or damage due to fire, strike, vandalism, embargo, explosion, power blackout, earthquake, flood, war, labor disputes, civil or military authority, acts of God or the public enemy, or other causes beyond its reasonable control, whether or not similar to the foregoing.
10. **No Other Representations.** Buyer acknowledges and agrees that no employee, officer or agent of Seller has the authority to make any representations, statements or promises in addition to or in any way different than those contained herein, and that Buyer is not entering into this contract or transaction in reliance upon any representation, statement or promise of Seller except as expressly stated herein.
11. **Severability of Terms.** If any of these terms and conditions are held to contravene applicable law, such provision only will be deemed void, and in all other respects these terms and conditions will remain in full force and effect.
12. **Entire Agreement.** These Terms and Conditions of Sale, and the quotation to which they relate, constitute the entire agreement between Seller and Buyer relating to the Product. Any certification by Seller by separate writing as to compliance of a Product with specifications, blueprints, tests or otherwise will not increase or vary Seller's obligations or liability hereunder. No modification or waiver of any term or condition of this contract will be effective unless in writing signed by authorized representatives of Buyer and Seller.
13. **Governing Law, Forum Selection and Limitation Period.** This contract, the construction of this contract, all rights and obligations between the parties to this contract, and any and all claims arising out of or relating to the subject matter of this contract (including all tort claims), will be governed by the laws of the State of New York, without regard to its conflict of laws principles. The rights and obligations of the parties to this contract will not be governed by the provisions of the 1980 UN Convention on Contracts for the International Sale of Goods; rather these rights and obligations will be governed by the laws of the State of New York. Any litigation or other legal proceeding of any kind based upon or in any way related to this contract, its subject matter, or the rights or obligations of the parties to this contract, will be brought exclusively in an appropriate court of competent jurisdiction (state or federal) located in Ontario County, New York (if the action is brought in state court) or in the Western District of New York (if the action is brought in federal court), and must be brought within one year after the date on which the claim accrued. Any action brought in such courts will not be transferred or removed to any other state or federal court. The parties consent to the exercise of jurisdiction over them by the above-named courts as their freely negotiated choice of forum for all actions subject to this forum selection clause.