

SMB MACHINERY SYSTEMS, LLC INVOICE TERMS AND CONDITIONS

The following terms and conditions are agreed to by SMB MACHINERY SYSTEMS, LLC ("SMB") and the buyer ("Buyer") of the items listed on the face hereof ("Machinery"). *The acceptance of Buyer's order is subject to these terms and conditions, all of which are accepted by Buyer, and supersede anything to the contrary contained in any prior communication (whether oral or written) between SMB and Buyer. Buyer hereby acknowledges that SMB objects to, and hereby rejects, any additional, differing, contradictory, alternative, or conditional payment terms that may be proposed by Buyer. Buyer specifically acknowledges that any such additional, differing, contradictory, alternative, or conditional payment terms proposed by it shall not alter, amend or modify these terms and conditions.*

1. **PAYMENT.** The purchase price shall be payable in United States currency in accordance with the Invoice terms. Payment is due from Buyer prior to shipment, unless otherwise agreed to in writing by SMB. All taxes assessed relating to or arising from this transaction are the responsibility of Buyer.
2. **TITLE.** Title to the Machinery shall remain in SMB, and Buyer hereby grants to SMB a purchase-money security interest in the Machinery, until Buyer has completed payment of the purchase price, plus accrued interest, if any, and fully performed all of the terms and conditions hereof.
3. **SHIPMENT, INSURANCE AND RISK OF LOSS.** All costs of transport borne by Buyer. Buyer shall accept the Machinery F.O.B. SMB's facility, Ball Ground, Georgia, or where the Machinery is located. The risk of loss or destruction of, or damages to, the Machinery shall be on Buyer from the moment delivery of the Machinery to carrier.
4. **INSPECTION.** Buyer acknowledges that it has inspected the Machinery, or hereby acknowledges that SMB invited, urged and cautioned Buyer to inspect the Machinery and Buyer declined to do so. SMB STRONGLY RECOMMENDS THAT PURCHASER CONDUCT AN INSPECTION OF THE MACHINERY SOLD HEREUNDER. SMB SHALL NOT BE RESPONSIBLE FOR THE CONSEQUENCES OF PURCHASER'S FAILURE TO INSPECT THE MACHINERY.
5. **WARRANTIES.** The warranties applicable to the Machinery, if any, will be in accordance with the terms of the Invoice, as follows:
 - a. If the Invoice states the Machinery is "**AS IS**": **THE MACHINERY IS PURCHASED BY THE BUYER "AS IS" AND "WITH ALL FAULTS", AND SMB MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE MACHINERY.**
 - b. If the Invoice states the Machinery is "**Cycle Tested**": SMB warrants only that the Machinery has been powered up and was operational at the time it was shipped to Buyer.
 - c. If the Invoice states that the Machinery has been "**Rebuilt**" or "**Customer Specified**": The Machinery has been rebuilt by SMB, or modified by SMB according to the specifications provided by the Buyer, and is warranted as set forth on the face of the Invoice. **EXCEPT AS SET FORTH HEREIN, SMB GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, WORKMANSHIP OR ANY OTHER MATTER WITH RESPECT TO ANY SUCH REPAIRS OR MODIFICATIONS.**
6. **HAZARDOUS CHEMICALS OR MATERIALS.** Buyer acknowledges that the Machinery may bear or contain hazardous chemicals or other hazardous materials which may be or may become directly or indirectly hazardous to life, to health, or to property. To the fullest extent permitted by law, Buyer does hereby discharge SMB from any and all liability directly or indirectly resulting from the presence of hazardous chemicals or other hazardous materials, including and not limited to any and all liability directly or indirectly resulting from the failure of SMB to give a warning with respect to such chemicals or materials, or from the alleged inadequacy of any warning that may have been given.
7. **DISCLAIMER OF LIABILITY AND INDEMNIFICATION.** Buyer hereby agrees to defend, indemnify and hold harmless SMB and its directors, officers, employees and other agents and representatives from and against any and all liabilities, judgments, claims, settlements, losses, damages, penalties, obligations and expenses, including attorney's fees and expenses and other professional fees and expenses, incurred or suffered by Buyer arising from, by reason of, or in connection with any loss, damage or injury to person or property arising from, by reason of or in connection with the Machinery hereunder, irrespective of whether such claim, damage or expense is caused, or alleged to be caused, in part by the sole, joint, several, or comparative negligence, breach of contract or warranty, or any other legal theory asserted against SMB. This indemnification shall survive delivery of the Machinery to Buyer and any subsequent sale or other transfer of the Machinery to a third party.
8. **LIMITATION OF DAMAGES.** Buyer acknowledges that SMB's liability shall be limited to refunding any deposits made by Buyer to the extent they are refundable, excluding any non-refundable portions thereof, (i) with respect to Machinery SMB authorized in writing to be returned or (ii) with respect to Machinery ordered but not shipped by SMB upon SMB's written agreement to cancel the purchase.
9. **FORCE MAJEURE.** SMB's ability to ship the Machinery may be affected by causes or events beyond its reasonable control, including by way of illustration, but not limitation, acts of God, war, sabotage, accidents, riots, fire, explosion, flood, strike, lockout, injunction, inability to obtain fuel, power, raw materials, labor, lack of containers or transportation facilities, or accident. SMB shall have no liability for the failure to ship or deliver Machinery in the event of such force majeure and SMB's obligation to complete the delivery of Machinery shall be suspended during such force majeure event and for a reasonable period of time thereafter; provided, however, that those Terms and Conditions herein not otherwise affected by the force majeure event shall remain in effect.
10. **GOVERNING LAW/FORUM.** This Invoice and these Terms and Conditions shall be construed according to the laws of the State of Georgia, notwithstanding any state's choice of law rules to the contrary. The parties agree that venue for any claim or controversy arising from or relating to this Invoice, the performance or breach thereof, or the transaction contemplated hereunder shall only be brought in the State or Superior Court of Cherokee County, Georgia. In the event any party institutes legal proceedings to enforce its respective rights arising out of this Invoice or these Terms and Conditions, the prevailing party shall be entitled to the award of attorneys' fees and court costs, plus cost of executing, enforcing and/or collecting any judgment at all trial and appellate levels.
11. **WAIVER.** No delay or failure on the part of SMB in exercising any right, privilege or remedy under law or hereunder shall operate as a waiver of such or of any other right, privilege or remedy.