

Martin Supply Co, Inc. Terms and Conditions

Parties. “Seller” will mean Martin Supply Co, Inc., a Maryland corporation. “Buyer” will mean the entity or person submitting the purchase order to Martin Supply Co. Inc. Application. These Terms and Conditions of Sale define the relationship of Buyer and Seller and will apply to all sales of equipment, parts, training, service or other supplies and materials (individually and collectively, “Products”) by stated that these Terms and Conditions of Sale incorporate by reference any invoice submitted to Buyer from Seller.

Quotation Expiration. Written quotations are valid for a period of thirty (30) days unless otherwise noted by Seller. Seller will have the right to withdraw any quote which has not been accepted by Buyer within the thirty (30) day time period.

Pricing. Prices for Products and other related information shown in any Seller or manufacturer product publication including, but not limited to catalogs, brochures and websites are subject to change without notice. Prices do not include related freight charges, installation and initial training charges, use tax, sales tax, excise tax, governmental authority unless otherwise noted by Seller.

Taxes. Prices quoted do not include (and Buyer will pay) all taxes or fees of any kind which may be levied or imposed on either party by federal, state, municipal, or other governmental authorities in connection with the sale or delivery of the Products by Seller.

Terms of Payment. Unless otherwise specifically agreed in writing by Seller, the total price is due and payable to Seller, without setoff or other deductions or charges, upon receipt of Seller’s invoice. Any amounts due by Buyer to Seller which are unpaid on or after thirty (30) days of Seller’s invoice will bear interest at the rate of eighteen percent (18%) per month, or the maximum rate permitted by law, whichever is less. The accrual of payment of any interest as provided above will not constitute a waiver by Seller of any rights and remedies in connection with a default by Buyer. Buyer will pay all court costs, attorney fees, and other costs incurred by Seller in collecting past due amounts, including interest. If shipment or delivery of Products is delayed by or at the request of Buyer, payment will remain due in full thirty (30) days from the date of Seller’s invoice. In such event, Seller may impose, and Buyer agrees to pay, storage charges and other incidental expenses incurred by Seller as a result of the delay, in addition to any interest on late payments as described above.

Security Interest. As security for payment of all accounts due to Seller, Buyer grants to Seller a security interest in all Products sold by Seller to Buyer, and Seller will have all rights of a secured party under the Uniform Commercial Code with respect to such Products. Buyer agrees and appoints Seller as its attorney-in-fact to do, at Seller’s option, all acts and things Seller may require to perfect the above security interest in any one or more jurisdictions, and Buyer agrees to pay all applicable filing fees.

Limited Warranty – Disclaimer of Warranties. The warranty obligations of Seller for Products sold by Seller will in all respects conform and be limited to the warranty extended by the manufacturer of such Products, if transferable. The sole remedy available to Buyer with respect to defects in such Products will be against such manufacturer under any applicable manufacturer’s warranty to the extent available to Buyer. TO THE EXTENT THE MANUFACTURER WARRANTY IS NOT TRANSFERABLE TO BUYER, SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO OR IN ANY WAY RELATING TO THE PRODUCTS, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Buyer agrees that if Products sold are resold by Buyer, Buyer will include in the agreement for resale provisions which limit recoveries in accordance with these Terms and Conditions of Sale. In case of Buyer’s failure to include in any such agreement for resale the terms providing for such limitations, Buyer will indemnify and hold Seller harmless against any liability, loss, cost, damage, or expense

(including reasonable attorney's fees) arising out of or resulting from such failure.

IN NO EVENT WILL SELLER BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR EXPENSE OCCASIONED BY THE USE OF DEFECTIVE PRODUCTS.

BUYER ASSUMES FULL RESPONSIBILITY THAT THE PRODUCTS PURCHASED FROM SELLER MEET THE SPECIFICATIONS AND/OR INTENDED USE OF BUYER AND SELLER MAKES NO REPRESENTATION WITH RESPECT THERETO.

Delivery. Any delivery dates or other schedule of performance by Seller are approximations, and the sole obligation of Seller with respect to the schedule of delivery or performance will be to use commercially reasonable efforts to deliver the Products, or otherwise to perform, consistent with the reasonable demands of its business. In any event, Seller will have no liability to Buyer or any other person for delays in performance due to strikes or labor disputes of any type, accidents, fire, floods, acts of God, or actions by governmental authorities, acts, omissions, or delays of Buyer or any other third party, shortages of labor, or without limitation of the above, for any causes reasonably beyond the control of Seller.

Title and Risk of Loss. Title to and risk of loss or damage to the Products will pass to Buyer upon delivery by Seller F.O.B. (a) seller's facility, (b) Seller's supplier's facility when Products is shipped directly from the manufacturer or (c) as otherwise indicated per Seller's quotation or invoice.

Inspection and Acceptance. Buyer will have three (3) days from the date of delivery to inspect the Products for defects and nonconformance and notify Seller, in writing, of any defects, nonconformance or rejection of such Equipment (other than defects or nonconformities due to damage, shortage or errors in shipping which will be reported as set forth below). If a common carrier is used for delivery of the Products, Buyer must take digital pictures of the packaging of the Products prior to opening any packaging container and immediately transmit the images by electronic communication to the Seller. Claims for shipping errors or shortages must be made in writing to Seller no more than three (3) days after receipt of shipment and will be administered by Seller so long as Buyer has provided the images as required by these Terms and Conditions. After such period, Buyer will be deemed to have irrevocably accepted the Equipment, if not previously accepted. After such acceptance, Buyer will have no right to reject the Products for any reason or revoke acceptance. If Buyer alleges claims for damage (concealed or otherwise) due to shipping, those claims must be made by Buyer directly to the freight carrier and Seller has no liability. Seller may assist Buyer in securing resolution of damage claims without waiving its rights under these Terms and Conditions or other agreement between Buyer and Seller.

Cancellation or Termination. In the event of cancellation of the purchase by Buyer, or in the event of default under the agreement by Buyer for the purchase of the Products which is not cured within thirty (30) days after notice by Seller, Buyer will pay to Seller on demand all direct and indirect costs (including without limitation all applicable restocking or cancellation charges including reimbursement for direct costs assessed by the manufacturer) incurred directly or indirectly by Seller in connection with this Agreement, all as reasonably determined by Seller, plus any profit to be negotiated with Buyer. In no event, however, will any amount payable by Buyer exceed the total price payable by Buyer for the Products.

Changes. Seller reserves the right from time to time to correct any typographical or clerical errors, including errors in mathematical computation, which may exist on these Terms and Conditions of Sale and/or any quotation or invoice provided by Seller to Buyer.

Return of Product. Customers returning stock material and/or equipment not used, damaged or converted may receive a credit with a 25% (twenty five percent) restock fee, providing the material is returned within 30 days from date of invoice. Specialty items such as, but not limited to, special orders and drop ships are not returnable and no credit will be issued. Freight charges are never reimbursed. All software is not returnable. Advance approval is required for all product returns.

Technical Support. Unless otherwise specifically provided on the quotation or invoice, these Terms and Conditions do not include any services of Seller in connection with installation, testing, or evaluation of the Products. Seller will, however, consistent with its capabilities and subject to scheduling acceptable to Seller, make available to Buyer, at Buyer's expense, technical support services relating to the Products at the rates then imposed by Seller, together with any out-of-pocket expenses to Seller in connection with such technical support. The sole remedy of Buyer in connection with any acts or omissions of Seller in the provision of such technical support will be the provision of further technical support to Buyer reasonably required to correct the act or omission.

Modifications and Waiver – Entire Agreement. Neither party has rights, warranties, or conditions expressed or implied, statutory or otherwise, other than those specifically contained in these Terms and Conditions of Sale or in an applicable agreement between Seller and Buyer signed by both parties. No waiver of any provision of these Terms and Conditions or any applicable agreement will be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable, will apply only to the specific case for which the waiver is given. Failure of either party to insist upon strict performance will not be construed as a waiver of these Terms and Conditions or any agreement.

Any document submitted by Buyer to Seller confirming its intention to purchase Products described in the purchase orders or releases will be deemed to constitute a confirmation and acceptance of these Terms and Conditions, even if such document states terms in addition to or different from these Terms and Conditions. All agreements between Seller and Buyer will be solely under these Terms and Conditions, and Seller objects to any and all such additional or different terms contained in any document submitted to Seller by Buyer. Any execution by Seller of any other document submitted by Buyer in connection with the purchase of Products does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained in these Terms and Conditions of Sale, but will constitute only acknowledgment of receipt of such document. In addition, notwithstanding any terms contained in any documents submitted by Buyer in connection with the purchase of Products described, the acceptance of delivery by Buyer of Products described in any order or quote will constitute a course of conduct constituting Buyer's agreement to these Terms and Conditions, to the exclusion of any additional or different terms and conditions.

Compliance with Laws. Buyer will be responsible for compliance with any and all federal, state of Maryland/Massachusetts or local laws or regulations respecting safety or respecting use of the Products, and shall indemnify and hold Seller harmless from and against any and all claims of violations of such laws or regulations or other claims of personal injury or property damage directly or indirectly related to the installation, maintenance or operation of the Products.

Governing Law. The agreement between Buyer and Seller, including these Terms and Conditions will be governed by and construed in accordance with the laws of the State of Maryland.

Authority. Each signatory represents that it has all requisite authority to execute any agreement between Buyer and Seller on behalf of its principal and that the agreement is fully enforceable against such principal in accordance with its terms.