

FRANK BACON MACHINERY SALES CO. TERMS AND CONDITIONS OF SALE

These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the goods ("**Goods**") by the Seller, Frank Bacon Machinery Sales Co. ("**Seller**") to the party with whom Seller is contracting with under purchase order ("**Buyer**").

1. Applicability. The accompanying invoice (the "**Invoice**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
2. Delivery. The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage in transit. Unless otherwise agreed in writing by the parties, terms for shipping shall be Free On-Board Warren, Michigan.
3. Shipping Terms. Delivery shall be made FOB Warren Michigan. Seller shall make delivery in accordance with the terms on of the Invoice.
4. Title and Risk of Loss. Title and risk of loss passes to Buyer upon Free On-Board Warren, Michigan. Goods remain the property of the Seller until paid in full.
5. Price. Goods from Seller at the price (the "Price") set forth in the Invoice. All Prices 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. 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.
6. Payment Terms. Buyer shall pay all invoiced amounts due to Seller with 30% down payment required before initiation of machine work. Remainder of payment is due before shipment. Buyer shall make all payments hereunder by wire transfer or check and in US dollars. Credit card payment may be used with no fee up to \$2,000. Over \$2,000 a 4% convenience fee will be charged. 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 these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 5 days following written notice thereof.
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.
Merchandise not claimed after 60 days from date of down payment will be retained or sold, and down payment forfeited.
A finance charge of 1-1/2% per month will be added to all items 30 days or more past due, with an annual rate of 18%.
7. Returned Goods. Seller provides a thirty (30) day satisfaction guaranteed return privilege from date of shipment, however, Seller reserves the right to charge up to a 30% re-stocking fee on cancelled orders in process. Returned goods must be shipped freight paid. Custom orders built to Buyer's specification may not be returned or cancelled.
8. One-Year Parts and Labor Limited Warranty. Seller one-year parts and labor warranty applies to remanufactured or reconditioned equipment that has been unaltered, properly installed, received on site calibration and training by a Seller technician and maintained in accordance with national local codes and in accordance with the installation manuals. This warranty only applies when stated on the Invoice. FBMS products are warranted to the original purchaser to be free from defects in material and workmanship under normal use and service for a period of one (1) year from the date of shipment. This warranty does not apply to equipment damaged, altered, or abused accidentally or intentionally, modified by unqualified service personnel or with missing or altered serial nameplates. This warranty does not apply to machine damage due to operator error. FBMS agrees to repair or replace defective parts due to flaws in material or workmanship during the warranty period. Proper installation, calibration, and normal maintenance is the responsibility of the Buyer, dealer, or owner-user and is not covered by this warranty. Shipping is not included in the warranty.
9. Purchaser's Responsibility: Machine Safety. It is the Buyer and user's responsibility to provide proper safety devices and equipment to safeguard the operator from harm for any particular use, operation, or setup, and to adequately safeguard the machine, or machines. Buyer shall conform to all Federal, State and Local Government safety standards and all Industry Safety Standards.
10. Limitation of Liability.
 - a. 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.
11. Compliance with Law. Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import

clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

12. 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; (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.
13. Waiver. No waiver by Seller of any of the provisions of this 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 this 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.
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. 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 on a non-confidential basis from a third party.
15. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.
16. Governing Law. 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 Michigan without giving effect to any choice or conflict of law provision or rule (whether of the State of Michigan or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Michigan.
17. Miscellaneous. Buyer represents that the person placing the purchase order and accepting any counteroffer on Buyer's behalf has the full authority to do so.

Buyer must ensure that persons who use, maintain, or otherwise handle equipment receive adequate training and safety literature. All drawings, descriptive matter, technical specifications, capacities, performance rates, descriptions and other particulars given in respect of any equipment (whether in brochures or advertisements or accompanying or referred to in the Terms) are stated by Seller in good faith based on Seller's experience as being correct within acceptable tolerances but are not binding in detail and do not form part of the Agreement unless specifically stated to do so. In the absence of any special arrangements to the contrary, it is Buyer's responsibility to ensure that Goods ordered is sufficient and suitable for Buyer's purposes.

Seller and Buyer each acknowledge that they have read and understand the terms and provisions of these Terms and have had an opportunity to have the same reviewed by an attorney of their choice.

Nothing contained in these Terms shall be deemed to require Seller to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and Seller's failure to take any such action shall not be deemed a breach hereunder. Seller reserves the right to correct Typographical errors.