

Terms and Conditions of Sale



GOVERNING PROVISIONS: These Terms and Conditions of Sale (“Ts&Cs”) govern all quotations made and purchase orders or releases (hereinafter referred to as “orders”) accepted by Bijur Delimon International (hereinafter referred to as the Company). Acceptance of Buyer’s purchase order is made only on the express understanding and condition that, insofar as these Ts&Cs conflict with any Ts&Cs on the Buyer’s purchase order, Buyer’s Ts&Cs must be accepted in writing by the Company.

PRICES: Price lists are subject to change without notice, as these are prepared for the purpose of supplying general information and are not quotations or offers to sell on the part of the Company. Prices are based on quantity and delivery period. All quotations are subject to change after 60 days, unless otherwise stated in the quote. All orders will be invoiced at the price in effect at the time of shipment.

ORDERS: All orders received are subject to acceptance by the Company. Modifications or changes to an order are acceptable only upon written approval by the Company. The Company reserves the right to revise its price and delivery schedules to effect such change(s). In addition, the Company has the right to charge the customer for expenses incurred by the Company for work already performed and rendered unnecessary by such change(s).

PAYMENT TERMS: Payments are due in full thirty (30) days from date of invoice. If credit cannot be established, payment is required at the time of order, unless otherwise negotiated with the Company. In some circumstances, an advance deposit to the Company may be required. Any modification to these payment terms must be approved by the Company in writing.

The Company may at any time, without notice, change or suspend credit terms, stop shipment or cancel unfilled orders when the financial condition of the Buyer or its account so warrants, or when delivery is delayed through any fault of the Buyer, or when the Buyer is delinquent on any payment for invoiced products or services. Amounts past due are subject to an additional monthly charge of 1%. Without limiting the above provisions, in the event the Buyer does not pay all amounts due and owing in accordance with the applicable payment terms, the Company may withhold further shipments until acceptable payment is made. Shipment holds shall not constitute the Company’s breach and the Company may, in its sole discretion, continue to perform in accordance with the Buyer’s order.

TAXES: Prices quoted for products or services do not include any applicable federal, state or local taxes, all of which shall be paid by the Buyer. In states where the Company has nexus, Buyer may be invoiced for applicable taxes unless Buyer furnishes a valid resale or tax exemption certificate.

SHIPMENT: All shipments are made F.O.B. point of shipment. Orders must clearly state method of shipment. Delivery and shipment dates are estimates only, are not guaranteed, and are determined from the date the Buyer’s order is accepted. The Company’s failure to ship or deliver as scheduled shall not entitle Buyer to cancel a purchase order, or to damages of any kind.

DELIVERY DEFERMENTS: Product scheduled for delivery within 60 days from the acceptance of order cannot be deferred and will be completed and invoiced. Limited deferment of product scheduled for shipment beyond 60 days from the date of order acceptance may be possible. Storage of completed or partially completed product will be at buyer’s expense. Consult the Company for other details and costs if deferment is contemplated.

CANCELLATIONS: Orders are not accepted subject to cancellation or decrease at a later date. All requests for cancellation must be in writing to the Company. Cancellation charges may include, but are not limited to, cost of raw material on hand and on order, manufacturing cost, engineering expense and a reasonable profit, depending on the degree of completion.

RETURN OF PRODUCT: Regardless of the reason for return, written or verbal return authorization approval must first be obtained from the Company. Return transportation must be prepaid. Restocking fees may apply.

CLAIMS AND REJECTION OF PRODUCT: In the event a shipment does not conform to the required acceptance level as set forth by the Company's specifications, the shipment may be returned upon obtaining the Company's prior written approval. The Buyer must notify the Company in writing within 30 days from initial receipt of the product. The Company shall have the option of re-inspection at the Buyer's plant or its own, before allowing or rejecting the claim. Shipping charges shall be prepaid by the Buyer and will be reimbursed in the event the Company determines the product to be defective. In no event shall the Company be responsible for packing, inspection, labor or other charges in connection with products returned. Buyer's failure to return product as provided in these Ts&Cs within 30 days of Buyer's receipt of approval from the Company for such return, shall terminate the Company's obligation with respect to any such nonconforming products.

ENGINEERING SERVICES: The Company and its Representatives will generally furnish upon request, data and proposals relating to the application or use of its products with the buyer's equipment. However, the Company will not be responsible for the success or failure of such proposals after their adoption or use in whole or in part by the Buyer. Where extensive tests are required or special development work is undertaken, a charge may be necessary, but such a charge shall be agreed to in writing by both parties prior to the start of work. Title, all rights and patents in connection with patterns, tools, jigs, fixtures, drawings, etc. covered by any development made by the Company shall remain the property of the Company.

LIMITED WARRANTY: The Company warrants all products to be free from defects in workmanship and materials when used under specified operating conditions. This warranty shall be in effect for a period of twelve months from date of shipment. The Company will repair or replace, at its option, any of its products found to be defective and within the warranty period, provided that the product is shipped freight prepaid, with prior authorization, to the Company. The Company is not responsible for removal, installation or any other incidental expenses incurred in returning the product. This warranty is in lieu of any other expressed or implied warranty, including (but not limited to), any implied warranties of merchantability and/or fitness for a particular use or purpose. The Company's liability under this warranty shall be solely limited to repair or replacement of the product within the warranty period. The Company shall not be liable, under any circumstances, for any consequential, incidental or indirect damages or expenses associated with the warranted products.

Normal wear and tear, for example, commutator and/or brush wear and their associated effects are a normal occurrence and are not covered by this warranty unless otherwise agreed to by the Company in writing. Any Bijur Delimon International product which is damaged due to misuse, abuse, negligence, or has become modified or dismantled without the knowledge or written consent of the Company, is not covered by this warranty.

ERRORS: The Company is not responsible for typographical errors made in any of its publications or for any stenographic or clerical errors. All such errors are subject to correction.

LIMITATION OF LIABILITY: In no event shall the Company be liable for any special, indirect, incidental, exemplary, punitive or consequential damages of any kind whatsoever, whether in contract, tort or otherwise, even if the Company is or should be aware of the possibility thereof. The Company's aggregate liability for damages for any cause, whether in contract or in tort, including negligence, shall be limited to the payments made to sell with respect to the product or services for which such claim is made.

INDEMNIFICATION: Buyer agrees to indemnify and hold the Company harmless from any and all losses, costs, expenses (including reasonable attorney's fees), claims, actions, causes of action and judgments arising out of or incident to the Company's resale, handling, usage, storage or testing of any product procured by the Buyer hereunder.

TITLE: Title to products sold hereunder shall pass to the Buyer upon delivery of the products to the carrier. Notwithstanding such passage of title, however, the Company reserves, and the Buyer grants the Company, a security interest in any goods provided under the Agreement in order to secure the Buyer's obligations of payment. In the event of default by the Buyer in any of its obligations to the Company, the Company will have the right to repossess such goods without liability to the Buyer. This form may be filed in appropriate jurisdictions to evidence such security interest. In addition, the Buyer will execute any further documents as the Company may request, and cooperate in filing such documents in order to evidence the Company's security interest.

PATENTS: Buyer shall indemnify, defend and hold harmless the Company from and against any expenses, costs or losses resulting from alleged infringement of any intellectual property rights arising from the Company's compliance with the Buyer's designs, specifications or instructions. The Company gives no warranties of non-infringement with respect to the products or services.

TOOLING: The Company, charging in full or part, shall maintain in good condition and for a reasonable period all tooling, fixtures, etc. The Company shall have the right to scrap tooling inactive for more than 12 months with any resulting value belonging to the Company to offset maintenance and storage costs. The Company shall not charge the Buyer additional amounts for use of the tooling in connection with the Buyer's subsequent orders for products of the same specification, provided that the tooling hasn't already been scrapped. The Company shall have the right to use tooling for other customer's orders unless specifically prohibited by a written agreement between the Company and the Buyer. The Company will destroy tooling at the Buyer's written request and will allow the Buyer to witness such destruction. Worn out tooling shall be replaced at the Buyer's expense after written notification from the Company.

FORCE MAJEURE: The Company shall not be liable for any delay in performance or inability to perform as a result of causes beyond its control, or beyond the control of its suppliers, manufacturers, processors, or finishers including, but without limiting the generality of the foregoing, war (whether declared or undeclared, and whether domestic or foreign), riots, crimes, fires, strikes, lockouts, labor difficulties, earthquakes, typhoons, embargoes, floods, hurricanes, delays by carriers, orders, rules or regulations of any foreign and/or domestic governmental authorities, trade associations or any other agency having control over import or export, voluntary quotas, restrictions, controls, unavailability or shortage or delay of any transportation. Intervention of any such cause(s) shall give the Company the right, without liability to the Buyer of any kind to terminate this contract with respect to all or any portion of the products or services affected thereby or upon removal of the cause, to resume deliveries in such proportions as it may determine until the entire quantity purchased hereunder has been delivered.

ASSIGNMENTS AND SUBCONTRACTING: The Company expressly reserves the right to assign or subcontract all or any portion of an order without the Buyer's consent unless this has been agreed upon and documented as part of the order or business agreement.

ARBITRATION: Any dispute or claim arising out of, or in connection with, this agreement shall be finally settled by binding arbitration in Raleigh, North Carolina, in accordance with N.C. Gen Stat. § 1-569.1 et seq. (the "Revised Uniform Arbitration Act") and the then-current rules and procedures of the American Arbitration Association by one (1) arbitrator appointed by the American Arbitration Association. The arbitrator shall apply the law of the State of North Carolina. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award punitive or exemplary damages against any party. Each party shall pay its own expenses associated with the arbitration.

GENERAL: The laws of the State of North Carolina, USA, govern this contract. This contract is the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this contract. Any Ts&Cs of any order or other instrument issued by the Buyer in connection with this contract, which are in addition to, and consistent with or different from the terms and conditions of this contract shall be of no force or effect. Only a written instrument duly executed by authorized representatives of the Company and the Buyer may modify this contract. If any legal action, arbitration, or other proceeding is brought to enforce or interpret the terms of this contract, the prevailing party shall be entitled to recover reasonable attorney's fees and costs. Any waiver by either party of any condition, part, term or provision of this contract shall not be construed as a waiver of any other condition, part, term or provision or a waiver of any future event or circumstance. If any provision of this contract is held invalid or unenforceable, the remainder of the contract shall continue in full force and effect.