

the emf company - Terms and Conditions of Sale

The Terms and Conditions of contained herein are the exclusive terms and conditions for the sale of products from The EMF Company™, a division of MUM Industries, Inc. ("EMF") to you, its Customer. Customer agrees that the terms and conditions stated herein and, to the extent not stated herein but contained on any EMF invoice, constitute the final, complete, exclusive expression of the agreement between EMF and Customer. In the event that any Customer form, purchase order or any other document submitted by Customer contains terms and conditions in addition to or different from the terms and conditions herein or from any EMF invoice, Customer agrees, by so submitting its purchase order or order form, by receiving an order acknowledgment or by accepting product produced by EMF, that such new or additional terms are rejected and that the language of the EMF terms and conditions control. Any and all new or additional terms contained on any Customer document (whether provided to EMF prior or subsequent to the delivery of these Terms and Conditions) are hereby expressly and completely rejected. Acceptance of Customer's order for product from EMF is expressly limited to these terms and conditions.

1. Orders become effective only when accepted and approved by EMF. EMF's acceptance is expressly made conditional on the Customer's assent to the terms and conditions contained herein and to the terms and conditions of any proposal issued by EMF to the Customer, and EMF agrees to furnish the product covered by the order only upon such terms and conditions. Any of the terms or provisions of the Customer's order which are inconsistent with the terms and provisions contained herein are not agreed to by EMF and shall not be binding on EMF and shall not be considered applicable to the sale or shipment of the products ordered.

2. There shall be a minimum order amount of \$50.00 exclusive of freight.

3. Orders, shipments, and terms of payment are subject to the approval of EMF's credit department. Invoices shall be rendered when the products are shipped. Terms of payment are net 30 days, unless otherwise agreed by EMF. Any sums not paid within the specified net terms are subject to a service charge of 1.5% per month. No discount will be allowed to any Customer having an overdue balance. Any discounts previously granted to any Customer that fails to pay any EMF invoice when due will be immediately forfeited and lost. Any discount forfeited or lost due to untimely payment of any invoice will be billed to Customer, which shall be immediately due and payable. Customer will pay all costs, collection agency commissions, expenses and all reasonable attorney fees incurred in the collection of any past due sums. By submitting an order or taking receipt of EMF products, Customer consents to the exclusive jurisdiction of the state and federal courts located in the State of Texas. Customer shall be deemed to have accepted the products shipped by EMF within ten (10) days

after delivery to Customer. After acceptance, Customer shall not be entitled to reject the products that are not in accordance with these terms and conditions. EMF reserves the right to refrain from performing any work on any of Customer's orders should any of Customer's account(s) or jobs with EMF be or become past due. Payments shall be made to EMF, 106 Regal Row, Dallas, TX 75247, or at such other address listed on the EMF invoice.

4. Products are sold FOB EMF's facility and title shall pass upon delivery to the carrier. EMF is not responsible for any loss or damage incurred in transit and any claim must be made by the Customer. EMF shall assist in the filing of any claim, at Customer's request.

5. Shipment dates are given based on current inventories and production plans. However, EMF shall not be responsible for any partial or total failure to deliver or for any delay incurred caused by accidents, delays in transportation, fires, explosions, floods, earthquakes, or other acts of nature, riots, strikes, or other causes beyond EMF's reasonable control.

6. Orders for non-standard products, such as modified product, are not cancelable and not returnable without EMF's prior consent. Should such consent be given, EMF reserves the right to recover all direct costs incurred as a result of the cancellation.

7. Returns of compliant products may be returned at Customer's request only upon the approval of EMF. Products must be in re-sellable condition and in their original packaging. No cash refunds will be provided for returned products. EMF will issue a credit memorandum for any authorized material return. Said credit memorandum will have no cash value and shall expire one (1) year after issuance. Authorized Returns not accompanied by a new order of greater or equal value shall be subject to a restocking fee of 25 percent of the original sale price.

8. EMF warrants that its products will be free from original defects in materials and workmanship for a period of *one (1) year* from date of shipment from its facility. This warranty is subject to receipt of written notification of a potential defect, provided by customer to EMF within the warranty period. This warranty applies when the EMF product is operated under the following conditions: 1. Compliance with all installation, maintenance, and operating instructions; 2. Use of the product is within its stated and designated purpose; and 3. The product has not been further modified from its original design as shipped, abused damaged by freight or other accident, misapplied, mishandled, or otherwise misused or used in a manner not as intended.

EMF will, at its sole discretion, repair or replace any EMF product found to be defective under normal use and service

within the stated warranty period, upon return of such parts at the customer's expense (as more fully described in "Return Policy" below). Any and all determination as to whether a product is defective shall be in EMF's sole and exclusive discretion. EMF will not be responsible for any incidental or consequential damages or for any damage caused by products which have been altered or modified. EMF's liability under this warranty is limited solely to replacement or repair of any EMF product confirmed by EMF to be defective.

EMF cannot and does not assume liability for defective product parts or components, or damage caused by defective product parts or components, that are not manufactured by EMF, even if such product parts and components are incorporated, contained or used in conjunction with any EMF product. Any parts or components manufactured by third parties that are incorporated, used or contained in EMF products are or may be separately warranted by the manufacturer of said parts or components. The warranty provided herein is limited in time and remedy to the actual warranty (if any) provided by the manufacturer of such parts or components, and EMF does not separately warrant the same.

NO EMPLOYEE, REPRESENTATIVE OR DISTRIBUTOR IS AUTHORIZED TO CHANGE THE FOREGOING WARRANTIES IN ANY WAY OR GRANT ANY OTHER WARRANTY ON BEHALF OF EMF. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES (INCLUDING ANY WARRANTY OF MERCHANTABILITY AND/OR FITNESS FOR A OR ANY PARTICULAR PURPOSE) AND NO REPRESENTATIONS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY EMF IN CONNECTION WITH THE MANUFACTURE OR SALE OF ITS PRODUCTS. THE LIABILITY OF EMF, WHETHER IN CONTRACT, TORT, UNDER ANY WARRANTY, OR OTHERWISE, SHALL NOT EXTEND BEYOND ITS OBLIGATION TO REPAIR OR REPLACE, AT ITS OPTION, ANY PRODUCT OR PART FOUND BY EMF TO BE DEFECTIVE IN MATERIAL OR WORKMANSHIP. EMF SHALL NOT BE LIABLE FOR COST OF REMOVAL OR INSTALLATION AND/OR SHALL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE.

Whether based on any Warranty claim or otherwise, EMF will not, in ANY event, be liable for any loss of profit, interruption of business or any other special, consequential or incidental damages suffered or sustained by Customer. EMF's total maximum liability to Customer in respect of the manufacture and sale of products is limited to the Warranty stated herein and, if any claim by Customer is based on a theory other than the Warranties, then the damages are limited to the total monies received by EMF from the Customer for the particular products described in Customer's order. The total maximum liability for scheduled orders that are drawn down against each

month will be the monthly total of the effected order or the total value of the items effected whichever is the lesser.

9. Any assistance, suggestions, or technical advice given the Customer by EMF or any agent thereof, concerning dimensions, handling, installation, testing, storage, use or placement in service of any product is an accommodation for which EMF shall have no liability unless such liability expressly assumed by EMF in writing and signed by an officer of the company.

10. No employee, agent, or representative of EMF has the authority or power to add, waive, or amend these terms and conditions unless first authorized in writing by an officer of EMF. Any transaction with Customer shall be construed under the laws of the State of Texas. Waiver of EMF of any breach shall not thereafter be deemed a waiver of a subsequent breach of the same of any other provision hereof.