



# CONDITIONS OF SALE

FORM 030197

Acceptance of Buyer's order by ZOLLER Inc. is subject to final acceptance by ZOLLER's home office and is conditioned on Buyer's assent to the following terms and conditions. If such terms and conditions are not acceptable, Buyer must notify ZOLLER within five days from the date hereof, and Buyer's failure to give such notice of acceptance of the products ordered by Buyer shall constitute assent by Buyer to all such terms and conditions. Any modification in the terms of this agreement must be in writing, specifically referring to this purchase order, and signed by ZOLLER:

1. **TERMS:** 40 % deposit with order, 60 % thirty days net upon delivery.
2. **PRICES:** Prices are fixed prices, no tax included. Taxes will be charged separately if applicable. Prices are valid in US \$, DAP Shipping Point. Prices subject to change at any time without notice prior to acceptance by ZOLLER's home office. Prices subject to increase equal to any increase in tax, fee, or charge by any governmental agency upon which ZOLLER may be required to collect or pay concerning any ZOLLER product measured in whole or part. If not included in invoice such amount may be invoiced later. Packing included in price.
3. **INSTALLATION:** Installation will be charged separately. First day US \$ 1,450.00, as from 2nd day US \$ 1,000.00/day.
4. **DELIVERY:** Computed from date ZOLLER receives Buyer's order or, in the case of special items, from date ZOLLER in its own discretion receives complete information necessary to proceed with design and manufacture. Delivery date is an estimate only, based on prevailing scheduling requirements. Shipments may be in installments or in single lot. Each installment shall be considered a separate and independent transaction with payment due accordingly. Title to products shall pass upon delivery to Buyer or to any common or contract carrier selected by ZOLLER (regardless of form of bill of lading) and all risks of loss of products shall pass to Buyer upon such delivery. Title to products held for buyer at ZOLLER's place of business shall pass to buyer at time ZOLLER accepts order; risk of loss and expense shall be buyer's. ZOLLER reserves the right to make a reasonable storage charge thereof. Damage resulting from common carrier shipment will not be construed as a warranty defect. Repairs for such damage will be invoiced by ZOLLER at prevailing part prices.  
Delivery is:
  - a) Subject to prior sale and confirmation by the factory at time of placing order.
  - b) Subject to any priority system established by the United States Government or any of its agents. (Any applicable priority rating must be indicated on each order.)
  - c) Subject to conditions/events stated in 8.c.
5. **WARRANTY AND LIABILITY:** Any parts of the products which, under normal operating conditions in the plant of original Buyer during a period of one year from date of shipment, prove defective in material or workmanship as determined by an inspection authorized by ZOLLER, will be replaced free of charge. ZOLLER's liability hereunder shall exist only if the products are erected in conformity with erection instructions, if any, furnished by ZOLLER, have had normal use and service for the purpose for which they were designed and have not been subjected to misuse, negligence, accident, failure to use and follow safety and operating instructions, modification, alteration or repair of product by a party other than ZOLLER, or modification or repair with parts other than those supplied by ZOLLER, and buyer shall indemnify and hold harmless ZOLLER from any liability or obligation incurred by ZOLLER by reason thereof. Any warranty provided is conditioned upon the product kept under environmentally controlled conditions (ambient temperature 41 - 95 F, relative humidity 5 - 90 % / non-condensing) and control hardware components kept protected from environmental influences such as oil, moisture, coolant, dust, etc.
6. **INDEMNITY:** Buyer shall notify ZOLLER promptly, and in any event within thirty (30) days, of any accident or malfunction involving ZOLLER's products which result in personal injury or damage to property, and shall cooperate fully with ZOLLER in investigating and determining cause of such accident or malfunction. If buyer fails to give such notice to ZOLLER and to so cooperate, buyer shall indemnify and hold harmless ZOLLER from any claims arising from such accident or malfunction.
7. **CLAIMS:** Buyer shall inspect and test the products promptly after delivery and before use and within 30 days following delivery. Buyer shall give ZOLLER written notice of all claims of any kind regarding products which were, or should have been, disclosed by testing or inspection. Failure to give such notice shall constitute an irrevocable acceptance of the products and a waiver by Buyer of all claims with respect thereto. Any action by Buyer with respect to the products shall be commenced within one year of delivery thereof to Buyer.
8. **LIMITATION OF WARRANTY AND LIABILITY:**
  - a) Except as provided in item 6 above with respect to defects in material or workmanship, ZOLLER makes no other warranties, express or implied, including warranties of fitness for a particular purpose or merchantability or arising from a course of dealing or usage of trade. In no event shall ZOLLER be liable for consequential, incidental, special damages, penalties or liquidated damages arising, directly or indirectly, in respect of the products or the use or failure thereof, whether based on breach of warranty, negligence or otherwise, including, but not limited to, erecting expenses and damages for loss of production or injury to buyer, buyer's employees or agents, any third person or property. ZOLLER shall not be responsible for any failure to comply with OSHA requirements which result from the location, operation, design, use, misuse or maintenance of ZOLLER's products.
  - b) Buyer agrees that any affirmation of fact, product description or sample or model products, whether or not relating to production or capability of product performance, are not the basis of this contract, but are merely estimates based on ZOLLER's understanding of the limits of accuracy and finish required, machinability of the material and amount of material to be removed.
  - c) ZOLLER shall not be liable for loss or damage due to nondelivery or delay in manufacture or delivery resulting from any cause beyond ZOLLER's control, including, but not limited to, compliance with any regulations, orders or instructions of any federal, state or municipal government or any department or agency thereof, acts of God, accidents, acts or omissions of the Buyer, acts of civil or military authority, fires, strikes, factory shutdowns or alterations, embargoes, war, riot, delays in transportation or inability due to causes beyond ZOLLER's control to obtain necessary labor, manufacturing facilities or materials, or other causes or casualties (of a like or dissimilar nature) beyond ZOLLER's control.
  - d) Regardless of any rights afforded by law to Buyer, ZOLLER's liability, if any, for any and all claims for loss or damages with respect to the products, and Buyer's sole and exclusive remedy therefore, shall in all events be limited in amount to the purchase price of that portion of the products with respect to which a valid claim is made.
9. **CANCELLATION OR RETURNS BY BUYER:** Orders accepted by ZOLLER may not be canceled and products received may not be returned without written authorization of ZOLLER. In the event of cancellation by buyer, ZOLLER shall receive any or all of the following:
  - a) payment of the contract price for products completed at time of receipt of written cancellation notice.
  - b) reimbursement on the basis of proportional expenditures at time of cancellation, as determined in accordance with ZOLLER's regular accounting practice, for work on the balance of the order.
  - c) reimbursement for all charges including, but not limited to, any additional charges which may arise as a result of any cancellation.
10. **CANCELLATION BY ZOLLER:** ZOLLER shall have the absolute right to cancel and refuse to complete this order:
  - a) if at any time all terms and conditions governing this order, including any requirement of advanced payment or posting of security, are not strictly complied with by buyer and such default or breach is not remedied within ten (10) business days.
  - b) if at any time buyer becomes insolvent or is admitted to any procedure for settlement of debts or bankruptcy.
11. **INFORMATION AND REPRESENTATIONS:** All drawings, brochures and other material provided by ZOLLER are for informational purposes only. ZOLLER reserves the right to make changes in design or construction at any time at ZOLLER's discretion. Buyer agrees that information specially prepared by ZOLLER for presentation in sales quotations or proposals shall not be transmitted to others or used to the detriment, implied or otherwise, of ZOLLER's competitive advantage.
12. **TAXES AND OTHER CHARGES:** All taxes, fees or charges of any nature whatsoever, imposed by any governmental authority, on or measured by any transaction between ZOLLER and buyer shall be paid by buyer in addition to the prices quoted or invoiced. In the event ZOLLER pays any such cost buyer shall reimburse ZOLLER. If available, buyer shall provide ZOLLER with an exemption certificate or other documentation acceptable to the authority imposing such tax, fee or charge prior to ZOLLER incurring the cost.
13. **PATENTS:** ZOLLER shall defend any suit or proceeding brought against buyer which alleges that any of ZOLLER's products or any part thereof, when employed in the manner intended by ZOLLER, constitutes an infringement of any patent of the United States issued on the date hereof, provided that ZOLLER is promptly notified in writing of the claim and given authority, information, and assistance to defend same. In no event shall ZOLLER be liable if the infringement is based on product use for a purpose other than that for which it was sold by ZOLLER, or based on a combination of the product or any part thereof sold with other products. If the product or any part thereof is held to constitute an infringement from a use and purpose intended by ZOLLER, ZOLLER shall at its option:
  - a) Procure the right to continue using said product.
  - b) Replace it with non-infringing product.
  - c) Modify it so it becomes non-infringing.
  - d) Remove it and refund the purchase price.The foregoing states the entire liability of ZOLLER for patent infringement by the product or any part thereof.
14. **CHOICE OF LAWS:** This contract and provisions and terms thereunder shall be governed by and construed according to the laws of the State of Michigan.