

**Wittmann Battenfeld Inc.**  
One Technology Park Drive  
Torrington, CT 06790

## **TERMS AND CONDITIONS OF SALE**

### **November 19, 2013**

#### **ACCEPTANCE**

Acceptance of Seller's quotation by Buyer is expressly limited to the terms and conditions contained herein. Any term or condition contained in purchase order or other form from the buyer that is in conflict with the terms or conditions of Seller's quotation is hereby expressly rejected and shall not be binding on Seller, unless specifically agreed to in writing by Seller. Unless the context otherwise requires, the term "Equipment" as used herein includes all Equipment, parts and accessories sold and all software and application software licensed to Buyer under this order. Unless the context otherwise indicates, the term "Services" as used herein shall mean labor, supervision and project engineering services provided by Wittmann Battenfeld under this order. As used herein, the term "Buyer" shall include the initial end user of the Equipment and/or Services.

#### **PRICES**

Prices, unless otherwise specified in the quotation, are FOB plant of manufacture and exclusive of all Federal, State, Municipal, or other Government Excise Sales, Use, Occupational or like taxes, fees, insurances, which in their event, will be burdened by Buyer. Subject to change at any time by Seller in the event of any change in the Buyer's requirements or the Standard Terms & Condition of Sale or as a result of changes to the quotation and/or order agreed to in writing between Seller and Buyer. Prices firm for 30 days from date of quotation. Except with respect to licensed software (for which title does not pass, use being licensed), title to Equipment shall not pass to Buyer until full payment has been received by Seller. Ideas quoted and engineering drawings remain the property of Seller. Should the rate of exchange of the currency specified in the quotation change with regard to the Euro – in particular, as a result of devaluation or revaluation – then the purchase price shall be calculated on the basis of the rate of exchange applying on the date that the Purchase Order was received from the Buyer.

#### **DELIVERY**

Delivery dates are approximate and are those available at the time of quotation and are subject to revision;

(1) Before Seller's acceptance of an order due to delay in receipt of;

(a) Buyer's signed order,

(b) Deposit payment,

(c) Final and complete details, specifications, sample parts, and drawings necessary to permit the start of design and manufacture.

(2) Based upon Seller's acceptance of other orders prior to receipt of items in (1).

(3) Due to causes beyond Seller's control, including, but not limited to, delays caused by strikes, fire, war, Acts of God, scarcity of materials, transportation delays.

(4) Due to delays or changes in approval drawings sign-off,

(5) Due to delays in supply of pieces necessary for testing,

(6) Due to delays in Seller's receipt of components from Suppliers,

(7) If the Buyer is in arrears with work to be done by him or with the fulfillment of his contractual obligations, in particular, failure to comply with the terms of payment.

The deadline for Delivery shall be deemed to have been met if the goods are ready for shipment by the date of said deadline. Should the goods be inspected for acceptance in our works, then the date on which notification that the goods are ready for inspection is sent to the Customer shall be deemed to have met the deadline. If, upon notification from Seller that the Product is ready for shipment, Buyer requests Seller to delay such shipment, Buyer shall pay Seller the reasonable cost of the storage of same until shipment is made pursuant to Buyer's instructions. All goods shall be shipped FOB point of shipment, unless otherwise specified in the quotation; the Buyer will assume freight charges and risks of loss, injury, damage or transportation. Seller reserves the right to specify routing, unless otherwise agreed to. "Delivery" refers to estimated shipping date. If a week number of the year is referenced, it is implied as the Friday of that week.

Seller is entitled to carry out partial or early deliveries where nothing to the contrary is agreed in writing.

#### **FREIGHT AND INSURANCE**

The Customer may, at his own risk and expense, arrange for the transport of the goods. If the freight carrier is commissioned by Seller, the Equipment shall be packed and shipped in the manner usual and customary in the trade. Seller at its sole discretion may consider special requests for freight and packaging if communicated in writing by the Buyer, receipt of which is confirmed in writing by the Seller.

Buyer shall, without delay, register and document any complaints regarding the transport of the goods with the last freight carrier upon receipt of the goods or the corresponding freight documents. The Buyer shall further be obliged to file, without delay, any claims for damage in transport with the freight carrier in accordance with the terms of the contract of carriage or shipment and to notify us of such claim(s) at the same time.

The Buyer shall be obliged to procure insurance coverage in the amount of the value of the goods to be delivered for the shipment from our works to the point of delivery. Should we be contractually obliged to procure such insurance coverage, the costs and risks thereof shall nonetheless be borne by the Buyer, and we shall in no case be liable for any damage incurred in transport.

#### **CHANGES IN DESIGN & IMPROVEMENTS**

(a) Buyer acknowledges that provisions in the drawings and/or specifications for the product are descriptive only and not intended as warranties from Seller, unless expressly stated to be such. Seller shall have the right, but not the obligation, to make changes at any time in the specifications for the Product in order to incorporate therein, later developments and improvements. (b) Changes in information or part samples supplied that effect design, delivery or installation start-up may have costs and/or impact to the performance of the operating system. Such costs or requirements necessary to meet the intended functionality of the system shall be at the Buyer's expense. (c) Any changes requested by Buyer affecting the scope of the work must be accepted by Wittmann Battenfeld and the resulting changes to price, schedule, and guarantee to be mutually agreed to in writing before implementation of the change. (d) Wittmann Battenfeld may, at its expense, make changes to the Equipment or Services as it deems necessary to meet any performance guarantees in the proposal. If Buyer refuses to approve any such changes, Wittmann Battenfeld shall be relieved of its obligations to meet such guarantees to the effect that Wittmann Battenfeld may be affected by such refusal.

#### **INTELLECTUAL PROPERTY**

Unless otherwise agreed in writing by Wittmann Battenfeld and Buyer, all rights, title and interest in inventions, developments, improvements, or modifications of or for Equipment or Services shall remain the exclusive property of Wittmann Battenfeld. Any design, manufacturing drawings or other information submitted by Wittmann Battenfeld shall remain the exclusive property of Wittmann Battenfeld. Buyer shall not disclose or copy, without Wittmann Battenfeld's written consent, any such information to a third party. This information shall be used solely for the operation and maintenance of the Equipment and not for any other reason, including duplication of Equipment.

#### **SOFTWARE**

Wittmann Battenfeld owns and has all rights to certain proprietary software. As part of the sale made here, Buyer obtains a limited license to use certain proprietary software identified in Wittmann Battenfeld's proposal, subject to the following: (a) The proprietary software may only be used in conjunction with Equipment specified by Wittmann Battenfeld. (b) The proprietary software is to be held strictly confidential. (c) The proprietary software shall not be copied, modified, or reverse engineered. (d) The Buyer's right to use the software shall become effective upon delivery and shall continue until the Equipment is no longer used by the Buyer or until otherwise terminated. (e) The Buyer's right to use the proprietary software is non-exclusive and non-transferable without Wittmann Battenfeld's prior written consent.

Seller provides flexible programming features for Buyer to modify programs for intended use, however this should only be used by individuals who have been certified after completing a Wittmann Battenfeld training course. Buyer modifies program at its own risk. Seller is not liable for damages arising from or related to Buyer's program modifications.

#### **INSTALLATION**

Equipment must be installed by trained and qualified personnel. When contracted, Seller or its agent will supply a service technician to supervise installation, start-up and demonstrate the operation of Equipment. The cost of providing a service technician shall be borne by the Buyer and charged at the prevailing service rates per eight-hour day including travel time, plus travel and living billed at cost. Overtime is billed after eight hours and weekends and Holidays are billed as written in the Equipment quotation. All costs incidental to the erection and installation shall be borne by the Buyer including modifications to the Buyer's molding machine, its controls, obstructions, building permits, etc.

#### **Main Office:**

Wittmann Battenfeld, Inc.  
One Technology Park Drive  
Torrington, CT 06790  
Phone: (860) 496-9603  
Fax: (860) 482-2069  
[www.wittmann-ct.com](http://www.wittmann-ct.com)

#### **Parts & Technology Center:**

Wittmann Battenfeld, Inc.  
1620 Shanahan Drive  
South Elgin, IL 60177  
Phone: (847) 531-0015  
Fax: (847) 531-0029  
[www.wittmann-group.com](http://www.wittmann-group.com)

**SAFETY**

All Equipment and systems supplied by Wittmann Battenfeld incorporate the latest safeguards to protect Equipment, but more importantly to protect and safeguard personnel. No person or persons shall alter or remove any factory installed safeties. Any guarding or safeties that need to be moved or added, shall be done in compliance with Federal, State and Local laws and safety guidelines, and as outlined in Equipment operating instructions. A detailed list of customer responsibilities is provided in the body of the Equipment proposal and quotation, which is specifically incorporated herein by reference. Before the use of this product, customer is responsible for ensuring compliance with all government and industry safety standards. The Customer shall, with the Purchase Order, inform us of statutory, official and any other regulations that relate in particular to the execution of delivery, the installation and assembly of the goods, their operation; to health and safety at work; to foreign-exchange controls with regard to export and/or import transactions; and in general inform us of any and all regulations that may delay or impede the permits and licenses in due time.

**LIMITED WARRANTY**

If during the first twelve months from shipment, unless otherwise stated in the Equipment quotation, any non-wear parts of the Equipment designed and manufactured by Seller prove to have defects in material or workmanship when furnished, Seller agrees to repair or replace such parts without charge, F.O.B. point of shipment, without any obligation on Seller's part for installation /labor. Customer agrees to supply a P.O. and return defective parts for evaluation. Warranty is void unless product has been properly installed, maintained and operated in accordance with all instructions of Seller. Warranty for Equipment not manufactured by Wittmann Battenfeld will carry manufacturer's standard warranty. THE WARRANTY GIVEN IN THIS SECTION IS EXCLUSIVE. SELLER DOES NOT WARRANT MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR MAKE ANY OTHER WARRANTY OR AGREEMENT EXPRESS OR IMPLIED WITH RESPECT TO ANY PRODUCTS DELIVERED UNDER THE SALES CONTACT. NO IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE IS GIVEN BY SELLER OR SHALL ARISE BY OR IN CONNECTION WITH THIS SALES ORDER AND/OR THE SELLER'S AND/OR BUYER'S CONDUCT IN RELATION THERETO OR TO EACH OTHER.

**LIMITATION OF LIABILITY**

- A. Compensation claims by the Buyer are excluded unless attributable to Sellers gross negligence or intentional acts or omissions.
- B. In no event will Wittmann Battenfeld be liable for SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, arising out of its Equipment or Services, of any nature including but not limited to loss of profit or revenue, productive facilities, labor, damage to or loss of the use of Equipment, damage to property, claims of third parties, including personal injury or death suffered as a result of the Equipment, or failure of Wittmann Battenfeld to warn, or adequately warn, against the dangers of the Equipment, or to instruct, or to adequately instruct about the safe and proper use of the Equipment, whether or not Wittmann Battenfeld has been advised of the potential for such damages.
- C. Total liability of Wittmann Battenfeld to Purchaser from any cause whatsoever, whether arising under contract, warranty, tort (including negligence), strict liability, products liability or any other theory of liability will be limited to half the purchase price paid to Wittmann Battenfeld for the Equipment or Services that are the subject of Purchaser's claim. All claims for damages shall be made within six (6) months of becoming known to the customer.
- D. Seller shall assume no liability whatsoever if Seller undertakes the repair, modification or alteration of old products or products from other suppliers. "Old products" shall mean products for which the warranty has expired, or which, with the Customer's knowledge, were previously used by Seller or by a third party.

**INDEMNIFICATION**

Buyer shall indemnify, defend, and hold harmless Seller, its parents, subsidiaries, and affiliate companies, and their respective successors, assigns, officers, directors, employees, representatives and agents against all claims, losses, liabilities, and expenses (including attorneys' fees), which the same may incur or become liable to pay which relate to or in any way arise out of the Equipment being subjected to, in whole or part: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Equipment; or (v) any use or application other than or varying in any degree from that for which the Equipment was designed. If goods are made to order in conformity with designs, drawings or models supplied by the Customer, then we shall not be liable for the correctness of the design, and our liability shall be limited solely to the execution of the design according to the Customer's specifications. We have no duty to inspect or warn. The Customer shall indemnify, defend, and hold us harmless from any claims for violation of patent or other property rights of third parties.

**CANCELLATIONS**

The Buyer shall not be permitted to cancel without the express written agreement of the Seller. Where the Buyer cancels with the approval of the Seller, a cancellation fee of 15% of sales price or total costs incurred by Seller, plus 20%, which ever greater will apply. The Seller may cancel at its sole discretion due to the Buyers breach of any of these Terms and Conditions or any of its obligations herein.

**TERMINATION**

No termination or rejection of the Equipment by Buyer for default or defect shall be effective unless, within fifteen (15) days after receipt by Wittmann Battenfeld of Buyer's written notice specifying the default, Wittmann Battenfeld failed to initiate and pursue with due diligence correction of such specified fault. Wittmann Battenfeld shall be granted sufficient time to investigate the proper course of action and correct the default.

**PAYMENTS**

If, in the judgment of Wittmann Battenfeld, the financial condition of the Buyer at any time prior to delivery does not justify the terms of payment specified, the Wittmann Battenfeld may require payment in advance, payment security satisfactory to Wittmann Battenfeld or cancel any outstanding order, whereupon Wittmann Battenfeld shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Buyer, payment shall become due on the date Wittmann Battenfeld is prepared to make delivery. Delays in delivery or nonconformities in any installments delivered shall not relieve Buyer of its obligation to accept and pay for remaining installments. Seller reserves the right to charge a 1% per month finance charge on unpaid balances (over 30 days due). Reasonable collection & Attorney's fees may be applied.

**RESERVATION OF TITLE**

Equipment is sold under reservation of title until the full invoiced amount has been received by Wittmann Battenfeld.

**APPLICABLE LAW**

This sales contract shall be governed by the laws of the state of Connecticut. *The parties consent to* and agree that the Superior Court of the State of Connecticut and/or the United States Federal District Court for the District of Connecticut shall have sole and exclusive jurisdiction to resolve any dispute over the interpretation, construction, breach, or other controversy arising out of or associated with this Agreement.

In the event that an agreed clause violates mandatory law then the remaining clauses in this contract remain binding.

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