

TERMS AND CONDITIONS OF SALE/WARRANTY

ACKNOWLEDGEMENT OF ORDER AND TERMS AND CONDITIONS OF SALE

This is to acknowledge receipt of your ("Buyer") purchase order for the specified ARCHITECTURAL CONTROL SYSTEMS, INCORPORATED ("Seller") products (the "Products") and to set forth the terms and conditions ("Terms and Conditions") of sale for this order. If the Terms and Conditions of this acknowledgment differ in any way from the terms and conditions of Buyer's order, this acknowledgment shall be construed as a counteroffer and shall not be effective as an acceptance of such order unless Buyer assents to the Terms and Conditions contained herein, which shall constitute the entire agreement (the "Agreement") between the parties. Buyer's assent to the Terms and Conditions contained herein shall be deemed given upon Buyer's execution of this acknowledgment below or upon Buyer's failure to object to these Terms and Conditions in writing within ten (10) days from the date of receipt of this acknowledgment. Buyer's receipt of delivery of the Products without immediate return will further manifest Buyer's assent to these Terms and Conditions. No additions to or modifications of any of the Terms and Conditions hereof shall be effective unless made in writing and signed by both parties.

- TAXES:** Any tax or governmental charge (or increase in same) affecting Seller's costs of production, sale, or delivery shall be for Buyer's account and shall be added to the price and shall not be subject to any discount.
- MINIMUM ORDER CHARGE:** The minimum invoice amount will be \$50.00. An order with a net value of less than \$50.00 will be invoiced at \$50.00.
- TERMS OF PAYMENT:** Terms are net thirty (30) days from the date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due. Buyer shall be liable for all costs and expenses, including reasonable attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest at the maximum rate allowed by law from the date on which it is due until it is paid. Should Buyer's financial situation and/or capabilities become unsatisfactory to Seller in its sole discretion, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Products theretofore delivered.
- BACK CHARGES:** Seller is not responsible for, and will not accept, any charges for labor or material costs incurred for any installation, repair, service or replacement of the Products without the prior written consent of Seller.
- SHIPMENT AND DELIVERY:** Deliveries are made F.O.B. Seller's shipping point. Responsibility and risk of loss for damage shall pass from Seller to Buyer upon tender to, and receipt by, a common carrier at Seller's shipping point. Buyer hereby expressly waives any claims for shortages or damages suffered in transit against Seller and hereby agrees that any such claims shall be submitted by Buyer directly and only to the Buyer's insurance carrier. While Seller will use commercially reasonable efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its sole option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of the Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom.
- RETURN OF GOODS:** Products cannot be returned without the prior written consent of Seller. A 25% restocking and handling charge will be applied to returned Products, other than those which are returned for warranty repair or replacement. Additional service charges will apply to any damaged Products for restoration to saleable condition.
- LIMITED WARRANTY; LIMITATION OF REMEDY AND LIABILITY:** Subject to the limitations on remedies and liabilities set forth below, Seller warrants that the Products manufactured by Seller will be free from defects in material or workmanship under normal use and regular service and maintenance for one (1) year from the date of sale by Seller to Buyer. Determination of the suitability or fitness of the Products from the use or purpose contemplated by Buyer is the sole responsibility of Buyer, and Seller shall have no responsibility in connection with such suitability. The warranty set forth in this paragraph is Seller's sole warranty with respect to the Products.

SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AGAINST INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS AGREEMENT.

Buyer agrees to examine and inspect the Products immediately upon arrival at their destination, and if the Products allegedly fail to comply with the limited warranty provided hereunder, Buyer shall give detailed written notice of such alleged failure/non-compliance to Seller within ten (10) days of its receipt of the Products. Any claim under this warranty shall conclusively be deemed waived by Buyer unless written notice thereof is given to Seller within ten (10) days after Buyer discovers, or should reasonably have discovered, the alleged failure/non-compliance of the Products, whichever is earlier. Buyer's exclusive remedy under this warranty is limited to the repair or replacement of the Products or the refund of the amount of the purchase price paid by Buyer, at Seller's sole option, upon the return of any nonconforming Products to Seller at Buyer's expense.

This limited warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, Buyer's negligence or intentional conduct, unauthorized modification or alteration, use beyond rated capacity, or improper installation, maintenance or application. To the extent that Seller has relied upon any specifications, information, representations of operating conditions or other data supplied by Buyer or its agents to Seller in connection with the design or manufacture of the Products, and in the event such specifications, information, representations or other data caused and/or contributed to the alleged failure/non-compliance of the Products, then any warranties contained herein shall be expressly waived by Buyer and be deemed null and void.

IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY HEREUNDER OR IN CONNECTION WITH THE MANUFACTURE OR SALE OF THE PRODUCTS DESCRIBED HEREIN, WHETHER IN CONTRACT, IN TORT, FOR INFRINGEMENT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS INCURRED BY BUYER). THE PRICE STATED FOR THE PRODUCTS IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY.

- EXCUSE OF PERFORMANCE (FORCE MAJEURE):** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; terrorism or other criminal conduct; flood; weather; sabotage; strikes, or labor or civil disturbances; governmental requests, restrictions, laws, regulations, orders or actions; unavailability of or delays in materials, utilities or transportation; default of suppliers; or circumstances or any other events or causes beyond Seller's control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the remainder of the Agreement shall otherwise remain unaffected as a result of the foregoing.
- If Seller determines that its ability to supply the total demand for the Products, or to obtain material used directly or indirectly in the manufacture of the Products, is hindered, limited or made impracticable, Seller may allocate its available supply of the Products or such material (without obligation to acquire other supplies of any such Products or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.
- CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and consent of Seller. If Seller consents to such cancellation, Buyer must pay Seller its cancellation charges which include, among other things, all costs and expenses incurred to cover commitments made by Seller, and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive.
- CHANGES:** Buyer may request changes or additions to the Products consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price(s) and date(s) of delivery.

Seller reserves the right to change designs and specifications for the Products without prior notice to Buyer, except with respect to Products being made-to-order for Buyer.

- ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest therein or any rights hereunder without the prior written consent of Seller, and any such assignment, without such consent, shall be void.
- INSTALLATION:** Buyer shall be responsible for receiving, inspecting, testing, storing, installing, starting up, and maintaining all Products.
- GENERAL PROVISIONS:** These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Terms and Conditions shall be binding upon Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject, or supplement these Terms and Conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be affected by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy or no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. In the event that any work, phrase, clause, sentence, or other provision hereof shall be deemed unenforceable by a court of law and/or equity, such finding shall not invalidate all other enforceable provisions hereof.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the laws of the state of Missouri, without giving effect to its conflict of laws rules. The application of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods to this Agreement are expressly excluded. Buyer and Seller agree that the proper and only venue for all actions arising from, relating to or in connection with this sale shall be the County of St. Louis, State of Missouri, where Seller's place of business is situated, and the parties agree to submit to such jurisdiction.



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APRIL 1, 2004