

**The following terms and conditions apply to all sales made by Tristar Machinery International, LLC ("Tristar").**

**1. ACCEPTANCE AND ENTIRE AGREEMENT.** The terms and conditions set forth herein shall constitute the entire agreement ("Agreement") between Tristar, and the purchaser named on the face hereof or in such purchaser's purchase order submitted to Tristar in writing or electronically in whatever form ("Buyer") with respect to the goods and services specified ("Goods"). In the event that Tristar is acting as the sales agent of the owner of the Goods, "Tristar" shall be interpreted to include the owner. BUYER'S ACCEPTANCE OF THE GOODS WILL CONSTITUTE BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS IRRESPECTIVE OF ANY PURPORTED TERMS AND CONDITIONS OF BUYER'S ORDER OR OFFER TO BUY THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS OF THIS AGREEMENT. No modification of, addition to, or waiver of any of the terms and conditions of this Agreement will be effective unless agreed to in writing by a duly authorized representative of Tristar, and in no event shall such modifications, addition or waiver affect any rights of Tristar accrued prior thereto. Tristar and Buyer agree that no course of prior dealings between the parties or usage of the trade shall be relevant to give particular meaning to, supplement or qualify any of the terms and conditions hereof.

**2. EXCLUSION OF WARRANTIES.** Purchaser understands that the Goods have been used by persons other than Seller. Purchaser is warned and acknowledges that such Goods may bear or contain hazardous chemicals or other hazardous materials which may be or may become, by chemical reaction or otherwise, directly or indirectly hazardous to life, to health, or to property (by reason of toxicity, flammability, explosiveness or for other similar or different reasons during use, handling, cleaning, reconditioning, disposal or at any other time after the Goods leave the possession and control of Seller). Purchaser does hereby discharge Seller from any and all liability directly or indirectly resulting from the presence of the aforesaid chemicals or materials, including and not limited to any and all liability directly or indirectly resulting from the failure of Seller to give more specific warning with respect to individual articles or substances or from the inadequacy of any warning. Buyer acknowledges that it has been given the opportunity to inspect the Goods prior to the date hereof. TRISTAR STRONGLY RECOMMENDS THAT BUYER CONDUCT AN ON-SITE INSPECTION OF THE GOODS SOLD HEREUNDER. TRISTAR SHALL NOT BE RESPONSIBLE FOR THE CONSEQUENCES OF BUYER'S FAILURE TO INSPECT THE GOODS OR FOR ANY INACCURACIES, INSUFFICIENCIES, OR OMISSIONS IN SUCH DESCRIPTIONS, SAMPLES AND/OR SPECIFICATIONS. The employees or representatives of Tristar are not authorized to make any statement or representation as to the quality, character, size, condition, quantity, etc. of the goods offered for sale inconsistent with these Terms and Conditions. Any such statements made will not be binding on Tristar or be grounds for any subsequent claim. THE GOODS SOLD HEREUNDER ARE PURCHASED IN THEIR "AS IS" CONDITION AND TRISTAR MAKES NO REPRESENTATION OR WARRANTY EXPRESSED OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE GOODS. TRISTAR DOES NOT WARRANT THAT THE GOODS SOLD HEREUNDER CONFORM WITH ANY PLANS OR SPECIFICATIONS OR MEET ANY REQUIREMENTS OF ANY FEDERAL, STATE OR LOCAL LAWS, REGULATIONS OR ORDINANCES, INCLUDING REQUIREMENTS OF THE UNITED STATES OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION ("O.S.H.A."), PERTAINING TO SAFETY OR INSURANCE REQUIREMENTS. TRISTAR MAKES NO WARRANTY THAT BUYER WILL HOLD THE GOODS FREE OF CLAIMS OF THIRD PERSONS INCLUDING, BUT NOT LIMITED TO CLAIMS OF ALLEGED PATENT OR TRADEMARK INFRINGEMENT. Any descriptions or illustrations contained in

Tristar's catalogues, website, price lists or other advertising matter are intended merely to present a general description of the Goods and shall not form a part of this Agreement. As the end use of the Goods cannot be predetermined, Tristar takes exception to any and all requirements as are or may be set forth by O.S.H.A. with respect to the goods. In the event that O.S.H.A. requires additions or modifications to the Goods before they may be used, it shall be the obligation of Buyer, at its expense, to make such additions and modifications.

### **3. BUYER'S INDEMNITY OF TRISTAR.**

**WARNING. THE GOODS SOLD HEREUNDER MAY BE DANGEROUS IF IMPROPERLY USED. THEY MAY CONTAIN HAZARDOUS CHEMICALS OR OTHER HAZARDOUS MATERIALS WHICH MAY BE HAZARDOUS TO LIFE, HEALTH OR TO PROPERTY BY REASON OF TOXICITY, FLAMMABILITY, EXPLOSIVENESS OR FOR OTHER SIMILAR OR DIFFERENT REASONS.**

Tristar will not be responsible for any loss or injury resulting from defects in the Goods sold or from the subsequent use of the Goods. Buyer expressly agrees that as a condition of its purchase of these Goods, it will indemnify and hold Tristar harmless of and from any and all liability which may be asserted against or incurred or suffered by Tristar by virtue of any suit or claim of any kind arising out of, connected with, or resulting from the purchase, sale or use of the Goods by Buyer or any subsequent user of the Goods, including but not limited to claims or suits for breach of warranty, negligence, strict liability, environmental liability, exposure to hazardous materials, alleged non-compliance of the Goods with O.S.H.A. or any other law or regulation, or infringement of patent or trademark of Goods alone or in combination with any other goods, materials, products or services. Buyer shall pay any and all judgments rendered against Tristar as a result of the foregoing and shall pay all costs and expenses incurred by Tristar in defending any action brought against Tristar as a result thereof, including attorney's fees and expenses, expert witness fees and expenses and court costs.

**4. BUYER'S INSURANCE.** Buyer shall not move, load, transport or otherwise handle the Goods without first having obtained insurance coverage satisfactory to Tristar. Such insurance shall include Workmen's Compensation, Employer's Liability, Public Liability (Bodily Injury, Property Damage and Contractual Liability) and Automobile Liability (Bodily Injury and Property Damage) insurance. Upon request, certificates of insurance evidencing the aforementioned insurance coverage shall be furnished to and shall be subject to approval by Tristar. Tristar shall not be required to supply goods to Buyer hereunder at anytime that the insurance coverage provided for hereunder is not in full force and effect.

**5. DELIVERY AND RISK OF LOSS.** Terms for delivery of the Goods are ex-works where located while in Tristar's possession. Tristar's responsibility for damage or loss of the goods furnished hereunder ceases upon Buyer's taking possession (including, without limitation, by its common carrier) ex-works at the location designated by Tristar. Any date of shipment stated on the face hereof is approximate only. Actual delivery may vary substantially based on factors including, but not limited to removal, availability and fabrication of parts, latent condition of the Goods, acts of God, governmental regulations or export/import restrictions or failure by Buyer or its common carrier to take possession of the Goods. In such circumstances Tristar shall have the right to extend the date of delivery for a reasonable period of time after the period of delay and Buyer shall not be relieved from accepting delivery at the agreed price when the causes interfering with delivery are removed. If delivery is in installments, delay in delivery of any

installments shall not relieve Buyer of its obligation to accept remaining deliveries.

**6. BUYER'S REMEDIES.** If, upon delivery of the Goods as defined in paragraph 5, the same shall not conform to Buyer's order, Buyer shall notify Tristar in writing within ten (10) days from the date of delivery and before any part of the Goods has been changed from its original condition. Such notification shall provide detailed information as to the nonconformity or shortage and Buyer shall hold the Goods for Tristar's disposition and afford Tristar a reasonable opportunity to inspect the Goods. In no event shall the Goods be returned without Tristar's consent. Failure to comply with the terms of this paragraph shall constitute a waiver by Buyer of all claims in respect of any nonconformity or shortage of Goods and shall be conclusive evidence that Tristar has satisfactorily performed.

**7. LIMITATIONS OF TRISTAR LIABILITY.** Tristar's liability to Buyer on any claim of any kind for any loss or damage arising out of, connected with, or resulting from the Goods, whether such claim is based upon Tristar's negligence, Tristar's performance or breach hereunder, strict liability, or upon the manufacture, sale, delivery or non-delivery, operation or use of the Goods, or otherwise, shall be limited, at Tristar's option, to either the replacement of the Goods with similar Goods at the original point of delivery or the return of the sales price of the Goods with respect to which the claim is made. Tristar, at its option, may require that Buyer return the Goods to Tristar at Buyer's risk and expense before Buyer shall be entitled to replacement or return of the sales price. TRISTAR SHALL IN NO EVENT BE LIABLE FOR THE COST OF ANY WORK DONE BY BUYER ON THE GOODS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER SUFFERED BY BUYER OR ANYONE ELSE. Any action or remedy by Buyer arising out of this Agreement or any breach thereof must be commenced by Buyer within one (1) year after such cause of action has accrued.

**8. TRISTAR'S REMEDIES.** The rights, powers, privileges and remedies of Tristar herein reserved shall be cumulative and in addition to any other or further rights, power, privileges and remedies provided in law or equity, including those contained in the Illinois Uniform Commercial Code. Tristar shall have the maximum period provided by law within which to pursue any remedy. A waiver by Tristar or any right or remedy hereunder shall not affect any rights or remedies subsequently arising under the same or similar provisions hereof, nor shall it operate as a waiver of the provision or condition under which such rights or remedies arise. In the event Buyer fails to comply with the terms of this Agreement and fails to pay for the Goods in accordance with the terms of this Agreement, Buyer shall be liable for interest on the unpaid balance at the rate of eighteen (18%) percent per annum or the maximum legal rate, whichever is less, until payment in full is made. In addition thereto, Tristar shall be entitled to recover reasonable attorneys' fees and all costs of suit which may be incurred by Tristar to enforce the terms and conditions of this Agreement.

**9. GOVERNING LAW.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Illinois. Any actions, claims or suits (whether in law or equity) arising out of or relating to this Agreement, or the alleged breach thereof, shall be brought only in courts located in Illinois and Buyer hereby waives its rights, if any, to bring such actions, claims or suits in any other courts. Buyer and Tristar hereby agree to submit themselves to the jurisdiction of the courts located in Illinois for the enforcement of this provision and for the enforcement of any judgment rendered by such courts. If any action, claim or suit is brought by Tristar against Buyer hereunder and Buyer is not otherwise subject to service of process in

Illinois, Buyer agrees to and does hereby irrevocably appoint the Secretary of State of the State of Illinois as Buyer's agent for the acceptance of service of process therein, and a copy of such process shall be mailed by Tristar to Buyer at Buyer's last known address. Buyer and Tristar agree that the United Nations Convention on Contracts for the International Sale of Goods ("CISG") does not apply to the sale of Goods from Tristar to Buyer.

**10. NONASSIGNABILITY.** Neither this Agreement nor any interest or obligation arising hereunder shall be assignable by Buyer without the prior written consent of Tristar.

**11. TAXES.** Buyer shall be liable for all taxes (other than income taxes), excises and other charges (including any increases or new levies) relating to the sale, purchase, delivery, storage, manufacture, use, consumption or otherwise of the Goods. In the event that Buyer either fails to pay the tax or other charges as agreed above or fails to provide a valid exemption certificate, Buyer agrees to indemnify and hold Tristar harmless from any liability and expense by reason of Buyer's failure. Such indemnification shall include, but not be limited to, attorneys' fees and/or other legal expenses relating to such failure.

**12. PAYMENT.** Unless otherwise stated in writing by Tristar, full payment in U.S. Dollars is required before delivery. If Buyer shall fail to pay any amount due on the Goods upon demand from Tristar, Tristar may defer further shipments until such payments are made, or may, at its option cancel the unshipped balance. In the event of the suspension of work on the Goods as a result of instructions of Buyer, or lack of instructions, the sales price may be increased to cover any extra expense thereby incurred by Tristar. In addition, Tristar shall charge Buyer for all costs of collection for past due amounts, including, without limitation, all legal expenses and costs incurred by Tristar. An interest charge at the rate of 18% per annum or the maximum legal rate, whichever is less, will be assessed on all past due payments.

**13. SEVERABILITY.** The terms and conditions set forth on the face hereof shall be deemed severable, and if one or more such terms and conditions shall be declared void or unenforceable, the remaining terms and conditions shall nevertheless continue in effect.