

RAUSCHERT INDUSTRIES, INC. TERMS AND CONDITIONS OF SALE

THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY TO ALL SALES OF ANY PRODUCT (AS DEFINED HEREIN) AND THE PROVISION OF ANY RELATED SERVICES BY RAUSCHERT INDUSTRIES (AS DEFINED HEREIN).

1. DEFINITIONS.

- a. The term “Rauschert” or “Rauschert Industries” shall refer to Rauschert Industries, Inc., a Tennessee corporation.
- b. The term “Purchase Order” will include documents titled “Purchase Order” or any web order, fax order, or email order, and any affirmation of the order request.
- c. The term “Customer” shall refer to and incorporate the named customer on any Purchase Order for any Product.
- d. The term “Products” shall refer to all products and components manufactured and/or distributed by Rauschert Industries.

2. ACCEPTANCE. All Products provided by Rauschert Industries are expressly subject to and governed by the Terms and Conditions set forth herein and shall, together with the Purchase Order confirmation (if any), constitute the entire agreement and understanding between Rauschert Industries and Customer relating to the Rauschert Industries Products (the “Agreement”) and shall merge all prior discussions, understandings, quotes, agreements and documents between them. Any variation to these Terms and Conditions, and any additional or different terms or conditions on any order form or other document submitted by Customer, are expressly rejected unless and until accepted in writing by a duly-authorized officer of Rauschert Industries. No order shall be effective or binding upon Rauschert Industries until accepted by Rauschert. Any representation, affirmation of fact and course of dealing, promise or condition in connection therewith or usage of trade not incorporated herein, shall not be binding on either party.

3. PRICE. All orders for Products will be charged at the applicable price in accordance with Rauschert Industries’ current pricing in effect at the time of ordering. Unless otherwise agreed in the Purchase Order confirmation, all quoted prices include packaging costs and shipping/transportation costs from the applicable facility of Rauschert or its affiliate. All sales, use, excise and other applicable taxes shall be charged to Customer and paid by Customer to Rauschert Industries per the payment terms stated on the invoice. All prices are in US dollars.

4. TAXES. Unless otherwise indicated on the face hereof, all prices and charges are exclusive of excise, sales, use, and property, occupational or like taxes, which may be imposed by any taxing authority upon the manufacture, sale or delivery of the items sold hereunder. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by Customer. If Rauschert Industries must pay any such taxes or if Rauschert Industries is liable for the collection of such tax, the amount thereof shall be paid by Customer to Rauschert Industries in addition to the amounts for the Products sold. Customer agrees to pay all such taxes.

5. TERMS OF PAYMENT. All orders shall be subject to credit approval by Rauschert. Unless otherwise agreed in writing, and unless credit is granted, payment shall be in U.S. Dollars and is due in full at the time of order. With respect to Products released and shipped on approved credit accounts, payment shall be due in full within thirty (30) days of the date of order. Late payments will accrue interest at the rate of one and one-half percent (1.5%) per month or the highest rate allowed by law, whichever is less. Payment shall not be withheld for delay in delivery of required documentation unless a separate price is stated therefor, and then only to the extent of the price stated for such undelivered documentation. Rauschert may cancel or delay work on or delivery of Products in the event Customer fails to make prompt payment therefor, in the event of an arrearage in Customer’s account with Rauschert, or if, in Rauschert’s judgment, the financial condition of Customer at any time prior to delivery does not justify continuation of

work on, or shipment of, the Products. Title to all Products shall remain in Rauschert until payment in full has been made by Customer.

6. SHIPMENTS. Unless otherwise agreed, all Products will be shipped Delivered Duty Paid (DDP), Customer's facility. Customer will assume all risks of loss of Products upon delivery by Rauschert Industries to Customer's facility. Rauschert Industries will determine the method of shipment and routing, absent special agreement between Rauschert Industries and Customer, which methods of shipping shall include, but are not limited to, interstate carriers, courier services, United States Postal Service, or ocean cargo transport. All shipping and delivery dates of any Product are approximate. Rauschert Industries shall not be responsible for switching, spotting, handling, storage, demurrage or any other transportation or accessorial service, nor for any charges incurred therefor.

7. DELAYS. Customer acknowledges that shipping and delivery dates are approximate and that Rauschert Industries shall have no liability for late deliveries resulting from factors beyond its control or outside the scope of its responsibility. Rauschert Industries shall not be responsible for any action or inaction of any carrier, including delays in delivery, nor, under any circumstances, shall Rauschert Industries be liable for any delay in performance, or non-performance, due to acts of God, war, riots, civil disturbances, acts of civil or military authorities, governmental regulation, court orders, fires, strikes or other labor disputes, shortages of labor, materials, fuel or energy, or unavailability of transportation, equipment failure, failure of supplier, carrier or subcontractor to deliver on time, or due to any other cause or causes beyond the control of Rauschert Industries.

8. FAILURE TO TAKE DELIVERY. If Customer seeks to delay or cancel any part of an order prior to delivery, such requests shall be made to Rauschert Industries in writing. Customers are responsible to pay the full cost for completed custom orders and stocked custom components. Components or finished products held at Rauschert Industries by request of the Customer or as a result of breach of these Terms and Conditions (including, without limitation, for failure to make payment), shall be assessed a warehousing fee of 5% per month of the total Purchase Order amount. Full payment of all open invoices, plus any applicable warehousing fee and finance charge, must be received by Rauschert Industries in order to release the Products. Products held for Customer because of any delay due to Customer's request to hold or inability to receive the equipment or product will be at the risk and expense of Customer. Any orders shipped by Rauschert Industries and refused by Customer will be handled as a Returned Products shipment. Any special orders and custom Products may not be canceled after Rauschert Industries begins manufacture of the order. Customer may not cancel any order except upon written notice and payment to Rauschert of all reasonable costs arising from the cancellation, plus a cancellation fee of 25%; in any event, the minimum cancellation fee shall be \$250.00.

9. INSPECTION; CLAIMS; RETURN OF PRODUCTS. All products shall be deemed accepted, and all claims for alleged defective goods shall be deemed waived, unless written notice is delivered to Rauschert within thirty (30) days after receipt of the Products by Customer. Customer shall assume all risk associated with the return of any Product. Returned Products shall be packaged securely and shall be returned to Rauschert Industries without damage. All returns shall be marked clearly with Customer's name and shall be returned to Rauschert Industries. Credit, if due, will be issued by Rauschert Industries based upon the original invoice price or current selling price of the Product(s) in question, whichever is less. All returns of non-current or unsaleable Products for which Rauschert Industries may refuse to issue credit are subject to repair (parts and labor charges), if Rauschert Industries chooses to repair them. Returns after sixty (60) days will not be accepted. Except with respect to Products which fail to conform to Customer's order or to Rauschert Industries' Limited Warranty, any non-custom Products returned shall be charged a restocking fee up to 35% of the total invoice cost and, in addition, freight charges both ways. Customer shall afford Rauschert Industries a reasonable opportunity to inspect all Products as to which any claim is made.

10. MANUFACTURE AND AVAILABILITY OF PRODUCTS. Rauschert Industries reserves the right to change manufacturing methods, materials and availability of Products without prior notice. To augment its own manufacturing capabilities, Rauschert Industries reserves the right to sublet or contract work out to any other company or individual, in its sole discretion. All such subcontracted Products will be considered as of Rauschert Industries manufacture and will be subject to the Terms and Conditions herein.

11. DEFAULT BY CUSTOMER. If Customer defaults under its Agreement with Rauschert Industries, then Rauschert Industries may, in its discretion, without prejudice to any other rights which may have accrued or which may accrue to it, terminate all orders with that Customer by notice in writing, or defer shipment until the situation is remedied to Rauschert Industries' satisfaction. As used herein, a "default" shall refer to the failure by Customer to pay any amount owed to Rauschert Industries when due; Customer's financial condition becoming unsatisfactory to Rauschert Industries, in Rauschert Industries' reasonable discretion; any violation of applicable federal, state or local law, rules or regulations by Customer; or any other breach or violation by Customer of these Terms and Conditions or its Agreement with Rauschert Industries.

12. LIMITED, EXCLUSIVE WARRANTY.

a. Subject to the limitations and exclusions stated herein, Rauschert warrants that all Products supplied hereunder will conform to the applicable specifications or drawings, as agreed by the parties, as of the date of delivery by Rauschert. Rauschert reserves the right of final determination of liability and Customer agrees to furnish accurate and reasonable information in the event that problems arise. Rauschert reserves the right of inspection at the installation where such failure occurred.

b. The foregoing shall be the only warranty applicable to Products manufactured or supplied by Rauschert Industries. RAUSCHERT DOES NOT WARRANT THAT THE PRODUCTS WILL WORK IN CUSTOMER'S PARTICULAR APPLICATION. This Limited Warranty does not apply to Products which have been damaged during shipment or to Products damaged or altered by abuse, misuse, misapplication, maintenance, modification or improper installation, maintenance or repair. All warranty coverage is further conditioned upon Customer (a) advising Rauschert Industries of any warranty claim in writing within thirty (30) days of the alleged failure to conform to the agreed-upon specifications or drawings, (b) complying with all applicable procedures regarding the return of Products, (c) providing to Rauschert Industries with the returned Product a complete written explanation of the claimed failure, the circumstances of the failure and the use of the Product when the alleged failure occurred, and (d) providing Rauschert Industries a reasonable time to inspect said Products and investigate Customer's claim.

c. Rauschert Industries' obligation under this Limited Warranty shall only be as follows: Rauschert Industries shall inspect any allegedly defective Product for any failure to conform to the applicable specifications or drawings. If Rauschert Industries determines, in its sole opinion, that a failure has occurred in a Product manufactured by Rauschert Industries, that the Product in question was being used in the normal and proper operation of the Product, and that said failure was caused solely by Rauschert, Rauschert will, at its sole option, either refund all payments made by Customer with respect to such non-conforming Products or, alternatively, replace such non-conforming Products or parts of the Product and pay any additional shipping charges incurred as a result thereof. Customer agrees to return the non-conforming Product in accordance with instructions provided by Rauschert Industries. As to any Product covered by this Limited Warranty, Rauschert Industries shall provide at its cost the lowest round-trip transportation charges from Customer's location to the designated Rauschert Industries location; provided, however, that this shall not include any transportation costs incurred by any customer of Rauschert Industries' Customer or any other costs, expenses, losses or claims related to any and all removal, installation or downtime expense related to any Product subject to coverage under this Limited Warranty. Rauschert will not be responsible for costs of removal, installation or re-installation of any equipment or items supplied by third parties, where such removal, installation or re-installation is required to repair or replace any allegedly defective Products supplied by Rauschert. Furthermore, Rauschert will not be responsible for and accepts no responsibility for materials or workmanship or any transportation charges labor costs or other related expenses for any work performed by third parties in the repair or replacement of defective Products without Rauschert's prior written notice and consent.

d. THE FOREGOING SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF CUSTOMER AND THE EXCLUSIVE LIABILITY OF RAUSCHERT INDUSTRIES. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED. ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION ARE SPECIFICALLY EXCLUDED AND DISCLAIMED AND SHALL NOT APPLY UNDER ANY CIRCUMSTANCES. THE SALE OF RAUSCHERT INDUSTRIES PRODUCTS UNDER ANY

OTHER WARRANTY OR GUARANTY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IS NOT AUTHORIZED.

e. Except as set forth in the Limited Warranty in Paragraph (a) above and except for specifications regarding certain capabilities (e.g., heat tolerance) of the Products, Rauschert Industries does not warrant or provide engineering advice as to the fitness and purpose of any Product for Customer's application of use, and Rauschert Industries is not responsible for determining the applicability of any Product for use, regardless of any presale statements made by Customer as to the anticipated use of any Product. It is Customer's responsibility to rely solely on its own engineers or retained consultants in determining whether any Product purchased from Rauschert Industries meets requirement of any and all federal, state, or local rules, regulations, or standards, or Customer's specific need, use and applicability.

f. No employee, agent or representative of Rauschert Industries has authority to make modifications or additions to this Limited Warranty in any respect, except pursuant to a written agreement signed by a duly-authorized officer of Rauschert Industries.

g. In seeking coverage under this Limited Warranty, Customer shall first obtain from an authorized Rauschert Industries warranty personnel a return authorization number for any such claim under this Limited Warranty and the specific location for returning any such Product prior to returning any Product to Rauschert Industries for inspection. Thereafter, in returning any Product to Rauschert Industries for inspection under this Limited Warranty, the Customer shall provide with the returned Product a complete written explanation of claimed failure to conform to the applicable specifications or drawings, the circumstances of the alleged failure, and the use of the Product when the alleged failure occurred.

h. No parent company, subsidiary, or affiliate of Rauschert Industries shall have any liability to Customer whatsoever under the limited warranty set forth herein or otherwise.

13. DISCLAIMER; LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES, WHETHER ALLEGED AS A RESULT OF BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY, WILL RAUSCHERT INDUSTRIES BE RESPONSIBLE TO CUSTOMER, OR TO ANY THIRD PARTY, FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, PRODUCTS, FACILITIES, OR SERVICES, DOWNTIME COSTS, CLAIMS OF ANY CUSTOMERS OF CUSTOMER, LOSS OF USE OF PROPERTY OR DAMAGES FOR PERSONAL INJURY, REGARDLESS OF FAULT OR CAUSE, AND NO CLAIMS FOR ANY SUCH DAMAGES SHALL BE BROUGHT BY THE CUSTOMER. IN NO EVENT SHALL RAUSCHERT INDUSTRIES BE LIABLE TO CUSTOMER FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCT(S) FOR WHICH A CLAIM IS MADE. CUSTOMER SHALL NOT BACK CHARGE, COUNTERCLAIM OR SET-OFF ITS CLAIMS AGAINST PAYMENTS DUE ON ITS ORDERS. APPLICABLE LAW IN SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

14. INTELLECTUAL PROPERTY RIGHTS.

a. Neither party shall have any liability with respect to the other party's infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights, except as provided in this paragraph. Each party shall defend and indemnify the other against allegations of infringement of United States patents, United States Registered trademarks, copyrights, trade dress and trade secrets (hereunder "Intellectual Property Rights") to the extent arising from the sale or manufacture of products by the Indemnifying Party. Each party shall defend and indemnify the other, including but not limited to retaining legal counsel at its expense and satisfying any settlement or damage awarded, in regards to an action, arbitration or legal proceeding instituted against the other party by a third party for an infringement of Intellectual Property Rights asserted by a third party, to the extent based on alleged infringement by Products designed or manufactured by the Indemnifying Party.

b. Notwithstanding the foregoing, Rauschert Industries shall have no liability, obligation to defend Customer, or obligation to indemnify Customer for: claims of infringement of Intellectual Property Rights based upon information provided by Customer; claims related to Products delivered hereunder for which the designs or specifications are provided or specified in whole or part by Customer; claims of infringement resulting from the modification, combination or use in a system of any item sold hereunder; or claims of infringement of Intellectual Property Rights based on products manufactured by any entity or person other than Rauschert Industries (although sold by Rauschert Industries). Moreover, in the event any Product to be furnished under this agreement is to be made in accordance with drawings, samples, or manufacturing specifications designed or provided by Customer, Customer agrees to indemnify and hold Rauschert Industries harmless from any and all damages, costs and expenses arising from an claim that such Product manufactured by Rauschert Industries at the direction and design of Customer, in whole or part, or the use thereof, infringes any Patent rights, foreign or domestic, and Customer agrees at its own expense to undertake the defense of any suit against Rauschert Industries or reimburse Rauschert Industries for its costs of defense, in Rauschert Industries' discretion, brought upon such claim or claims, in addition to any other obligations of Customer as set forth herein.

15. PROPRIETARY INFORMATION. All work product or other party (including, without limitation, quotations, product specifications, product development processes, and manufacturing processes) shall be considered the proprietary information of such party ("Proprietary Information"). The parties will not disclose to any third party, or use in any manner except to perform their obligations under this Agreement, any Proprietary Information of the other party, without first obtaining the written consent of the other party, to be given in its sole discretion. Each party shall, with respect to the other's Proprietary Information: (i) safeguard and protect such Proprietary Information from disclosure to third parties by the exercise of the same degree of care as it employs with respect to preserving and safeguarding its own information; and (ii) not reproduce such Proprietary Information, in whole or in part, without identifying such whole or partial reproduction on its face as being Proprietary Information of the other party. Either party may disclose Proprietary Information to the extent required by law, in which event it will first provide the other party with timely written notice of its intended disclosure (if such is permitted under applicable law) and shall give the other party the opportunity to challenge the need to disclose and/or limit the scope of disclosed information. Each party acknowledges and agrees that a violation of this paragraph would result in irreparable harm and damage to the other party not adequately compensable by money damages, and agrees that in the event of such violation that the injured party may, in its absolute discretion, seek injunctive relief including an ex parte temporary restraining order in order to avoid such irreparable harm. In seeking temporary or permanent injunctive relief, the injured party shall not be required to prove actual damages or post a bond other security. Nothing in this paragraph shall be construed as preventing any claim for monetary damages which may be brought for breach of this Agreement.

16. TOOLING FEES. A tooling fee may be applicable to cover partial tooling costs for new and revised parts. This will be a one-time service charge covering a portion of the preparatory operations necessary to manufacture Customer's products, but does not constitute payment for any resulting dies or special tools, which shall remain the property of Rauschert. There will be no charges for tooling maintenance unless specifically stated on the quotation. All tooling will remain the sole property of Rauschert Industries.

17. CONDITIONS; FORCE MAJEURE. All orders or contracts are accepted with the understanding that they are subject to Rauschert's ability to obtain the necessary raw materials, and all orders or contracts as well as shipments and government regulations, orders, directives, and restrictions that may be in effect from time to time. Rauschert shall not be liable for any delay or failure to deliver Products to the extent caused by any force majeure event, act of God, labor stoppage, or similar event beyond Rauschert's control.

18. RELATIONSHIP OF PARTIES. Rauschert Industries and Customer are independently contracting parties. Nothing in this agreement shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.

19. ASSIGNMENT. Customer may not assign any right or duty arising under this Agreement or any Purchase Order, in whole or in part, without Rauschert Industries' prior written consent.

20. NO WAIVER OF RIGHTS. Any waiver by either party of any breach of any provision or term contained in these Terms and Conditions shall not be construed as a waiver of any continuing or succeeding breach of such provision, or a waiver of any other provision hereof.

21. SEVERABILITY. If any provision hereof shall be declared unenforceable, invalid or void for any reason, such provision shall be automatically voided and shall not be part of these Terms and Conditions, and the enforceability or validity of the remaining provisions shall not be affected thereby.

22. INDEMNIFICATION. In addition to its other indemnification obligations set forth herein, Customer agrees to indemnify, defend and hold Rauschert Industries (together with its parent companies, subsidiaries, affiliates, shareholders, officers, directors and successors-in-interest) harmless from and against any losses, costs, expenses (including, without limitation, attorney's fees and expenses, paralegal fees, expert witness fees, and other costs of litigation), demands, claims, liabilities, causes of action or damages of any kind or character, arising out of or in any manner relating to: (a) any misuse, alteration, modification or misapplication of any Product(s) or use of any Product(s) other than in accordance with Rauschert Industries' specifications, data sheets or recommendations; (b) any violation of any federal, state or local laws, rules or regulations; or (c) any breach of any of the Terms and Conditions set forth herein or other default under the terms of any Master Purchasing Agreement or Purchase Order with Rauschert Industries; or (d) any error, permission, or negligence in connection with any custom Product specifications provided by Customer.

23. COMPLIANCE WITH LAW. Customer agrees that it is solely responsible for compliance with all applicable federal, state and local laws, ordinances, regulations, rules and standards relating to the installation, maintenance and use of the Products purchased from Rauschert Industries.

24. LIMITATION OF ACTIONS. In addition to all other Terms and Conditions that govern this purchase of a Product, Customer hereby acknowledges and agrees that any legal action, claim or demand arising out of the sale of any Product or in any way related to the Customer's purchase of any Rauschert Industries Product shall be barred if not filed within one (1) year from the date of the accrual of the Customer's cause of action. This limitation shall not preclude any action by Rauschert Industries for recovery of any amount due for the purchase of any Product by the Customer.

25. GOVERNING LAW. The foregoing Terms and Conditions, and any agreed-upon amendment thereto, shall be governed in all respects by the internal laws of the State of Tennessee, U.S.A. Any legal action in connection with the Agreement between Rauschert Industries and the Customer and/or any Product sold to Customer shall be filed in a court of competent jurisdiction in Knox or Monroe County, Tennessee, U.S.A., or in the United States District Court for the Eastern District of Tennessee in Knoxville, Tennessee, U.S.A.

26. COSTS AND EXPENSES; ATTORNEY'S FEES. In the event of any action or proceeding concerning the enforcement, interpretation or construction of these Terms and Conditions, any Purchase Order, or any Master Purchasing Agreement between the parties, the prevailing party shall be entitled to recover any and all costs and expenses incurred in connection therewith, including, without limitation, attorney's fees and expenses, paralegal fees, expert witness fees, court costs and other costs of litigation.