

PENN MACHINE COMPANY LLC TERMS AND CONDITIONS OF SALE

1. **APPLICABILITY.** These Terms and Conditions of Sale (“Terms”) are the only terms and conditions which govern the sale of the goods (the “Goods”) by Penn Machine Company LLC (“Seller”) to buyer (“Buyer”) and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms.
2. **ACCEPTANCE.** Acceptance is expressly limited to these Terms. These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by mutual written agreement. Should these Terms differ in any way from the terms of Buyer’s purchase order, these Terms shall be construed as a counteroffer. Any proposal for additional or different terms or any attempt by Buyer to vary these Terms is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to these Terms. The earlier of Seller’s commencement of performance or Buyer’s receipt of any of the Goods shall constitute acceptance of these Terms. If a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail over inconsistent terms herein. Seller has the right to allocate Goods as it sees fit.
3. **LIMITED WARRANTIES.** Seller warrants the Goods in accordance with its written limited warranty in effect from time to time. **THESE ARE SELLER’S ONLY WARRANTIES. SELLER MAKES NO OTHER EXPRESS WARRANTIES AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.** If Buyer notifies Seller in writing during the warranty period that the Goods are not in conformity with the warranty, and if Seller determines that the Goods are non-conforming, Seller will repair or replace or refund the purchase price therefor, at its sole option, F.O.B. Seller’s facility, provided Buyer returns such Goods to Seller’s facility, freight prepaid. This shall be Buyer’s exclusive remedy for Seller’s liability. Any claims not made during the warranty period are deemed waived by Buyer. Seller’s warranty does not attach to Goods or parts not manufactured by Seller. Seller will pass on to Buyer the warranty, if any, it receives from the manufacturer of such Goods or part, but only to the extent allowed by such manufacturer. Seller’s aggregate liability to Buyer or anyone claiming through or on behalf of Buyer, with respect to any claim or Loss arising out of or relating to any Goods or alleged to have resulted from any act or omission of Seller, whether negligent or otherwise, and whether in tort, contract, or otherwise, shall be limited to an amount not to exceed the price received by Seller for the Goods with respect to which such liability is claimed. Any contract created between the Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer, and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract. **UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES OR EXPENSES, INCLUDING WITHOUT LIMITATION, FOR INJURIES TO PERSONS OR DAMAGE TO PROPERTY, LOSS OF PROFIT, REVENUES OR USE, DIMINUTION IN VALUE, COST OF SUBSTITUTE PRODUCTS, DOWNTIME COSTS, OR CLAIMS OF BUYER’S CUSTOMERS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. NO LEGAL PROCEEDING SHALL BE BROUGHT BY BUYER FOR ANY BREACH OF THESE TERMS MORE THAN ONE YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION THEREFOR.** Upon the occurrence of any event described in Section 12(e)(i)-(vi) without the prior written consent of Seller, this warranty shall be void.
4. **TAXES.** All taxes or duties imposed by any Federal, State, foreign, or local authority which Seller may be required to pay or collect, relating to the sale, purchase, transportation, delivery, storage, use or consumption of goods or services, except net income and equity franchise taxes, shall be for the account of Buyer.
5. **TITLE AND RISK OF LOSS.** Title and risk of loss to the Goods shall pass to Buyer at the delivery point specified by Seller. If delivery is made by Seller’s trucks, risk of loss shall pass to Buyer upon delivery at the destination specified, and any charges at destination for spotting, switching, handling, storage, and other accessorial services, and demurrage, shall be for Buyer’s account. If delivery is made by common carrier, claims for loss or damage in transit must be made by Buyer to the carrier. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays, loss or damage in transit.
6. **INSPECTION.** Buyer shall inspect the Goods upon arrival, and within fifteen days, Buyer shall notify Seller in writing of any claims that the Goods do not conform to Seller’s warranty for such Goods. Failure to give such written notice during such period will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer of all Goods. No Goods shall be returned to Seller without its written consent. Seller will instruct Buyer as to disposition of rejected Goods.
7. **PRICES AND DELIVERY.** Prices quoted are net F.O.B. origin. Delivery dates are estimates only and are based upon Seller’s prompt receipt of all necessary information, including but not limited to final engineering and manufacturing information and Tooling or equipment. The quotation is based upon freight charges now in effect. Buyer will be invoiced at the freight charge prevailing at the date of shipment.
8. **TERMS OF PAYMENT.** All payments are due net 30 days from date of invoice. No discounts shall be taken unless specifically allowed in writing by Seller. All amounts due Seller from Buyer shall be paid without abatement, deduction, or setoff. The date of payment of an invoice shall be the date the payment is received by Seller at the location designated on the invoice. Invoices not paid when due are subject to a late payment service charge of the lesser of 1.5% per month or the highest rate permitted by law, calculated daily and compounded monthly. If Buyer fails to make any payment when due, Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys’ fees and costs. If, in Seller’s judgment, the financial condition of Buyer does not justify continuance on the terms of payment above, Seller may require full or partial payment in advance or otherwise adjust the Terms including ceasing to supply Buyer.
9. **MATERIAL FURNISHED BY BUYER.** All material furnished by Buyer must be shipped prepaid to Seller’s plant and must be suitable metallurgically and dimensionally for the Goods to be manufactured by Seller. If Seller discovers defects in the material furnished by Buyer, Seller will notify Buyer and charge for all expenses incurred up to discovery of the defect. Should Seller spoil any material furnished by Buyer, Seller will assume only the loss of Seller’s work and replacement of the material is for Buyer’s account. Seller assumes no liability for loss of Buyer’s material by fire, storm, flood or any other causes beyond Seller’s control.
10. **TOOLING.** Any tools, jigs, dies, patterns, etc. (collectively, “Tooling”), which Seller owns, makes or acquires for the production of the Goods shall be and remain Seller’s property, notwithstanding any charge Seller may have made therefor. In no event shall Buyer have any interest in any Tooling which is utilized in the production of the Goods, or which has been converted or adapted by Seller for such use, notwithstanding any charge for any such utilization, conversion or adaptation. Seller shall not be responsible for the correctness of designs or details prepared by Buyer or its agents.
11. **CANCELLATION OR ALTERATION.** Once production or tooling has commenced, Buyer cannot alter or cancel any order without Seller’s written consent. For any order altered or canceled with Seller’s consent, Buyer must pay for all expenses incurred and work executed up to the time Seller has consented to such alteration or cancellation. Any order delayed or deferred by Buyer will be subject to price escalation for costs of storage, increased costs of production, and any other expenses caused by delay. Material on such orders will be stored at Buyer’s risk. Seller reserves the right to invoice for work done on any delayed or deferred order.
12. **INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys’ fees) (collectively, “Losses”), arising out of or relating to: (a) specifications, design, structure, operation, material or method of making Goods provided by or on behalf of Buyer (“Buyer’s Specifications”) including, without limitation any resulting violation of intellectual property or proprietary rights; (b) Buyer’s use, misuse and/or disposal of Goods or materials; (c) Buyer’s non-compliance with any applicable law or regulation (collectively, “Law”); (d) breach of these Terms by Buyer; and (e) Goods subjected to: (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 Goods; (v) repairs or modifications made to all or part of the Goods without the prior written consent of Seller; or (vi) a use or application other than or varying in any degree from the specifications and/or Seller’s instructions.
13. **CONFIDENTIALITY.** All non-public, confidential or proprietary information of Seller is confidential, solely for the use in performing hereunder and may not be disclosed, used or copied unless authorized in advance by Seller in writing.
14. **WAIVER.** All waivers by Seller shall be in writing. Failure of Seller at any time to require Buyer’s performance of any obligation hereunder shall not affect Seller’s right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.
15. **FORCE MAJEURE.** Seller shall not be liable for any delay in delivery or failure to deliver due to fire, explosion, strike or other difference with workmen, shortage of utility, facility, material or labor, delay in transportation, breakdown or accident, compliance with or other action taken to carry out the intent or purpose of any Law, or any cause beyond Seller’s reasonable control. In the event of shortage, Seller shall have the right to apportion its production among its customers in such manner as it may consider in its sole discretion to be equitable.
16. **MISCELLANEOUS.** Buyer shall not assign any of its rights or obligations hereunder without Seller’s prior written consent. Buyer shall comply with all applicable Laws. There are no third-party beneficiaries. Provisions which by their nature should survive will remain in force after any termination or expiration. Section headings are included solely for the convenience of the parties. In the event that any provision herein shall be found to be void or unenforceable, this shall not be construed to render any other provision void or unenforceable, and all other provisions shall remain in full force and effect. These Terms shall be construed in accordance with the laws of the State of Pennsylvania without regard to any rules on conflicts of laws.