



InterMetro Industries Corporation
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METRO TERMS AND CONDITIONS

Standard Terms and Conditions of Sale

These Terms and Conditions, the attendant quotation or acknowledgment, and all documents incorporated by specific reference therein will be the complete and exclusive statement of the terms of the agreement governing the sale of goods ("Goods" or "Products") by InterMetro Industries Corporation and its divisions ("Seller") to Customer ("Customer"). Customer's acceptance of the Goods will manifest Customer's assent to these terms and conditions. If these terms and conditions differ in any way from the terms and conditions of Customer's order, or other documentation, this document will be construed as a counteroffer and will not be deemed an acceptance of Customer's terms and conditions which conflict herewith (unless specifically agreed to otherwise by Seller with specific reference to the intent to amend these terms and conditions on a one-off basis), and to the extent there is any conflict between the terms and conditions herein and any purchase order or other document from the Customer, the terms and conditions herein shall govern and prevail.

1. Prices:

Unless otherwise specified in writing by Seller, Seller's price for the Goods shall remain in effect for thirty (30) days after the date of Seller's quotation or acknowledgment of Customer's order for the Goods, whichever occurs first, provided an unconditional, complete authorization for the immediate shipment of the Goods is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods to Seller's price for the Goods at the time of shipment.

2. Taxes:

Any tax or governmental charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, selling or delivering the Goods or of procuring material used therein, and any tax, tariff or other governmental charge now, or in the future, in effect or increase in same payable by the Seller because of the manufacture, sale or delivery of the Goods, may at Seller's option, be added to the price. Customer shall be solely responsible for providing Seller with a valid sales tax exemption certificate at the time of the Customer's submission of a purchase order. The Customer shall be liable for all taxes assessed and/or due based upon the Customer's failure to properly and timely notify Seller of the applicable tax exemption for each purchase order. For Customer assistance, see:

<https://app.certexpress.com/?c=7552454d6f3537564f6a36576576634631665569:d6980a819ceb4bd537428813569c9d9d>

3. Terms and Payment:

Subject to the approval of Seller's Credit Department, terms are 1% ten (10) days net thirty (30) days from date of Seller's invoice in the currency as directed by the Seller in its quotation or invoice. Payment shall be made in full without set-off, counterclaim or withholding of any kind. Freight, handling and other service charges/fees are not subject to discount. If any payment owed to Seller is not paid when due, it shall bear interest at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller shall have the right, among other remedies, either to terminate the agreement or to suspend further performance under this and/or other agreements with Customer. Customer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts.

Forms of payment accepted by InterMetro include: Cash, Check, Wire Transfer, Automated Clearing House Network, and Credit Card. Credit Card payments will be subject to a 3% fee.

Minimum Order, Returns, Cancellations, Changes, Configured Products and Exceptions:

Orders under \$300.00 net at invoice, will be charged a handling fee of \$39.00 plus actual freight costs. (All amounts in the currency as directed by the Seller in its quotation or acknowledgment.)

Written approval is required from the Seller's factory to return merchandise. All merchandise must be returned within forty-five (45) days from the invoice date and be returned in original, unopened, and resalable packaging. A Return Merchandise Authorization (RMA) must be obtained through Seller's customer service department prior to returning the product. All costs of returned items, including shipping and insurance shall be the responsibility of the Customer.

1. Minimum return value - \$200.00 net.
2. Restocking fee - 15% (\$50.00 minimum).

Exceptions – The following items are not returnable: Custom products, made-to-order products, designer color products, cut posts, cart covers non-stock heated cabinets, Starsys® cabinets, and Basix®, CaseVue®, Flexline®, Lifeline®, Lionville®, MetroTrux®, & Starsys® carts. Accessories that are not factory installed on these carts and cabinets are returnable at the sole discretion of Seller.

All order change requests must be requested through Seller's customer service. Changes/cancellations, for exception items listed above, requested within seven (7) workdays of the scheduled ship date that will impact order production will incur, at minimum, a 20% Change/Cancellation Fee, up to the full order value, depending on the percentage of the order completed. Customer service will relay the percentage of order completed along with the Change/Cancellation Fee amount. Prior to Seller accepting the change, a revised purchase order (including associated Fee) is required. Orders for Heated Holding & Transport cabinets with an "A" suffix are non-cancellable.

Customer may request changes or additions to the Goods consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price and delivery schedule.

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

4. Shipment and Delivery:

Shipments are made FOB Seller's shipping point. Seller reserves the right to split orders based on the FOB Shipping Point. Order consolidation is available for an additional charge. Customer should contact customer service for more information. Any claims for shortages or damages suffered in transit shall be submitted by the Customer directly to the carrier. While Seller will use all reasonable commercial efforts to maintain the delivery date acknowledged or quoted by Seller, all shipping dates are approximate. Seller reserves the right to make partial shipments and to segregate "specials" and made-to-order Goods from normal stock Goods. Seller shall not be bound to tender delivery of any Goods for which Customer has not provided shipping instructions.

5. Limited Warranty:

(a) Subject to the limitations of Section 6, and except as otherwise specifically agreed upon in writing by the Seller, the Seller warrants that the Goods will be free from defects in material and workmanship under normal use, service and maintenance for a period of one (1) year (unless otherwise specified by Seller in writing) from the date of shipment of the Goods by Seller. THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER WITH RESPECT TO THE GOODS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR CUSTOMER'S USE OR PURPOSE.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, unauthorized modification or alteration, use beyond rated capacity, or improper installation, maintenance or application. To the extent that Customer or its agents has supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Customer, the warranties or other provisions contained herein which are affected by such conditions shall be null and void.

If, within thirty (30) days after Customer's discovery of any warranty defects within the warranty period, Customer notifies Seller thereof in writing, Seller shall, at its option, repair or replace F.O.B. Seller's shipping point, or refund the purchase price for that portion of the Goods found by Seller to be defective.

Failure by Customer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Customer's claim for such defects. Goods repaired or replaced during the warranty period shall be covered by the foregoing warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. Customer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components. Customer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

(b) All batteries sold by Seller to Customer hereunder receive the Goods warranty under Sections 5 and 6 with a warranty period of one year from the warranty start date. Battery adjustments will be prorated over a one (1) year period.

(c) Seller has no obligation under the warranties provided in Sections 5 and 6 to correct any software programming error(s) that do not significantly adversely affect the use of the Goods; however, such programming error corrections shall be made available from time to time to those Customers purchasing applicable contract maintenance services from the Seller.

(d) SECTIONS 5 AND 6 APPLY TO ANY ENTITY OR PERSON WHO MAY BUY, ACQUIRE OR USE SELLER'S GOODS, INCLUDING ANY ENTITY OR PERSON WHICH BUYS THE GOODS FROM SELLER'S DISTRIBUTOR, AND SUCH ENTITY OR PERSON SHALL BE BOUND BY THE LIMITATIONS THEREIN.

6. Limitation of Remedy and Liability:

THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 11) SHALL BE LIMITED TO REPAIR, REPLACEMENT OR REFUND OF THE PURCHASE PRICE OF THE AFFECTED GOODS. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE, AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO CUSTOMER AND/ OR ITS CUSTOMERS EXCEED THE PRICE PAID BY THE CUSTOMER FOR THE SPECIFIC GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. CUSTOMER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO CUSTOMER AND/OR ITS CUSTOMERS EXTEND TO OR INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE, COST OF CAPITAL AND DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT.

It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained; all such advice being given and accepted at Customer's risk.

7. Excuse of Performance:

Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Customer; war, riot, fire, flood, power surges, other severe weather, sabotage, pandemics or epidemics; strikes or labor disturbances; governmental requests, restrictions, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances or any events or causes beyond Seller's reasonable control. Deliveries may be suspended for an appropriate period of time as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods is hindered, limited or made impracticable due to causes addressed in this Section 7, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or such materials) among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom. Deliveries suspended or not made by reason of this Section 7 may be canceled by Seller upon notice to Customer without liability, but the balance of the agreement shall otherwise remain unaffected.

8. Software:

Notwithstanding any other provision herein to the contrary, Seller or applicable third-party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, the Customer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Customer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to and used by Customer only after execution of Seller's (or the licensor's) applicable standard license agreement.

9. Tooling:

Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Customer title, ownership interests in, or rights to possession or removal, nor prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Customer in writing with reference to this provision.

10. Assignment:

Customer shall not assign its rights or delegate its duties hereunder or any interest therein or any rights hereunder without the prior written consent of the Seller, and any such assignment, without such consent, shall be void.

11. Patents and Copyrights:

Subject to Section 6, Seller warrants that the Goods sold, except as are made specifically for Customer according to Customer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of delivery. This warranty is given upon the condition that Customer promptly notify Seller of any claim or suit involving Customer in which such infringement is alleged, and that Customer cooperate fully with Seller and permit Seller to control completely the defense or compromise of any such allegation of infringement. Seller's warranty as to use only applies to infringements arising solely out of the inherent operation (1) of such Goods, or (2) of any combination of Goods in a system designed by Seller. In the event such Goods, singularly or in combination, are held to infringe a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or in the case of a compromise by Seller, Seller shall have the right at its option and expense to: (i) procure for Customer the right to continue using such Goods; or (ii) replace them with non-infringing Goods; or (iii) modify same to become non-infringing; or (iv) grant Customer a credit for the depreciated value of such Goods and accept return of them.

All information (including but not limited to pricing, descriptions, specifications and drawings) provided by Seller in email, literature, website, quotations, order acknowledgements or other is proprietary in nature and deemed CONFIDENTIAL intended for use solely by the designated party.

The Seller's name, logo, designs, drawings, trademarks and other intellectual property remains the property of Seller and may not be disclosed, reproduced, or used without its prior written consent.

12. 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, unless specifically agreed to otherwise by Seller with specific reference to the intent to amend these terms and conditions on a one-off basis. No change, modification, rescission, discharge, abandonment or waiver of these terms and conditions shall be binding upon the 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, 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 or additional terms shall be applicable to this agreement 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. Any such modifications or additional terms are specifically rejected by Seller. No waiver by either party with respect to any breach or default or of any right or remedy, and 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.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania. Customer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in the Court of Common Pleas of Luzerne County, Pennsylvania or the United States District Court for the Middle District of Pennsylvania, and the parties agree to submit to such exclusive jurisdiction. No action, regardless of form, arising out of transactions relating to this agreement or underlying agreement, may be brought by either party more than two (2) years after the cause of action has accrued. The United Nations Convention for the International Sales of Goods shall not apply to this agreement.

Customer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Customer are established or from which items may be supplied, and the requirements of any licenses, authorizations, general licenses or license exceptions relating thereto will apply to its receipt and use of hardware, software, services and technology. Customer agrees furthermore that it shall not engage in any activity that would expose Seller or any of its affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Customer agrees to comply with all appropriate legal, ethical and compliance requirements. To the extent applicable, and except to the extent otherwise required by applicable law, Seller shall have no responsibility for the collection, treatment, recovery or disposal of (i) the Goods or any part thereof when they are deemed by law to be 'waste' or (ii) any items for which the Goods or any part thereof are replacements. If Seller is required by applicable law, including waste electrical and electronic equipment legislation, and related legislation in EU Member States, to dispose of 'waste' Goods or any part thereof, Customer shall, unless prohibited by applicable law, pay Seller, in addition to the Contract Price, either (i) Seller's standard charge for disposing of such Goods or (ii) if Seller does not have such a standard charge, Seller's costs (including all handling, transportation and disposal costs and a reasonable mark-up for overhead) incurred in disposing of such Goods. GOODS AND OR SERVICES PROVIDED HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Customer (i) accepts Goods and Services in accordance with the foregoing restriction, (ii) agrees to communicate such warranties terms and conditions, limitations of liability, restrictions and all other terms and conditions contained herein, in writing, to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Seller and Seller's Affiliates from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

All purchases made by Customer from Seller are subject to Seller's Warranty, Remedy and Return Policy.