

## **Panelmatic Terms and Conditions**

**The terms and conditions set forth below shall constitute the expression of all the terms of this agreement as a complete and exclusive statement of the agreement between Panelmatic, Inc. and its subsidiaries (hereafter referred to as SELLER) and the PURCHASER (hereafter referred to as BUYER). The SELLER and the BUYER may hereinafter be referred to singularly as a "Party" or collectively as the "Parties."**

### **TERMS AND CONDITIONS OF SALE**

Unless different or additional terms and conditions are stated or referred to in the SELLER's proposal or final order acknowledgement, in which event such different or additional terms and conditions shall be exclusive as to the particular subject covered, the terms and conditions stated below shall apply. These terms and conditions shall supersede any prior or contemporaneous agreements or correspondence between the parties. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in these terms and conditions. Acceptance or acquiescence in a course of performance rendered under these terms and conditions shall not be relevant to determine the meaning of these terms and conditions even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to approval by SELLER. Any additional or different terms or conditions set forth in the BUYER's order or other communications are objected to and shall not be effective or binding unless assented to by an authorized representative of the SELLER. Any waiver or alteration of terms herein shall not be binding unless in writing and signed by an authorized representative of the SELLER.

### **PRICES**

All product prices are FCA SELLER's plant or point of origination of shipment unless otherwise specified and shall be the prices in effect at the time of shipment. All prices for service shall be at SELLER's prevailing rates at the time service is performed. However, prices are subject to change without notice in the event of: (1) alterations in specifications, quantities, designs, or delivery schedules; and (2) foreign or domestic legislation (including tax legislation) enacted by any level of government which would increase the cost of producing, warehousing or selling the goods purchased hereunder. In addition, prices may be subject to escalation as negotiated at the time of quotation and receipt of order.

All costs for modification or adjustment to the products required to suit unforeseen field conditions or errors or omissions in the information supplied to SELLER, with or without SELLER's aid, shall be assumed and paid by BUYER. In the event of a price change, the effective date of the change will be the date shown on the new price. However, where a price change is made in writing, the effective date may be given as part of the announcement.

### **TAXES**

Any excise, sales, use, GST/HST or similar tax or duty of any nature whatsoever arising out of, or assessed against orders, shall be added to the prices quoted and paid by the BUYER unless BUYER provides SELLER with an exemption certificate or other documents acceptable to taxing or customs authorities at the time an order is submitted. In the event SELLER is required to pay any such taxes or duties, the BUYER shall reimburse SELLER thereon.

### **PAYMENT AND CREDIT TERMS**

Subject to establishment of satisfactory credit, terms are strictly net cash thirty (30) days from date of invoice, payable in U.S. funds. Invoices will be issued as shipments are made. If shipments are delayed by the BUYER, payments shall become due on the date when the SELLER is prepared to make shipment. If the work to be performed hereunder is delayed by the BUYER, payments shall be made based on the purchase price and the percentage of completion. Equipment held for the BUYER shall be at the risk and expense of the BUYER. If payments are not made in accordance with these terms and conditions, a service charge will, without prejudice to the right of SELLER to immediate payment, be added in an amount equal to the lower of 1.5% per month or fraction thereof or the highest legal rate on the unpaid balance. If BUYER fails to fulfill the terms of payment, SELLER may defer further shipments to BUYER at its option. Until the purchase price and all other sums due pursuant hereto are paid in full, SELLER retains a security interest in the materials sold (hereafter sometimes referred to as 'Goods') and in all proceeds of said Goods. BUYER shall execute financing statement(s) on request and authorizes SELLER to execute and file same.

If the financial condition of the BUYER at any time does not, in the judgment of the SELLER, justify continuance of the work to be performed by the SELLER hereunder on the terms of payment agreed upon, the SELLER may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement of its reasonable and proper cancellation charges. In the event of bankruptcy or insolvency of the BUYER or in the event any proceeding is brought against the BUYER, voluntarily or involuntarily, under the

bankruptcy or any insolvency laws, the SELLER shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges. In event of cancellation, SELLER shall be entitled to receive reasonable cancellation charges and shall not in such event be liable for breach or nonperformance of contract in whole or in part. The rights of the SELLER under this paragraph are cumulative and in addition to all rights available to the SELLER at law or in equity.

### **PACKAGING**

All materials are carefully packed/packaged for Domestic shipment and prices stated are based on SELLER's standard packaging. SELLER reserves the right of packaging material in any manner acceptable to commercial carrier. Special customer packaging will be furnished only when specified in writing, and the cost thereof shall be borne by the BUYER.

SELLER will not be responsible for loss, delay or damage made by carriers. However, SELLER will render BUYER all possible assistance in securing satisfactory adjustments of such claims.

### **DELIVERY**

Unless otherwise specified, all products are shipped FCA point of shipment, whereupon delivery to a carrier shall constitute delivery to BUYER per INCOTERMS. Any claim by BUYER for shortage or damage occurring subsequent to such delivery or for nonconformance of Goods must be made within forty-eight (48) hours after receipt of the Goods from carrier in the condition claimed, or such Goods shall be deemed finally inspected, checked, and accepted by BUYER.

Should the BUYER request that SELLER delay shipment, once manufacturing and testing are completed, SELLER will store such equipment, subject to the following conditions:

- a) Upon completion, the BUYER will allow SELLER to issue an invoice for the equipment and process said invoice, within the payment terms of the purchase order, as if the equipment had actually shipped.
- b) BUYER agrees to assume title and ownership of the equipment on the date the invoice is issued.
- c) BUYER agrees to pay SELLER applicable handling and storage fees until time of shipment. If shipment is delayed for more than three months, an additional fee will be assessed for inspection and cleaning of the equipment prior to shipment.

BUYER agrees to accept and sign a Bill & Hold Agreement in a form acceptable to SELLER (which shall, in any event, include provisions a) through c) above)

### **STORAGE CHARGES**

Goods held in the factory or placed in storage beyond the completion/delivery date for the convenience of BUYER will be invoiced monthly. Terms of payment will apply from invoice date. Title and risk of loss shall pass to the BUYER upon invoicing or moving of such Goods to storage. Said Goods will be subject to charges for warehousing, any direct costs of storage, and any other expenses incidental to such delay. BUYER agrees to pay SELLER any direct costs of storage charges plus an additional 10% thereof. Such direct costs may include delivery charges to a storage facility if necessitated.

BUYER agree to accept and sign a Storage Agreement in a form acceptable to SELLER or Provided by SELLER.

### **FORCE MAJEURE**

The SELLER shall not be liable in any way for default or delay in delivery or in performance or failure to manufacture or deliver, due to contingencies beyond its control or the control of its suppliers or sub-contractors. This includes but is not limited to acts of God, acts of the BUYER, acts of civil or military authority, acts of war, priorities, bombings, accidents, fires, strikes or other labor disturbances, floods, droughts, epidemics, riot, inability on account of causes beyond SELLER's reasonable control to obtain necessary labor, materials, components or manufacturing facilities, or any other contingency affecting the SELLER, its suppliers, or sub-contractors. In the event of any such delay, the SELLER shall have the right to cancel a contract of sale or to extend the date of delivery or performance by a minimum period at least equal to the time lost by reason of the delay.

### **SHIPPING AND ROUTING**

SELLER will notify BUYER when the products or any part thereof are ready for shipment. If the contemplated shipment cannot be made for any cause referred to under "Force Majeure" hereof, including the lack of shipping instructions for the BUYER or BUYER appointed independent freight forwarder, SELLER may, unless other agreement is made with the BUYER, store such products or parts in which event the following conditions shall apply:

- a) BUYER shall advise SELLER of shipping instructions within ten days from the date of SELLER notification that the products are ready for shipment.
- b) If SELLER does not receive shipping instructions within such ten-day period, then all expenses incurred by SELLER in connection with the storage of products including demurrage, the cost of preparation for storage, storage charges, taxes, insurance, if placed, and handling charges shall be payable by the BUYER upon submission of invoices and warehouse receipts therefore.

SELLER shall select the point of origin of shipment, the method of transportation, the type of carrier equipment and the routing of the shipment. If the BUYER specifies a special method of transportation, type of carrier equipment, routing or delivery requirement, BUYER shall pay all special freight and handling charges. When freight is included in the price, no allowance will be made in lieu of transportation if the Buyer accepts shipment at factory, warehouse or freight station or otherwise supplies its own transportation.

Except in the event of shipments specifically designated by SELLER as FCA destination shipments, SELLER will not participate in any settlement of claims for concealed or other shipment damage. When shipment has been made on an FCA destination basis, the BUYER must unpack immediately and, if damage is discovered, must:

1. Not move the product from the point of examination.
2. Retain shipping container and packing material.
3. Notify the carrier of any apparent damage in writing on carrier's delivery receipt and request the carrier to make an inspection.
4. Notify SELLER representative within 72 hours of delivery.
5. Send SELLER a copy of the carrier's inspection report.

For the avoidance of doubt, risk of loss or damage to the products shall pass to BUYER at the FCA point.

#### **CANCELLATIONS AND CHANGES**

Orders are not subject to cancellation, additions, changes in specifications, shipping schedules, or any other conditions except with SELLER's written consent and subject to conditions then agreed upon. The BUYER may cancel his order only upon written notice and upon payment to the SELLER of reasonable and proper cancellation charges, which may take into account, without limitation (costs of materials incurred through the date of cancellation, charges for labor for work done through the date of cancellation, overhead and the SELLER's margin on such materials and labor). Without limiting the generality of the foregoing, in the case of cancellations, BUYER shall indemnify SELLER against any liability and expense incurred and commitments made by SELLER in the course of processing and performing such order and shall provide for compensation for the contract value of products or parts completed and ready for shipment, plus an additional payment equal to 10% of the amount of the payment for which SELLER otherwise would have invoiced BUYER with respect to such order. Any orders delayed or rescheduled at the request of the BUYER will be subject to the prices and conditions of sale in effect at the time of the release of the hold or reschedule.

#### **ERRORS**

All clerical errors are subject to correction.

#### **CONFIDENTIALITY**

(a) Both during and after the term of this Agreement, the parties will treat as confidential all information obtained from the disclosing party and all information compiled or generated by the disclosing party under this Agreement for the receiving party, including but not limited to business information, manufacturing information, technical data, drawings, flow charts, program listings, plans and projections. Neither party may disclose or refer to the work to be performed under this Agreement in any manner that identifies the other party without advance written permission. However, SELLER has the right to share confidential information with its affiliates and subcontractors, provided those recipients are subject to the same confidentiality obligations set forth herein.

(b) Nothing in this Agreement requires a party to treat as confidential any information which: (i) is or becomes generally known to the public, without the fault of the receiving party; (ii) is disclosed to the receiving party, without obligation of confidentiality, by a third party having the right to make such disclosure; (iii) was previously known to the receiving party, without obligation of confidentiality, which fact can be demonstrated by means of documents which are in the possession of the receiving party upon the date of this Agreement.

#### **ASSIGNMENT OF CONTRACT**

Any assignment of this contract or any rights hereunder without written consent of the SELLER shall be void. The

provisions of this contract are for the benefit of the parties thereto and not for any other individual or company.

### **LIMITATION OF LIABILITY**

NOTWITHSTANDING ANY PROVISION OF THESE CONDITIONS OF SALE OR ANY OTHER CONTRACT DOCUMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, ITS OFFICERS, DIRECTORS, AFFILIATES OR EMPLOYEES BE LIABLE FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF PRODUCT, LOSS OF REVENUE, PROFITS OR LOSS OF DATA DAMAGES WHETHER SUCH DAMAGES ARISE IN CONTRACT OR TORT, IRRESPECTIVE OF FAULT, NEGLIGENCE OR STRICT LIABILITY OR WHETHER SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION OF THESE CONDITIONS OF SALE OR ANY OTHER CONTRACT DOCUMENT TO THE CONTRARY, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM LIABILITY OF SELLER FOR DAMAGES HEREUNDER SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY THE PURCHASER TO SELLER FOR THE WORK GIVING RISE TO A CLAIM.

### **INDEMNITY**

SELLER and BUYER (each as an "Indemnitor") shall indemnify, hold harmless and defend the other ("Indemnitee") from and against all third party claims alleging bodily injury, death, or damage to a third party's tangible property, but only to the extent caused by the Indemnitor or its subcontractor's negligent acts or omissions. If the injury or damage is caused by the parties' joint or contributory negligence, the loss and/or expenses shall be borne by each party in proportion to its degree of negligence. No part of BUYER'S Site or property of BUYER (or Site Owner) is considered third party property.

Indemnitee shall provide the Indemnitor with prompt written notice of any third party claims covered by this Article. Indemnitor has the unrestricted right to select and hire counsel, and the exclusive right to conduct the legal defense and/or settle the claim on the Indemnitee's behalf. Indemnitee shall not make any admission(s) which might be prejudicial to Indemnitor and shall not enter into a settlement without the express permission of Indemnitor.

### **WARRANTY**

SELLER warrants that the Goods manufactured by it and/or services provided by it will be free from defect in workmanship, material and manufacture; provided, however, that this warranty shall terminate on the date one (1) year from the date of shipment. In the event any service supplied or product sold hereunder manufactured by the SELLER is defective due to workmanship or material, the SELLER agrees for a period of one (1) year from the date of shipment, at its option, to correct such non-conformity or replace such defective part or product. The agreement, however, is upon condition that the BUYER promptly notifies the SELLER in writing of any claim in this respect, setting forth in detail any such claimed defect and that the SELLER be afforded a reasonable opportunity to examine the product and to investigate the claimed defect. This warranty does not obligate the SELLER to bear any transportation charges in connection with the replacement or repair of defective products. Notwithstanding the foregoing, the SELLER shall be, in no event, liable for damages, whether based in contract or negligence, beyond the lower of the cost of correcting the non-conformity as herein provided or the price paid by the BUYER for such defective product and shall not be liable for any incidental or consequential damage whatsoever.

SELLER's warranty does not apply to any product which has been subjected to misuse, mishandling, misapplication, abuse neglect (including but not limited to improper maintenance), accident, improper installation or storage, modification (including but not limited to use of unauthorized parts or attachments), or adjustment or repair performed by anyone other than SELLER or one of SELLER's authorized agents. This warranty does not cover reimbursement for labor, gaining access, removal, installation, temporary power, or any other expenses, which may be incurred in connection with repair or replacement.

Goods which may be sold by SELLER but which are not manufactured by SELLER are not warranted by SELLER, but are sold only with the warranties, if any, of the manufacturers thereof. SELLER does not warrant any products or services of others that BUYER has designated. The liability of the SELLER shall not exceed any adjustments with respect to which such manufacturer accepts responsibility. No affirmation, modification, or addition to this agreement with respect to warranty of the SELLER, either before or after contract of sale, shall be made except in writing by an authorized representative of the SELLER.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE NOT EXPRESSLY SET FORTH HEREIN. BY ACCEPTANCE HEREOF, THE BUYER AGREES THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES BY THE SELLER OR BY ANY MANUFACTURER AS TO THE FITNESS FOR A PARTICULAR USE, MERCHANTABILITY, CAPACITY, OR EFFICIENCY OF ANY PRODUCT SOLD OTHER THAN EXPRESSLY SET FORTH HEREIN, AND THAT THERE ARE NO ORAL OR IMPLIED ADDITIONAL WARRANTIES MADE IN CONNECTION WITH ANY SALE BASED HEREON.

CORRECTION OF NON-CONFORMITIES IN THE MANNER AND FOR THE PERIOD OF TIME PROVIDED ABOVE SHALL CONSTITUTE SELLER'S SOLE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR FAILURE OF SELLER TO MEET ITS WARRANTY OBLIGATIONS, WHETHER CLAIMS OF THE BUYER ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE.

For the avoidance of doubt, the warranties and remedies set forth herein are conditioned upon (a) proper storage, installation, use and maintenance, and conformance with any applicable recommendations of SELLER and (b) BUYER promptly notifying SELLER of any defects and, if required, promptly making the product available for correction.

#### **NON-SOLICITATION OF EMPLOYEES**

For the term of this Agreement and for the period of six (6) months thereafter, without the prior written consent of SELLER, BUYER shall either directly or indirectly solicit or entice away (or seek or attempt to entice away) from the employment of the SELLER any person employed (or any person who has been so employed in the preceding six (6) months) by SELLER in the provision or receipt of the Services. For the avoidance of doubt, this Clause shall not apply to unsolicited responses by employees to general recruitment advertising.

#### **GOVERNING LAW**

The rights and remedies of the parties hereunder shall be governed by the law of the State of Texas. SELLER certifies that its goods will be produced in compliance with all applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U. S. Department of Labor issued pursuant thereto.

#### **CLAIMS**

Any claim by BUYER with reference to the Goods sold hereunder shall be deemed waived by the BUYER unless submitted in writing to SELLER within ten (10) days from the date BUYER discovered, or by reasonable inspection should have discovered, any claimed breach of the foregoing warranty. Any cause of action for breach of the foregoing warranty shall be brought within one (1) year from the date the alleged breach was discovered or should have been discovered, whichever occurs first. At SELLER's request, BUYER will send, at BUYER's sole expense, any allegedly defective parts to the plant of SELLER which manufactured them or such other place as SELLER may request. Parts, products which are repaired, or replacement parts or products, shall be delivered to BUYER FCA SELLER's plant or such other place as SELLER may designate.

#### **FAILURE TO ENFORCE**

Forbearance or failure of the SELLER to enforce any of these conditions, or to exercise any right accruing from any default of the BUYER, shall not constitute a waiver of SELLER's rights hereunder or, for the avoidance of doubt, affect or impair the SELLER's rights should default continue, or in case of subsequent default of BUYER. Such forbearance or failure shall not be deemed a waiver of the SELLER's rights in case of other or future defaults of the BUYER.

#### **ARBITRATION**

Any disputes or differences concerning the performance, breach, or interpretation of any of the provisions of these terms and conditions, or any agreement between BUYER and SELLER governed hereby, other than for SELLER's Canadian locations, shall be resolved only by binding arbitration to be conducted in accordance with the commercial arbitration rules of the State of Texas and the proceeding will be held in Houston, Harris County, Texas. Any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

#### **GENERAL**

The provisions of these terms and conditions are for the benefit of the parties thereto and not for any other person. No understanding, promise or representation, and no waiver, alteration or modification of any of the provisions hereof, shall be binding upon the SELLER unless assented to in writing by an authorized representative of the SELLER.

The invalidity, in whole or part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph contained herein.