

## **BADGER MAGNETICS, INC. TERMS AND CONDITIONS OF SALE**

1. **Offer, Governing Provisions and Re-orders.** Any order for goods and/or services which is placed with Badger Magnetics, Inc. ("Seller"), regardless of how placed, is subject to these terms and conditions. Any future orders regardless of how placed, will also be subject to these terms and conditions. No modified or other conditions will be recognized by Seller unless specifically agreed to in writing and failure of Seller to object to provisions contained in any purchase order or other communications from buyer shall not be construed as a waiver of these terms and conditions, nor an acceptance by Seller of any such provisions. No order accepted by Seller may be altered or modified by buyer unless agreed to in writing by Seller, and no such order may be cancelled or terminated except upon payment of Seller's loss, damage and expense arising from such cancellation or termination, as set forth in Section 6 hereof. IT IS RECOGNIZED THAT BUYER MAY HAVE FORMS THAT HAVE TERMS AND CONDITIONS PRINTED THEREIN WHICH DIFFER FROM OR ADD TO THE TERMS AND CONDITIONS CONTAINED HEREIN, AND THAT SUCH ORDER FORMS MAY LIMIT ACCEPTANCE OF THE TERMS AND CONDITIONS OF SUCH PURCHASE ORDER FORMS. IN THE INTEREST OF ECONOMY AND CONVENIENCE, IT WILL BE PERMISSIBLE FOR BUYER TO PLACE AN ORDER WITH SELLER ON SUCH PURCHASE ORDER FORM, BUT IT IS EXPRESSLY UNDERSTOOD THAT NONE OF THE TERMS AND CONDITIONS THEREIN SHALL BE DEEMED EFFECTIVE AND THAT IN THE CASE OF SUCH CONFLICT, THE TERMS AND CONDITIONS SET FORTH HEREIN SHALL BE DEEMED EFFECTIVE AND AGREED TO BETWEEN SELLER AND BUYER AND THAT ACCEPTANCE OF SUCH FORMS SHALL NOT BE DEEMED TO BE AN ACCEPTANCE OF THE TERMS AND CONDITIONS OF SUCH FORMS.

2. **Delivery, Claims and Force Majeure.** Unless otherwise specified on the face hereof, delivery of products to a carrier at Seller's plant or other loading point shall constitute delivery to buyer, and regardless of shipping terms or freight payment, all risk of loss or damage in transit shall be borne by buyer. Buyer hereby grants to Seller a security interest in the products delivered until payment in full is made for all quantities ordered and appoints Seller its agent and attorney in fact to take all such action and to execute all such documents and instruments as may be necessary or reasonably requested by Seller to perfect and continue perfected Seller's security interest hereunder.

Claims for shortages, defects or other errors in delivery of products or services must be made in writing to Seller within 30 days after receipt of shipment (or delivery in the case of services) and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by buyer. Claims for loss or damage to goods in transit should be made to the carrier and not to Seller.

Seller shall not be liable for any damage as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including, without limitation, any act of God, act of buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation, or inability to obtain necessary labor, materials or production facilities. Seller's liability for other delays or failure of performance shall be limited to the portion of the contract price attributable to the quantity delayed or not shipped.

3. **Shipment and Storage.** Buyer shall specify in writing the method of shipment preferred and, in the absence of such specification, Seller may ship in any manner it elects. All shipping and delivery dates are approximate.

4. **Prices and Payments.** Any prices quoted are f.o.b., Seller's plant of shipment unless otherwise agreed to in writing. Written quotations shall expire unless accepted by Buyer within 60 days from the date quoted. Prices shown in catalogues or other publications shall not be considered offers and shall require a specific price quotation. All prices are subject to change without notice. Seller reserves the right to require full or partial payment in advance of or upon delivery of any shipment and the right to require additional security or collateral to secure payment. If Buyer fails to pay any invoice when due, Seller may at its option (1) delay further shipments to buyer until such invoice is paid, and/or (2) terminate any or all contracts with buyer. All invoices are due and payable in net cash thirty (30) days from the date of invoice. Any invoice that is not paid during such thirty (30) day period shall bear interest at the rate of one and one-half percent (1½%) per month from the due date or the highest amount allowed by applicable law, whichever is less. Buyer shall be responsible for and shall remit to Seller all costs, expenses and reasonable attorney fees incurred by Seller in obtaining payment of any invoice or portion thereof.

5. **Taxes and Other Charges.** Any sales tax, excise tax, duty custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and buyer shall be paid by buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, buyer shall reimburse Seller therefor.

6. **Cancellations.** No order may be cancelled or altered or delivery deferred by buyer except on terms and conditions acceptable to Seller, as evidenced by Seller's written consent. In the event of such approved cancellation by buyer, Seller shall be entitled to the full contract price, less any expenses saved by reason of such cancellation.

7. **Warranties and Limitations.** Seller warrants that its products and services will be free from defects in material and workmanship.

THE FOREGOING WARRANTIES ARE IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES WHATSOEVER, EITHER IN CONTRACT OR ON ACCOUNT OF NEGLIGENCE, WITH RESPECT TO THE PRODUCTS OR ANY OF SELLER'S

OBLIGATIONS ARISING HEREUNDER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL OR OTHER DAMAGES, EXPENSES, LOSSES OR DELAYS, HOWSOEVER CAUSED, INCLUDING WITHOUT LIMITATION, DAMAGES FROM DECREASE IN INCOME, INCREASE IN COST OF ANY DESCRIPTION OR DECREASE IN PROFITS, OR FROM FAILURE OF ANY PART OF THE PRODUCTS FURNISHED HEREUNDER. ALL LIABILITY OF SELLER ON ACCOUNT OF NEGLIGENCE OR IN TORT IS HEREBY WAIVED BY BUYER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION IN THESE TERMS AND CONDITIONS OF SALE.

Any claim under this warranty section and any obligation of Seller hereunder is conditioned upon Seller receiving written notice from buyer of any alleged defect within ten (10) days after its discovery and, at Seller's option, the return of the allegedly defective Products in the case of products; provided, however, that Seller's warranty shall expire, and Seller shall have no responsibility for claims brought after one (1) year from the date of shipment, or delivery in the case of services. No agent of Seller is authorized to make any warranty in addition to or contrary to the foregoing.

8. **Returns.** Products may not be returned to Seller for any reason after delivery to buyer without written approval of Seller.

9. **Warranty, Liability and Consequential Damages.** Seller's liability with respect to the products and/or services sold hereunder shall be limited to the warranty provided in Section 7 hereof and, with respect to that or other performance of this contract, shall be limited to, at Seller's option, either (i) the amount of the contract price attributable to the part of the performance which is nonconforming, delayed or not made or the contract price, whichever is less, or (ii) replacement or repair of the nonconforming product or service. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. Seller's maximum liability for a claim whatsoever shall be limited to the amount Buyer has paid to Seller for the product or service for which a claim is made.

Buyer shall indemnify Seller against any and all losses, liabilities, damages and expenses (including without limitation, attorneys' fees and other costs of defending any action) which Seller may incur as a result of any claim by buyer or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence.

10. **Prototype.** In the event an order is for creation of a prototype, Seller reserves the right to cease work on the prototype if, in Seller's sole opinion, continued work on the prototype is technically or economically not feasible. In such instance, the sole remedies of the parties shall be that Buyer shall pay for Seller's work up to the point of cessation, and Seller shall provide to Buyer its work product.

11. **Deliveries to Third Parties.** In the event buyer requests Seller to deliver products to third parties, Seller at its discretion may do so, but such delivery shall be subject to these terms and conditions, and Seller shall have no liability which arises in whole or in part as a result of buyer's failure to inspect products due to their direct transmittal to a third party. Seller shall have no liability for costs incurred by buyer with such third parties whatsoever.

12. **Trade Secrets/Confidential Information.** Seller expends considerable resources to develop, acquire and safeguard its Confidential Information. Any Confidential Information that is disclosed to buyer is disclosed in the strictest confidence and buyer shall not disclose any Confidential Information to any person, firm, corporation or other entity. Buyer shall not copy or duplicate any Confidential Information for its own use or benefit. Buyer shall use the same degree of care to avoid disclosure of Confidential Information as it uses with respect to its own highest level confidential information and, in any event, no less than a reasonable degree of care. Confidential Information shall include, but not be limited to, all information, regardless of the form in which it is transmitted or stored, relating to Seller's research, development or business information, products, product specifications and trade secrets, as defined by law.

13. **Tooling.** Seller's tools involve a certain amount of engineering and special techniques that are not for sale. Tool charges are made with the understanding that tool costs are for use of the tools, do not include the cost of the tools, and therefore the tools are to remain Seller's sole property.

14. **Patent Indemnity.** Buyer shall hold Seller harmless against any expense, liability or loss, including attorneys fees and costs, resulting from infringement of patents or trademarks of third parties arising from compliance by Seller with Buyer's design, specifications or instructions.

15. **Construction, Venue, Severability.** This contract shall be governed and construed in all respects by the laws of the State of Wisconsin. The parties hereto agree that the only proper venue for any cause of action arising hereunder shall be in the state courts of the County of Milwaukee, State of Wisconsin and buyer hereby consents to such jurisdiction. In the event that any provision of this contract is declared void or unenforceable by any competent legislative or judicial authority, said declaration shall not affect the enforceability of any other provision of this contract, it being the intent of the parties that this contract shall be severable and applied as if such void or unenforceable provision had not been included herein.