

TERMS AND CONDITIONS OF SALE

1. All orders are subject to approval and acceptance in writing by Magellan Corporation ("MAGELLAN") at Deerfield, Illinois.
 2. Acceptance of orders, whether oral or written, is based on the express condition that Buyer agrees to all of the terms and conditions contained herein. Acceptance of delivery by Buyer or payment of the price of the goods, whichever first occurs, will constitute Buyer's assent to these terms and conditions. These terms and conditions represent the complete agreement of the parties, and no terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein shall be binding upon MAGELLAN unless made in writing and signed and approved by an officer of MAGELLAN. Terms or conditions contained in any of Buyer's purchase orders or any other document issued by Buyer that in any manner purport to alter, amend, modify, change, suspend or add to any terms or conditions stated herein shall be deemed excluded from such Buyer document and waived by Buyer. No modification of any of these terms will be effected by MAGELLAN's shipment of goods following receipt of Buyer's purchase order, shipping request or similar forms containing printed terms and conditions conflicting or inconsistent with the terms herein.
 3. Checks or payments received from or for the account of Buyer shall be applied by MAGELLAN against any amount owing by Buyer with full reservation of all of MAGELLAN's rights and without an accord and satisfaction of Buyer's liability to MAGELLAN, regardless of written legends or notations upon such checks or payments or upon other documents.
 4. All prices are F.O.B. point of warehouse, unless otherwise specified, and are subject to adjustment, without notice, to MAGELLAN's prices in effect at the time of shipment. Magellan may at its sole discretion add a surcharge to the price of goods predicated upon increases in the costs of raw materials or energy. Such surcharges may be adjusted by Magellan periodically to reflect changes in such costs. All transportation and related charges (switching, drayage, demurrage, handling, spotting or storage) shall be paid by Buyer. Any increase in transportation rates or any changes in routing resulting in an increase of transportation costs shall be paid and borne by Buyer unless otherwise specified. MAGELLAN's weights taken at time of shipment shall govern.
 5. MAGELLAN will use all reasonable efforts to comply with Buyer's requests as to method of shipment, but MAGELLAN reserves the right to use an alternative method of transportation or route of shipment if substantial delay might otherwise occur. In such cases, MAGELLAN will notify Buyer of such changes as soon as reasonably possible. Buyer may pick up the goods at MAGELLAN's shipping facility with prior written approval from MAGELLAN. If MAGELLAN has been instructed by Buyer to hold goods prior to shipping, MAGELLAN reserves the right to ship such goods to Buyer (notwithstanding Buyer's instructions) after ninety (90) days following the initial shipping date requested by Buyer.
 6. Terms of payment are net 30 days unless otherwise agreed between the parties, and are effective from the date of invoice. Cash discount, if any is indicated, will apply only on the net amount of invoice after deducting transportation charges and taxes thereon, unless otherwise specified, and will be allowed only if taken within the time stated, and provided there are no past due items. A service charge of the lesser of one and one-half percent (1½%) per month or the maximum charge permitted by law will be added to all past due accounts. If MAGELLAN employs attorneys to enforce the terms of this order or otherwise with respect to any matter related to this order, Buyer agrees to pay to MAGELLAN all of MAGELLAN'S reasonable attorneys' fees and costs paid or incurred by MAGELLAN.
 7. Delivery dates are approximate. MAGELLAN shall not be liable for delays in shipment or default in delivery for any cause beyond MAGELLAN's reasonable control including, but not limited to, government action, acts of terrorism, shortage of labor, raw material, production or transportation facilities, labor difficulty involving employees of MAGELLAN or others, fire, flood or other casualty. In the event of any delay in Magellan's performance due in whole or in part to any cause beyond MAGELLAN's reasonable control, MAGELLAN shall have such additional time for performance as may be reasonably necessary under the circumstances. Acceptance by Buyer of any goods shall constitute a waiver by Buyer of any claim for damages on account of any delay in delivery of such goods. No liquidated damage or penalty provision will be accepted.
 8. All taxes and excises of any nature whatsoever now or hereafter levied by any governmental authority, which taxes and/or excises, MAGELLAN is required to collect or pay with respect to the production, sale or shipment of goods sold to Buyer shall be paid and borne by Buyer. Buyer agrees to pay all such taxes and excises and further agrees to reimburse MAGELLAN for any such payments made by MAGELLAN.
 9. Delivery of goods to carrier shall be deemed delivery to Buyer, and thereupon title to such goods, and risk of loss or damage, shall be Buyer's, upon such delivery. Any claim by Buyer against MAGELLAN for shortage or damage occurring prior to such delivery must be made in writing within seven (7) days after receipt of shipment and accompanied by original transportation bill signed by carrier noting that carrier received goods from MAGELLAN in the condition claimed.
 10. Goods shipped hereunder shall be within the limits and of the sizes distributed by MAGELLAN. Except for Buyer's specifications expressly agreed to in writing by MAGELLAN, all goods shall be produced in accordance with MAGELLAN's standard practices. All goods, including those produced to Buyer's specifications, shall be subject to: tolerance and variations consistent with good mill practice in respect to weight, dimension, straightness, section, composition and mechanical properties; to normal variations in surface, internal conditions, and quantity; to deviations from tolerances and variations consistent with practical inspection and testing methods; and to regular mill practice on over-and-under-shipments.
 11. Buyer may inspect goods at MAGELLAN's warehouse or immediately upon receipt. Failure to make such inspection shall be deemed to be acceptance of the goods. If goods are rejected at Buyer's place of business, freight back expenses will be for the Buyer's account. If Buyer orders and/or MAGELLAN delivers a good designated as a "prototype" or "sample", Buyer shall have the duty and sole responsibility to test such prototypes or samples prior to acceptance and/or incorporation into end-use applications.
- THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE INVOICE, SUBJECT TO STANDARD MANUFACTURING VARIATIONS. THE GOODS SOLD UNDER THIS AGREEMENT ARE PURCHASED BY BUYER "AS IS" AND "WITH ALL FAULTS." ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS, ARE HEREBY DISCLAIMED AND EXCLUDED.
- MAGELLAN shall not be liable to Buyer or any other person or entity for any special, incidental or consequential losses, damages or expenses, directly or indirectly arising from the sale, handling or use of the goods which are the subject of this order, or from any other cause relating thereto, including, without limitation, damages based upon loss of sales or profits, lost good-will, work stoppage, delay, product failure or otherwise and MAGELLAN's liability hereunder in any case is expressly limited to the replacement (in the form originally shipped) of goods not complying with this order, or, at MAGELLAN's election, to the repayment of, or crediting Buyer with, an amount equal to the purchase price of such goods, whether such claims arise from breach of warranty, breach of contract, negligence or otherwise.
- Any claim by Buyer with reference to the goods sold hereunder for any cause shall be deemed waived by Buyer unless submitted to MAGELLAN in writing within thirty (30) days after delivery of the goods to the first destination to which such goods are shipped.
12. MAGELLAN reserves the right to require payment for any shipment hereunder in advance, or satisfactory security for such payment, if the financial responsibility of Buyer becomes unsatisfactory to MAGELLAN in MAGELLAN's sole discretion. If Buyer fails to make payment in accordance with the terms of this agreement, fails to comply with any provision hereof, or if the financial position of Buyer becomes unsatisfactory to MAGELLAN (in its reasonable determination), MAGELLAN may, at its option (and in addition to other remedies) suspend further shipments until such payments are made or at its sole option cancel any unshipped portion of this order. Buyer is to remain liable for all unpaid accounts. If shipments are suspended and MAGELLAN later proceeds with such order, MAGELLAN shall be entitled to such extension of time for performance as is caused by the suspension.
 13. MAGELLAN has taken all appropriate steps with its suppliers to ensure that the goods will be available at the price and quantity set forth in this order. MAGELLAN reserves the right to cancel or modify this order in the event that the supply of these goods is disrupted by U.S. trade sanctions, including enhanced duties, quotas and other restrictions.
 14. This order cannot be terminated, and goods cannot be returned, without MAGELLAN's prior written consent. Orders cannot be modified or canceled, and releases cannot be held up by Buyer, after the goods ordered are in process, except with MAGELLAN's prior written consent and subject to conditions which shall adequately protect MAGELLAN, in its sole judgment, against all loss.
 15. Waiver by MAGELLAN of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time.
 16. Buyer acknowledges and agrees that MAGELLAN retains all right, title and interest in and to all intellectual property rights in the goods and all processes and other practices relating to the manufacture and sale of the goods, including all intellectual property rights therein.
 17. Buyer shall indemnify and hold harmless MAGELLAN, its affiliates and its employees and agents from and against all liabilities, losses, claims, costs and expenses (including reasonable attorney's fees and expenses) related to any claim, investigation, litigation or proceeding (whether or not MAGELLAN is a party) which arises or is alleged to arise from Buyer's acts or omissions under these terms or in any way with respect to Buyer's use, operation or possession of the goods. Without limiting the foregoing, Buyer (at its own expense) shall indemnify and hold harmless MAGELLAN and defend or settle any action brought against MAGELLAN to the extent that it is based on a claim that any good made to Buyer's specifications infringed intellectual property rights of another party.
 18. This order and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Illinois, USA. PURSUANT TO ARTICLE 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (THE "UN CONVENTION"), THE PARTIES AGREE THAT THE UN CONVENTION SHALL NOT APPLY TO THIS ORDER.
 19. BUYER, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, IRREVOCABLY SUBMITS GENERALLY AND UNCONDITIONALLY FOR ITSELF AND IN RESPECT OF ITS PROPERTY TO THE JURISDICTION OF ANY STATE COURT OR ANY UNITED STATES FEDERAL COURT SITTING IN COOK COUNTY, ILLINOIS, USA, OVER ANY DISPUTE ARISING OUT OF OR RELATED TO THIS ORDER AND THE PERFORMANCE THEREOF. BUYER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION THAT BUYER MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. BUYER HEREBY AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUIT, ACTION OR PROCEEDING IN ANY STATE COURT OR ANY UNITED STATES FEDERAL COURT SITTING IN THE STATE OF ILLINOIS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BUYER AT ITS ADDRESS FOR NOTICE SET FORTH IN THIS ORDER, OR AT A SUBSEQUENT ADDRESS OF WHICH MAGELLAN RECEIVED ACTUAL NOTICE FROM BUYER IN ACCORDANCE WITH THE NOTICE SECTION OF THIS ORDER, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED. NOTHING HEREIN SHALL AFFECT THE RIGHT OF MAGELLAN TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR LIMIT THE RIGHT OF MAGELLAN TO BRING PROCEEDINGS AGAINST BUYER IN ANY OTHER COURT OR JURISDICTION.
 20. Buyer agrees to NEVER USE THE GOODS FOR AN APPLICATION INVOLVING SERIOUS RISK TO LIFE OR PROPERTY WITHOUT ENSURING THAT THE SYSTEM AS A WHOLE HAS BEEN DESIGNED TO ADDRESS THE RISKS, AND THAT THE GOODS MAGELLAN PROVIDES ARE PROPERLY INSTALLED FOR THE INTENDED USE WITHIN THE OVERALL EQUIPMENT OR SYSTEM.
 21. This order may not be assigned by Buyer without MAGELLAN's prior written consent. Any assignment attempted without such written consent shall be null and void and shall effect, at MAGELLAN's sole option, a cancellation of all of MAGELLAN's obligations hereunder. MAGELLAN may assign this Agreement to any affiliate of MAGELLAN or any successor of MAGELLAN without the consent of Buyer. All notices, demands, requests, consents, approvals or other communications (any of the foregoing, a "Notice") required, permitted, or desired to be given hereunder shall be in writing sent by telefax or email (with answer back acknowledged) or by registered or certified mail, postage prepaid, return receipt requested, or delivered by hand or reputable overnight courier addressed to the party to be so notified at its address herein set forth, or to such other address as such party may hereafter specify in writing. Any Notice shall be deemed to have been received: (a) three (3) days after the date such Notice is mailed, (b) on the date of sending by telefax or email if sent during business hours on a business day (otherwise on the next business day), (c) on the date of delivery by hand if delivered during business hours on a business day (otherwise on the next business day), and (d) on the next business day if sent by an overnight commercial courier.
 22. This order may be executed in counterparts, all of which together shall constitute one and the same document.