

TERMS AND CONDITIONS**1. MODIFICATIONS OF SALES TERMS**

Any Terms and Conditions contained in any purchase order or other form of communications from Procon's customer which are additional to or different from these Terms and Conditions shall be deemed rejected by Procon Products unless expressly accepted in writing by Procon. In general, no modifications, amendment, waiver, or other change of any of these Terms and Conditions and those contained on the reverse side hereof and/or in attachments hereto ("Terms and Conditions"), or any of Procon's rights or remedies thereunder, shall be binding on Procon unless expressly accepted in writing by Procon's authorized officers at Procon's home office. No course of dealing, usage of trade or course of performance shall be relevant to explain or supplement any of these Terms and Conditions. In cases of conflict between Terms and Conditions printed on this page and those contained on the face side or in attachments hereto, the latter shall control.

2. ACCEPTANCE OF ORDERS

Acceptance by Procon of Buyer's purchase order(s) is expressly conditioned by Buyer's assent to these Terms and Conditions. Buyer will be deemed to have assented to such Terms and Conditions unless Procon receives written notice of any objections within fifteen (15) days after Buyer's receipt of this form and in all events prior to any delivery or other performance by Procon of Buyer's order.

3. QUOTATIONS

Quotations by Procon shall be deemed to be offers by Procon to sell the equipment described therein subject to these Terms and Conditions and acceptance of such offers is expressly limited to acceptance of buyer of all of these Terms and Conditions within thirty (30) days from the date of this quotation. Purchase order submitted by Buyer for the equipment quoted by Procon shall be subjected to and will be deemed to constitute acceptance of these Terms and Conditions. All purchase orders will be subject to approval by Procon at Procon's home office.

4. PRICES; PRICE CHANGES

All prices are net ExWorks shipping point and are subject to change without notice. In the event of a change in Procon's prices, the price for equipment unshipped will be the price in effect on the date of shipment.

If Procon's quoted price was based upon delivery to and acceptance by the Buyer of a specified quantity of equipment, such price shall be subject to adjustment if Buyer does not accept the quantity at the times specified in Procon's quotation, and Buyer will be invoiced at Procon's standard price without quantity discounts, if any, for the quantity of equipment actually accepted by Buyer.

5. TAXES

In addition to any prices, Buyer shall pay the amount of any present or future manufacturer's tax, retailer's occupation tax, use tax, 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 Procon and Buyer. In the event Procon is required to pay any such tax, fee or charge, Buyer shall reimburse Procon therefor; or in lieu of such payment, Buyer shall provide Procon at the time the

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES (EXCEPT TITLE) INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Any description of the equipment whether in writing or made orally by Procon's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, or similar materials used in connection with Buyer's order, are for the sole purpose of identifying the equipment and shall not be construed as an express warranty. Any suggestions by Procon or Procon's agents regarding use, application, or suitability of the equipment shall not be construed as an express warranty unless confirmed to be such in writing by Procon's authorized office at Procon's home office.

11. LIMITATIONS OF LIABILITY CONSEQUENTIAL DAMAGES

Nuclear Use Disclaimer – Equipment sold by Procon is not intended for use in connection with any nuclear facility or activity. If so used, Procon disclaims all liability for nuclear damage, injury, or contamination, and Buyer shall indemnify and hold Procon, its officers, agents, employees, successor, assigns, and customers harmless from and against any and all damage or expense of what ever form or nature (including attorney's fees and other costs of defending any notion) which they or any of them may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, by reason of such use.

Consequential Damage Disclaimer – Procon's liability with respect to equipment proved to its satisfaction to be defective within the warranty period shall be limited to rebuilding, replacement or refund as provided in Section 10 hereof, and in no event shall Procon's liability exceed the purchase price of the equipment involved. Procon shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty tort (including negligence) or other theories of law, with respect to equipment sold or services rendered by Procon, or any undertakings, acts, or omissions relating thereto. Without limiting generality of the foregoing, Procon specifically disclaims and liability for property or personal injury damages, penalties, special punitive damages, damages for lost profits or revenues, loss of use of equipment or any associated equipment, cost of capitol, cost of substitute products, facilities or services, down-time, shut-down, or slow-down costs, or for any other types of economic loss, and for claims of Buyer's customers for any such damages.

PROCON SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.

12. INDEMNIFICATION AND PRODUCT USE

Buyer hereby agrees to indemnify, defend and hold harmless Seller from any and all liabilities, losses, damages, costs and expense (including reasonable attorney's fees) incurred in connection with any injury to persons and damage to property resulting from, or in any way connected to, the possession, sales, resale, transfer or use of the Products. Buyer agrees to comply with all applicable federal or state safety requirements

order is submitted with an exemption certificate or other document acceptable to the authority imposing such tax, fee or charge.

6. TERMS OF PAYMENT

All orders are subject to the approval of Procon at its home office. Terms of payment are cash in full no later than thirty (30) days from date of shipment, without discount. If, during the period of performance of an order, the financial condition of Buyer is determined by Procon not to justify the terms of payment specified, Procon may demand full or partial payment in advance before proceeding with the work, or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option, without prejudice to other lawful remedies, may defer delivery or cancel this contract. If delivery is deferred, the equipment may be stored as provided in Section 9 hereof and Procon may submit a new estimate of cost for completion based upon prevailing conditions. If Buyer defaults in any payment when due, or in the event any voluntary bankruptcy or insolvency proceedings involving Buyer are initiated by or against Buyer, then the whole contract price shall immediately become due and payable upon demand, or Procon, at its option, without prejudice to its other lawful remedies, may defer delivery or cancel this contract.

Prompt payments shall be become due as shipments are made. If shipments are delayed by the Buyer for any cause, payments shall become due from the date on which Procon is prepared to make shipment and storage shall be at the Buyer's risk and expense as provided in Section 9 hereof. If manufacture is delayed by the Buyer, for any cause, a partial payment based upon the proportion of the order completed shall become due from the date on which Procon is notified of the delay.

7. DELIVERY: RISK OF LOSS

All sales are ExWorks Procon's plant or other point of shipment designated by Procon. Shipping dates are estimates only which are not guaranteed and are based upon prompt receipt from Buyer of all necessary shipping and other information. Procon reserves the right to make delivery in installments, all installments to be separately invoiced and paid for by Buyer when due per invoice, without regard to subsequent deliveries.

Delivery of equipment to a commercial carrier at Procon's plant or other loading point shall constitute delivery to Buyer, and any risk of loss and further cost and responsibility thereafter for claims, delivery, loss or damage, including, if applicable, placement and storage, shall be borne by Buyer. When equipment is delivered by Procon's truck, unloading at Buyer's dock shall constitute delivery to Buyer. Claims for shortages or other errors in delivery must be made in writing to Procon within ten (10) days after receipt of shipment 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 equipment in transit by common carrier must be made to the carrier and not to Procon.

8. EXCUSABLE DELAYS FORCE MAJEURE

Procon shall not be liable for any loss or damage as a result of Procon's delay in or failure of delivery or installation due to (i) any cause beyond Procon's reasonable control, (ii) an act of God, act of the Buyer, embargo or other governmental act, authority, regulation or request, fire, theft, accident, strike, slow-down, or other labor

and if Buyer fails to do so Buyer shall indemnify, defend and hold Seller harmless against any and all claims, losses or expenses for injury or damage arising from the use of the Products.

Buyer shall also comply with and require its employees to comply with directions set forth in instructions and manuals and to use reasonable care in the use and maintenance of the Products. Buyer shall not remove or permit anyone to remove any safety devices, guards, warnings or instruction signs on the Products. In the event of personal injury or damage to property or business arising from the use of the Products, the Buyer shall within 48 hours thereafter give Seller written notice of such injury or damage. If Buyer fails to comply with any of these requirements in addition to those stated above, Buyer shall indemnify defend and hold harmless Seller against any claims, loss, or expense for injury or damage arising from the use of Products.

13. INCLUSION OF PROCON'S TERMS AND CONDITIONS

All of Buyer's sales contracts or quotation, acknowledgement or invoice forms relating to equipment sold by Procon shall include appropriate references to the limitations on Procon's warranty and damage obligations as contained in Section 10 and 11 hereof so as to effectively limit Procon's obligations to customers of Buyer to those set forth in these Sections 10 and 11.

14. PATENT INDEMNIFICATION

Procon will, at its own expense, defend or settle any suit that may be instituted against Buyer for alleged infringement by the equipment of any United States patent, provided that (a) such alleged infringements consists of the use of the equipment for any of the purposes for which such equipment was sold, (b) Buyer shall have made all payments for such equipment then due hereunder, (c) Buyer shall give Procon immediate notice in writing of any such suit and transmit to Procon immediately upon receipt all processes and papers served upon Buyer, and (d) Buyer shall permit Procon through its counsel, either in the name of Buyer or in the name of Procon, to defend such suit(s) and give all needed information, assistance, and authority to enable Procon to do so.

In case of a final award of damages in any such suit, Procon will pay award but will not be responsible for any compromises or settlement made without the written consent. In case the equipment itself is in such suit held to infringe any valid patent issued in the United States and its use enjoined, form, in the event of a settlement or compromise approved by Procon which shall preclude future use of the equipment sold to buyer hereunder, Procon shall, at its own expense and at its sole option, either (a) procure rights to continue using such equipment (b) modify the equipment to render it noninfringing (c) replace the equipment with noninfringing equipment or (d) refund the purchase price paid by the Buyer for the equipment after return of the equipment to Procon. Notwithstanding the foregoing, Procon shall not be held responsible for infringements of combination or process patents covering use of equipment in combination with other goods or materials not furnished by Procon.

The foregoing states the entire liability of Procon for patent infringement, and IN NO EVENT SHALL PROCON BE LIABLE FOR CONSEQUENTIAL DAMAGES ATTRIBUTABLE TO AN INFRIGEMENT nor for infringement based on the use of the equipment for a purpose

disturbance, war, riot, delay in transportation, or (iii) inability to obtain necessary labor, materials, components, or facilities.

Should any of the aforementioned events of force majeure occur, Procon, at its option, may cancel Buyer's order with respect to any undelivered equipment or extend the delivery date for a period equal to the time lost because of delay. Notice of such election shall be given promptly to Buyer. In the event Procon elects to cancel the order, Procon shall be released of and from all liability for failure to deliver the equipment, including, but not limited to any and all claims of any nature which Buyer might have.

If shipping or progress of the work is delayed or interrupted by Buyer, directly or indirectly, Buyer shall pay Procon for all additional charges resulting therefrom.

9. STORAGE

If the equipment is not shipped within thirty (30) days after notification has been made to Buyer that it is ready for shipping, for any reason beyond Procon's control, including Buyer's failure to give shipping instructions, Procon may store the equipment at Buyer's risk and expense in a warehouse or upon Procon's premises and Buyer shall pay all handling, transportation, and storage costs at the prevailing commercial rates, promptly following Procon's submission of invoices for such costs.

10. WARRANTIES TO DISTRIBUTORS AND INDUSTRIAL OR COMMERCIAL CUSTOMERS

Warrant Period – Procon warrants new products manufactured by it to be free from defects in materials and workmanship for a period of **twenty-four (24) months from the date of manufacture**. Products rebuilt by Procon are warranted similarly for a period of twelve (12) months from the date of factory rebuilding.

Warranty Remedies – If, prior to expiration of the foregoing warranty period, any product shall be proved to Procon's satisfaction to be defective or nonconforming, Procon will rebuild or replace such defective equipment or components thereof, ExWorks Procon's plant or other destination designated by Procon, or will refund the purchase price paid therefor by Buyer, at Procon's sole option. Buyer's exclusive remedy and Procon's sole obligation under this warranty shall be limited to such rebuilding or replacement ExWorks Procon's plant or other destination designated by Procon, and shall be conditioned upon the defective equipment being returned to Procon.

Exclusions – This warranty does not (i) cover shipping expenses paid to and from Procon's factory or other destination designated by Procon for rebuilding or replacement of defective equipment, nor does it cover the cost of removing defective equipment or reinstalling rebuilt or replaced equipment, (ii) apply and shall be void with respect to equipment operated in excess of rated capacity or otherwise not in accordance with installation, maintenance or operating instructions or requirements, to equipment rebuilt or altered by others than Procon or Procon's authorized service agencies, or to equipment which was subject to negligence, misuse, misapplication, accidental damages by circumstances beyond Procon's control, to improper installation (if by others than Procon) operation, maintenance, or storage, or to other than normal use of service, and (iii) apply to equipment or components not

other than that for which bought from Procon. As to any equipment furnished to by Procon to Buyer manufactured in accordance with designs proposed or furnished by Buyer or any claim of contributory infringement resulting from the use or resale by Buyer of equipment sold hereunder, Buyer shall indemnify Procon against any award made against Procon for any patent, trademark, or copyright infringements.

15. SECURITY AGREEMENT AND FINANCING STATEMENTS

To secure payment of the purchase price and all of the monies which may be due hereunder, and performance of all of Buyer's obligations hereunder, Buyer hereby grants to Procon a security interest in all equipment sold by Procon, and agrees not to pledge, for any reason, any equipment sold by Procon until payment for same has been made, and to execute such other Security Agreements and Financing Statements as Procon may reasonably request.

16. INSURANCE

Until payment in full of the purchase price, Buyer shall maintain insurance covering all equipment sold by Procon to Buyer in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, and shall upon Procon's request, furnish evidence of such insurance satisfactory to Procon.

17. DRAWINGS; OTHER DESIGN DATA

All specifications, drawings, design, data, information, ideas, methods, patterns, and/or inventions made, conceived, developed or acquired by Procon in connection with procuring and/or executing Buyer's order will vest in and inure to Procon's sole benefit not withstanding any charges therefor which may have been or may be imposed by Procon.

Buyer shall not give, loan, exhibit, sell, transfer to any person not then employed by Buyer and authorized to receive such information, or to any organization or entity, and drawing, photograph, or specification furnished by Procon or reproduction thereof which may enable such person, organization, or entity to furnish similar goods or parts therefor.

18. RETURN OF EQUIPMENT

No equipment or part shall be returned to Procon for any purpose other than rebuilding, without written authorization and shipping instructions first having been obtained from Procon.

19. ASSIGNMENT

None of Buyer's rights under any order shall be assigned by the Buyer to any other person, whether by operation of law or otherwise, without Procon's prior written approval.

20. CANCELLATION

No order submitted to Procon may be cancelled by Buyer without prior written consent of Procon, which consent will at all times be conditioned on Buyer's agreement to pay Procon's cancellation charge. For finished equipment which in Procon's judgment is readily resaleable to others, the cancellation charge shall amount to all costs and expenses incurred by Procon and arising out of or in connection with Buyer's order, net of recoverability, but in no event less than 10% of the invoice price of the equipment or more than the invoice price.

21. GENERAL

Governing Law – These Terms and Conditions, and the contract of sale between Procon and Buyer, shall be governed by and construed in accordance with the internal laws of the State of Tennessee.

manufactured by Procon. With respect to equipment not manufactured by Procon, Procon's warranty obligations shall in all respects, conform and be limited to the warranty actually extended to Procon by its suppliers, but in no event shall Procon's obligations be greater than those provided under Procon's warranty set forth in this Section 10.

Salvatory Clause – The invalidity, in whole or in part, of any of the provisions of these Terms and Conditions, shall not affect the enforceability of any of the other provisions thereof.

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“QUALITY PRODUCTS – DELIVERED ON TIME”

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