

**TERMS AND CONDITIONS****Sale of Goods**

Form 100-T-9 (10/09)



SMS group

SMS Meer Service Inc.  
210 West Kensing Drive, Suite 300  
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1. **ACCEPTANCE OF TERMS AND CONDITIONS** - These Terms and Conditions qualify and set forth the terms and conditions under which SMS Meer Service Inc. ("Seller") offers to sell the goods described in Seller's letter of quotation ("Quote"). Acceptance by Buyer of Seller's Quote is expressly and exclusively limited to the terms, conditions and limitations contained herein and in the Quote, which terms and conditions supersede all prior statements, proposals, negotiations, representations and agreements and shall constitute the entire agreement between Seller and Buyer (this "Agreement"). This serves as a written objection to and rejection of all inconsistent or additional terms, conditions and limitations contained on any form or writing of Buyer. Buyer's acceptance of these terms and conditions shall be deemed to have occurred unless written notice of rejection is received by Seller within ten (10) calendar days of Seller's final acknowledgement of an order. In any event, Buyer's acceptance of delivery of the goods sold hereunder shall manifest Buyer's assent to the terms and conditions hereof.  
**ACCEPTANCE OF ORDER** - No contract shall arise between Seller and Buyer and Seller shall not be liable for performance hereunder or in connection with the terms hereof until an executive officer of Seller or an authorized representative designated as such by Seller has reviewed the acceptance of the Quote or the order and acknowledges such acceptance or order in writing.
2. **TERMS OF PAYMENT** - Unless otherwise specified by Seller:
  - (a) All prices are quoted in US Dollars and are firm for the agreed period of delivery.
  - (b) Unless otherwise expressly agreed, all prices are net and F.O.B. shipping point(s) as specified by Seller. Freight will be prepaid and invoiced to the Buyer.
  - (c) Payment terms are net thirty (30) days from the date of Seller's commercial invoice and all payments shall be in United States currency.
  - (d) **Taxes and Duties** - Prices do not include import duties, federal, state, local, sales, use, excise or similar taxes. Consequently, in addition to the price quoted, the amount of any present or future sales, use, excise or other similar tax applicable to the sale or use of the materials and/or services covered hereby shall be paid by Buyer. In lieu thereof, Buyer shall provide Seller with (i) a tax exemption certificate acceptable to the taxing authorities prior to shipment or (ii) evidence of a valid direct pay permit. In the event that, in reliance upon (i) or (ii) above, Seller does not collect any such taxes from Buyer but, upon audit or examination by any taxing body, Seller is assessed taxes, penalties and/or interest with respect to this Agreement or any portion thereof, Buyer shall, upon notice by Seller, reimburse Seller for the entire amount so assessed.
  - (e) **Collection Costs** - In the event that payment is not made in accordance with the terms hereof and Seller pursues any form of legal action to collect any amount that has become due on an invoice, in addition to any amount determined to be due Seller, Seller shall be entitled to an award of its reasonable attorneys' fees and any other costs of collection, together with interest on the past due amount at the rate of 1% per month beginning on the date payment was due on the invoice.
3. **DELIVERY**
  - (a) The delivery date shown on the Quote is provided to Buyer on the basis of Seller's best estimate for informational purposes only and is not guaranteed.
  - (b) **Delayed Delivery Schedule** - If Buyer is unable or unwilling to accept delivery of goods within the period specified under this Agreement, Seller shall have the right to charge Buyer storage charges and/or all costs of commercial storage, handling, insurance and freight. In any event, the risk of loss shall pass to Buyer and the balance of all payments due shall be due and payable unconditionally as if there had been no delay.
  - (c) **Seller's Liability for Shortages, Delivery of Improper Material or Delivery of Damaged or Defective Material** - Buyer agrees to carefully check without unreasonable delay all received material upon unloading at destination. No claims for shortages, for delivery of improper material or for apparent defects or damage to material will be recognized by Seller unless written notice specifying in detail the nature and extent of the shortage, defect or damage shall be delivered to Seller's office in Cranberry Township, Pennsylvania within fourteen (14) calendar days from the date of unloading. Seller will in no case pay or be liable for any claims resulting from the use by Buyer of material having apparent defects or damage when installed by Buyer.
4. **TERMINATION** - Orders will be accepted by Seller only with the express understanding that in the event of a written request to stop work or to cancel any part of an order, payment shall be made to Seller as follows unless otherwise agreed upon in writing:
  - (a) Any and all work that can be completed within thirty (30) days from the date of notification to stop work on account of cancellation shall be completed, shipped and paid for in full by Buyer, without condition.
  - (b) All work in process, any materials or supplies procured or for which definite commitments have been made by Seller in connection with orders shall be paid to Seller on the basis of actual cost, direct and indirect, and overhead expenses determined in accordance with good accounting practice plus thirty percent (30%). Additional re-stocking fees shall be levied, inclusive of any applicable insurance fees.
  - (c) Seller may cancel this Agreement in whole or in part if governmental regulation or control of material or services prevents the lawful performance of this Agreement for a period of twelve (12) months after the date of the issuance of the order or regulation making further performance unlawful. In that event, Buyer's obligation shall be as set forth in Section 4(b) above.
5. **EXCUSABLE DELAY** - Seller shall not be responsible for delay in delivery or failure to deliver because of causes beyond the control of Seller or Seller's suppliers or subcontractors, including, but not limited to, fires, floods, windstorms, strikes, lockouts, work stoppages, failure of Seller's carrier to perform, inability to obtain raw materials, delay in machining and receipt of sub assemblies from suppliers, energy, fuel or power curtailment, war, civil disturbances, acts of terrorism, declared national emergencies, regulations, orders, statutes or laws of any state, local or national government. Seller shall be obligated to settle any labor disputes related to Seller's supply and service or disputes with suppliers of raw materials only according to its own discretion.
6. **RISK OF LOSS AND TRANSFER OF TITLE** - Risk of loss (except as specified in Section 3(b) hereof) of, all equipment and replacement parts furnished hereunder shall pass to Buyer upon delivery to a carrier at Seller's plant or other shipment point, and such carrier shall thereafter be deemed to be acting for Buyer. Title shall pass to Buyer upon full payment of the applicable sales price.
7. **LIMITED WARRANTY - SUBJECT TO BUYER'S COMPLIANCE WITH SECTION 3(c), SECTION 9 AND SECTION 11 HEREOF, IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, SELLER WARRANTS ANY GOODS, MATERIALS OR PRODUCTS MANUFACTURED BY IT AND FURNISHED HEREUNDER AGAINST FAILURE, UNDER NORMAL OPERATIONS OR SERVICE, DUE TO DEFECTIVE MATERIALS, MANUFACTURE OR WORKMANSHIP, AS DETERMINED BY AN INSPECTION AUTHORIZED BY SELLER, FOR A PERIOD OF ONE (1) YEAR FROM THE DATE SUCH GOODS, MATERIALS OR PRODUCTS ARE SHIPPED TO BUYER, OR READY FOR SHIPMENT IN THE EVENT THAT BUYER IS NOTIFIED IN WRITING BY SELLER, IF BUYER IS UNABLE OR UNWILLING TO ACCEPT DELIVERY. SELLER SHALL IN NO EVENT BE LIABLE TO BUYER UNDER ANY TORT THEORY OF LIABILITY IN CONNECTION WITH GOODS FURNISHED HEREUNDER, INCLUDING, BUT NOT LIMITED TO, SELLER'S ALLEGED NEGLIGENCE AND/OR STRICT LIABILITY.**

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In the event of such failure, Buyer shall give Seller at Seller's office in Cranberry Township, Pennsylvania, prompt written notice thereof. Upon receipt of such notice, Seller shall have the option of repairing free of charge or replacing goods or products free of charge F.O.B. at Seller's plant or such other location as Seller shall determine. Buyer's sole remedy hereunder shall be the repair or replacement of nonconforming goods or, at Seller's option, refund of the portion of the purchase price allocable to the nonconforming goods. Liability hereunder shall not extend to or include transportation charges, the dismantling of the defective or any other property or material or the installation of the replacement materials or any other property. The above warranty does not extend to goods, materials or products damaged after the date of shipment from Seller's plant where the damage is not directly due to a defect in material or workmanship, nor does it apply to goods altered or repaired by anyone other than Seller's authorized agents or personnel. The above warranty shall be void if Buyer fails to utilize the applicable goods, materials or products in the manner intended and/or instructed by Seller, does not use, repair or maintain such goods, materials or products in accordance with Seller's instructions, or alters or modifies such goods, materials or products. Equipment not manufactured by Seller which is furnished by an outside supplier under this Agreement is warranted by Seller only to the extent that such equipment is warranted by the outside supplier to Seller; however, in no event shall Seller's warranty obligation for such equipment exceed the warranty extended by Seller hereunder for goods manufactured by it.

Notwithstanding the foregoing, the above warranty expressly excludes normal wear and tear and certain goods, materials, parts and/or products manufactured or supplied by Seller having a useful life shorter than one (1) year.

**THE ABOVE WARRANTY COMPRISES SELLER'S SOLE AND ENTIRE WARRANTY OBLIGATION AND LIABILITY TO BUYER, ITS CUSTOMERS AND ASSIGNS IN CONNECTION WITH GOODS SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.**

8. **LIMITATION ON DAMAGES** - IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, DAMAGES SUCH AS LOSS OF PROFITS, LOSS OF THE USE OF THE GOODS, LOST PRODUCTION, LOSS OF GOODS IN PROCESS, PERSONAL INJURY OR PROPERTY DAMAGE, BUSINESS INTERRUPTION AND LOSS OF PURCHASE OPPORTUNITY. SELLER'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE, OR THE PORTION OF THE PURCHASE PRICE PAID BY BUYER IN THE EVENT BUYER FAILS TO PAY THE ENTIRE PURCHASE PRICE.
9. **PRODUCT LIABILITY** - All safety devices and guards offered in the Quote are recommended for purchase and use by Buyer when equipment is in operation. Buyer hereby undertakes to specify any additional devices and guards that may be deemed necessary for the safe operation of the equipment not covered by the Quote. Seller shall provide such additionally necessary safety devices and guards not offered in the Quote at an extra price in accordance with the specifications of Buyer. Further, Buyer shall at all times use and require its employees to use all safety devices, guards and proper safe operating procedures. Buyer shall not remove or modify any such devices, guards or warning signs and shall insist on safe operating practices on the part of its personnel. Buyer agrees to indemnify and to save Seller harmless from any liability or obligation incurred by or assessed against Seller, including costs and attorney fees, to or by any persons injured directly or indirectly in the operation of the equipment furnished under the following conditions: (i) if Buyer fails to purchase the safety devices and guards recommended by Seller, (ii) if Buyer fails to maintain in good working order such safety devices and guards as are purchased from Seller, (iii) if Buyer adds, omits, repairs, modifies, replaces or substitutes any components on the equipment without written permission from Seller, (iv) if Buyer exceeds at any time the maximum safe loads, speeds, pressures and temperatures recommended by Seller for the equipment furnished hereunder without the specific written consent of Seller or (v) if Buyer otherwise negligently operates the equipment.
10. **PATENT INFRINGEMENT** - Seller shall at its expense defend any suit or proceedings against Buyer so far as based on a claim that goods, materials or products manufactured by Seller infringe upon any now existing United States patent, so long as Seller is notified promptly in writing by Buyer of such claim and given information and assistance at Seller's expense. In the event of a final award of costs and/or damages, Seller shall pay such award. Seller, at its option, shall have the right to settle, compromise or resolve any such claim and satisfy its liability to Buyer hereunder by (i) procuring for Buyer the right to continue using any infringing or allegedly infringing goods, materials or products, (ii) modifying such goods, materials or products to render them non-infringing, (iii) removing any infringing or allegedly infringing goods, materials or products and refunding the purchase price, or (iv) replacing such goods, materials or products with non-infringing goods. The foregoing states the entire liability of Seller for patent infringement, and in no event shall Seller be liable for a claim for infringement based on the use of the equipment (for a purpose other than that for which sold) or for any damages assessed on the basis of incorporation into product(s) produced by Buyer.
11. **OCCUPATIONAL SAFETY AND HEALTH** - Seller agrees that all goods and services furnished to Buyer hereunder will comply with all applicable laws and government regulations relating to the occupational safety and health of employees, specifically including the Federal Occupational Safety and Health Act of 1970 and rules, regulations, standards or orders issued thereunder (herein collectively called the "Occupational Safety and Health Requirements") in effect as of the date of the order placement. In the event Seller fails to so perform, then its liability shall be limited to replacing, or, at its option, repairing or modifying any goods furnished or supplied, and in no event shall Seller be liable for consequential damages or any other forms of claims, suits, fines, demands, damages, losses or court or attorney fees. Seller agrees upon request to furnish to Buyer any and all information regarding the ingredients of goods sold or furnished to Buyer hereunder and to comply with any other reasonable request of Buyer made in connection with the application of any Occupational Safety and Health Requirement to Buyer, its employees and property.
12. **CONFIDENTIALITY** - All drawings including technical descriptions, calculations, schematics and electronic documents are confidential technical information of Seller. It is also expressly agreed and understood that Buyer or its legal successors shall not give, loan, exhibit or sell the documents or copies of documents of Seller and/or documents supplied by third parties to Seller, and that Buyer or its legal successor shall not use them in any way except in connection with the single installation covered by this Agreement.
13. **MISCELLANEOUS**
  - (a) **Applicable Law** - The law of the Commonwealth of Pennsylvania shall apply to the formation, performance and all other matters and/or disputes pertaining to this Agreement. Furthermore, any suit or litigation pertaining to this Agreement shall be commenced in either the Court of Common Pleas of Allegheny County, Pennsylvania, or in the United States District Court for the Western District of Pennsylvania. In the event of disputes, arbitration will be the first remedy.
  - (b) **Assignment** - In the event Buyer desires to assign this Agreement, Seller reserves the right to approve and accept the assignee prior to any assignment. Buyer agrees that Seller shall have the right to subcontract any portion of work provided for herein.