

# GENERAL TERMS AND CONDITIONS OF SALE

## 1. PAYMENT

Terms of payment are net cash with order, except where credit is established, in which case terms are NET 30 DAYS and are effective from actual date of invoice. If, in COUNTERBALANCE CORPORATION'S opinion, the financial condition of the Buyer at any time - or any other circumstances do not justify the incurrence of production costs or shipment or the terms of payment specified, COUNTERBALANCE CORPORATION reserves the right to require full or partial payment before beginning or continuing work and/or prior to shipment of finished goods. COUNTERBALANCE CORPORATION further reserves the right to assess a finance charge of 1.5% per month on past due account balances, payable within ten days of receipt by the buyer of notice of such finance charge.

## 2. F.O.B.

All shipments are F.O.B. the COUNTERBALANCE CORPORATION factory unless otherwise stated.

## 3. PRICES

Quoted prices are subject to change without notice. Orders calling for future deliveries will be invoiced according to prices in effect at the time of shipment.

## 4. TAXES

Any applicable sales, use, revenue, excise or other taxes not specifically indicated in the COUNTERBALANCE CORPORATION order acknowledgement are to be paid/remitted by the Buyer directly to the appropriate agency unless required to be collected by COUNTERBALANCE CORPORATION in which case they will be included in the invoice.

## 5. LIMITED WARRANTY

All COUNTERBALANCE CORPORATION products are warranted for a period of one year from date of manufacture against defective materials and workmanship. COUNTERBALANCE CORPORATION MAKES NO OTHER WARRANTY, EXPRESSED OR IMPLIED, AND ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEEDS THE FOREGOING IS HEREBY DISCLAIMED AND EXCLUDED FROM THIS CONTRACT. If the products are being acquired for resale, Buyer will make, in connection with any such resale, only those warranties contained herein and will indemnify COUNTERBALANCE CORPORATION against any claims, cause of actions and judgments which arise from any representations, warranties or agreements made by or entered into by Buyer, other than those contained herein.

## 6. BUYER'S EXCLUSIVE REMEDY

In the event of any breach of any warranty covering COUNTERBALANCE CORPORATION products, the sale and exclusive remedy of Buyer (or any person claiming through Buyer) shall be limited to the repair or replacement of defective products or parts, at the COUNTERBALANCE CORPORATION plant or, at COUNTERBALANCE CORPORATION'S option, to the refund of the purchase price, provided that notice of such defects is given within 60 days of discovery of said defects. In no event will COUNTERBALANCE CORPORATION be liable of any incidental or consequential damages.

## **7. PATENTS**

COUNTERBALANCE CORPORATION will defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that Buyer's use of any items furnished hereunder constitutes infringement of any patent of the United States, if COUNTERBALANCE CORPORATION is notified promptly in writing and given authority, information and assistance, at COUNTERBALANCE CORPORATION'S expense, for the defense of same, and COUNTERBALANCE CORPORATION will pay all damages and costs awarded therein against Buyer. If COUNTERBALANCE CORPORATION receives notice that any such items infringe such a patent, Buyer will, at COUNTERBALANCE CORPORATION'S request, immediately cease using such items. In the event of a determination of such infringement by final order of a court of competent jurisdiction, unappealed, and Buyer's use of such items is enjoined, COUNTERBALANCE CORPORATION will, at COUNTERBALANCE CORPORATION'S expense and at COUNTERBALANCE CORPORATION'S option (a) procure for the Buyer the right to continue to use said items or replace same with non-infringing items; (b) modify said items so that they become non-infringing; or (c) remove said items; and refund to Buyer the purchase price and the transportation and installation cost thereof. COUNTERBALANCE CORPORATION will have no responsibility to pay any sums in connection with any settlements of claims not made with COUNTERBALANCE CORPORATION'S consent. The foregoing states COUNTERBALANCE CORPORATION'S entire liability and Buyer's exclusive remedies for patent infringements by said items or any part thereof. The preceding paragraph will not apply to, and COUNTERBALANCE CORPORATION will have no responsibility respecting, infringement of any patent issued after the date hereof, not to infringement (a) by reason of the use of the items furnished hereunder, or any part thereof, for a purpose other than that for which COUNTERBALANCE CORPORATION manufactured the same or (b) by reason of the use of the items furnished hereunder, or any part thereof, in combination with other items in a system not designed by COUNTERBALANCE CORPORATION, or (c) by the use of any items, or any part thereof, manufactured to a design not furnished by COUNTERBALANCE CORPORATION.

## **8. DELIVERY**

All stated delivery dates are approximate. COUNTERBALANCE CORPORATION will not be liable for loss or damage of any kind resulting from delay or inability to deliver on account of flood, fire, strike, labor troubles, riot, civil disturbances, accidents, acts or orders or regulations of civil or military authorities, shortages of materials, or any other cause or causes (whether or not similar in nature to any of these enumerated) beyond COUNTERBALANCE CORPORATION'S reasonable control.

## **9. ORDER/SHIP QUANTITY**

COUNTERBALANCE CORPORATION reserves the right to ship up to 5% above or below ordered quantity.

## **10. PRODUCT CHANGES**

In keeping with COUNTERBALANCE CORPORATION'S continuing policy of product improvement, COUNTERBALANCE CORPORATION reserves the right to make modifications to COUNTERBALANCE CORPORATION products at any time, provided such modifications do not materially affect product performance.

## **11. RETURN OF GOODS**

In no case may products or parts be returned without COUNTERBALANCE CORPORATION'S prior written permission. Products or parts returned under the aforementioned Warranty must be shipped with transportation charges prepaid.

## **12. FORCE MAJEURE**

A party shall be excused for delays in performance or failure of performance hereunder to the extent arising from causes beyond such party's control, including without limitation strikes, wars, fire, flood, earthquake, or other Act of God. In the event of any such event of condition, the party whose performance is excused hereunder shall notify the other promptly thereof and shall make diligent efforts to perform at its earliest opportunity. During any such period of non-performance by one party, the other party shall be permitted to suspend its performance hereunder.

## **13. CANCELLATION**

The contract to which this document relates may be cancelled only with COUNTERBALANCE CORPORATION'S written consent and upon payment by Buyer of cancellation charges specified by COUNTERBALANCE CORPORATION which shall be in an amount sufficient to cover all direct and indirect expenses incurred in connection therewith, and a reasonable allowance for the profits lost as a result of this cancellation, and in no event less than 10% of COUNTERBALANCE CORPORATION quoted prices.

## **14. ATTORNEYS FEES/CONSENT TO JURISDICTION**

Buyer shall be liable for all attorneys fees and costs incurred by COUNTERBALANCE CORPORATION in the collection of any unpaid invoices and/or interest charges. Buyer consents to the jurisdiction of the Courts of the Commonwealth of Pennsylvania in regard to any matter litigated between the parties stemming from the contract to which this document relates.

## **15. CONTRACT FORMATION; CHANGES**

These terms and conditions of sale and any attachments take precedence over Buyer's additional or different terms and conditions to which notice of objection is hereby given. Acceptance by Buyer is limited to these terms and conditions of sale which constitute the entire understanding between the parties and supersedes any previous communications, representations, or agreements by either party, whether verbal or written. No change or modification of any of the terms or conditions herein shall be valid or binding on either party unless in writing and signed by an authorized agent of each party.