

Baker Industries - Terms and Conditions of Sale

- 1. Scope.** Seller means the Lincoln Electric entity identified in the Seller Documents (defined below), and Buyer means the industrial company purchasing Goods, Services and/or Software from Seller. Any Seller proposal, acknowledgment or invoice and all documents incorporated by specific reference herein or therein by Seller ("Seller Documents"), and these terms and conditions of sale ("Terms"), constitute the complete terms and conditions governing the sale of Goods, Services and/or Software ("Agreement"). ANY AND ALL ADDITIONAL OR DIFFERENT TERMS IN THE BUYER'S REQUEST FOR PROPOSAL, PURCHASE ORDER, BUSINESS FORMS, WEBSITE OR BY ANY OTHER DOCUMENTATION ISSUED BY BUYER ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO AND REJECTION OF SUCH TERMS IS HEREBY GIVEN. No website usage agreement or any other click through agreement on a web-site will have any binding effect whether or not Seller clicks on an "ok," "I accept," or similar acknowledgment. Commencement of any work by Seller or Buyer's acceptance of delivery of the Goods, Services and/or Software will manifest Buyer's assent to this Agreement. Additional or different terms applicable to a particular sale may be specified in the body of a Seller Document or agreed to in a written contract signed by both parties. In the event of a conflict, the following order of precedence will apply: (a) written contract signed by both parties; (b) Seller Documents; and (c) these Terms.
- 2. Definitions:** Unless the context otherwise requires: (a) "Goods" as used herein means Goods sold under this Agreement, as identified in the Seller Documents; (b) "End-User" is the person or entity who uses the Goods or possesses them without any intention of resale. The "initial" End-User is the first End-User; (c) "Services" as used herein means all labor, supervisory, technical and engineering, installation, commissioning, programming, support, repair, training, consulting or other services provided by Seller under the Agreement; and (d) "Software" as used herein means all software, plus software documentation, if any, licensed to Buyer by Seller under this Agreement.
- 3. Prices.** (a) Proposals for Goods, Services and/or Software expire thirty (30) days from the date thereof. (b) Prices for Services are based on normal business hours. Seller reserves the right to charge Buyer overtime rates for Services rendered outside normal business hours, holiday pay for working on holidays and travel time. Prices are subject to change without notice. (c) Seller's price does not include any federal, state or local property, license, privilege, sales, value-added, use, excise, gross receipts, or other like taxes which may now or hereafter be applicable. Buyer agrees to pay or reimburse any such taxes which Seller or its suppliers are required to pay or collect. If Buyer is exempt from the payment of any tax or holds a direct payment permit at the time of the placement of order, Buyer shall provide Seller a copy, acceptable to the relevant governmental authorities of any such certificate or permit. (d) Seller's price excludes customs, duties and other similar fees which may not or hereafter be applicable. Buyer agrees to pay or reimburse any such customs, duties and other fees which Seller or its suppliers are required to pay or collect. Seller neither represents nor guarantees that any of the Goods qualify as originating under the North American Free Trade Agreement, Buy America, General System of Preferences or other relevant, existing or future trade agreements or tariff preference programs. Any duties, fees, taxes, other charges or exactions on the Goods payable to any government or other entity are the sole responsibility of the Buyer. Seller's price includes standard packaging for shipment by truck, unless expressly stated otherwise in the Seller Documents. Any change after the proposal date in such rates, or additional packaging required by Buyer or required to transport the Goods or Software via another mode of transportation, shall be paid to Seller in addition to the quoted price.
- 4. Payment.** (a) All payments are due upon receipt of invoice without offset by Seller. (b) Seller has no obligation to ship any Goods to Buyer or to complete future milestones until Buyer is current on all payments due. (c) If in the judgment of Seller, the financial condition of Buyer at any time prior to shipment does not justify the terms of payment originally specified, Seller may require payment in advance, payment security satisfactory to Seller, or may terminate the Agreement for default, whereupon Seller shall be entitled to receive the charges set forth in Section 18 below. If shipment is delayed by Buyer, all payments shall become immediately due and payable on the date Seller is prepared to ship. Delays in shipment or nonconformities in any installments delivered shall not relieve Buyer of its obligation to accept and pay for remaining installments. (d) Buyer shall pay, in addition to the overdue payment, a late charge equal to the lesser of 1 1/2% per month or any part thereof or the highest applicable rate allowed by law on all such overdue amounts plus Seller's attorneys' fees and court costs incurred in connection with collection.
- 5. Changes.** (a) Every change order shall reflect modifications to the Agreement, the delivery schedule and the price. A change order is not binding on either party mutually agreed to in writing. Seller has no obligation to perform any changes until the change order is mutually agreed in writing. (b) Seller may make such changes in the Goods, Services and/or Software as it deems necessary, in its sole discretion, to conform the Goods, Services and/or Software to the applicable specifications. If Buyer objects to any such changes, Seller shall be relieved of its obligation to conform to the applicable specifications to the extent that conformance may be affected by such objection.
- 6. Shipment & Delivery.** (a) Goods are shipped on a domestic basis: **FOB, point of shipment (UCC)** and on an international basis: **FCA: Seller's facility** (Incoterms 2010) unless otherwise stated in the Sellers Documents. (b) Buyer shall be responsible for any and all demurrage, detention, customs broker and freight forwarder fees, warehouse and terminal charges, insurance, inspection, storage, special notifications, and special equipment/handling charges shall be at the Buyer's additional expense unless otherwise agreed in writing by Seller. (c) Shipping and delivery dates are estimates only, and are contingent upon Buyer's timely approvals and delivery by Buyer of any documentation required for Seller's performance hereunder. Seller shall not be liable for any penalties or damages of any kind if anticipated shipment dates are not met. Delivery times shall be automatically extended as needed to resolve any technical matters between the parties with respect to the delivery, installation or use of the Goods and/or Software. (d) If the scheduled delivery of Goods, Services and/or Software is delayed by Buyer, Seller may store in its facility or move the Goods and/or Software to storage, at Buyer's sole cost, expense and risk, whereupon the Goods and/or Software are deemed to be delivered and accepted by Buyer and all payments shall be accelerated and come immediately due and payable on the date Seller is prepared to make delivery – notwithstanding any terms to the contrary stated in Sellers Documents. (e) Seller may make partial deliveries.

Baker Industries - Terms and Conditions of Sale

- 7. Title & Risk of Loss.** Title and risk of loss for the Goods shall transfer to Buyer upon delivery of the Goods to the first carrier for shipment. Seller retains a purchase money security interest on and in such Goods until Seller receives payment in full, and Buyer will cooperate with Seller to perfect any such interest as deemed reasonably necessary by Seller.
- 8. Buyer's Obligations.** (a) Buyer must provide required inputs and approvals on a timely basis. Buyer must complete site preparation work prior to shipment of the Goods and/or Software and performance of the on-site acceptance test, if applicable. Seller will not be liable for any delays caused by Buyer's failure to complete its site preparation obligations. (b) With respect to all of the Buyer's tools, equipment, material, or other property such as parts and test samples that are used in the design, assembly, manufacture, or testing of the Goods and/or Software (collectively "Buyer's Property") provided to Seller, Buyer agrees that Seller shall have the right to use Buyer's Property without payment of consideration, and if Buyer requires return or scrap of Buyer's Property, it will be at Buyer's direction and expense. Seller is not liable for any damages to Buyer's Property or any other parts and test samples supplied by Buyer during the manufacturing / testing process. Buyer must timely provide a sufficient number of test samples that meet the agreed upon specification in connection with the Goods, Services and/or Software being purchased by Buyer. If there are too few test samples or the test samples do not meet the agreed upon specifications, Seller may, in its sole discretion and at Buyer's sole cost and expense: 1) require Buyer to submit a sufficient number of test samples or to provide test samples that meet the specifications; 2) create additional test samples, or rework / modify existing test samples to meet the specifications; 3) be released from every obligation to test the Goods and/or Software, accelerate payment in full for the Goods, Services and/or Software then owing to Seller, and ship the Goods and/or Software as-is upon receipt of payment in full; or 4) terminate the Agreement for cause, whereupon Seller shall be entitled to receive cancellation charges set forth in Section 18 below. (c) Notwithstanding any other provision contained herein or any other obligation of Buyer hereunder, Buyer, upon acceptance of Goods, Services and/or Software that are the subject of this Agreement, warrants that Buyer, its employees, agents, customers, representatives, successors and assigns are industrial users of such Goods, Services and/or Software and possess the knowledge and expertise to use the same in accordance with (i) accepted industry standards, including, but not limited to, those promulgated by the American National Standards Institute, the American Welding Society, the Robotic Industry Association standards and the Laser Institute of America standards, (ii) all applicable laws, including, but not limited to, OSHA's Hazard Communication Standard; (iii) prudent safety practices, and (iv) operating manuals, safety data sheets, warning labels and other written instructions provided by Seller, if any. In addition to other obligations stated herein, Buyer assumes all risk and liability for loss or damage resulting from the handling, use, or application of the Goods, Services and/or Software. Buyer agrees that it has an independent duty to familiarize itself with and keep informed of any safety and/or health hazards to persons and/or property involved in handling and using such Goods, Services and/or Software. Buyer shall advise its employees, customers, agents, distributors, consultants, independent contractors and others who may foreseeably handle or use such Goods, Services and/or Software of any hazards. (d) Buyer agrees to indemnify, defend and hold harmless Seller, its subsidiaries and affiliates and their respective directors, officers, shareholders, customers, employees, agents, successors and assigns of each from and against any and all liabilities, losses, costs or damages, including reasonable attorneys' fees, resulting from claims (unless finally determined to be the result of the gross negligence or willful misconduct of Seller) that arise from (i) use or handling of the Goods, Services and/or Software by Buyer or any third party, whether or not the Goods, Services and/or Software are combined with any other materials, substances or equipment or is used in any manufacturing process; (ii) failure by Buyer to disseminate safety and health information as required above; and (iii) failure of Buyer to comply with Section 26.
- 9. Inspection, Testing and Acceptance.** (a) If Seller is not providing a factory acceptance test, Buyer will be deemed to have accepted the Goods and/or Software upon delivery. (b) If the Agreement provides for factory acceptance testing, Seller shall notify Buyer when Seller will conduct factory testing for compliance to Seller's specifications prior to shipment. Unless Buyer states specific objections in writing within two (2) days after completion of factory acceptance testing, completion of the factory acceptance test constitutes Buyer's acceptance of the Goods and/or Software and Buyer's authorization for shipment. If the Agreement provides for factory acceptance testing and Buyer instructs Seller to ship the Goods and/or Software without completing the factory testing, Buyer has i) waived the factory acceptance test, ii) accepted the Goods, Services and/or Software as-is through such waiver; iii) accelerate payment in full for the Goods, Services and/or Software then owing to Seller, and iv) ship the Goods and/or Software as-is upon receipt of payment in full. (c) If the Agreement provides for site acceptance testing, testing will be performed by Seller personnel at Buyer's site to verify compliance to Seller's specifications. Completion of site acceptance testing constitutes final acceptance of the Goods, Services and/or Software. If, through no fault of Seller, site acceptance testing is not completed within thirty (30) days after arrival of the Goods at the site, the site acceptance test shall be deemed completed. Upon completion or deemed completion of on-site acceptance testing, any final payment is immediately due and owing to Seller.
- 10. Warranties and Remedies.** (a) Warranty. Seller warrants that Goods shall be delivered free of defects in material and workmanship and in accordance with Seller's specifications, and that Services shall be performed in a professional and workmanlike manner, in accordance with industry standards. Any Good or major component to a Good that is manufactured by a third party is warranted only to the extent of the manufacturer's warranty, and only the remedies, if any, provided by the manufacturer shall apply. Unless covered by the following two sentences, the warranty period for new Goods manufactured by Seller is 12 months from shipment. The warranty period is 3 years from shipment for new Python X (or 6000 hours, whichever occurs first), FlexCut Power Supply, Spirit II Power Supply. The warranty period is 2 years from shipment for new Torchmate 4400, Torchmate 4800. The warranty period for new spare parts manufactured by Seller shall end twelve (12) months after date of shipment. The warranty period for refurbished or repaired parts manufactured by Seller shall end ninety (90) days after date of shipment. The warranty period for Services shall end ninety (90) days after completion of Services. Warranty coverage is available only to the initial End-User and is non-transferable. Any subsequent purchaser/End-User interested in purchasing additional warranty coverage must contact Seller directly, and if agreed by Seller, will be granted via a separate written agreement. (b) Remedy. If a nonconformity to the foregoing warranty is discovered in the Goods or Services during the applicable warranty period specified above, and written notice of such nonconformity is provided to Seller promptly after such discovery and within the applicable warranty period, Seller's sole and exclusive obligation shall be, at its option, to either (i) repair or replace the

Baker Industries - Terms and Conditions of Sale

nonconforming portion of the Goods; (ii) ship repair or replacement parts to Buyer; (iii) re-perform the nonconforming Services; or (iv) refund the portion of the price applicable to the nonconforming portion of Goods or Services. If any portion of the Goods or Services so repaired, replaced or re-performed fails to conform to the foregoing warranty, and written notice of such nonconformity is provided to Seller promptly after discovery and within the original warranty period applicable to such Goods or Services or 30 days from completion of such repair, replacement or re-performance, whichever is later, Seller will repair or replace such nonconforming Goods or re-perform the Services. The applicable warranty period shall not otherwise be extended. (c) Software. Seller warrants that, except as specified below, the Software will, when properly installed, execute in accordance with Seller's published specifications. If a nonconformity to the foregoing warranty is discovered during the period ending one (1) year after the date of shipment, and written notice of such nonconformity is provided to Seller promptly after such discovery and within the warranty period, including a description of the nonconformity and complete information about the manner of its discovery, Seller shall correct the nonconformity by, at its option, either (i) modifying or making available to the Buyer instructions for modifying the Software; or (ii) making available at Seller's facility necessary corrected or replacement programs. Seller shall have no obligation with respect to any nonconformities resulting from (i) unauthorized modification of the Software and/or (ii) Buyer-supplied software or interfacing. Seller does not warrant that the functions contained in the software will operate in combinations which may be selected for use by the Buyer, or that the software products are free from errors in the nature of what is commonly categorized by the computer industry as "bugs". (d) Exceptions. Seller has no liability under this Section 10 for any of the following: (i) components that get consumed and replaced on a regular basis through normal use and operation of the Goods, including but not limited to contact tips, weld wire, conduit, etc.; (ii) Buyer's failure to provide Seller working access to the nonconforming Goods including disassembly and re-assembly of non-Seller supplied equipment, and for shipment to or from any repair facility – or the opportunity to examine the Goods - prior to expiration of the warranty period; (iii) improper installation, repair or alteration by Buyer or a third party not under Seller's control and supervision; (iv) misuse, negligence or accident; (v) Buyer's failure to meet its obligations in Section 8; (vi) failure as a result of materials provided by or a design specified by Buyer; (vii) failure as a result of ordinary wear and tear; (viii) failure as a result of Buyer's failure to comply with the law; (ix) any failure submitted after expiration of the applicable warranty period; and/or (x) if the Goods, Services and/or Software have not been paid for in full. (e) Disclaimers. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY AND PERFORMANCE, WHETHER WRITTEN, ORAL OR IMPLIED. ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USAGE OF TRADE AND AGAINST INFRINGEMENT ARE HEREBY DISCLAIMED. THE REMEDIES STATED HEREIN CONSTITUTE BUYER'S EXCLUSIVE REMEDIES AND SELLER'S ENTIRE LIABILITY FOR ANY WARRANTY CLAIMS OR MATTERS. (f) Customer Assistance Policy. The business of Seller is manufacturing and selling high quality welding equipment, automated welding systems, consumables, and cutting equipment. Our challenge is to meet the needs of our customers and to exceed their expectations. On occasion, purchasers may ask Seller for information or advice about their use of the Goods, Services and/or Software. Seller's employees respond to inquiries to the best of their ability based on information provided to them by the customers and the knowledge they may have concerning the application. Seller's employees, however, are not in a position to verify the information provided or to evaluate the engineering requirements for the particular weldment or application. Accordingly, Seller does not warrant or guarantee or assume any liability with respect to such information or advice. Moreover, the provision of such information or advice does not create, expand, or alter any warranty on our Goods, Services and/or Software. Any express or implied warranty that might arise from the information or advice, including any implied warranty of merchantability or any warranty of fitness for Buyer's particular purpose is specifically disclaimed. Seller is a responsive manufacturer, but the selection and use of specific Goods, Services and/or Software sold by Seller is solely within the control of, and remains the sole responsibility of Buyer. Many variables beyond the control of Seller affect the results obtained in applying these types of fabrication methods and service requirements.

- 11. Patent Indemnity.** (a) By Seller. (1) Seller agrees to defend any suit, proceedings or counterclaim against Buyer for the infringement of any United States Letters Patent by: (1) any Goods manufactured by Seller, of whatever kind, or any parts thereof, made to Seller's design or specifications, but only in the form, state or condition supplied under the Agreement; or (2) any use of such Goods manufactured by Seller where the Goods constitute a material part of any patented method of such patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use. Such defense is conditioned only if Seller is: (1) notified promptly in writing of any charges of infringement; (2) given authority to direct and control the defense of such charge or suit; and (3) furnished such information and assistance, at Seller's expense, as may be necessary for such defense. Seller shall pay all costs and damages awarded therein against Buyer. This Agreement does not apply to the combination of the Goods, Services and/or Software supplied under this Agreement with goods, services and/or software not supplied by Seller, nor to any process involving such combinations. If at any time, such Goods or any part thereof, or their use, are considered by the Seller to constitute infringement, Seller may, at its own expense: (1) procure for the Buyer the right to continue using such Goods; (2) modify them so they become non-infringing; or (3) remove them and refund the purchase price and the transportation costs thereof, if any. The foregoing states the entire liability of the Seller for patent infringement by such Goods or their use. (b) By Buyer. If Buyer supplies an order request to Seller for a product and/or its own specifications for the same, then Buyer represents that Buyer has ownership rights to, and/or have a license to have such product built for Buyer, and Buyer agrees to defend, indemnify and hold harmless Seller, its parent company, agents and/or affiliates from and against any claims, suits, proceedings (whether in court or out of court) of all types whatsoever against, and shall indemnify Seller, its parent company, directors, officers, employees, shareholders, affiliates and agents for all costs, damages, judgments, settlements and compromises (including incurred costs and attorneys' fees) for the infringement or claimed infringement of any patent, trademark, service mark, trade secret, copyright, moral rights or other claims of violation of intellectual property anywhere in the world by: (1) Buyer's request that Seller reproduce, manufacture, modify, utilize or incorporate Buyer's product idea and/or specifications into this Agreement; or (2) any misrepresentation by Buyer that it had ownership rights and/or a license to have Goods built for it when such representation was not accurate and/or resulted in claims against Seller based upon Seller's completion of a project for Buyer under such misrepresentation. Buyer shall pay all costs, damages, judgments, settlements and compromises (including incurred costs and

Baker Industries - Terms and Conditions of Sale

attorneys' fees) arising out of or related to such claims, suits, proceedings (whether in court or out of court) against Seller, its parent company, directors, officers, employees, shareholders, affiliates and agents.

- 12. Limitation of Liability.** (A) IN NO EVENT SHALL SELLER, ITS PARENT, SUBSIDIARIES AND AFFILIATES BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF THE GOODS, SERVICES AND/OR SOFTWARE OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, DOWNTIME COSTS, DELAYS, AND CLAIMS OF CUSTOMERS OF THE BUYER OR OTHER THIRD PARTIES FOR ANY DAMAGES. SELLER'S LIABILITY FOR ANY CLAIM WHETHER IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, OPERATION OR USE OF ANY GOODS AND/OR SOFTWARE COVERED BY OR FURNISHED UNDER THIS AGREEMENT, OR FROM ANY SERVICES RENDERED IN CONNECTION THEREWITH, SHALL IN NO CASE EXCEED THE PURCHASE PRICE ALLOCABLE TO THE GOODS, SERVICES AND/OR SOFTWARE OR PART THEREOF WHICH GIVES RISE TO THE CLAIM. (B) ALL CAUSES OF ACTION AGAINST SELLER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE YEAR OF THE TIME OF ACCRUAL THEREOF. (C) IN NO EVENT, REGARDLESS OF CAUSE, SHALL SELLER BE LIABLE FOR THE ACTS OR OMISSIONS OF BUYER OR THIRD PARTIES.
- 13. Software License.** (a) Seller owns all rights in or has the right to sublicense all of the Software, if any, to be delivered to Buyer under this Agreement. As part of the sale made hereunder Buyer hereby obtains a limited license to use the Software, subject to the following: (i) The Software may be used only in conjunction with Goods sold by Seller; (ii) The Software shall be kept strictly confidential; (iii) The Software shall not be copied, reverse-engineered, or modified; (iv) The Buyer's right to use the Software shall terminate immediately when the specified Goods are no longer used by the Buyer or when otherwise terminated for breach, hereunder; and (v) the rights to use the Software are non-exclusive and non-transferable, except with Seller's prior written consent. (b) Nothing in this Agreement shall be deemed to convey to Buyer any title to or ownership in the Software or the intellectual property contained therein in whole or in part, nor to designate the Software a "work made for hire" under the Copyright Act, nor to confer upon any person who is not a named party to this Agreement any right or remedy under or by reason of this Agreement. In the event of termination of this License, Buyer shall immediately cease using the Software and, without retaining any copies, notes or excerpts thereof, return to Seller the Software and all copies thereof and shall remove all machine readable Software from all of Buyer's storage media.
- 14. Data Security/Data Access.** Some Goods and/or Software may require internet access for operation. Buyer is responsible for obtaining internet access and payment for all usage charges related thereto. If Seller or Buyer requires access to the other's computer systems to perform tasks that fall under the scope of an Agreement, access shall be granted only to the extent necessary to fulfill any required tasks. Buyer represents that it has developed and implemented and covenants that it will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to: (a) ensure the confidentiality, security, integrity and availability of its computer systems and information; (b) protect against threats or hazards to their computer systems and the confidentiality, security, integrity and availability of information; and (c) protect against unauthorized access to its computer systems and information. Buyer shall promptly notify Seller of any breach of confidentiality or disclosure of confidential information, or a breach of information security policies or procedures, or unauthorized access to its computer systems. Notice shall be provided no later than twenty-four (24) hours upon discovery of a breach. Buyer agrees that it shall be responsible for all acts and omissions with respect to the unauthorized access to its computer systems and information, including the acts and omissions of its employees, agents and independent contractors. Buyer agrees to indemnify and hold Seller harmless, its parent company, directors, officers, employees, shareholders, affiliates and agents from and against any and all third party claims of damages, liabilities, expenses, fines and losses of any type, including but not limited to reasonable attorneys' fee, in connection with or arising out of, in whole or in part, of its or its representative's breach of computer system security.
- 15. Inventions and Information.** All materials, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade or service marks created or prepared by Seller under this Agreement, together with any and all intellectual property rights therein (collectively "Inventions"), shall belong exclusively to Seller. Buyer hereby assigns the worldwide right, title and interest in and to the Inventions to Seller. Seller shall have the right, at its option and expense, to seek protection of the Inventions by obtaining patents, copyright registrations, and filings related to proprietary or intellectual property rights. Buyer agrees to execute, and to cause its employees and/or agents to execute, such documents, applications, and conveyances and to supply information as Seller shall request, in order to permit Seller (at Seller's expense) to protect, perfect, register, record and maintain its rights in the Inventions and effective ownership of them throughout the world. These obligations survive the expiration or termination of this Agreement. Buyer shall not, without Seller's prior written consent, copy or disclose such Inventions to a third party. Such Inventions shall be used by Buyer solely for the operation or maintenance of the Goods, Services and/or Software and not for any other purpose, including the duplication thereof in whole or in part.
- 16. Confidentiality.** "Confidential Information" means all information, know-how, trade secrets or other material disclosed by Buyer to Seller and Seller to Buyer. Both Buyer and Seller shall treat each other's Confidential Information as confidential; shall not use such Confidential Information except in connection with the Agreement; shall not disclose such Confidential Information to any third party who has not executed an agreement to maintain the confidentiality of the Confidential Information with restrictions at least as restrictive as those set forth herein; and shall not reverse-engineer Seller's Goods, Services and/or Software. All technical, business, sales, distribution channel, financial, marketing, pricing, planning, competitor information and the lists of customers who have purchased Goods from Seller are considered Seller's Confidential Information. Confidential Information does not include

Baker Industries - Terms and Conditions of Sale

information that is: (i) generally known and available in the public domain; (ii) was known to recipient prior to the date of disclosure; (iii) was received from a third-party without any obligation of confidentiality; or (iv) was independently developed without reliance on Confidential Information. Given the nature of the Confidential Information and the likely consequences of its unauthorized use or disclosure, monetary damages would not be an adequate remedy and both Seller and Buyer reserve the right to seek and obtain injunctive relief, in addition to any other remedy that may be available, in any proper forum.

- 17. Cancellation.** (a) All sales are final. If this Agreement is cancelled or terminated for convenience by Buyer, Buyer shall pay Seller 100% of the sale price under the Agreement. Seller may attempt to mitigate the monetary impact of cancellation or termination, at its discretion. (c) Upon receipt of payment in full, Seller will deliver Goods, Services and/or Software to Buyer, or scrap the same at Buyer's direction.
- 18. Termination for Default.** (a) Either party may terminate this Agreement for cause if the other party is in material breach of this Agreement and such breach is not cured within 30 days after the non-breaching party issues written notice to the breaching party. Seller may terminate this Agreement immediately for cause if Buyer fails to comply with its obligations under Section 26. (b) Effect of termination. If this Agreement is terminated due to Buyer's breach, Buyer shall pay Seller 100% of the sale price under the Agreement. If this Agreement is terminated due to Seller's breach, Buyer shall pay Seller the sale price of the Goods, Services and/or Software based on percentage of work completed as of the effective date of termination, plus costs incurred from vendors as a result of early termination. Seller may attempt to mitigate the monetary impact of cancellation or termination, at its discretion. (c) Upon receipt of payment, Seller will deliver Goods, Services and/or Software to Buyer, or scrap the same at Buyer's direction.
- 19. Insurance.** (a) Buyer shall maintain general liability insurance including coverage in an amount no less than two million (U.S. \$2,000,000) dollars per claim for property damage, bodily injury, and contractual liability. Until Seller is in receipt of full payment by Buyer for the Goods, Services and/or Software, Buyer shall maintain insurance in an amount that is sufficient to cover the contract price of the Goods, Services and/or Software. Further, Buyer shall maintain insurance in an amount that is sufficient to cover the cost of any Buyer's Property in Seller's possession for the purposes of providing Goods, Services and/or Software until such time that Buyer's Property is returned to Buyer. Unless otherwise agreed to in writing by Buyer and Seller, Seller shall not maintain insurance on Buyer's Property and will not assume any liability for destruction or loss of the same. (b) Nuclear Insurance – Indemnity. For applications in nuclear projects, Buyer and its customer shall have and maintain complete insurance protection against liability and property damage resulting from a nuclear incident to and shall indemnify Seller, its parent company, directors, officers, employees, shareholders, affiliates, agents, subcontractors, suppliers and vendors against all claims resulting from a nuclear incident.
- 20. Force Majeure.** Seller shall not be in default for failure to perform and shall not be liable for loss, damage, detention or delay when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared), Acts of God, fire, terrorism, sabotage, power, explosions, epidemics, civil disturbances, strike, labor difficulties, acts or omissions of any governmental authority, compliance with government laws or regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, raw materials, or manufacturing facilities from usual sources, equipment failure, or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. Upon the occurrence of any event or circumstance referenced above, Seller shall have the right to allocate Goods, Services and/or Software among its customers in its sole discretion. This Section supplements, and does not replace, any remedies available to Seller under applicable law.
- 21. Assignment.** Buyer cannot assign this Agreement without Seller's prior written consent. Seller can assign this Agreement.
- 22. Entire Agreement.** The Agreement constitutes the entire agreement between Seller and Buyer with respect to the Goods, Services and/or Software covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless mutually agreed to in writing.
- 23. Waiver.** In the event of any default by Buyer, Seller may decline to ship Goods or Software or to provide Services. If Seller elects to continue shipping or otherwise fails to insist upon strict compliance with the Agreement, Seller's actions will not constitute a waiver of Buyer's default or any other existing or future default, or affect Seller's legal remedies.
- 24. Severability.** If any provision of this Agreement is held to be unlawful or unenforceable, the remaining provisions shall remain in effect.
- 25. Survival.** Any provisions of this Agreement which, by their nature, extends beyond the completion, termination or expiration of any sale of Goods, Services and/or Software, will remain in effect until fulfilled.
- 26. Compliance with Laws.** Buyer will comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Buyer's obligations under this Agreement and its operations or use of the Goods, Services and/or Software, including but not limited to those regarding safety, the environment, data protection, data privacy, conflict minerals, human trafficking/slavery, export/import, labor and anti-corruption. Nothing contained herein shall be construed as imposing responsibility or liability upon Seller for obtaining any permits, licenses or approvals from any agency required in connection with the supply, erection or operation of the Goods, Services and Software. In no event shall Seller be responsible for liability arising out of use of the Goods and/or Software in association with other equipment of Buyer, the alteration of the Goods and/or Software by any party other than Seller, or the violation of any laws relating to or caused by Buyer's design, location, operation, or maintenance of the Goods and/or Software.

Buyer acknowledges that the Goods, Services and Software, if any, which are purchased or received under this Agreement may be subject to the export controls of the U.S. Export Administration Regulation, the U.S. Department of Treasury Office of Foreign

Baker Industries - Terms and Conditions of Sale

Assets Control, the U.S. Department of State and other U.S. agencies, as well as the export control regulations of the European Union, the United Nations Security Council, and other foreign governments ("Export Control and Economic Sanctions Laws"). Buyer agrees that any export, resale, or re-export of Seller's Goods shall be in compliance with all applicable Export Control and Economic Sanctions Laws, Unless licensed to do so, Buyer agrees that it will not: (i) export, resell, re-export or transfer the Goods, Services and/or Software for end-uses that are prohibited by Export Control and Economic Sanctions Laws, including, but not limited to: maritime nuclear propulsion; nuclear, chemical and biological weapons; rocket, missile and unmanned air vehicle systems; and nuclear activities not in compliance with International Atomic Energy Agency (IAEA) safeguards; (ii) export, resell, re-export or transfer any Goods, Services and/or Software to a customer that an entity or person that is listed, blocked or subject to sanctions under applicable Export Control and Economic Sanctions Laws, including entities that are owned 50% or more, directly or indirectly, individually or in the aggregate, by an individual or entity that is listed, blocked or subject to sanctions; or (iii) export, resell, re-export, transfer, or conduct transactions involving the Goods, Services, Software with or to entities or individuals in countries or regions subject to comprehensive sanctions, including: Crimea, Cuba, Iran, North Korea, Syria, and Sudan. Further, none of the underlying information, software, or technology of the Goods, Services and/or Software may be transferred or otherwise exported or re-exported in violation of Export Control and Economic Sanctions Laws. Any diversion contrary to U.S. law or other applicable law is prohibited. By purchasing Goods from Seller, Buyer represents and warrants that Buyer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Buyer agrees to assume sole responsibility for obtaining licenses to export or re-export as may be required, and further represents and warrants that Buyer shall: (i) cooperate fully with Seller in any official or unofficial audit or inspection that relates to Export Control and Economic Sanctions Laws; and (ii) not export, re-export, divert, transfer, or disclose, directly or indirectly, any Goods, Services and/or Software sold hereunder or any related technical information, document, or material or direct products thereof to any country, entity, person or end-user so restricted by Export Control and Economic Sanctions Laws, as modified by time to time. Seller and Buyer are committed to fair, honest and ethical business practices. Buyer acknowledges that Seller has adopted a Code of Corporate Conduct and Ethics (a copy of which is available on Seller's website at www.lincolnelectric.com) and Buyer agrees to conduct itself in its dealings with or on behalf of Seller in a manner that is consistent with and facilitates compliance with Seller's Code.

27. Disputes and Governing Law. In the event of any controversy, claim or dispute arising out of or relating to this Agreement (a "Dispute"), Seller and Buyer shall seek to resolve the matter amicably through diligent, good faith, mutual discussions to be initiated as promptly as possible after a Dispute arises. If the Dispute cannot be resolved through mutual discussions as set forth above, either party may commence an action to resolve the Dispute in the Federal or State courts of Ohio. The parties shall submit to personal jurisdiction and venue in the State of Ohio, County of Cuyahoga. This Agreement and any transactions arising therefrom shall be governed and construed under the laws of the State of Ohio, as applied to contracts entered into and performed in that State, specifically excluding any conflict or choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to this Agreement or any transactions created thereby or construed therewith. In the event of any litigation, arbitration or mediation arising from a breach of any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorneys' fees incurred during the Dispute, provided that if each party prevails in part, such fees will be allocated in the manner as the court, arbitrator or mediator determines to be equitable in view of the relative merits and amounts of the parties' claims.