

TERMS AND CONDITIONS OF SALE

- 1. GOVERNING PROVISIONS AND GENERAL** Sale of all materials, equipment or services by Semahtronix LLC. shall be subject to these Terms and Conditions of Sale ("Conditions"), and Semahtronix acceptance of any order or instruction to produce or provide any materials, equipment or services shall be conditioned upon Purchaser's assent to these Conditions, which assent shall be deemed given by the placing of any order for or statement of intent to purchase any materials, equipment or services or any direction to proceed with manufacturing, engineering, procurement or shipment thereof. No modified, additional or different conditions (whether contained in a purchase order or any other communication from Purchaser) shall be recognized by or binding upon Semahtronix unless specifically agreed to in writing by an officer of Semahtronix, and the failure of Semahtronix to object to any such provisions shall in no event be a waiver of these Conditions or an acceptance of any other, different or further terms. No modification, amendment of, or addition to these Conditions shall be binding or enforceable unless such modification specifically states an intent to modify or amend these Condition and is expressly made in a writing executed by an officer of Semahtronix.
- 2. ACCEPTANCE OF ORDERS** All orders are subject to approval at Semahtronix's main office by an officer of Semahtronix, and are accepted subject to these Conditions (as herein-above set forth) and Semahtronix's price provisions in effect at the time of the acceptance.
- 3. PAYMENT TERMS** Unless otherwise specifically noted in writing by Semahtronix, Semahtronix's terms of payment are: Net 30 days from invoice date.

 - (a). Each invoice rendered by Semahtronix to the Purchaser shall be deemed an account stated, correct, accepted, and binding upon the Purchaser unless Semahtronix shall receive a written statement of objection within ten days after said invoice is rendered. No cash discounts are allowed on settlements by note of trade acceptance. A delinquency charge of 1 ½% per month will be charged on all amounts remaining unpaid 30 days after the invoice date, if not prohibited by law; otherwise at the highest lawful contract rate. If Semahtronix refers an invoice or account to an attorney for collection, the Purchaser shall pay all Semahtronix's expenses of collection, including reasonable attorney's fees.
 - (b). If, in the opinion of Semahtronix, the financial condition of the Purchaser at any time shall not justify continuance of production or shipment on the terms of payment specified, Semahtronix may require full or partial payment in advance or other assurance of Purchaser's due performance.
 - (c). Pro rata payments become due as shipments are made. If shipments of completed material or equipment are delayed or deferred by Purchaser or because of any condition beyond Semahtronix's control, Semahtronix shall invoice Purchaser for the full invoice value of such material or equipment when Semahtronix is prepared to make shipments; Purchaser shall pay said invoices in accordance with the above payment terms and shall bear the sole risk of storage of said equipment and material. If completed material or equipment is, through no fault of Semahtronix, not shipped within 60 days after its completion, Purchaser shall pay Semahtronix as storage charges 2% per month of the invoice value of said material or equipment.
 - (d). All remittances are to be sent to the office of Semahtronix as shown on invoices. Payments are deemed made at the time they are received by Semahtronix. Purchaser assumes the risk of delay in delivery.
- 4. QUOTATIONS** All Semahtronix's bids, proposals, or quotations, whether written or verbal, are subject to these Conditions. All quotations are based upon Semahtronix's use of its standard materials and equipment and are only for the quantities specified therein. Verbal quotations expire, unless accepted, the day they are made. Written quotations automatically expire 60 calendar days from the date issued unless sooner terminated by notice by Semahtronix within that period.

 - (a). Prices shown in Semahtronix's literature are not a definite quotation or offer to sell. This literature is maintained as a source of general information, which is subject to change at any time. Purchaser assumes the responsibility to confirm pricing for any orders based on Semahtronix's literature or advertisements.
- 5. CHANGES** Prices, discounts, and shipping terms are subject to change without notice. Semahtronix may amend these Conditions upon 30 days written notice to Purchaser. Upon provision of such notice by Semahtronix, such amended Conditions become binding upon Purchaser unless Purchaser notifies Semahtronix in writing of any objections to such changes within 20 days from the time Semahtronix provides the aforementioned 30 day written notice.
- 6. PRICE CHANGES** In the event of a price change, the price of equipment or materials on order but unshipped will be adjusted to the price in effect at the time of shipment.
- 7. TRANSPORTATION EXPENSE** Unless otherwise specified by Semahtronix in writing, all sales are F.O.B. point of shipment. Point of shipment, method and route of shipment are at the discretion of Semahtronix.
- 8. DELIVERY** Semahtronix will not pay or be liable for, any penalty or damage, whether liquidated or otherwise, for late delivery or installation. Shipping dates are approximate and are based upon Semahtronix and Purchaser finalizing delivery schedules and Semahtronix's prompt receipt of all details essential to the proper execution of Purchaser's order, including approved shop drawings. In case of delay in furnishing complete information, date of shipment may be extended for a reasonable time.

 - (a) Semahtronix shall not be liable for delays in delivery or in the performance or failure to manufacture or deliver, due to (1) causes beyond its reasonable control, or (2) acts of God, acts of the Purchase, acts of civil or military authority, priorities, riots, fires, boycotts, strikes or other labor disturbances, floods, epidemics, war, freight embargos, terrorist activities or threats thereof, transportation shortages, wrecks or delays in transportation or unusually severe weather, or (3) inability because of causes beyond its reasonable control to obtain necessary labor, materials or components for manufacturing facilities from usual sources. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.
- 9. ERRORS** All stenographic and clerical errors are subject to correction by Semahtronix.
- 10. WEIGHTS** Catalog listed weights are carefully estimated, but not guaranteed. No particular classification by a transportation company is guaranteed.

- 12. GOVERNMENT REGULATIONS** If the equipment or material is or becomes subject to government control, allocation, regulation or restriction, the necessary and proper preference rating certificate, or certificates, shall be supplied by the Purchaser.
- 13. TAXES** Semahtronix's prices do not include sales, use, manufacturers, retailers occupation, excise or any similar or other tax, fee, duty, tariff, or charge imposed by any governmental authority on any transaction between Semahtronix and the Purchaser. Consequently, in addition to the price, the amount of any such tax, fee, duty, tariff, or charge, even if initially advanced by Semahtronix or by an export-import broker, shall be paid by the Purchaser, or in lieu thereof the Purchaser shall provide Semahtronix with an exemption certificate or other document acceptable to the authority imposing the charges.
- 14. PENALTIES** No penalty, delay assessment, burden, or liquidated damage clause of any description will be effective or binding upon Semahtronix unless specifically approved in a written agreement executed by an officer of Semahtronix.
- 15. CANCELLATION** An order once placed with Semahtronix may be canceled or terminated only with the consent of Semahtronix and upon terms which will indemnify Semahtronix against loss, damage and expense arising from such cancellation or termination.
- 16. SUBSTITUTE MATERIAL** Semahtronix may furnish suitable substitutes for materials which cannot be obtained because of priorities or regulations established by any governmental authority or because of non-availability thereof from usual sources or suppliers.
- 17. DAMAGE CLAIMS – TITLE – RISK OF LOSS** Semahtronix shall not be responsible for any damage, loss, or shortage after having received "in good order" receipts from the transportation company. All material and equipment is shipped F.O.B. Semahtronix's plant, regardless of transportation costs being prepaid or collect. Semahtronix's responsibility ceases with delivery to a carrier, at which time title and all risks of loss or damage in transit shall pass to the Purchaser. All claims of loss, damage and delay must be made by the Purchaser to the carrier. When material or equipment is received in a damaged condition, the Purchaser should obtain from and file with the carrier a concealed damage report on the day of delivery.
- 18. SECURITY AND OTHER REMEDIES** To secure the Purchaser's obligations to make full payment to Semahtronix, Semahtronix shall retain a security interest in all materials and equipment sold until the purchase price is fully paid. If full payment is not made when due, Semahtronix shall have all of the rights and remedies given a secured party by the Uniform Commercial Code. In addition, in the event of Purchaser's default in any obligation to Semahtronix, Semahtronix shall have the right to file and prosecute liens and to collect under any bond or other security for Purchaser's performance. All of Semahtronix's rights and remedies provided in these Conditions shall be cumulative and in addition to other rights and remedies provided by law and equity. Waiver by Semahtronix of any breach of any provision hereof shall not constitute a waiver of any other breach.
- 19. DISCLAIMER OF ALL WARRANTIES** Except to the extent Semahtronix otherwise specifically agrees in writing, the sale of all services, equipment and material by Semahtronix shall be **WITHOUT ANY WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Semahtronix expressly disclaims any and all implied warranties, except as otherwise expressly stated in these Conditions or in a subsequent written agreement between Purchaser and Semahtronix executed in writing by an officer of Semahtronix.
- 20. LIMITATION OF LIABILITY** Semahtronix shall not be responsible for damage to material or equipment caused by exposure to the elements, storage, accident, circumstances beyond Semahtronix's control, unauthorized modification, tampering, improper operation, abuse, or lack of service or maintenance. In no event, whether as a result of breach of contract, warranty (MERCHANTABILITY, FITNESS or other), alleged negligence, or otherwise, shall Semahtronix be liable for special or consequential or incidental damages including, but not limited to, loss of profits or revenue, loss of use of the materials or equipment or any associated equipment, down time costs, or claims of customers of the Purchaser for damages or penalties.
- (a). Semahtronix's sole and exclusive liability on any claim of any kind, including negligence, or for any loss or damage resulting from any contract for sale of material, equipment or service, or from the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, installation, technical directions of installation, inspection, repair, operation or use of any material or equipment covered by or furnished shall be limited to (1) repairing any product provided by Semahtronix, (2) replacing any product provided by Semahtronix with a new product of like description, or (3) refunding to Purchaser the price paid by Purchaser for the particular product provided by Semahtronix; which election shall be made by Semahtronix in its sole and exclusive discretion.
- (b). Purchaser must inspect and examine all material and equipment purchased from Semahtronix promptly upon receipt and notify Semahtronix in writing within ten days thereof of any claimed defect, nonconformity or discrepancy. The failure of the Purchaser to timely notify Semahtronix shall constitute conclusive acceptance by the Purchaser of the material or equipment received by the Purchaser. In no event shall any action be commenced against Semahtronix more than one year after the cause of action with respect to which the claim is made has accrued.
- (c). Semahtronix does not assume, and shall not be responsible for, any liability or expense for repairs made outside Semahtronix's factory without the prior written authorization and consent of Semahtronix.
- 21. PLACE OF PERFORMANCE AND ADJUSTMENT.** Each order, purchase request, confirmation, acceptance, or other transaction between Semahtronix and Purchaser shall be governed by and subject to this Agreement and these Conditions. All work, products, goods, labor, and services provided, or to be provided, to Purchaser by Semahtronix are subject to and governed by this Agreement and these Conditions. This Sales and Credit Agreement becomes effective at the time it is approved and accepted by Semahtronix and shall remain in effect until it is expressly and specifically terminated in a writing delivered to an officer of Semahtronix. This Sales and Credit Agreement, and all work, labor, products, goods, or services provided or to be provided by Semahtronix are based on this agreement which is deemed to have been entered and to be performed in Flippin, Arkansas. Venue for any action arising from this agreement, or from any work, labor, goods, products, or services provided or to be provided by Semahtronix to Purchaser shall be heard, adjudicated, and resolved solely in state or federal courts in the judicial district encompassing Flippin, Arkansas.
- 22. ASSIGNMENT** No purchase, shipment, order or right thereunder may be assigned by the Purchaser without Semahtronix's prior written consent.

23. ON SITE WORK If Semahtronix agrees to provide services of any nature on a job site or at any other place than Semahtronix's plant (which Semahtronix shall not be obligated to do), the Purchaser shall furnish, at its expense, heat, water and all other facilities, utilities, materials and services necessary.

24. INDEMNIFICATION FROM PATENT INFRINGEMENT If material or equipment sold by Semahtronix is not a part of Semahtronix's standard line offered by Semahtronix to the trade generally in the usual course of Semahtronix's business, but is produced in accordance with the Purchaser's specifications, requirements or design, the Purchaser agrees to defend, protect and save harmless Semahtronix and its successors and assigns against all suits and from all damages, claims and demands for actual or alleged infringement of any U.S. or other patent and to defend any such suits, claims, or actions which may be brought against Semahtronix, or any of its officers, owners, successors or assigns for any alleged infringement allegedly resulting from such manufacture, distribution or sale of any such material or equipment.

25. RETURNS FOR CREDIT In no case is material or equipment to be returned without first obtaining Semahtronix's written permission and a return material or equipment tag. Only unused material or equipment as currently sold and/or manufactured which has been invoiced to Purchaser within one year shall be considered for return. Semahtronix reserves the right to refuse any material or equipment returned for credit. Material or equipment accepted for credit is subject to a minimum service charge of 20% and all transportation charges shall be prepaid by Purchaser. Equipment built to order is not subject to return for credit under any circumstances. Material and equipment must be securely packed, and must reach Semahtronix without damage. Any cost incurred by Semahtronix to put material or equipment in first class condition shall be paid by the Purchaser in advance.

26. INTEGRATION. This Credit and Sales Agreement, and the Conditions presented herein, supersede all prior, oral or other written agreements or understanding between Semahtronix and Purchaser. No employee or representative of Semahtronix, other than a corporate officer of Semahtronix, is authorized to amend or modify this Agreement or the Conditions stated above. This Credit and Sales Agreement, and the Conditions, stated above may only be modified by a subsequent written agreement which is executed by a corporate officer of Semahtronix and specifically refers to this agreement and states an intention to modify or amend the terms hereof.

Approved and Accepted: **CUSTOMER/PURCHASER**

Company Name (Print): _____

By: (Authorized Signature): _____

Its (Title of Authorized signer): _____

Date: _____

Approved and Accepted: **Semahtronix LLC.**

By: (Authorized Signature): _____

Its (Title of Authorized signer): _____

Date: _____

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