

## CONTRACT AND ACCEPTANCE

Unless otherwise specifically provided by separate written agreement signed by BPR/RICO Manufacturing, Inc. ("RICO"), these Terms and Conditions of Sale ("Terms"), together with the conditions contained in any quotation, order, or acknowledgement from RICO, constitute the entire agreement between RICO and Customer as to this order to sell goods or services (the "Products"), and no other terms and conditions will be of any effect unless agreed to in writing by RICO. Customer will be deemed to have assented to the Terms upon (i) acceptance of any quotation from RICO, (ii) issuance of a purchase order in response to any quotation from RICO, or (iii) acceptance of any portion of the Products delivered by RICO.

Unless otherwise agreed in writing, the acceptance of any purchase order by RICO is expressly conditioned upon Customer's agreement to these Terms. If Customer objects to any of the Terms, Customer must set forth each objection in a separate writing signed and dated by Customer and delivered to RICO prior to or contemporaneous with Customer's purchase order or other form of acceptance. Customer's issuance of a purchase order or any other documentation which purports to reject some or all of the Terms or which includes language or terms contrary or additional to the Terms shall not constitute sufficient objection. Any objections to which RICO does not agree in writing shall be deemed rejected and shall not become a part of the parties' agreement. RICO's failure to object to provisions in any purchase order or other communication from Customer (including, without limitation, penalty clauses of any kind), shall not constitute a waiver of these Terms, nor an acceptance by RICO of any such provisions. No course of dealing, custom or usage, which is contrary to these Terms, shall apply. RICO may correct any typographical or clerical errors in prices, specifications, quotations, or acknowledgments.

## PAYMENTS, TITLE AND SECURITY INTEREST

All payments shall be made in U.S. Dollars. All payments shall be without deductions for back-charges, other accounts between RICO and Customer, and the like, which shall be settled independently of the payment of the invoice. Payment shall not prejudice claims on account of omissions or shortages in shipment, but no such claim will be allowed unless made in writing within 96 hours after receipt of the applicable shipment by Customer. **Unless otherwise specified in writing by RICO, a 35% deposit is required with Customer's purchase order and the remaining balance of 65% is due prior to shipment** from factory. At RICO's request, Customer will furnish sufficient information to enable RICO to assess Customer's creditworthiness.

Should a Customer wish to establish an open account with RICO for current and future orders, they may do so by contacting RICO's Finance Department at [accounting@ricoequipment.com](mailto:accounting@ricoequipment.com).

Although risk of loss passes to Customer upon shipment, title shall not pass to Customer, and RICO shall have a security interest in all goods and proceeds thereof, until RICO receives payment in full. Customer authorizes RICO to file any and all financing statements and other documents required to perfect RICO's security interest. Customer agrees to pay a late charge of one and one half percent (1.5%) per month, (but not in excess of the rate allowed by law), on any overdue amounts not the subject of a good faith dispute. If full payment is not made within 60 days of final payment due date, Customer is responsible for all expenses, including legal fees, incurred by RICO for collection.

## PRICES

Prices are subject to change without notice. Prices are quoted in U.S. dollars and are FOB point of shipment. Prices **exclude** freight or delivery charges, and all taxes (sales, excise, use, ad valorem, etc.), or any export or import duties. Freight or delivery charges shall be prepaid by RICO and added to Customer's invoice. Customers to pay direct all applicable sales taxes.

## SHIPMENTS TO RICO

In the event RICO requires a Customer to make a shipment to RICO, please contact your sales representative for detailed instructions before shipment. All shipments will be refused if the following conditions are not followed.

- (a) Freight must be prepaid.
- (b) Label all freight with assigned RICO serial number.

## SPECIFICATIONS

RICO is entitled to rely on specifications and other data furnished by the Customer or its agents in all phases of the work covered by these Terms. Changes in specifications, changes in delivery instructions and all other instructions must be submitted in writing to RICO and may affect RICO's price quote. RICO shall not be responsible for any delays, damages or losses claimed by Customer as a result of errors or omissions in Customer's specifications or other data supplied by customer.

## DRAWINGS

RICO will prepare non-Integrated drawings, if required, after receipt of order from the Customer. Revision to the original drawings by customer will be reviewed and may be subjected to additional price increases and/or delay to final production delivery schedule. No work or ordering of goods will commence until New Purchase Order is submitted and accepted by Rico for these changes.

Please allow Rico 2-4 weeks after receipt of (i) order, (ii) down payment and (iii) clarification of all design requirements. All submitted drawing(s) to customer must be signed off as

Accepted or Change Required and resubmitted within 5 Business days of receipt of drawing(s) delivery by Rico to keep original scheduled production slot.

## WARRANTY AND REMEDIES

RICO's "New Truck Warranty" (S1156 Revised 1-2014) (the "Warranty") is hereby incorporated into this Agreement and shall apply to any Products manufactured or provided by RICO except as stated herein. **RICO MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND RICO EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.** Customer's sole and exclusive remedy for any loss or damage associated with the Products shall be as set forth in the Warranty.

Products replaced by RICO shall become the property of RICO. Repaired or replacement Products will be shipped to the Customer FOB point of shipment.

If the Product sold is not manufactured by RICO, RICO will extend to Customer the same warranty protection RICO received from the original manufacturer, to the extent assignable.

RICO is not responsible for any charges relating to warranty work that are not authorized by the Warranty or have not otherwise been authorized by RICO in writing. If RICO, without separate compensation therefore, furnishes Customer with advice or other assistance concerning any Product or any system or equipment in which any such Product may be installed or incorporated, the furnishing of such advice or assistance will not subject RICO to any liability whether in contract, tort (including negligence and strict liability) or otherwise.

If Customer breaches any of Customer's obligations under this Agreement or if Customer fails to pay amounts due for Products Customer purchases from RICO, RICO reserves the right to discontinue or otherwise void any warranty. Customer shall be solely responsible for all representations or omissions Customer makes to third parties regarding the Products, including but not limited to any representations or omissions Customer makes about warranties, features, performance, support and service related to the Products. Customer shall inform its customers of RICO's rights and Customer's obligations under this Agreement.

## DELIVERY DATES

RICO shall select the method and carrier for delivery of all goods. Risk of loss or damage to the goods shall pass from RICO to Customer upon acceptance of a carrier at point of shipment. Any shipment, delivery or performance date stated is approximate only and does not constitute any guarantee of shipment, delivery or performance on any particular date. Time shall not be of the essence of this agreement.

## DELAYS

RICO shall not be liable for loss, damages, or non-performance resulting from delays in receipt of final specifications or instructions from Customer, changes in specifications, events of force majeure, or other causes beyond RICO's reasonable control. In the event of such delay, the delivery date shall be extended for a period equal to the time lost by reason of the delay. RICO shall notify Customer of any significant delay and will specify the revised delivery date as soon as practical. If shipment is delayed by Customer, Customer shall arrange for and notify RICO of the place or places to which RICO shall ship the goods for warehousing or storage at Customer's expense, and all risk of loss or damage to the goods shall be borne by Customer. If Customer is unwilling or unable to promptly arrange for warehousing or storage facility, RICO may do so at Customer's expense.

## CANCELLATION

Once accepted by RICO, this order **is not subjected to cancellation by Customer without the express written consent of RICO.** The Customer agrees to a cancellation fee for cost incurred on the project to date not as a penalty, but as offset of the damages which RICO and the vendors of RICO will suffer due to such cancellation.

## FREIGHT TERMS

Freight charges, delivery charges, blocking in goods, tarping, crating taxes or any export or import duties are the responsibility of the customer. Unless otherwise arranged by the customer, all orders are shipped FOB point of shipment prepaid and added to the Customer's invoice.

## STORAGE FEES

Products sold hereunder can be stored at RICO, at no cost, for up to five calendar days after the agreed upon ship date. For storage required after five calendar days and up to 30 calendar days, a storage fee of \$0.05 per cubic foot per day will be assessed. For storage required beyond 30 calendar days, the storage fee increases to \$0.09 per cubic foot per day. RICO's agreement to store Products shall not alter or otherwise affect the invoicing and payment dates set forth in the Terms.

RICO will invoice Customer for the full amount of the order, in accordance with our standard payment terms, when the product has been fully manufactured and readied for shipment. For storage periods less than 30 calendar days, the total incurred storage fee will be invoiced separately. For storage periods exceeding 30 calendar days, RICO will invoice monthly for the incurred storage charge. All risk of loss or damage to the Products stored by RICO shall be borne by Customer.

## LIMITATION OF LIABILITY

**UNDER NO CIRCUMSTANCES SHALL RICO BE LIABLE TO CUSTOMER FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF USE ARISING DIRECTLY OR INDIRECTLY FROM ANY BREACH OF WARRANTY, BREACH OF CONTRACT, MATERIAL OR OTHERWISE, OR FROM ANY ACTS OR OMISSIONS OF RICO'S EMPLOYEES OR AGENTS, TORTIOUS OR OTHERWISE. IN NO EVENT SHALL RICO'S LIABILITY FOR ANY CLAIM BROUGHT BY CUSTOMER EXCEED THE PRICE PAID BY CUSTOMER FOR THE PRODUCT.**

RICO shall not be liable beyond the remedies set forth in these Terms, including but not limited to any liability for Products not being available for use, delay damages, lost profits, loss of business,. RICO shall not be liable for any claim by any third party except as expressly provided herein. Notwithstanding anything in this Agreement, RICO is not responsible for information provided by the Customer to RICO unless agreed to in writing by RICO. Notwithstanding anything in this agreement to the contrary, the remedies set forth in this Agreement shall apply even if such remedies fail their essential purpose.

## APPLICABLE LAW / VENUE

The parties agree that these Terms and the parties' relationship, any sales thereunder, or any claim, dispute or controversy between Customer and RICO arising from or relating to the Products, these Terms, the interpretation, or the breach, termination or validity thereof, the relationships which result from these Terms, RICO's advertising, or any related purchase shall be governed by Ohio law. The venue and jurisdiction for the resolution of all disputes between the parties shall be the state or federal courts located in Cuyahoga County, Ohio.

## INDEMNIFICATION

To the fullest extent permitted by law, Customer shall indemnify, defend and hold RICO, including RICO's partners, officers, directors, agents, employees, subsidiaries, affiliates, and related companies, harmless from any claim, demand, cause of action, debt or liability (including reasonable attorneys fees, expenses and court costs) arising from: (a) Customer's modification(s) of and/or addition(s) to Product(s); (b) Customer's breach of this Agreement, (c) Customer's omissions, misrepresentations, or negligence, (d) any damage or injury to a third party to the extent such claim is based on (i) Customer's modification of and/or addition to the Products, misuse, negligent use or abuse of the Products, or breach of any

provision in this Agreement; (ii) Customer's failure to abide by all applicable laws, rules, regulations and orders that affect the Products; (iii) RICO's manufacture of Products according to specifications, drawings or other instructions provided by Customer; (iv) Customer's omission, misrepresentation, or negligence, or (v) any intentional or reckless acts by Customer or Customer's end-users causing harm to any person or property. Indemnified claims, debts and liabilities include the amount of any discount in price or concession that is made available by RICO to Customer.

## WAIVERS

The waiver by RICO of any breach by Customer of any provision of the Terms and Conditions of Sale shall not be deemed a waiver of future compliance therewith or with any other provision hereof, and such provisions, as well as all other provisions hereof, will remain in full force and effect. No course of conduct, nor any delay by RICO in exercising any rights of RICO hereunder, nor the acceptance of payment by RICO with knowledge of default or breach will waive any rights of RICO to enforce or modify these Terms.

## MISCELLANEOUS

Customer may not assign any rights arising out of the parties' business relationship or any duty of RICO under these Terms without RICO's prior written consent. Invalidity of any provision of these Terms shall not affect the validity of any other provision and any invalid provision shall be severed from the valid provisions.

## NOTICES

With the exception of any notices required by the Warranty, which are governed by notice requirements in the Warranty, any notice required or contemplated by these Terms shall be in writing and shall be delivered personally or sent to RICO by facsimile or by prepaid registered mail to the attention of Rico Chief Financial Officer. Notice by facsimile shall be deemed to have been received when transmitted and any notice sent by registered mail shall be deemed to have been received on the second day following the date mailed.

## ERRORS

RICO reserves the right to correct clerical or stenographic errors or omissions.