

TERMS AND CONDITIONS OF SALE

1. **General.** Tunstall's sale to Buyer is limited to and expressly made conditional on Buyer's assent to these Terms and Conditions of Sale, and any additional terms set forth on the face side hereof. These Terms and Conditions govern all sales of product(s) by Tunstall to Buyer regardless of whether Buyer purchases through the medium of written purchase orders, telephonic orders, internet orders, electronic orders or otherwise, and supersede and take precedence over any other terms and conditions including, but not limited to, terms and conditions which may appear in Buyer's order or in any document incorporated by reference in Buyer's order. Any term or condition of Buyer's order which is in addition to, inconsistent with, contrary to or different from these Terms and Conditions is rejected and shall not become part of the contract unless explicitly referenced and agreed to in writing by an authorized executive of Tunstall at its principal office in Massachusetts. Retention and/or acceptance by Buyer of any product delivered by Tunstall, or payment by Buyer of any invoice tendered hereunder, shall operate as acceptance by Buyer of these Terms and Conditions. Tunstall's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision.

2. **Orders.** By submitting an order to Tunstall, Buyer agrees to be subject to these Terms and Conditions of Sale in their entirety. All orders must be bonafide commitments showing definite prices and quantities and mutually agreed to shipping dates.

3. **Prices and Taxes.** Prices do not include federal, state or local taxes, including, without limitations, sales, use or excise taxes, now or hereafter enacted, applicable to the products sold in this transaction, which taxes may, in Tunstall's discretion, be added by Tunstall to the sales price or may be billed separately, and which taxes will, in any event, be paid by Buyer unless Buyer provides Tunstall with a proper tax exemption certificate at the time the order is placed. Prices quoted for goods or posted on Tunstall's website or otherwise presented are subject to change without notice. Acceptance of any order sent to Tunstall by the purchaser is entirely at the discretion of Tunstall.

4. **Delivery and Shipment.** All products will be tendered and shipped F.O.B. Buyer bears all risk of loss or damage in transit and shall be responsible to file claims with any carrier for damage occurring during shipment. Tunstall is not responsible for damage or loss in transit. Tunstall will use commercially reasonable efforts to deliver as specified herein but shall not be liable in any manner for any delays in delivery. Buyer bears all risk of delays in delivery, and waives all claims against Tunstall arising out of any such delays. Tunstall reserves the right to make delivery in installments and back order goods unless Buyer expressly states otherwise in writing. All such installments and back orders shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any products, whether by installment or back order or otherwise, shall not relieve Buyer of its obligation to accept remaining deliveries.

5. **Terms of Payment.** Payment shall be in U.S. dollars. Unless otherwise stated on Tunstall's invoice, terms of payment shall be net thirty (30) days from the date of the invoice. If at any time Tunstall, in its sole discretion, determines that payment in advance would be prudent, Tunstall may require full or partial payment in advance, and if such requirement is not met, may cancel the order or any part thereof and receive reasonable cancellation fees. If Buyer fails to pay the price or any other payment due hereunder Tunstall may recover, in addition to the price or payment, interest thereon at the rate of one and one-half percent per month where lawful, otherwise the maximum lawful monthly interest rate, and all costs of collection including, but not limited to reasonable attorney's fees and court costs. Terms of payment hereunder may be changed by Tunstall at any time.

6. **Contingencies.** Tunstall shall not be liable for any delay in delivery or for nondelivery, in whole or in part, caused by the occurrence of any contingency beyond the control of Tunstall including, by way of illustration but not limitation, war (whether an actual declaration is made or not), sabotage, insurrection or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or agency or subdivision thereof, judicial action, labor dispute, accident, fire explosion, adverse weather, floods, storm or other act of God, shortage of labor, raw materials or machinery or technical failure. If any such contingency occurs, Tunstall may allocate production and deliveries in its discretion among Tunstall's customers.

7. **Refunds, Exchanges and Returns.** Custom made products are non-returnable. Standard products may not be returned more than thirty (30) days after the date of invoice, and then, only upon the prior written approval of Tunstall. All returns will be subject to a twenty-five percent (25%) restocking charge and must be returned freight prepaid. No refunds or exchanges are ever allowed on modified or damaged goods.

8. **Products Manufactured by Tunstall; Limited Warranty.** Tunstall warrants to the Buyer that all products it manufactures will be free from defects in material and workmanship for a period of one (1) year from the date of original purchase, provided that such products are installed and used in accordance with standard industry practice pertaining to these products and product installation instructions. This limited warranty excludes remedy for damage or defect caused by abuse, alterations to the product(s) not executed by Tunstall, improper or insufficient maintenance, improper operation and normal wear and tear. Tunstall's obligation under the foregoing warranty is limited to the repair or replacement of defective product(s) and does not include reimbursement for the expense of removing the defective product(s), installing the repaired or replacement product(s) or any other damages. In no event shall Tunstall be liable for any other losses, claims or damages, whether direct, indirect, incidental, consequential or otherwise, arising from the foregoing warranty. **THE WARRANTIES IDENTIFIED ABOVE ARE TUNSTALL'S SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO PRODUCT(S) IT MANUFACTURES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. TUNSTALL HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS SET FORTH HEREIN.**

9. **Products Not Manufactured by Tunstall; Manufacturer Warranties.** Tunstall offers no warranty of any kind for products which are not manufactured by Tunstall. Rather, Buyer agrees to look solely to the manufacturer's warranty, if any, for such products. Buyer agrees that the manufacturer's warranty supplants Tunstall's limited warranty (Para 8) and that Tunstall's limited warranty (Para 8) shall not be applicable to products manufactured by anyone other than Tunstall. Manufacturer warranty policy information may be requested from Tunstall or the manufacturer.

10. **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL TUNSTALL'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, PRODUCTS SOLD BY TUNSTALL, OR TUNSTALL'S PERFORMANCE OR ALLEGED FAILURE TO PERFORM, WHETHER IN CONTRACT, IN TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE) OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCTS, AND IN NO EVENT SHALL TUNSTALL BE LIABLE FOR SPECIAL, INCIDENTAL, PUNATIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES RESULTING FROM LOSS OF USE, LOSS OF PROCESS, LOSS OF BUSINESS OR LOSS OF GOODWILL.

11. **Cancellation and Rescheduling.** Orders accepted by Tunstall may be cancelled or rescheduled by Buyer only with a written consent of Tunstall and upon payment of the then currently published cancellation or rescheduling charges, or a minimum of twenty percent (20%) of the purchase price, whichever is greater. Tunstall shall have the right without penalty or payment to cancel any order accepted, or to refuse or delay the shipment thereof: (i) if Buyer fails to make promptly any payment due Tunstall or to meet any other reasonable requirements established by Tunstall, (ii) if any act or failure to act of Buyer delays Tunstall's performance, or (iii) if Buyer's credit becomes impaired. In such event, Tunstall shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.

12. **Notice and Returns.** Any claims for defective product(s) and any claims resulting from freight shortages must be made in writing by Buyer within seven (7) days of receipt of such product(s). Failure to make a written claim within the stated time constitutes acceptance of the product(s) as is and a waiver of any claims. In addition, Buyer must promptly return any rejected product(s) to Tunstall, accompanied by a valid return authorization obtained from Tunstall. For any valid claim timely made, Tunstall, at its option, may repair product(s) or replace product(s) with an identical or substantially similar product(s).

13. **Confidentiality.** The price schedules, quotes and any other discounts contained herein are considered Confidential Information of Tunstall and Buyer shall not discuss with or disseminate such Confidential Information to any third-party without the prior written authorization of Tunstall.

14. **Intellectual Property Indemnification; Products Manufactured by Tunstall Only.** Tunstall will indemnify and defend Buyer against any claim that a product of Tunstall's own manufacture sold to Buyer, or any part thereof, constitutes a direct infringement of any United States patent, provided that such alleged direct infringement shall consist only in the use of such product alone and not as a part of or in combination with any other devices and/or parts not provided by Tunstall and provided further that: (i) Buyer gives Tunstall immediate written notice of any claim of alleged infringement, (ii) Buyer is not in breach of its contract with Tunstall and (iii) Tunstall is given authority, information and assistance by Buyer for the defense of same. If at any time Tunstall determines there is a substantial question of infringement, Tunstall may, in addition to the foregoing, and in its sole discretion, either (i) procure for Buyer the right to continue using and selling the product or part; (ii) replace it with a non-infringing product or part of its choosing; or (iii) refund the purchase price thereof to the Buyer. Tunstall shall retain control over any defense proffered hereunder, including the selection of defense counsel. The foregoing is subject to the limitations of liability in these Terms and Conditions and states the Buyer's exclusive remedy for patent infringement or infringement of any other intellectual property right. Products manufactured to a Buyer's designs or specifications are not warranted against patent or any other intellectual property infringement and are excluded from this indemnity and defense obligation. Buyer agrees to defend, indemnify and hold Tunstall harmless from and against any claim that a product manufactured to the Buyer's designs or specifications, or any part thereof, constitutes an alleged infringement of any United States patent or any other intellectual property right.

15. **Changes.** Tunstall reserves the right to make process, composition and design changes to its products without prior approval of or notification to Buyer.

16. **Governing Law/Jurisdiction.** The sale of any product(s) by Tunstall and the contract between Tunstall and the Buyer including but not limited to these Terms and Conditions shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of its choice of law provisions. All claims, disputes, controversies and other matters in question arising out of or relating to the sale of any product(s) by Tunstall and/or the contract between Tunstall and the Buyer, including, but not limited to, these Terms and Conditions, shall be decided and adjudicated through litigation in a Massachusetts state court in Hampden County or the Federal Court in the Springfield, Massachusetts, which shall have exclusive jurisdiction and be the exclusive venue.

17. **No Waiver and Severability.** No waiver of any provision of these Terms and Conditions by Tunstall shall be construed as a subsequent waiver of same, or waiver of any other provision. No invalidity of any provision of these Terms and Conditions shall invalidate the other provisions, which shall remain in full force and effect. In the event a court of competent jurisdiction determines that a provision of these Terms and Conditions imposes on buyer a greater obligation than permitted by applicable law, such provision shall be deemed to be re-written to provide for the maximum permitted obligation. It is the parties express intention that no provision shall be declared void or unenforceable.

18. **Basis of Bargain.** Tunstall and Buyer agree that the warranty disclaimers, the limitations of liability, governing law and jurisdiction and exclusive remedy provisions are material, bargained for terms that are fundamental to these Terms and Conditions and are reflected in the consideration to be given to both parties under these Terms and Conditions and in the decision by both parties to accept these Terms and Conditions.

19. **Entire Agreement and Amendment.** These Terms and Conditions constitute the entire agreement between the parties and supersede all previous negotiations, agreements or communications, whether oral or written. Any change to these Terms and Conditions may be made only upon mutual agreement of the parties in writing.