



The South's Leading Distributor of Fabrication and Robotic Welding Equipment

## TERMS & CONDITIONS

**Terms & Conditions of Capital Machine Technologies, LLC ("CMT"):** These Terms and Conditions (these "Terms") of CMT are the only terms that govern: (i) Buyer's purchase of the Products and Services identified on the reverse side of this form; and (ii) any future Buyer purchase of Products or Services from CMT, except to the extent that the Parties modify these Terms by a written agreement that is signed by an authorized representative of each Party, or updated terms are included in a Sales Acknowledgement.

- 1. Acceptance of Orders.** CMT's acceptance or fulfillment of any Order is expressly limited to and conditioned upon Buyer's agreement to these Terms. CMT hereby rejects any additional or inconsistent terms or conditions in any Order or other document that Buyer submits at any time, whether before or after the date hereof. Inclusion of Buyer's purchase order number on a Sales Acknowledgement does not constitute acceptance of any terms or conditions in that purchase order. Notwithstanding anything to the contrary contained in its purchase order or other documents, Buyer's receipt and acceptance of a Product shall constitute Buyer's acceptance of these Terms. If a Sales Acknowledgement identifies a CMT Quotation, then the Sales Acknowledgement shall be deemed to incorporate by reference any applicable terms of that Quotation. The place of acceptance and sale of all Products and Services is CMT Headquarters, or at any other location identified by CMT.
- 2. Payment.** Except as otherwise specified in a Sales Acknowledgement: (a) any Deposit, down payment or other initial payment identified in a Sales Acknowledgement shall be nonrefundable; and (b) Buyer shall pay for all Products upon completion of installation; provided, however, that if Buyer does not allow installation on the timetable specified by CMT, Buyer shall pay any remaining balance of the Purchase Price no later than seven (7) days after the Pickup Date. Buyer shall pay CMT, at CMT Headquarters, all amounts specified on each Sales Acknowledgement. There shall be no extension of any payment due date based on delays in installation and/or operation of Products caused by damage, warranty service, or warranty replacement of parts. If Buyer does not make payment when due, then Buyer shall pay CMT a late charge at the rate of eighteen percent (18%) per annum on the amount due or the highest amount permitted by law, whichever is less. Buyer has no right to deduct or set off any amount due to CMT by the amount of any damages or costs incurred by Buyer, arising from any CMT action on or otherwise. "**Purchase Price**" for any Product or Service means the Purchase Price identified on the applicable Sales Acknowledgement, exclusive of any Taxes; provided, however, that the Purchase Price may increase prior to the Pickup Date to cover any increase in price by the manufacturer. CMT will notify Customer of any increase in Purchase Price. "**Deposit**" for a Product or Service means the initial payment that Buyer is required to make with respect thereto, as indicated on the Sales Acknowledgment. Quoted Product and Service prices do not include any excise, sales, occupation, use or similar tax or governmental charge, including any levy or surcharge. Buyer shall pay all such taxes and charges.
- 3. Security Interest.** CMT reserves and Buyer hereby expressly grants to CMT, as collateral security, a lien on and purchase money security interest in and to all of Buyer's right, title, and interest in, to, and under each Product, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing, until Buyer has paid all amounts due to CMT with respect to such Product. Buyer shall execute, and hereby appoints CMT as its attorney-in-fact to execute on Buyer's behalf, any document requested by CMT that CMT determines is necessary for attachment and perfection of CMT's security interest. The foregoing security interest is a purchase money security interest under the UCC. If there is a Buyer Default, CMT shall have all the rights of a secured creditor under the UCC. Buyer shall ensure that ALL Products are excluded from the terms of any encumbrance on the real property where the Products are located.
- 4. Delivery; Risk of Loss; Title. "Pickup Date"** for a Product is the date that the Product is available for pickup by Buyer's designated carrier. The Pickup Date indicated on each Sales Acknowledgement is an estimate and is subject to change. CMT shall not be liable to Buyer for any change in the Pickup Date. CMT shall notify the Buyer of the final Pickup Date for a Product. Except to the extent otherwise set forth in a Sales Acknowledgement, Products shipped from inside the continental U.S. shall be shipped F.O.B. point of origin. If Buyer does not pick up a Product within two (2) days after the Pickup Date due to a delay by Buyer or Force Majeure: (i) CMT may move that Product to storage; or (ii) CMT may select an alternate carrier to make shipment and charge Buyer for such shipment. Buyer shall be liable for any demurrage or storage charges. All risk of loss or damage shall pass to Buyer, and delivery shall be deemed to be completed, on the Pickup Date.
- 5. Inspection; Acceptance; Damage; Nonconforming Products.** Buyer shall inspect all Products immediately upon delivery, prior to commencement of installation. On the date of Product delivery, Buyer shall: (a) notify CMT of any nonconformance with Specifications and notify both CMT and the carrier of any damage; and (b) ensure that any such notice includes photographic evidence and other documentation that clearly illustrates any nonconformance or damage. The carrier shall be responsible for any damage that occurs during shipment. If any delivered Product does not conform with the Specifications for any other reason, and if Buyer provides timely notice of nonconformance as required above in this Section 5, then: (i) CMT may in its discretion cure such nonconformance, replace the nonconforming Product(s), or accept return of the Product(s) and provide a refund, in each case on terms reasonably determined by CMT; and (ii) Buyer shall be deemed to accept such Product on the date that CMT in its reasonable discretion has provided a cure or delivered a replacement for such Product. Notwithstanding anything herein to the contrary, if Buyer assigns any interest in a Product for the purpose of an equipment lease or financing, such assignment shall be deemed to be an acceptance of that Product. Except as specified in the foregoing provisions of this Section 5, Buyer shall be deemed to have accepted all Products upon delivery. **The foregoing remedies are Buyer's exclusive remedies for the delivery of Products that are damaged or do not conform to Specifications.**
- 6. Installation.** Except to the extent set forth in a Sales Acknowledgement, Buyer, not CMT, shall be solely responsible for timely site preparation and for any erection, installation, warranty, or other services. Any CMT installation Services shall be conditioned upon Buyer complying with CMT installation requirements, including Buyer's execution of any required CMT installation form. Except as otherwise provided in a Sales Acknowledgement, any installation by CMT shall be deemed to have occurred upon the execution of a CMT Installation Form by a CMT service engineer.
- 7. Cancellation.** Buyer may not cancel any Order, except that Buyer may cancel an Order for a Non-Customized Product if Buyer: (a) delivers a cancellation notice to CMT prior to the Pickup Date for that Product; and (b) pays a cancellation charge equal to (i) twenty five percent (25%) of the Product's Purchase Price, if Buyer delivers the notice within thirty (30) days after the Sales Acknowledgement Date, or (b) thirty five percent (35%) of the Purchase Price, plus any costs incurred by CMT in performing its obligations hereunder, if Buyer delivers that notice more than thirty (30) days after the Sales Acknowledgement Date. "**Non-Customized Product**" means a Product that CMT determines, in its sole discretion, to be of a standard type routinely sold by CMT and for which there is relatively continuous purchaser demand.
- 8. Default.** A "**Buyer Default**" shall be deemed to have occurred if CMT determines in its reasonable discretion that Buyer: (a) has failed to timely make any payment due hereunder; (b) has failed to comply with any other Terms and has not cured such failure within ten (10) days after receipt of notice from CMT specifying that failure; (c) is unable to meet its financial obligations hereunder; (d) has become insolvent, made an assignment in favor of creditors, or become subject to any bankruptcy, dissolution or similar proceeding; or (e) has undergone a change of control by merger, change in ownership, or sale of substantial assets.
- 9. Remedies for Default.** Upon any Buyer Default, CMT may, by written notice to Buyer: (a) cancel any Order, in which case Buyer shall pay CMT a cancellation charge of thirty five percent (35%) of the Purchase Price of the ordered Product, plus any costs incurred by CMT in performing its obligations hereunder; (b) suspend delivery of any Product, performance of any Services, or performance of any other CMT obligations hereunder; (c) render any Product unusable; (d) terminate these Terms; and/or (e) exercise any and all of its rights as a secured

creditor under the UCC. CMT's rights, remedies, powers, and privileges provided in these Terms are cumulative and not exclusive of any rights, remedies, powers, and privileges available at law or equity.

10. **No Warranty; Liability Limits.** CMT MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF NO N-INFRIENGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR OTHERWISE, WITH RESPECT TO ANY PRODUCT OR SERVICES, OR ANY LABOR FURNISHED IN CONNECTION WITH THE SALE, DELIVERY, OR SERVICING OF ANY PRODUCT. GOODS AND MATERIALS SOLD BY CMT CARRY THE STANDARD WARRANTY OF THE MANUFACTURER THEREOF, IF ANY, AND CMT SHALL NOT BE RESPONSIBLE FOR ANY SUCH WARRANTY. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IS AGAINST THE MANUFACTURER OF THE PRODUCT. THE SOLE PURPOSE OF THE STIPULATED EXCLUSIVE REMEDY PROVIDED FOR IN [SECTION 5](#) IS TO PROVIDE CUSTOMER WITH REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS IN THE MANNER PROVIDED BY THE MANUFACTURER. IN NO EVENT SHALL CMT BE LIABLE TO CUSTOMER FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES FOR INJURY TO PERSON OR PROPERTY, LOST PROFITS OR REVENUE, LOST SALES OR LOSS OF USE OF ANY PRODUCT.
11. **Force Majeure.** Except with respect to the payment of monies due hereunder and Buyer's obligations under [Section 12](#), neither Party shall be responsible for failure or delay in performance hereunder or for any loss or damage due to Force Majeure. "Force Majeure" with respect to a Party means a cause beyond such Party's reasonable control, including an act of God, epidemic, pandemic, quarantine, fire, civil disobedience, war, terrorism, riot, strike, work stoppage, flood, water/element, change in governmental requirements, or inability to secure equipment, raw materials or transport.
12. **Buyer Liability.** Buyer shall reimburse CMT for all costs incurred by CMT enforce CMT's rights hereunder, as a secured party or otherwise, including any attorneys' fees and collection costs arising out of Buyer's breach of its obligations hereunder. Buyer shall indemnify, defend, and hold CMT harmless from and against all judgments, decrees, and costs (including attorneys' fees) resulting from Buyer's use and/or resale of the Products.
13. **Entire Agreement; Amendment; Waiver.** These Terms: (a) constitute the entire agreement between the Parties with respect to Buyer's purchase of Products and Services from CMT, and supersede all prior oral or written agreements or communications between the Parties with respect thereto; (b) may be amended only by a written agreement that references these Terms and is signed by an authorized representative of each Party. These Terms shall remain effective as between the Parties, regardless of any arrangement or agreement for financing of Buyer's purchase of any Product, even if financing is provided by CMT or a CMT affiliate. Any CMT failure to enforce these Terms shall not constitute a waiver of its right to such enforcement in the future, regardless of the length of time for which such failure continues. Any waiver by CMT must be in writing and signed by an authorized representative of CMT. No statement or assistance made or offered by CMT through its representatives, whether made before or after Buyer's submission of any Order, including statements regarding any Product's suitability, capacity, performance, or compliance with Buyer specifications, shall constitute a waiver by CMT of any provision hereof. These Terms are for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy.
14. **Survival; Severability; Assignment.** Any provision hereof that by its terms is intended to have effect after the termination of these Terms shall survive such termination until by its terms it is no longer applicable. If any of these Terms or the application thereof shall be invalid, void, or unenforceable, then the remainder of these Terms and the application thereof shall not be affected thereby and shall be enforceable to the fullest extent permitted by law. Buyer shall not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of CMT. Any purported assignment or delegation in violation hereof is null and void. No assignment or delegation will relieve Buyer of any of its obligations hereunder.
15. **Governing Law; Forum.** These Terms, and Buyer's purchase of Products and Services, shall be governed by and interpreted in accordance with the laws of Florida, U.S.A. The state and federal courts having jurisdiction in Hillsborough County, Florida shall be the exclusive venue for any action to enforce these Terms.
16. **Notice.** Any notice given to a Party hereunder: (a) shall be in writing; (b) shall be sent by email, by U.S. certified or registered mail, return receipt requested, or by a delivery service that has a tracking system to confirm deliveries, such as FedEx or UPS; and (c) shall be deemed to be delivered and received upon delivery to the receiving Party at the address set forth on the reverse side of this form, or to such other address as such Party has designated by written notice in accordance with this [Section 16](#). The delivery receipt shall be conclusive, but not exclusive, evidence of receipt. If delivery is refused upon presentation or is undeliverable, then notice shall be deemed to be received at the time of such refusal or failure of delivery.
17. **Construction; Definitions.** For purposes of these Terms: the singular shall include the plural, and the plural shall include the singular; headings are for convenience only, and are not intended to limit the intent of these Terms; "herein", "hereof", "hereto", and "hereunder" refer to these Terms in their entirety and not to any particular provision hereof; "including" means "including without limitation"; the definition of any defined term shall apply equally to both the singular and plural forms of the term, and to other forms of the word; reference to a number of days shall be deemed to refer to calendar days; if the final date of any period for the taking of any action falls on a day other than a Business Day, then the end of such period shall be extended to 5:00 p.m. Tampa, Florida time on the next day that is a Business Day; any reference to a Section refers to a Section of these Terms; "Business Day" means any day other than a Saturday, Sunday, or government holiday in Tampa, Florida; "Buyer" means the Person identified as the Customer on the reverse side of this form; "Order" means a purchase order that Buyer delivers for a Product or Service; "Party" means CMT or Buyer; "Person" means an individual or juridical entity; "Product" means a machine tool or related equipment, part or accessory, or combinations or components thereof, specified on the front of any on any Sales Acknowledgement; "Quotation" means a CMT-issued quotation that is referenced in the applicable Sales Acknowledgement; "Sales Acknowledgement" for a Product or Service means a Sales Order Acknowledgment or other agreement that (a) sets forth the terms of Buyer's purchase of such Product or Service from CMT, and (b) is executed by an authorized officer of CMT; "Sales Acknowledgement Date" for any Product means the date of CMT's issuance of the applicable Sales Acknowledgement for that Product, as indicated thereon; "Service" means a CMT service specified in any Sales Acknowledgment; "Specifications" for a Product means specifications for such Product that are set forth in a Quotation, as modified by CMT prior to its acceptance of a Deposit for such Product.

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**Tampa Technology Center**  
911 US Highway 301 South  
Tampa, FL 33619

**Atlanta Technology Center**  
2964 Northeast Pkwy N.E.  
Atlanta, GA 30360

**Dallas Technology Center**  
13710 Omega Road  
Dallas, TX 75244