

## **TERMS AND CONDITIONS OF SALE**

These Standard Conditions of Sale shall govern the sale of products (“Products”) by Cimballi Usa Inc, a Delaware corporation with an office in 418, Meadow Str., Fairfield, CT 06824, USA (hereinafter referred to as “Seller”).

These Standard Conditions take precedence over any Customer’s additional or different terms and conditions to which notice of objection is hereby given. Acceptance by Customer is limited to these terms and conditions. Neither Seller’s commencement of performance nor delivery shall be deemed or constituted as acceptance of Customer’s additional or different terms and conditions.

### **1. Purchase orders and acceptance**

**1.1** The Seller’s quotations shall automatically expire if not followed by a purchase order from the Customer within 30 (thirty) days from the quotation date.

**1.2** All orders placed with Seller must be in writing and must include all the essential details for the sale contract as indicated in the quotation (i.e. type and quantity of Products and services ordered, price, payment terms) as well as an express reference to the quotation.

**1.3** Orders will be binding upon Seller when accepted in writing by Seller. A sale contract is deemed to be made when Seller accepts a Customer’s order in writing.

**1.4** Accepted purchase orders may not be cancelled by Customer. In the event of cancellation of an accepted order, Customer shall indemnify Seller from and against any and all damages and losses suffered.

**1.5** The terms of this quotation are confidential. Any technical information included herein are disclosed in confidence and are proprietary to Seller (or Seller’s affiliates, as the case may be). They may not be copied, reproduced, revealed or appropriated by others in whole or in part, without the Seller’s express prior written consent.

**1.6** Seller sells its Products for professional use only. The Customer hereby represents and warrants that he purchases Products for professional use and not as a “consumer” (as defined by the applicable laws).

**1.7** Products comply with the US laws, regulations and standards, and should be sold, installed and used in the United States. Seller hereby disclaims any and all liabilities in case Products are resold, used or installed outside the US and is not responsible for the Products' compliance with laws, regulations or standards applicable in countries other than the US. The Customer shall fully indemnify and hold Seller harmless from and against any and all damages or other liabilities Seller may suffer in relation to the above.

## **2. Products**

**2.1** All information regarding the Products contained in the Seller's catalogues, lists, leaflets, web sites, or any other similar documents are not binding upon the Seller, unless an express reference to them is included in the quotation or in the Seller's order confirmation.

**2.2** The Customer must provide the Seller with all the information reasonably requested by the Seller in order to provide the Products.

**2.3** Seller will provide the operating and maintenance manual relating to each Product supplied

**2.4** Seller may make any Product changes at any time due to technical and/or aesthetical reasons, Seller shall reserve all of its rights derived from such modifications.

## **3. Price**

**3.1** The prices of the Products are those specified in the Seller's quotations or, if no price is so specified, those in the Seller's Price List current at the time of Seller's acceptance of an order. Seller's Price List is subject to change without notice.

**3.2** Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, and all taxes including federal, state and local use, sales, property (ad valorem) and similar taxes. Customer agrees to indemnify and hold harmless Seller for any tax liability in connection with the sale, as well as the collection or withholding thereof, including penalties and interest thereon. When applicable, transportation and taxes shall appear as separate items on Seller's invoice.

## **4. Payments**

**4.1** Unless otherwise confirmed in writing by Seller, payment is by means of bank transfer. Customer is not entitled to retain or offset any payments.

**4.2** Third party's payments are not accepted unless authorized in writing by Seller.

**4.3** Unless otherwise specified in the Seller's order confirmation, standard payment of the purchase price for Products shall be due at 30 (thirty) days net upon the date of the invoice.

**4.4** Failure to make timely payments shall entitle Seller to one or more of the following: (i) suspend any further deliveries; (ii) charge Customer with collection costs including but not limited to reasonable attorney's fees; (iii) terminate the sale contract if delay in payment exceeds 30 (thirty) days from the due date; and (iv) claim damages.

**4.5** The above is without prejudice to any and all remedies available to Seller, by contract, law or equity.

## **5. Tests**

Products are subject to ordinary inspections by Seller's or manufacturer's personnel and to the Seller's standard tests at the Seller's or manufacturer's facilities before shipment.

## **6. Shipment**

**6.1** Delivery dates quoted are estimates based on workloads at the time this quotation was generated and every effort will be made to hold quoted delivery dates. However, in no event does Seller accept any type of penalty clause, or related expenses, for late delivery. Delivery terms start from the Seller's order confirmation date, except where agreed upon otherwise.

**6.2** All shipments will be made EX Works (ICC Incoterms 2010) at the Seller's warehouse. Delivery will be deemed complete and risk of loss or damage to the Products will pass to Customer upon delivery to the carrier. Seller shall not be required to procure insurance to cover the Products in shipment. Any shipping arrangements made by Seller with carriers or forwarding agents at the Customer's request shall be made solely on the Customer's behalf and at the Customer's sole cost and risk.

**6.3** Seller shall provide ordinary packaging as per Seller's standard practices. Any special packing may be provided on the Customer's express request and shall be subject to separate charge

## **7. Security Interest**

Seller retains a security interest in the Products delivered to Customer, and in their accessories, replacements, accessions, proceeds and products, including accounts receivable (collectively, the Collateral) to secure payment of all amounts due under the sale contract. If Customer fails to pay any amount when due, Seller shall have the right to repossess and remove all or any part of the Collateral

from Customer, but not from Customer's customers. Any repossession or removal shall be without prejudice to any other remedy of Seller hereunder, at law or in equity. Customer agrees, from time to time, to take any act and execute and deliver any document (including, without limitation, financing statements) reasonably requested by Seller to transfer, create, perfect, preserve, protect and enforce this security interest.

## **8. Complaints on faulty delivery**

The Customer shall carefully inspect any Products delivered as soon as practicable after receipt thereof. Any complaints relating to packaging, quantity, non-conformity, or faulty parts, must be notified to the Seller in writing within 7 (seven) days from Products receipt.

Only if delivery was organized and fulfilled by Seller's carrier, Seller will replace the damaged part(s) at Seller's discretion. Failure to timely notify Seller of non-conformity, damage or defect, will result in forfeiture of the Customer's rights to claim the above non conformity, damages or defects.

## **9. Warranty**

**9.1** Seller warrants defective parts for a period of 12 (twelve) months starting from the invoice date unless otherwise stated on invoice.

**9.2** Seller's sole obligation in the event of a breach of such warranty shall be to provide at no charge to Customer repair works or replacement parts for all defective parts, at Seller's sole judgment. All parts to be replaced shall be sent to Seller at the Customer's costs and shall become the Supplier's property upon their replacement. If the part to be replaced is not sent back to Seller, the cost of the replacement part will be charged to Customer.

**9.3** Warranty claims hereunder must be made promptly and in writing; must recite the nature and details of the claim, the date the cause of the claim was first observed and the serial number of the Product concerned; and must be received by Seller within three (3) days from discovery of the defect by Customer and, in any case, no later than the date of expiration of the warranty period as provided for above. Customer may not in any case suspend or delay any payments due to Seller, for whatever reason.

**9.4** Seller shall have no obligation hereunder in the event that: (a) replacement of Products shall have been required through normal wear and tear or necessitated by Force Majeure, or by the fault or negligence of Customer or third parties; or (b) the Products have not been properly installed, used, maintained, or repaired in accordance with Seller's instructions, whether by Customer or third parties, or shall have been modified in any manner; (c) the defect is due to any other cause attributable to

Customer or third parties, including but not limited to harmful environmental conditions unknown to Seller; electro-chemical or electrical influences, etc.; (d) Customer has not fulfilled its payment obligations timely. Electric and electronic parts are not covered by this warranty, and are subject to the original manufacturer's warranty terms. Seller does not provide any warranties as to the Product cleaning performance, e.g. in terms of qualitative or quantitative results of the chemical treatment provided by the Product.

**9.5** THE WARRANTIES SET FORTH HEREIN ARE INTENDED SOLELY FOR THE BENEFIT OF CUSTOMER AND MAY NOT BE MADE BY CUSTOMER'S CUSTOMERS. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE, OR ANY WARRANTY AGAINST INFRINGEMENT, WHICH ARE ALL HEREBY DISCLAIMED AND EXCLUDED BY SELLER. THE REMEDIES GRANTED TO THE PURCHASED PURSUANT TO THESE STANDARD TERMS OF SALE SHALL BE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO CUSTOMER. IN NO EVENT SHALL SELLER'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING BUT NOT LIMITED TO PERSONNEL COSTS, TRAVEL EXPENSES, LOST PROFITS, LOSS OF TURNOVER OR BUSINESS, ETC.).

**9.6** Customer shall purchase and keep in stock those original components, spare parts and replacement parts as recommended by Seller. Further, Customer agrees to use the ordinary care in the industry in the inspection, use and maintenance of the Product and to follow any operation manual or specific instructions provided by Seller. In the event Customer fails to exercise the care necessary as set forth above, Customer agrees to indemnify, defend and save Seller harmless from any liability or obligation incurred by Seller to persons injured in connection with the operation of a Product.

**9.7** Any action for breach of warranty must be commenced within 6 (six) months from the expiry date of the warranty.

**9.8** This warranty applies only if Customer uses original manufacturer's spare parts and consumable materials.

## **10. Force Majeure**

**10.1** Performance of any obligations may be suspended by Seller without liability to Customer to the extent that a war, fire, earthquake, hurricane prohibition or acts of public government or public

agency, riot, hostility, public disturbance, epidemic, flood, storm, other acts of God, strikes, labor disputes, shortages, inability to obtain materials, raw materials, components, electrical power, equipment or transportation, computer viruses or other matter beyond the reasonable control of such party delays or prevents the performance of the sale contract. Seller shall invoke this provision by promptly notifying Customer in writing of the nature and estimated duration of this suspension.

**10.2** Should a Force Majeure event prevent or delay delivery of the Products to the Customer or the performance of any other material obligation of the Seller for a period exceeding six (6) consecutive months, then either Seller or Customer will be entitled to cancel the sale contract to the extent not yet executed without Seller being held to any indemnity or liability whatsoever towards the Customer.

## **11. Trademarks**

**11.1** Unless otherwise agreed and approved in writing by the Seller, the Customer undertakes not to cancel or remove any of the trademarks, logos or names of the Seller placed upon the Products and/or appearing in Seller's documents.

**11.2** Nothing contained in these Standard Terms or in the sale contract shall be construed as granting Customer any rights, whether by license or otherwise, upon the Seller's trademarks. Any use of the Seller's trademarks by Customer is therefore excluded, unless with the Seller's prior written consent.

## **12. Termination of the sale contract**

Seller shall be entitled to terminate immediately the sale contract (i) if a change in the Customer's financial conditions occurs, in such a way that, in the Seller's judgment, payments due to Seller are at risk, or (ii) if the Customer files a petition in bankruptcy, or is adjudicated bankrupt, or takes advantage of the insolvency laws of any jurisdiction, or makes an assignment for the benefit of creditors, or is voluntarily or involuntarily dissolved, or has a receiver, trustee or other court officer appointed for its property. In the above cases the Seller shall be entitled to request the entire payment of the sums still due by the Customer in one amount.

## **13. Intellectual Property Rights**

Any and all intellectual property rights connected with the Products, including any parts thereof and any documentation pertaining thereto, are and shall remain the Seller's sole property.

## **14. Severability**

Should any of these Standard Terms be declared void or unenforceable by a court of competent jurisdiction, the remainder of these Standard Terms and the sale contract shall not be affected thereby and shall continue to be fully valid and enforceable.

#### **15. Governing laws**

These Standard Terms and any sale contract between Seller and Customers shall be governed by the laws of Connecticut.

#### **16. Arbitration**

Any controversy or claim arising out or relating to these Standard Conditions and/or relating to a contract of sale between Seller and Customer, shall be settled exclusively by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Venue of the arbitration proceeding shall be Fairfield County, Connecticut.