

# Terms & Conditions



## **CONDITIONS OF SALE**

All transactions between Stürtz Machinery, Inc. ("Stürtz") and the purchaser ("Purchaser") concerning goods and services sold by Stürtz ("Products") shall be exclusively and entirely governed by the following terms and conditions, and any rider, attachment or replacement attached thereto notwithstanding any conflicting or additional terms set forth in any document submitted by Purchaser.

### **1. AGREEMENT**

These terms and conditions of sale duly signed by Purchaser in the space provided below, must accompany any order submitted by Purchaser for the purchase of Stürtz Products and shall govern all quotations covering purchase orders for the sale of the Products and are the sole terms and conditions upon which the order from any Purchaser will be accepted. A contract between Stürtz and the Purchaser will be deemed entered into upon Stürtz's dispatch of its written confirmation and acceptance of the Purchaser's purchase order. No other supplementary or additional agreement between Stürtz and a Purchaser will be binding on or enforceable against Stürtz unless said agreement has been specifically accepted in writing by Stürtz. Stürtz's written acceptance of Purchaser's order shall not constitute an acceptance of any provisions, however formulated, including but not limited to written provisions on Purchaser's order form which are inconsistent with or additional to these terms and conditions. In order for any provisions submitted by the Purchaser to be binding on Stürtz, such provisions must be specifically accepted in writing by Stürtz. These conditions of sale apply only to the standard products manufactured and/or supplied by Stürtz. For specially manufactured products and other complex orders, as defined in the sole discretion of Stürtz, a different agreement may apply.

### **2. SALE OF PRODUCTS**

Stürtz shall transfer ownership and delivery possession to Purchaser, and Purchaser shall pay for and accept the Products described on the face hereof.

### **3. QUOTATION, DRAWINGS AND DESCRIPTIVE DOCUMENTS**

All illustrations, drawings, specifications and other materials accompanying Stürtz estimates or contained in Stürtz catalogs, as well as other data and information furnished by Stürtz constitute good faith approximate estimates, and are not binding on Stürtz unless so stated in writing by Stürtz. Any samples or materials provided by Stürtz and all technical or commercial information provided to Purchaser by Stürtz in connection with the sale of its Products are furnished with the understanding that they will be used exclusively by Purchaser for the sole and specific purpose of evaluating the feasibility of purchasing Stürtz's Products or services. Purchaser agrees that any materials furnished by Stürtz to Purchaser will not be copied, reproduced, transmitted or communicated by Purchaser or any of its servants, agents, employees or natural or non-natural persons controlled by Purchaser or such person's servants, agents and employees, including independent contractors hired by Purchaser, to a third person, without the prior written consent of Stürtz. If Stürtz does not confirm and accept Purchaser's purchase order, Purchaser hereby agrees to return to Stürtz all illustrations, drawings and other written materials furnished to Purchaser upon Stürtz's written request for same.

### **4. PRICE**

The price to be paid by Purchaser shall be that contained on Stürtz's price list or quotation last published before the date of actual delivery of the goods and are FOB Plant in Twinsburg, Ohio unless otherwise stated on the face hereof. Freight, insurance, the cost of installing the equipment are not included in the purchase price unless otherwise stated. Federal, state and local sale, use and other taxes are also not included in the purchase price, unless otherwise stated in Stürtz's quotation. Purchaser shall pay the amounts of any present or future taxes imposed on the sale, installation or use of the Products. If Purchaser claims that a transaction, including but not limited to a sale, installation or use of the Products is tax-exempt, the Purchaser shall provide Stürtz with a tax-exemption certificate acceptable to the authorities competent for the taxation of the transaction to which the Purchaser claims a tax exemption. Stürtz's price quotation includes the cost of customary packing to protect the Product during shipment. The cost of packing will not be refunded if, for any reason, the packing is returned. The price is subject to change at any time, without notice, (i) if changes in governmental action affect the landed cost of imported goods including the Products; or (ii) if any federal, state or local governmental action taking effect between the date of Stürtz's confirmation of the purchase order and the date of delivery affects the cost of producing or providing the Products.

### **5. PAYMENT**

Purchaser agrees to make prompt payment of invoices due in accordance with the Conditions of Sale set forth herein, whether complete or partial shipment. Terms for machinery and custom tooling are: 30 % down payment, 50 % prior to shipping and balance net 30 days from date of Stürtz's invoice, unless otherwise agreed upon in writing. The terms for standard parts are Two Percent (2 %) Ten (10) days, net/Thirty (30) days from date of Stürtz's invoice. The purchase price of the Products shall be payable without deduction of any kind, within such period of time and according to such terms as provided in Stürtz's quotation. Any alleged claims against Stürtz by Purchaser do not entitle Purchaser to make deductions or to withhold payment. Only persons duly authorized by Stürtz may accept payments on behalf of Stürtz. Any payment by Purchaser to a person not duly authorized to accept a payment may be deemed, at Stürtz's sole option, as not effected and making Purchaser fully liable for the purchase price. In the event Purchaser fails to make payments when due, then Stürtz shall have the right to charge interest at the maximum rate allowed by applicable law. Where delivery of the Products is made prior to the receipt of Eighty (80) Percent of payment for machinery and custom tooling by Stürtz, the Purchaser hereby grants Stürtz a security interest in the Products for the balance of the amounts owed by the Purchaser to Stürtz. Purchaser acknowledges and agrees that Stürtz shall have a right to file, and Purchaser agrees to sign, any documents required to evidence Stürtz's security interest in the Products. Should the laws of the place of business or of the place of incorporation of the Purchaser not provide for a security interest in the Products, title to the Products shall remain with Stürtz until full and final payment of the purchase price and all other sums that may be due and outstanding. In such event, pending the receipt of payment in full by Stürtz, Purchaser shall observe all notice requirements in the jurisdiction where the Product is located to preserve Stürtz interest in the Product and Purchaser shall remain liable to Stürtz for all damages following from any unauthorized disposal or use of the Product by Purchaser.

### **6. DUTY TO INSPECT**

Prior to shipment, Purchaser shall inspect the Products at Stürtz's plant in Twinsburg, Ohio, pursuant to the terms of written notice, sent by overnight courier or facsimile by Stürtz, that the Products are available for inspection (the "Notice"). Failure by Purchaser to effect any inspection within seven (7) days from receipt of the Notice shall constitute waiver of inspection, and acceptance of the Products. The prices set forth on the face hereof do not include any charges incident to said inspection by Purchaser or any individuals or agents authorized to perform said inspection at the request of Purchaser.

### **7. NOTIFICATION OF SELLER BY PURCHASER AS TO SHIPMENT DATE**

Purchaser shall notify Stürtz of the date or dates of shipment of the Products which shall not be later than the shipping date specified on the face hereof or (if said date is an extended period), "Shipping Date" shall mean not only the date written on the face hereof, on which or before which, the last day of period, or of time, so written, within which shipment is to be made, the but also the last day of any mutually agreed extension thereof. If no time for shipment is written on the face hereof, the one hundred and twentieth day from the date hereof (exclusive of said date) shall be shipping date. The shipping date of Products requiring inspection by Purchaser before shipment shall be extended by the time required for such inspection. Shipping date shall also be extended by the period of time occasioned by any of the following: (a) Failure of the Purchaser to furnish complete shipping instructions to Stürtz at least three (3) days prior to the date for any shipment specified herein; (b) Purchaser's failure to furnish correct or complete data for the manufacture of the goods sold hereunder; (c) Revisions of specifications by Purchaser agreed to by Stürtz; or (d) any of the causes set forth in Paragraph 14 hereof. Should any of the foregoing events set forth in this Paragraph 7 occur, the provisions of this contract in respect to such shipment shall, without notice, be automatically extended from day to day until such time as the shipping instructions, complete data for the manufacture of goods or the revisions of specifications by Purchaser are furnished to Stürtz or until any of the causes set forth in Paragraph 14 hereof shall have abated.

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## 8. SHIPMENT AND DELIVERY

Unless otherwise stated in Stürtz's quotation, delivery shall be merely indicative, and shall not constitute guarantee of delivery time in any manner whatsoever. Unless otherwise stated, delivery shall be made on F.O.B. United States point of shipment basis. Delivery will be deemed complete and risk of loss will pass to the Purchaser upon delivery by Stürtz of the goods to the carrier at the carrier's place(s) of business stated in Stürtz's quotation. If delivery to a carrier is at any time delayed due to circumstances for which Purchaser is responsible, risk of loss will pass to the Purchaser five days from dispatch of written notification to the Purchaser that the Products are ready for delivery to a carrier. Partial deliveries of the goods are permitted. In the event of a delay for force majeure as described in this paragraph, Stürtz will be entitled to withdraw in whole or in part from this contract without liability of any kind. If completion or delivery of the goods or the providing of services is delayed due to the fault of the Purchaser, Purchaser shall be charged with all costs and expenses incurred by Stürtz as a result of the delay, plus reasonable profit on all such costs and expenses. In addition, the Purchaser shall make any payments to Stürtz as they become due, regardless of Stürtz's delay in performance or delivery.

## 9. TOLERANCES AND VARIATIONS

Except as otherwise specified by Purchaser and expressly agreed to in writing by Stürtz, the goods sold to the Purchaser hereunder shall be produced in accordance with Stürtz's standard manufacturing practices. All goods, including those produced to meet an exact specification, shall be subject to dimensional, weight, sectional composition, mechanical and electrical property tolerance and variations consistent with good manufacturing practices. All such goods shall also be subject to normal variations in surface and internal conditions and deviations in quality or from tolerances and variations consistent with practical testing and inspection methods.

## 10. WARRANTY

Stürtz warrants that goods manufactured by Stürtz hereunder will be free from defects in workmanship and material for a period of twelve months from the transfer of risk per Section 8 hereof. If any such Products fail to meet the foregoing warranties, Stürtz will correct any such failure by repair or replacement of any defective damaged part or parts of the Products free of charge relative to cost of parts. Final determination as to whether a Product is defective rests with Stürtz. Stürtz's warranty obligations hereunder shall be limited solely to the repair and replacement of Products that fall within the foregoing limitations, and shall be conditioned upon receipt by Stürtz of written notice by Purchaser of any alleged defects or deficiency promptly after discovery within the warranty period. In the case of components, units or services purchased by Stürtz from a third party supplier, Stürtz's warranty obligations shall not exceed the settlement that Stürtz obtains from third party supplier. Purchaser shall not return any Products to Stürtz without Stürtz's prior written consent. Products for which Stürtz consents to their return will be shipped by the Purchaser F.O.B. Stürtz's factory. Stürtz does not assume responsibility nor shall it accept any invoice for unauthorized repairs to the goods or parts thereof, regardless of defective condition of the goods. Stürtz shall not be liable for any damage or defects in the Products arising while the goods are in the hands of a third party.

The Warranty contained herein will endure only to the benefit of the Purchaser and may not be transferred to any other person. Should Purchaser at any time transfer this Warranty to another person, Stürtz's liability under this Warranty shall cease.

THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ANY OTHER EXPRESS, IMPLIED, ORAL OR WRITTEN WARRANTY. STÜRTZ SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR PURPOSE.

USE OF MATERIALS NOT MANUFACTURED BY STÜRTZ OR RECOMMENDED INSTALLATION PROCEDURES THEREOF DOES NOT CONSTITUTE A WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH MATERIALS OR INSTALLATION PROCEDURES BY STÜRTZ AND STÜRTZ EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSES AS TO SUCH MATERIALS.

## 11. INSTALLATION

Stürtz is not responsible for installing the Products unless Stürtz and the Purchaser otherwise agree in writing. Should Stürtz agree in writing to undertake installation of the Products, Stürtz's obligations thereof shall be limited to providing installation of the Products in a workman-like manner. If Stürtz furnishes Purchaser with advice or other assistance concerning any Products supplied hereunder, or any system or equipment in which or as part of which such Products may be installed, and that is not required pursuant to this agreement, the furnishing of such advice or assistance shall not subject Stürtz to any liability, whether in contract, warranty, tort (including negligence), or otherwise.

## 12. NOTICE OF ACCIDENT OR MALFUNCTION

Within Twenty (20) days of any accident or malfunction involving goods manufactured or sold by Stürtz which results in personal injury or damage to property, Purchaser is required to give notice thereof in writing to Stürtz. Further, should Purchaser fail to give such notice to Stürtz and to cooperate in the investigation of any accident or malfunction, Purchaser agrees to protect, defend and save Stürtz harmless against all suits at law or in equity and from all costs of suit, legal fees and expenses, damages, claims and demands arising out of suit, legal fees and expenses, damages, claims and demands arising out of, or awarded in connection with, the sale or use of the goods sold hereunder.

## 13. CANCELLATION

Cancellation of any purchase order will be accepted on the following basis, unless otherwise stated in writing in our quotations and/or order acknowledgments: all Products will be paid for on the basis of actual cost of labor and material applied to the production or providing of such Products, plus 100 % of the total of such cost, or a charge equal to Fifteen (15) Percent of the purchase price, whichever is greater, as restocking charge. Stürtz's figures are considered final and conclusive and disposition of the Products subject to the cancellation will be given within 30 calendar days from date of notice to Purchaser of the cost of cancellation. Failure to give Stürtz final disposition of canceled material, within 30 calendar days will be prima facie evidence of Purchaser's agreeing that Stürtz may dispose of the canceled material as Stürtz sees fit, without further credit to Purchaser or obligation whatsoever by Stürtz.

## 14. FORCE MAJEURE

This contract is subject to, and Stürtz shall not be responsible or liable for, delay directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, acts of public enemies or insurrection, war and/or continuance of war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with or rendering more burdensome the production, delivery or payment hereunder, also delays in or lack of the usual means of transportation, riots, fires, floods, explosions, strikes or other labor problems, including but not limited to slowdowns or labor shortages, accidents to or breakdowns or mechanical failure of Stürtz's plant machinery or equipment, delays of suppliers, inability to procure materials or labor, shortages or reduction in energy sources, inability to secure fuel, material, supplies, or power at current prices; priorities, allocations, limitations, restrictions or other acts required or requested by federal, state or local governments, or any subdivision, bureau or agency, thereof, or other accidents or contingencies beyond Stürtz's control, either of the foregoing nature or of other kind, nature or description in Stürtz's or its suppliers' plants or elsewhere or otherwise affecting transportation or production of said merchandise or any ingredients used in or in connection with its production. In the event that any one or more deliveries hereunder are suspended or delayed by reason of any one or more of the occurrences or contingencies aforesaid, any and all deliveries so suspended or delayed shall be made after such disability has ceased to exist and nothing herein contained shall be construed as lessening in any event the full amount of merchandise herein purchased and sold but only as deferring delivery and payment in the events and to the extent herein provided for.

IN NO EVENT SHALL STÜRTZ BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR CONTINGENT DAMAGES ARISING OUT OF STÜRTZ DEFAULT OR DELAY IN FULFILLING THE TERMS OF THIS CONTRACT.

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## 15. CONTRACTUAL MODIFICATION OF REMEDIES

Except as otherwise provided in Ohio Revised Code Section 1302.93 (B) and (C) and of Ohio Revised Code Section 1309.92, Stürtz shall, at its sole opinion, credit Purchaser's account for the purchase price of, provide a replacement for or repair, any goods (or component parts hereof) manufactured or sold by it which its examination discloses to its satisfaction to have been defective when supplied, provided Stürtz receives actual notice from Purchaser of such alleged defect within Fifteen (15) days of (i) the discovery of the alleged defect; or (ii) the expiration of the applicable warranty, whichever is earlier. Claims not made within such period shall conclusively be deemed waived by Purchaser. If requested by Stürtz, the goods shall be returned to it at its direction and expense for examination. No allegedly defective goods may be returned to Stürtz without proper RMA number or its written authorization signed at its office in Twinsburg, Ohio by a duly authorized officer. Stürtz shall, at its expenses, reimburse Purchaser for any reasonable expenses incurred by it in an attempt to remedy any defect in Stürtz's goods.

STÜRTZ SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, OR CONTINGENT DAMAGE OR EXPENSES, ARISING DIRECTLY OR INDIRECTLY FROM ANY DEFECT IN GOODS MANUFACTURED OR SOLD BY IT OR FROM THE USE OF ANY DEFECTIVE GOODS. THIS LIMITATION ON CONSEQUENTIAL, SPECIAL AND CONTINGENT DAMAGE OR EXPENSES SHALL APPLY ONLY TO COMMERCIAL LOSS.

Claims for shortage of goods must be presented within Fifteen (15) days from the date of shipment of goods and must designate Stürtz's order number applicable to the claim. Any claim for shortage not presented pursuant to this provision shall be conclusively deemed waived.

Any action for breach of this contract for sale of goods or any other action arising out of or relating to this contract, or the breach thereof, must be commenced within One (1) year after the cause of action has accrued. The foregoing shall not limit the time within which any suit or action may be brought by Stürtz to collect any sums agreed to be paid pursuant to this contract by Purchaser.

THE REMEDIES SET FORTH HEREIN SHALL CONSTITUTE THE EXCLUSIVE REMEDIES AVAILABLE TO PURCHASER AND ARE IN LIEU OF OTHER REMEDIES, EXPRESS OR IMPLIED; AND THE LIABILITY OF STÜRTZ, WHETHER IN CONTRACT, TORT, UNDER ANY WARRANTY OR OTHERWISE, FOR ANY COMMERCIAL LOSS, SHALL NOT EXCEED THE PURCHASED PRICE OF THE PARTICULAR GOODS MANUFACTURED, SOLD, SUPPLIED OR FURNISHED BY STÜRTZ UNDER THE CONTRACT ON WHICH SUCH LIABILITY IS BASED.

The purpose of the foregoing stipulated exclusive remedy is to provide the Purchaser with a credit or replacement for, or the repair of, defective goods in the manner provided herein. The exclusive remedy shall not be deemed to have failed of its essential purpose so long as Stürtz is willing to credit Purchaser's account for the purchase price of, provide replacement for, or repair, the defective goods in the manner prescribed herein.

## 16. MISCELLANEOUS

All permits, licenses or authorizations necessary for the purchase, importation, installation or use of the Products shall be obtained by the Purchaser at its sole cost and expense.

Stürtz shall prepare all equipment for CSA inspection and certification which exceeds UL standards. Cost of final CSA certification and labeling shall be borne by purchaser.

In the event Stürtz's scope of supply includes any computer software, Purchaser will not receive title to the software but will receive a non-exclusive user license, subject to any such additional terms issued by Stürtz in writing separately from these Conditions of Sale.

Stürtz's sales representatives, agents and/or distributors have no authority to bind Stürtz with regard to any terms or conditions that are not contained herein. Stürtz's officers or the person who has signed Stürtz's quotation on behalf of Stürtz are the sole parties authorized to either make changes to these terms and conditions or to bind Stürtz with regard to any terms and conditions not contained herein. Any such changes and/or additional obligations shall nevertheless be binding on Stürtz only if accepted in written form by the President/Chief Executive Officer of Stürtz.

No right or obligation under this agreement shall be assigned by Purchaser without the prior written consent of Stürtz.

Should any single provision or subparagraph of this condition of sale be deemed invalid, the balance thereof will remain binding and enforceable in accordance with its terms and conditions.

This writing is intended by Stürtz and the Purchaser as the final expression of their contract and is intended also as a complete and exclusive statement of the terms of their contract. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determining the meaning hereof even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code (the "Code") is used in this contract, the definition contained in the Code, as adopted in the State of Ohio, is to control. No modification of this contract shall be binding unless expressly agreed to in writing and signed at Stürtz's office in Twinsburg, Ohio by its duly authorized officer in a document making specific reference to this contract and specifically stating that it amends this contract. No waiver by Purchaser or Stürtz of any default shall be deemed a waiver of any default which may thereafter occur.

Purchaser agrees to defend, protect, and save Stürtz harmless against all suits in law or equity and from all costs of suit, legal fees and expenses, damages, claims and demands arising out of or awarded in connection with the manufacture, sale or use of the goods sold hereunder to meet Purchaser's drawings, specifications, or other data furnished to Stürtz by Purchaser, including but not limited to, claims for actual or alleged infringement of any United States or foreign patent, trademark, copyright, trade secret or proprietary right.

This Agreement, which is in English, shall be interpreted in accordance with the commonly understood meaning of the words and phrases hereof in the United States of America, and the performance of the parties hereto shall be construed and governed according to the laws of the State of Ohio, United States of America, including the Uniform Commercial Code as adopted in such state.

Any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination, or invalidity thereof, shall be submitted, decided and resolved with finality by arbitration in accordance with the Commercial Arbitration Rules, including the Supplementary Procedures for International Commercial Arbitration, of the American Arbitration Association, as amended and in effect, at the time of such dispute, controversy or claim. The arbitration shall be conducted by three (3) arbitrators, one to be appointed by Purchaser, one to be appointed by Stürtz and a third, neutral arbitrator being nominated by the two arbitrators so selected, or if they cannot agree on third arbitrator, by the American Arbitration Association in accordance with its rules.

The Arbitration shall be conducted in English and shall take place in the City Cleveland, Ohio, as the exclusive forum for resolving such dispute, controversy or claim.

The decision of the arbitrators shall be binding upon the parties hereto, and the expense of the arbitration (including without limitation the award of attorneys' fees to the prevailing party) shall be paid as the arbitrators determine. The decision of the arbitrators shall be executory, and judgment thereon may be entered by any court of competent jurisdiction.

## 17. LIMITATION OF LIABILITY

All remedies set forth herein are exclusive and in no event, whether in contract, tort, (including negligence), strict liability, indemnity or otherwise, shall Stürtz be liable for indirect, special, incidental or consequential damages of any nature including but not limited to loss profits, scrap, plant down time, loss of use, increased cost of production, damage to goodwill or business reputation.