



220 W. Los Angeles Avenue  
Simi Valley, CA 93065 USA  
Tel: 805-581-1200  
Fax: 805-584-1624  
[www.malabar.com](http://www.malabar.com)

## Terms and Conditions of Sale

**Definitions.** As used in these Terms and Conditions of Sale, The term Product shall mean the machinery, equipment, goods, products, and other tangible property from time to time sold or offered by "Seller" ; the term "Buyer" shall mean the entity to whom such goods or services is sold or offered.

**Prices.** Unless otherwise stated, all prices are in U.S.Dollars. All prices for equipment, parts, and services will be priced according to current market conditions, and may fluctuate from time to time at the discretion of Malabar International.

**Payment Terms.** All payments shall be in U.S.Dollars, without offset, back charge, retention, or withholding of any kind. All invoices shall be payable within the terms stated on the invoice. Any amounts not paid when due will be subject to interest at the rate of 1 \_ % per month or the highest non-usurious rate permitted by applicable law, whichever is less. At the request of Seller, payments will be made through a confirmed irrevocable letter of credit, drawn on a U.S. bank or other bank acceptable to Seller.

**Sales Tax and Duties, Import Fees.** Seller is required to charge/collect national, state, local tax, applicable duties, and import fees on the products for which Buyer has not provided valid exemption certification. Buyer assumes responsibility for, and unconditionally guarantees payment or reimbursement of, all applicable taxes, fees, licenses, import duties, and fees and licenses, and expenses as may be applicable. When ordering, Buyer shall indicate clearly if any, or specifically, which products is tax exempt.

**Security Interest.** On any open account sale, Buyer hereby grants to Seller a priority lien, purchase money security interest and/or chattel mortgage in the products and any accounts receivable or cash from resale thereof until full payment is made to Malabar International. Buyer agrees to file or permit Seller to file any financing statements or other appropriate documents with its governmental authorities to perfect the validity, priority, and enforceability of Sellers priority lien on security interest. Buyer agrees to inform Seller immediately if it intends to use any import financing or has or will be granting a lien or security interest on its inventory to any third party.

**Credit Balance.** Buyer agrees that any credit balance issued will be applied within one (1) year of its issuance. If not applied or requested within one (1) year, any credit balance remaining will be subject to cancellation, and Seller shall have no further liability.

**Shipping Charges and Freight Policy.** Unless otherwise varied, shipping terms are EXW (as defined by the International Chamber of Commerce Terms, 2000), Seller's shipping warehouse. All shipments are freight collect from Sellers facility. Buyer shall be responsible for obtaining insurance. Title and risk of loss for products shall pass when made available to Buyer or delivery to carrier in the United States; provided that if payment has not been made at the time of shipment, Seller shall retain title (but not risk of loss) until payment has been made. If product is damaged in transit, Buyer must file claim exclusively with airline, carrier, vessel and/or insurance company; provided, however, that if the Seller has not received payment in full at the time the product is damaged in transit, Seller shall have the right to file the claim exclusively with airline, carrier, vessel, and/or insurance company.

**Cancellation.** Any cancellation by Buyer must be approved by Seller, and may be subject to penalty, restocking, or other charges.

**Acceptance.** All goods shall be finally inspected and accepted within ten (10) days after delivery. Failure of Buyer to provide Seller with an itemized list of defects within such ten (10) days or permit Seller a reasonable opportunity to correct any listed defects shall be deemed acceptance of Goods or Services. In the event of multiple shipments, each individual shipment shall be separately accepted and shall be periodically inspected and accepted. Buyer expressly waives any right to reject Goods or Services that substantially conform to the specifications relating thereto and any right to revoke acceptance after such ten (10) day period.

**Product Return.** Where Buyer claims an alleged defect in material or workmanship, Buyer shall advise Seller, in writing within ten (10) days after discovery thereof. Then, only after acceptance by Seller that such return is potentially warranted, Buyer shall return said equipment, transportation prepaid, to the Seller, provided such return is timely and within the warranty period. This warranty and liability of the Seller is expressly limited solely to replacement or repair of defective parts or goods, and return, at Buyer's expense, to Buyer after finding by Seller the product was defective prior to original shipment or, at the option of Seller, to provide refund to Buyer of the purchase price for said product.

**Warranty / Liability Disclaimer.** Seller's Standard Warranty is applicable and available either upon request or on our website ([www.malabar.com](http://www.malabar.com)). THERE IS NO WARRANTY, REPRESENTATION OF CONDITION OF ANY KIND, EXPRESS OR IMPLIED, \_ (INCLUDING NO WARRANTY OF MERCHANTABILITY OR OF FITNESS) EXCEPT THAT THE MATERIAL SHALL BE OF THE QUALITY SPECIFIED IN APPLICABLE SPECIFICATIONS, AND NONE SHALL BE IMPLIED BY LAW. Except as otherwise provided herein, quality shall be in accordance with Seller's specifications. Final determination of the material for the use contemplated by Buyer is the sole responsibility of Buyer and Seller shall have no responsibility in connection with such suitability.

**Force Majeure.** Seller shall not be liable for any delay in, or impairment of, performance resulting in whole or in part from acts of God, acts of war, acts of terrorism (whether actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines, labor disruptions, shortages, communication or power failures, fire, accident, explosion, inability to procure or ship product or obtain permits and licenses, supplies or raw materials, severe weather conditions, catastrophic events, or any other circumstances or cause beyond the reasonable control of Seller in the conduct of its business.

**No Third Party Benefit.** The provisions stated above are for the sole benefit of Seller and Buyer, and confer no rights, benefits or claims upon any person or entity not a party hereto.

**Waiver.** The failure of either Seller or Buyer to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of the right or excuse any subsequent nonperformance of any such term or condition by the other party.

**Severability.** If any portion of these Terms and Conditions is found to be invalid or unenforceable by a court of competent jurisdiction, the invalid or unreasonable term shall be undefined, or a new enforceable term provided, such that the intent of the Seller and Buyer in agreeing to the provisions of these Terms and Conditions shall be enforceable to the fullest extent of the applicable laws.

**Complete Agreement.** These terms and conditions, together with any other terms and conditions that the Seller publishes or makes available to Buyer (i) on an invoice or a packing slip, (ii) on any document including, without limitation, those involving extension of credit by Seller, or export of products, represent the entire agreement between the parties and shall supersede all written statements, agreements, and understandings between the Seller and Buyer pertaining to the subject matter of this agreement.

**Assignment.** Buyer shall not assign any order, any interest therein, or this order without the prior written consent of the Seller. Any actual or attempted assignment without the Seller's prior written consent shall entitle Seller to cancel such order or to terminate this agreement upon notice to Buyer.

**Governing Law.** These Terms and Conditions shall be governed by the laws of the State of California, United States, including its provisions of the Uniform Commercial Code, but excluding its conflict of law rules. Notwithstanding the foregoing, any legal action by Buyer with respect to any transaction must be commenced within one year after the cause of the action has arisen.