



Basic Tool Inc

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TERMS AND CONDITIONS OF SALE

NOTICE: All offers to sell, all acceptances of offers to purchase or acceptances of offers to sell and the sale of all products described in this document ("Products") are made solely pursuant to the terms and conditions described below. Any purported acceptance by Seller of a purchase order is expressly conditional upon Purchaser's acceptance of these terms and conditions of sale and delivery. Seller hereby objects to any and all additional or different terms and conditions of sale and delivery proposed by Purchaser. Purchaser will be deemed to have accepted these terms and conditions of sale unless it cancels its purchase order within five business days after receipt by seller.

- 1. Acceptance.** All orders received by Seller are subject to final acceptance or confirmation by Seller and no terms or orders are binding upon Seller until so accepted. Written authorization to proceed with work is considered to be the same as a purchase order for purposes of these terms and conditions.
- 2. Deliveries.** All deliveries are F.O.B. (see Offer to Sell). All deliveries shall be made via BTI Truck or some other reasonable means chosen by Seller. All risk of loss to Products sold shall pass to Purchaser upon delivery by Seller. Title to the Products shall remain with Seller until Purchaser pays the Purchase price in full to Seller. Delivery is conditional on the timely receipt by Seller of documents necessary for the completion of the order, any down payment, and Purchaser's compliance with these terms and conditions. Seller will use reasonable efforts to meet delivery schedules. Seller will not be liable for any delay in the performance of orders or contracts, or in the delivery or shipment of Products, or for any damages suffered by Purchaser by reason of such delay. Delivery is subject to Purchaser maintaining credit satisfactory to Seller. Seller may suspend or delay performance or delivery at any time pending receipt of assurances, including full or partial prepayment or payment of any outstanding amounts owed, adequate to Seller in its discretion, of Purchaser's ability to pay. Failure to provide such assurances shall entitle Seller to cancel this contract without further liability or obligation to Purchaser.
- 3. Prices.** Prices are quoted F.O.B. (see Offer to Sell). Prices do not include sales, use, excise, privilege or any similar tax levied by any government, and Purchaser shall pay any such applicable tax. Upon the request of Seller, Purchaser shall provide Seller a tax exemption certificate acceptable to the appropriate taxing authorities.
- 4. Terms of Payment.** The purchase price shall be due in full by Purchaser sixty days after date of invoice or as otherwise provided in Seller's offer to sell. Extensions of credit, if any, may be changed or withdrawn by Seller at any time. Invoices not paid on their date due will be subject to carrying charges which shall accrue and be added to the unpaid balance in the amount of one and one-half percent (1-1/2 %) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever is less. Purchaser shall reimburse Seller for the costs of collection, including, without limitation, reasonable attorneys' fees, of any overdue amount owed by Purchaser to Seller, and such collection costs shall also be subject to the carrying charges. Purchaser may not hold back or set-off any amounts owed to Seller in satisfaction of any claims asserted by Purchaser against Seller.
- 5. Cancellation/Changes.** Purchaser may not cancel or change an order once placed with and accepted by Seller except with the prior written consent of Seller and upon terms that will indemnify Seller against any loss. Seller may correct mathematical, clerical or transcription errors.
- 6. Limited Warranty.** Seller warrants that the Products sold will be free from defects in material and workmanship for the life of the program the product supports from the date of delivery to the original Purchaser, except that Seller provides no warranty with respect to electrical parts, attachments, accessories to the main equipment and any part not manufactured by Seller. Purchaser's exclusive remedy with respect to such items shall be the applicable manufacturer's warranty, if any. Seller will repair, or in its sole discretion, replace, any Product found to be defective at the time of delivery. This limited warranty does not cover (i) normal maintenance; (ii) normal wear and tear; (iii) use under circumstances exceeding specifications; (iv) abuse; (v) unauthorized repair or alteration including repair by Purchaser; (vi) accident; (vii) failure to follow installation, maintenance and operating instructions; or (viii) damage caused by natural calamities such as fire, storm, or high wind. This limited warranty is Purchaser's exclusive remedy. It shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or, in its sole discretion, replace the defective Product in the manner specified. Descriptions, representations and other information concerning the Products contained in Seller's catalogs, advertisements or other promotional materials or statements or representations made by Seller's sales representatives or distributors shall not be binding upon Seller and shall not be part of this limited warranty. Except as provided herein, Seller shall not be liable to Purchaser in any manner with respect to Products. In no event shall Seller's liability to Purchaser ever exceed the purchase price of the allegedly defective Product. Except as provided herein, Seller shall not be liable for transportation, labor or other charges for adjustments, repairs, replacements, installation, or other work which may be done upon or in connection with the Products sold. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOST PROFITS, whether arising from any defect in the Products, from any use of the Products, from any inability to use the Products, or otherwise. NO OTHER EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, TITLE OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN (WHICH ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES) SHALL APPLY TO THE PRODUCTS. The application of the Products and the output or performance capabilities and operational costs of the Products are not warranted. These will vary depending on maintenance, amount, method of operation and other factors not within Seller's control.
- 7. Security Agreement.** Purchaser hereby grants to Seller a continuing purchase money security interest in all Products sold and/or delivered to it and to the proceeds thereof. Purchaser shall execute and deliver any financing statements and other documents that Seller may reasonably require for the perfection of Seller's security interest and Purchaser hereby authorizes Seller to do all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of its security interest.
- 8. Limitations.** Any action by Purchaser under or relating to this Agreement or the Products sold must be commenced within one (1) year after such cause of action has accrued.
- 9. Entire Agreement.** Seller and Purchaser acknowledge that these Terms and Conditions of Sale, together with Seller's invoice, constitute the entire agreement between Seller and Purchaser with regard to the sale or transfer of the Products sold and supersede all prior oral or written statements of any kind made by the parties or their representatives. These Terms and Conditions of Sale and Delivery may not be amended, modified, or supplemented except by written agreement executed by Seller and Purchaser. The provisions of the Agreement are hereby deemed by the parties to be severable and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.