

TENSATOR INC.
TERMS AND CONDITIONS OF SALE

The Terms and Conditions of Sale contained herein (the "Agreement") constitute the entire agreement between Tensator, Inc. ("Seller") and the party that places a purchase order with Seller ("Buyer"), and shall control all purchases of Products and Services (as hereinafter defined) by Buyer from Seller. Although Seller has used reasonable efforts to accurately illustrate and describe its Products and Services in its catalogues, literature, samples, and other advertising material, such illustrations and descriptions are for the sole purpose of identifying the Products and Services, and do not express or imply an affirmation of fact that the Products and Services will conform to their respective illustrations or descriptions. No form of acceptance of Buyer's purchase order except Seller's written or electronic acknowledgment provided to Buyer shall constitute valid acceptance; any such acceptance is expressly conditioned on Buyer's assent to the terms hereof and the exclusion of all additional or different terms, and Seller hereby gives notice of its objection to any additional or different terms proposed by Buyer in its purchase order or elsewhere, except as may be set forth in a written agreement expressly superseding these terms. Seller hereby reserves the right to correct clerical or typographical errors made by its employees at any time.

1. PRODUCTS AND SERVICES

1.1 Product(s) and Service(s) shall mean any product(s) and/or service(s) identified on:

- (a) Seller's proposal and/or quotation;
- (b) In the event of inconsistency between the purchase order, proposal, quotation and/or order acknowledgment, the final correspondence between Seller and Buyer will supersede all other documents unless (Buyer) has notified (Seller) of inaccuracy.

1.2 Seller shall give Buyer prior notice of proposed alterations to Products and/or Services that Seller deems necessary to comply with applicable safety standards and/or other statutory requirements and of any other alterations it might make that do not materially affect the quality or performance of the Products and/or Services specified by Buyer. If Buyer does not consent to any such alteration within fifteen (15) days following receipt of notice, Seller shall have the right, by written notice to Buyer, to cancel the Order.

1.3 Buyer shall inform all third parties to whom it may supply products of all information regarding the use and safe handling of the Products that Seller has provided Buyer.

2. ORDERS AND PRICES

2.1 Unless otherwise agreed in writing by Seller, all quotations for Products and/or Services may be withdrawn or varied at any time for any reason, and shall be deemed withdrawn at the expiration of one calendar month from the date of issue.

2.2 Prices charged will be those current at the time of delivery of the Products or completion of the Services. Seller may increase its prices at any time to account for an increase in cost to Seller of purchasing raw materials or of manufacturing, working on or supplying Products and/or Services. Seller may also increase its prices at any time to account for any faulty or improper specifications of Products and/or Services by Buyer.

2.3 Any notice or instruction from Buyer received subsequent to Seller's acknowledgment which has the effect of changing the specifications, scope of work or other terms shall be effective only upon an appropriate adjustment in the price and/or delivery date, and the written acceptance of any such change by Seller.

2.4 All prices quoted are exclusive of any tax, duty, or other fee imposed upon the transaction by any Federal, state or local government of the United States and/or foreign government authority; all such fees shall be paid by Buyer and are in addition to the price quoted or invoiced (unless Buyer shall present an exemption certificate acceptable to the taxing authorities); in the event Seller is required to prepay any such tax, duty or other fee, Buyer will reimburse Seller promptly upon request.

3. SHIPPING, DELIVERY AND COMPLETION OF SERVICES

3.1 Unless otherwise agreed in writing by Seller, Buyer agrees that orders are available for immediate shipment unless otherwise specified on purchase order. Ship complete requirements must be noted on purchase order. If Seller agrees to deliver Products to a location other than its premises, it shall await Buyer's instructions, and off-loading will be at Buyer's risk and expense. Buyer shall be billed accordingly for all material costs as well as shipping and handling charges. Carton charges not included in shipping and handling charges will be billed as a separate line item on invoice. These charges are for Tensabarrier and Posts for quantities of (4) and under.

3.2 If an Order involves the shipment of Products to Buyer or consignee located outside the United States ("International Supply Contract"), it shall be governed by the latest edition of Incoterms published by the International Chamber of Commerce as of the date of the Order. If there is any inconsistency between Incoterms and the terms of this Agreement, the latter shall prevail.

3.3 Shipments pursuant to an International Supply Contract may be subject to the issuance of a license or other permit by the United States Commerce Department, United States Department of State and/or other United States department or agency. Acceptance of all such Orders is conditioned upon and subject to the issuance of such license and/or permit; in the event that Seller is unable to obtain such license(s) or permit(s), Seller may cancel such Order and shall have no further liability to Buyer.

3.4 Seller will attempt to deliver Products or complete Services by the date, or within the period, agreed upon by Buyer and Seller; however, such dates or periods are good faith estimates, and Seller will not be liable for failure to deliver by such date or within such period. Seller may defer delivery or completion until all payments due by Buyer have been received. Products may be delivered by Seller in advance of any agreed date upon giving reasonable notice to Buyer.

3.5 Seller will attempt to comply with reasonable requests by Buyer for the postponement of delivery, but shall be under no obligation to do so. Where delivery is postponed for reasons other than Seller's default, Buyer shall pay the expenses associated with the delay, including a reasonable charge for storage and transportation.

4. CANCELLATION; DEFERRAL

4.1 Seller may defer delivery of Products or performance of Services and/or consider the Order cancelled if Buyer fails to make any payment due under the Order or hereunder, is unable to meet its debts as they become due or becomes insolvent, files a petition, or has a petition filed against it, for bankruptcy under any bankruptcy laws, enters into any arrangement or composition with creditors, makes an assignment for the benefit of creditors or goes or is put into liquidation. Cancellation of the Order shall not relieve Buyer from its obligations which shall have accrued prior to such cancellation.

4.2 Orders accepted by Seller can only be canceled by Buyer with the agreement of Seller, and Seller's acceptance of the cancellation will be binding only if in writing. In the event that an Order is agreed to be canceled, Buyer will be liable for any costs or expenses incurred by Seller from the date of the Order through the date of the cancellation, and for all loss or damage resulting from the cancellation.

5. LIMITED WARRANTY; LIMITATION ON LIABILITY

5.1 Seller warrants to the original Buyer that the Products, when delivered or shipped, and the Services, when completed, will be free from defects in material and workmanship, and will be in accordance with any applicable specifications, and that the warranty period shall commence on the date of original delivery, shipment or completion of Services and extend through two (2) year from said date. Buyer shall carefully examine the quality of the Products upon delivery or shipment and the Services upon completion, and provide Seller with a written confirmation (via email, fax or letter) of any visible defect, damage, loss or shortage within two (2) days of receipt of the Products, receipt of the invoice or other proof of dispatch, or completion of the Services.

5.2 Buyer has fifteen (15) days from invoice date to provide written confirmation (via email, fax or letter) of any concealed damage found upon receipt of shipment. At the request of Seller, Buyer shall authorize Seller's employees or agents to inspect the Products and/or Services. Seller's warranty obligations hereunder are subject to Buyer's timely compliance with the provisions of this Paragraph 5.1. Seller's liability is limited to (at its option) (a) repairing, replacing, or paying for the repair or replacement of Products that prove defective in material and/or workmanship, and/or do not perform in accordance with applicable specifications and (b) carrying out any Services that it failed to perform in accordance with the Order (in each case as determined by Seller). Where Seller agrees to repair or replace, or have repaired or replaced, Products or correct the defect in the Services, any time specified for delivery or completion in the Order will be extended for such period as Seller may reasonably require.

5.3 Where the Products and Services are in accordance with Buyer's specifications, then responsibility for the design and feasibility of such specifications is that of the Buyer. Buyer agrees that Seller shall not be liable under any warranty applicable to the Products or Services or for any nonconformity in the Products or Services if Buyer's specifications are faulty or improper. Buyer will indemnify Seller against any infringement of intellectual property rights, and the associated losses, damages and expenses, including attorneys fees, in this or any other country arising from its faulty or improper specifications.

5.4 As a condition to the warranty provided for herein, Buyer shall prepay the shipping charges for all Products returned to Seller for repair and shall be responsible for all insurance, packing, crating, handling and other transportation costs in connection therewith. Unless otherwise agreed to in writing by Seller, when any Product is returned to Seller for repair, Buyer shall be responsible for all damages resulting from improper packing, crating or handling, and for any loss in transit, notwithstanding any defect or nonconformity in the Product. Seller will pay the return shipping charges to Buyer with respect to Products that prove to be defective in material and/or workmanship (in each case as determined by Seller).

5.5 If, in Seller's sole judgment, a repair or replacement requires on-site evaluation or service by Seller's representatives, the costs of travel, lodging and meals of Seller's representatives shall be at Buyer's expense.

5.6 This Warranty is exclusive and in lieu of any and all other warranties, express or implied, in law or in fact, orally or in writing, including, without limitation, the implied warranties of merchantability and of fitness for a particular purpose.

5.7 Voiding of Warranty will occur if any of the below actions are taken: abuse, alteration, customer abuse / misuse, neglect, Acts of God and failure to use product(s) under normal operating conditions or within respective specified ratings. Failure to use product(s) according to operating instructions provided by Seller. Lack of routine care and maintenance or taking proper precautions as indicated in operational or maintenance instructions. Any attempts made to repair, dismantle, alter, modify, replace or attempt to do the same by any person other than an Authorized Representative of Seller, without prior written authorization by Seller, voids this warranty in its entirety and Seller shall have no further obligations to Buyer under any warranty of any kind whatsoever.

5.8 Seller's Aggregate Liability in damages or otherwise shall not exceed the payment, if any, received by Seller for the unit of product or service furnished or to be furnished, as the case may be, which is the subject of the Claimant dispute. In no event shall Seller be liable, whether in contract, in tort, under warranty, in negligence or otherwise, for loss of use, interruption of business, lost profits, or incidental, consequential, punitive or special damages of any kind whatsoever, how so ever caused even if Seller has been advised of the possibility of such damages. Seller is not responsible for any consequential or other damage to any peripheral equipment resulting from the use of products. The misuse or mis-application of Seller equipment is not covered under warranty. The price stated for the products and/or services is based upon and in consideration for limiting Seller's liability as herein provided.

5.9 Warranty policy as outlined in sections 5.1 through 5.8 is not applicable to all Tensator item(s). Specific item(s) such as but not limited to all electronic item(s) have warranties that are not addressed in this standard policy.

6. INSTALLATION, TESTING AND SERVICING

6.1 If, pursuant to the Order, the installation, testing or servicing of equipment is to be carried out by or under the supervision of Seller, Buyer warrants that it shall make all necessary preparation to the site by such date as may be specified in the Order or is reasonably required by Seller. Buyer further warrants that it shall provide suitable access to the site, suitable protection of Products from the time of delivery and the facilities necessary to enable Seller to perform its obligations.

6.2 Subject to Paragraph 5.7, Seller shall indemnify Buyer against any direct damage to property caused in the course of installation, testing, servicing or repair by the negligence or willful default of Seller or its employees or agents.

6.3 Seller reserves the right to subcontract the installation of Products or the performance of any Services required by the Order.

7. SAFE WORKING

7.1 Buyer warrants that it will, at all times, provide a safe working environment for Seller's employees, agents or subcontractors, and will comply with all statutory and other regulations in connection therewith. Buyer will indemnify Seller against any loss or damage incurred by Seller as a result of Buyer's breach of this warranty.

8. PAYMENT AND RISK OF LOSS

8.1 Unless otherwise agreed in writing by Seller, full payment shall be made by Buyer in the form of cash, check, credit card or wired funds/ACH payment no later than due date specified on invoice. Payment due date is determined by specific "Payment Terms" assigned to Customer's account which is calculated from "Invoice Date." The "Invoice Date" is the date on which Buyer accepts delivery of the Products at Seller's premises or the date Seller dispatches the Products via a pre-determined Carrier.

8.2 Without prejudice to any other rights of Seller, interest shall be payable on all overdue accounts in the amount of 1.5% per month. For purposes of Paragraph 4.1, the full purchase price of the Products and/or Services shall include any interest payable under this paragraph. Seller shall, with respect to all overdue accounts, have a general lien upon Products of Buyer that are in Seller's possession, and shall, after the expiration of fourteen (14) days of notice to Buyer, be entitled to dispose of the Products as it deems fit and apply the proceeds to the overdue accounts.

8.3 If at any time Buyer is delinquent in the payment of any invoice, Seller may demand payment of all outstanding balances, whether due or not, and/or cancel any outstanding Orders prior to shipment. Seller may suspend performance of its obligations if it reasonably believes that Buyer will not make payments in accordance with Paragraph 8.1. Buyer shall not be entitled to withhold payment of any invoice by reason of a right of setoff or a claim against Seller.

8.4 Except for International Supply Contracts, and unless otherwise agreed in writing by Seller, the risk of loss for Products shall pass from Seller to Buyer as of the Relevant Date, "FOB Seller's warehouse". Notwithstanding Paragraph 1.2, if delivery of any Product is delayed at Buyer's request, Seller may invoice Buyer for such Product and risk of loss of such Product will pass to Buyer on the date that Sellers prepared to deliver to Buyer.

8.5 Except for International Supply Contracts, Buyer hereby acknowledges and agrees that Seller shall retain a purchase money security interest in all Products sold hereunder and in all proceeds from their resale by Buyer to secure payment by Buyer of the purchase price. In the event of a failure by Buyer to perform in a timely manner any of its obligations to Seller, Buyer hereby agrees to assemble all secured collateral for the defaulted obligation and make such collateral available to Seller at a place reasonably

convenient to both parties. In the event Buyer disposes of any such collateral, any proceeds from such disposition shall be applied to the amount of Buyer's outstanding obligation as provided by law. Buyer shall be entitled to use the Products in the normal course of business before full payment of the purchase price is made.

8.6 Except for International Supply Contracts, Buyer shall be responsible for insuring the Products at and after the time it assumes the risk of loss. In the event of any loss or damage occurring while the Products remain the property of Seller, Buyer shall, immediately upon receipt of the insurance monies, remit to Seller the full purchase price of the Products lost or damaged less any portion thereof that has already been paid, and, until such amount has been remitted, shall hold such amount as trustee and agent for Seller.

8.7 The licenses granted under Paragraph 8.6 regarding use of the Products in the normal course of business and the authority to resell Products shall be terminated at any time upon notice by Seller to Buyer. No cancellation of the Order shall prejudice, limit or extinguish Seller's rights under this paragraph.

9. DATA AND INTELLECTUAL PROPERTY RIGHTS

9.1 Unless otherwise agreed in writing by Seller, all technical data and intellectual property rights in Products and/or Services originated by or on behalf of Seller, which Seller discloses to Buyer, are and shall remain proprietary to Seller. Buyer agrees not to disclose any such data to any third party, including its affiliates, nor copy, loan, transfer or use it for any purpose other than as intended by Seller.

9.2 All intellectual property rights in software supplied by Seller shall remain vested in Seller or in the licensor.

10. FORCE MAJEURE

10.1 In addition to any excuse provided by Sections 2-613 through 2-615 of the Uniform Commercial Code, or any other applicable law, Seller shall be excused from any liability, loss or damage to Buyer or any other person for canceling or suspending Orders due to delays in delivery arising from events beyond Seller's control, regardless of whether or not such events were foreseeable by either party when the Products were ordered. Such uncontrollable events include, but are not limited to, Acts of God, war, governmental or regulatory restrictions, fires, floods, explosions, strikes, lock-outs, labor disturbances, trade disputes, damage to or destruction of Products, breakdown of machinery, delivery delays and shortages of labor and/or raw materials.

11. GENERAL TERMS

11.1 The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of New York, excluding choice of law rules thereof. Any dispute between Buyer and Seller shall be settled by binding arbitration in Nassau County, New York in accordance with the rules then prevailing of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof, with no right of appeal there from.

11.2 The headings in this Agreement are inserted for convenience only, and are not intended to affect the interpretation or construction of the terms and conditions.

11.3 In the event that any of the terms of this Agreement become or are declared to be illegal by any court of competent jurisdiction or arbitrator(s), such term(s) shall be null and void. All remaining terms of this Agreement shall remain in full force and effect.

11.4 Seller's failure to enforce strict compliance with the terms of this Agreement shall not constitute a waiver of any of the terms.

11.5 This Agreement constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of Seller and Buyer. No writing executed on behalf of Seller shall be valid unless signed by an officer of Seller.

11.6 Neither this Agreement nor any rights hereunder shall be assigned or otherwise transferred by Buyer (by operation of law or otherwise) without the prior written consent of Seller. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

12. ALLOWANCES

Included but not limited to, any Sales Promotions, Incentives and/or Discounts will automatically expire at the end of current calendar year unless expressly implied in writing with a specified end date.

13. CONTRACTUAL AGREEMENTS

Included but not limited to, any Contractual agreements such as Rebate / Sales Volume Agreements and Coop Advertising Agreements will automatically expire at the end of current calendar year unless expressly implied in writing with a specified end date.

Returns and Restocking Fee Policy

While we try our best to ensure that every order received is completely satisfactory, we understand it is sometimes necessary to return item(s). Please take a moment to review our standard Returns and Restocking Fee Policy.

When Your Order Arrives

Upon receipt of your shipment, please be sure to open all boxes and check the contents immediately for defects and/or inaccuracies. Tensator Customer Service must be notified of any shipment discrepancies excluding damages within 30 days of invoice date.

Failure to do so voids your right to a return product(s).

General Returns Procedure

Prior to returning any item(s), please contact Customer Service at (800)441-0019 to obtain a Return Merchandise Authorization (RMA) number along with shipping instructions. All product returns must be sent **prepaid and insured** to:

Tensator Inc.
260 Spur Drive South
Bay Shore, NY 11706

Return Merchandise Authorizations are valid for (30) days from date of issue and will expire on the 31st day. Any shipment(s) returned without a valid RMA number will be refused accordingly.

Products Damaged During Shipment

If packaging appears damaged, carton should be refused. If you cannot refuse carton in question, please make a notation on the Bill of Lading / Proof of Delivery of noted damage. Customer Service must be contacted with **(48) hours, (2) days of receipt of shipment** in order for Tensator Inc to file a "Claim" with carrier.

If packaging is fine, but a "Concealed Damage" is found, Tensator Inc must be notified within (15) days of receipt of shipment.

Defective or Incorrect Products

We will only accept a return if a Return Merchandise Authorization (RMA) number has been issued and the item(s) is returned in the original Tensator Inc. packaging or adequate/protective packaging. The item(s) must be brand new, never used condition and contain all the contents shipped in the original order. Any item(s) returned used and/or damaged not having been reported as such upon issuance of RMA number **are not eligible for return**.

Special product orders / custom items may only be returned if defective, damaged, or incorrectly processed by Tensator. Customer ordering errors for custom items **are not eligible for return**.

Summary of Non-Returnable Items:

- Custom item(s) incorrectly ordered by customer;
- Item(s) that have been installed;
- Item(s) that are not brand new and/or item(s) that are missing from original order;
- Item(s) not adequately packaged.
- Item(s) altered from original state.

Applicable Restocking Fees for Incorrectly Ordered Product(s)

Incorrectly ordered item(s), excluding custom item(s) which are not eligible for return, require the obtaining of a RMA number. Contact our Customer Service department for a RMA number along with shipping instructions. The RMA number must be obtained within **30 days from invoice date**. RMA is valid for (30) days and will expire on the 31st day. No return will be accepted without a valid RMA number.

These item(s) will incur a 25% restocking fee plus the cost of inbound and outbound freight. These charges will be deducted from credit / refund issued.

Item(s) returned after 30 days from RMA number issuance will be refused accordingly.

Due to the substantial cost incurred on returned shipments, Tensator Inc. will adhere strictly to this policy.

Tensator Inc. reserves the right to modify this policy without notice.