

## **APEX VACUUM, LLC TERMS AND CONDITIONS OF SALE**

**CHANGES AND CANCELLATION.** This contract of sale, may not be changed or canceled by Buyer except with the written permission of the Seller. The Buyer was submit in writing reason for cancellation of order.

**PRICE.** The price is payable in full within 30 days of receipt of invoice. The price does not include any sales, use or excise taxes and such taxes shall be paid by the Buyer or added to the sale price unless a tax exemption certificate is presented to the buyer. The price shall bear interest at six (6) per cent per annum from the date due until the date paid. If, in the judgment of Seller, the financial condition of the Buyer, at any time during the manufacturing period or at the time the product is ready for shipment, does not justify the terms of payment specified, Seller may require full or partial payment in advance.

**DELIVERIES.** Shipment of the order will be subject to current availability, priority and scheduling requirements, changes in production schedules, export or other license requirements and governmental orders or directives. Seller shall not be liable for unavoidable delays in delivery caused indirectly or directly or in any manner by fires, flood, accidents, riots, acts of God, war, governmental interference, embargoes, strikes, labor difficulties, shortage of labor, fuel power, materials or supplies, transportation delays, or any other cause or causes (whether or not similar in nature to any of those herein before specified) either beyond its control or which it cannot remedy without economic hardship.

**EXPORT/ RE-EXPORT.** Buyer understands that the equipment, service, or technology supplied thereunder is subject to U.S. Department of Commerce, Office of Export Administration, and other U.S. Government Agency rules and regulations. If the equipment, service, or technology is intended for export or re-export, Buyer agrees to comply with all pertinent U.S. Government rules and regulations. Buyer further acknowledges that diversion of the equipment, service, or technology supplied thereunder to any destination contrary to or in violation of any U.S. Law is prohibited. Seller requires a \$75 processing fee for all international orders.

**RISK OF LOSS.** If the goods are shipped FOB Seller's loading dock, the risk of loss shall be upon the Buyer and the Buyer shall make all claims for loss or damage in transit directly to the carrier. The parties shall assist each other in filing claims against carriers.

**ACCEPTANCE.** The goods shall be considered to have been finally accepted by Buyer ten (10) days after receipt of the shipment unless notice of rejection or notice of any claims has been given in writing to the Seller within such ten (10) day period. Without limiting the foregoing, the Buyer shall have been deemed to have accepted any shipment of an amount more or less than the amount ordered unless notice of claim or rejection is given within the ten (10) day period.

**CONDITIONS OF SELLER'S PLANT APPROVAL.** This contract of sale shall not be effective unless accepted and acknowledged by the Seller at Seller's office in Canton, GA, within ten (10) days after the date of receipt by the Seller.

**LIMITED WARRANTY.** Seller warrants to the original purchaser that the equipment to be delivered pursuant to this Agreement will be as described herein and will be free from defects in material or workmanship. Minor deviations which do not affect the performance of the equipment shall not be deemed to constitute either a failure to conform to the specifications or a defect in material or workmanship.

This warranty shall extend for a period of twelve (12) months from the initial date of shipment. Should any breach of this warranty appear within twelve (12) months from the initial date of shipment, Seller shall, upon immediate notification of such alleged failure and substantiation that the equipment has been operated and maintained in accordance with Seller's recommendations and standard industry practices, correct such defects by suitable repair or replacement at its own expense.

Seller's liability under this warranty shall cease if any major repairs to or any replacement or modification of the equipment is made by any person other than Seller's personnel or persons working under the supervision of Seller's personnel. Further, the warranty shall cease unless the Buyer has operated and maintained the equipment in strict compliance with the operating instructions and manuals, if any, provided with the equipment.

If the equipment contains components from another manufacturer and are subject to the manufacturer's warranty, then Seller's liability shall be limited to the extent of the warranty which Seller received from the manufacturer or supplier of the equipment component parts. Seller's liability shall be no greater than the liability of the manufacturer or supplier as determined by a final judgment by the Buyer against the manufacturer or supplier of such components. Seller will cooperate with Buyer in such legal action but at Buyer's expense.

THIS LIMITED WARRANTY IS IN LIEU OF ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY OF QUALITY. THIS WARRANTY CONSTITUTES THE EXCLUSIVE REMEDY. The sole purpose of this exclusive remedy shall be to provide Buyer with free repair and/or replacement in the manner and for the time period provided herein.

The entire agreement between the parties is embodied in this writing, which constitutes the final expression of the parties, and it is the complete and exclusive statement of the terms of the agreement. No other warranties are given beyond those set out in this writing.

**LIMITATION OF LIABILITY.** SELLER SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, such as but not limited to, loss of profits, damage to or loss of other property, downtime costs of the equipment, delay expenses, overhead or capital costs, claims of Buyer's customers or activities dependent upon the equipment.

Except to the extent provided in the LIMITED WARRANTY, Seller shall not be liable for any claim or loss arising out of or related to this agreement or the equipment provided pursuant thereto, whether such claim allegedly arises or is based on contract, warranty, tort (including negligence), strict liability in tort or otherwise. Liability shall not in any event exceed the cost of the equipment upon which such claim is based.

**RETURN OF MATERIAL.** Merchandise may not be returned without an authorized RMA number from the seller. This RMA number is valid for 30 days after the date on the invoice. The RMA number must be printed on the outside of the box and must be shipped prepaid and insured for the current value. Special orders and material of a special nature cannot always be accepted for return. Accepted material must be in new condition and will be subject to inspection by the Seller and a restocking charge of 25% of the purchase price

**PATENTS.** Based on the Seller's knowledge of the published prior art, the Seller expresses the opinion that the equipment or any part thereof, furnished under this contract, should not infringe upon any apparatus claim of any United States patents or protective rights.

In the event that the equipment or any part thereof constitutes an infringement of any apparatus claim to a protective right, the Seller shall, at its own expense and at its option within a reasonable time.

- (a) Procure for the purchaser the right to continue the use of said design or
- (b) replace any infringing equipment or part thereof, with non-infringing equipment or
- (c) modify the equipment or any part thereof so that it becomes non-infringing

The Seller assumes no liability under this article unless the purchaser gives to the Seller immediate notice in writing of the institution of a patent infringement suit against the purchaser and any threat of such institution, and permits the defense of such suit by Seller through Seller's own counsel, at Buyer's expense giving Seller all necessary information, assistance and authority therefore.

Seller shall not be liable to purchaser for infringement of any equipment construed pursuant to purchaser's design and specifications, or any modifications, alterations or changes made at purchaser's request, and Seller and Seller's supplier shall in that event be indemnified by purchaser for all damages, costs, and expenses arising out of such a suit. Seller's liability is specifically limited to infringements of apparatus patents and shall not extend to patents covering any particular use, process or method.

This article defines Seller's entire liability with respect to a patent infringement of the design of the equipment or any part thereof.

**LAW APPLICABLE.** The law of the State of Georgia shall apply to the contract of sale.