



Terms & Conditions of Sale – North America

1. Acceptance. Magnaflux, a division of Illinois Tool Works Inc., is herein referred to as “Magnaflux,” and the customer purchasing products (“Products”) or services (“Services”) from Magnaflux is referred to as “Purchaser.” These terms and conditions of sale (“Terms”), any Magnaflux quotation, acknowledgment or invoice and all documents incorporated by specific reference herein or therein (“Magnaflux Documents” and together with these Terms, the “Agreement”), constitute the complete terms governing the sale of Products and Services. Magnaflux HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER’S BUSINESS FORMS OR ON PURCHASER’S WEBSITE, AND SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not Magnaflux clicks on an “ok,” “I accept,” or similar acknowledgment. Commencement of any work by Magnaflux or Purchaser's acceptance of delivery of the Products or Services will manifest Purchaser's assent to the Agreement. Additional or different terms may be specified in the body of an Magnaflux Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized representative of Magnaflux; (b) Magnaflux Document terms; (c) these Terms.

2. Quotations. Quotations are only valid in writing for 30 days from the date of the quotation for systems, equipment, and accessories and materials. All quotations are subject to change or withdrawal without prior notice to Purchaser. Quotations are made subject to approval of Purchaser’s credit. Magnaflux may refuse orders and has no obligation to supply Products or Services unless Magnaflux issues an order acknowledgement or upon the shipment of Products or commencement of Services.

3. Prices/Payment Terms. Prices are in U.S. Dollars and are subject to change without notice. All orders are accepted subject to Magnaflux’s price in effect at time of shipment. Prices do not include any sales, use, value-added or other taxes, import duties, license fees or like charges (“Fees”) related to the sale, importation or use of Products or Services, and Purchaser is responsible for those Fees. If Magnaflux is subsequently required to pay any Fees, Purchaser shall fully defend and indemnify Magnaflux therefore. Terms will be communicated upon review by Credit Department. Overdue invoices will incur interest at the rate of 1.5% per month, or at the maximum rate allowable by governing law. Purchaser’s inspection rights herein will not affect the payment terms. Under no circumstances will Purchaser have a right of set-off. If Purchaser fails to make any payment as required, Purchaser agrees to indemnify Magnaflux for all associated costs incurred by Magnaflux, including reasonable attorney fees and court costs.

In addition, if a raw material, component, or service provider raises its prices, or imposes a surcharge on ITW, or if the cost of any of ITW’s inputs into the Products or Services increase, ITW reserves the right to increase prices and/or surcharge Purchaser, and Purchaser agrees to accept such price increase or surcharge until the term of such cost increase or surcharge or until the termination of the contract to which these terms and conditions apply is reached. Time of payment is of the essence. All orders are accepted subject to ITW’s price in effect at time of shipment. If Purchaser objects to any price increase (regardless of the amount or cause of such increase), or if Purchaser refuses to provide a new purchase order reflecting such price increase, ITW may, at its option, stop any or all future shipments of Products (regardless of whether such price increase affects or implicates such Products).



4. Credit Approval. All shipments are subject to approval by Magnaflux's credit department. Magnaflux may invoice Purchaser and recover for each shipment as a separate transaction. If, in Magnaflux's sole judgment, Purchaser's financial condition is or becomes unsatisfactory, then Magnaflux may, without prejudice to any of its other remedies: (a) defer or decline to make any shipments except upon receipt of satisfactory security or cash payments in advance; and/or (b) terminate any or all of Purchaser's purchase orders.
5. Cancellation /Modification. Magnaflux may cancel any purchase order or release thereunder, or terminate any agreement relating to the purchase of Magnaflux's Products or Services upon reasonable prior written notice to Purchaser. Once Magnaflux has accepted a purchase order or begun taking actions with respect to a purchase order, Purchaser cannot cancel or modify that purchase order except with Magnaflux's written consent. In such event, Purchaser will be liable for cancellation or modification charges and all costs incurred and committed for the order or in connection with the cancellation or modification, as applicable, together with a reasonable allowance for prorated expenses and anticipated profits.
6. Equipment Acceptance Testing. Any required equipment acceptance testing ("Acceptance Testing") must be quoted by Magnaflux. The parties shall agree in writing upon the criteria for such Acceptance Testing, including, without limitation, the parts used for Acceptance Testing. All Acceptance Testing must be performed using Magnaflux materials and Purchaser is responsible for the cost of any such materials. Purchaser is responsible for providing facilities for disposition of tested parts. Preparation for Acceptance Testing and approval may take several weeks. It is the responsibility of Purchaser to provide Magnaflux with adequate time for evaluation of parts to be tested and to complete Acceptance Testing. If acceptance is required at Purchaser's facility or other location directed by Purchaser, additional charges may apply, and, unless otherwise agreed by Magnaflux, acceptance must occur within 30 days of Product delivery. Products that meet the Acceptance Testing criteria shall be deemed accepted. All Acceptance Testing services provided by Magnaflux are subject to the terms in the section entitled "Service Terms" below.
7. Inspection / Non-Conforming Shipments. With respect to Products that are not subject to Acceptance Testing, Purchaser may inspect Products for a period of 10 days after delivery ("Inspection Period"). Purchaser must notify Magnaflux in writing of any Products that do not conform to the specifications applicable to their sale within the Inspection Period and afford Magnaflux a reasonable opportunity to inspect such Products and cure any nonconformity. If Purchaser fails to provide Magnaflux such written notice within the Inspection Period, Purchaser will be deemed to have accepted the Products. Purchaser may not return any Product without Magnaflux's prior written authorization. Any return authorized by Magnaflux must be made in accordance with Magnaflux's return policies. Purchaser will be responsible for all costs associated with returns of Products and will bear the risk of loss, unless Magnaflux agrees otherwise in writing or determines that the Products do not conform to the applicable terms of sale. Any variation in quantities shipped over or under those ordered (not to exceed 10%) will constitute compliance with Purchaser's order, and the stated price per item will continue to apply.
8. Purchaser Responsibilities. Purchaser shall be responsible for the following: (a) providing all labor and materials required to install the Products; (b) providing parts for inspection that are clean, dry, and free of contaminants that may compromise the test method; (c) exercising precautions to guard against hazards that can arise when using flammable materials; and (d) any other requirements specified in the quotation.
9. Shipment. FCA: Seller's Facility (Incoterms 2010).
10. Title/Risk of Loss. Title to the Products and risk of loss shall pass to Purchaser upon delivery in accordance with the applicable shipping term. Purchaser assumes all risk and liability for loss and use or misuse by third parties who acquire or use the Products illicitly after delivery. Purchaser must notify Magnaflux and the delivering carrier within 10 days from date of receipt of Products, of any damage or shortage, and afford Magnaflux a reasonable opportunity to inspect the Products. Any loss occasioned by



damage or shrinkage in transit will be for Purchaser's account, and claims for such loss must be made solely against the carrier.

11. End User Certificates. Magnaflux requires an End User Certificate for all equipment exported. Purchaser shall fully cooperate with Magnaflux in providing information on end users in connection with such certification.

12. Warranty. Magnaflux warrants that it will convey the Products free and clear of all liens, security interests and encumbrances created by, through or under Magnaflux. Magnaflux further warrants that for the applicable period for the Product, as set forth in the applicable Warranty Statement (the "Warranty Period"), under normal use and given proper installation and maintenance as determined by Magnaflux, the Products: (a) will conform to mutually agreed upon written specifications or other descriptions; and (b) will be free from substantial defects in material and workmanship, as further described in the applicable Warranty Statement. Warranty Statements are available on the Magnaflux North America web site (the statements are currently located at <http://magnaflux.com/Consumable-and-Accessory-Warranty-Statement.pdf> and <http://magnaflux.com/Equipment-Warranty-Statement.pdf>) and upon request.

In the event of a breach of the warranties set forth above (the "Warranties"), to the extent permitted by applicable law, Magnaflux's sole liability and Purchaser's sole remedy will be (at Magnaflux's option), for Magnaflux to repair, replace or credit Purchaser's account for, any Product that fails to conform to the Warranties, subject to the terms and exclusions set forth in the applicable Warranty Statement.

13. Warranty Disclaimers. EXCEPT AS SET FORTH ABOVE, MAGNAFLUX MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), AND ALL OTHER WARRANTIES ARE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE ABOVE WARRANTY DOES NOT APPLY TO, AND MAGNAFLUX SHALL HAVE NO LIABILITY FOR, DEFECTS IN OR DAMAGE TO PURCHASER'S PARTS ARISING FROM USE OF MAGNAFLUX'S PRODUCTS, SERVICES AND/OR NONDESTRUCTIVE TESTING METHODS.

14. Limitation of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MAGNAFLUX WILL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST MAGNAFLUX, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON MAGNAFLUX'S NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MAGNAFLUX'S LIABILITY IN CONNECTION WITH THE SALE OF MAGNAFLUX'S PRODUCTS OR SERVICES IS LIMITED TO THE INVOICE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.

15. Product Use. Purchaser is solely responsible for determining if a Product or Service is fit for a particular purpose and suitable for Purchaser's method of application. Accordingly, and due to the nature and manner of use of Magnaflux's Products and Services, to the extent permitted by law Magnaflux is not responsible and shall not be liable in any manner whatsoever for the use or application of its Products or Services or the results obtained through the use of its Products or Services. Purchaser is responsible for the application of nondestructive testing methods to Purchaser's parts. This responsibility includes, but is not limited to, the determination of appropriate products, testing methods and classification of parts. All physical properties, statements and recommendations are either based on the tests or experience that Magnaflux believes to be reliable, but they are not guaranteed.

16. Tooling/Molds/Dies. All material, equipment, facilities and special tooling (including tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment and manufacturing aids and replacements thereof) used in the manufacture of the Products will remain the property of Magnaflux. Any



material, tooling or equipment furnished to Magnaflux by Purchaser will remain the property of Purchaser with title to and right of possession remaining in Purchaser.

17. Ownership of Intellectual Property. All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Purchaser by Magnaflux and all rights therein (collectively, "Intellectual Property") will remain the property of Magnaflux and will be kept confidential by Purchaser in accordance with these Terms. Purchaser has no claim to, nor ownership interest in, any Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to Magnaflux upon request from Magnaflux. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use Magnaflux's Products or receive the Services purchased from Magnaflux.

18. Use of Trademarks and Trade Names. Purchaser shall not use, directly or indirectly, in whole or in part, Magnaflux's name, or any other trademark or trade name that is now or may hereafter be owned by Magnaflux (collectively the "Trademarks"), as part of Purchaser's corporate or business name, or in any way in connection with Purchaser's business, except in a manner and to the extent approved by Magnaflux in writing. Purchaser hereby acknowledges Magnaflux's ownership of the Trademarks and the goodwill associated therewith. Purchaser shall not infringe upon, harm or contest the validity of any Trademarks. Purchaser shall be entitled to use the Trademarks only in connection with the promotion or sale of the Authorized Products pursuant to the terms of the Agreement. Purchaser shall reproduce the Trademarks exactly as specified by Magnaflux. Purchaser shall not use the Trademarks in combination with any other trademarks or names. Purchaser agrees that it will not register or attempt to register any Trademark or any colorable imitation thereof (including any non-English language variation thereof), or use such Trademarks for any products or for any purposes other than those set forth in the Agreement. Purchaser shall not at any time during or after termination of the Agreement use in its business any other trademark that is similar to or in any way resembles the Trademarks so as to be likely to cause deception or confusion with the Trademarks. Purchaser shall provide reasonable cooperation to Magnaflux with respect to any efforts of Magnaflux to protect, defend or enforce its rights to the Trademarks. Should Purchaser cease being an authorized customer of Magnaflux for any reason, Purchaser shall immediately discontinue any formerly permitted use of Magnaflux's name or the Trademarks.

19. Confidential Information. All information furnished or made available by Magnaflux to Purchaser in connection with the Products or Services shall be held in confidence by Purchaser. Purchaser agrees not to use, or disclose to others, such information without Magnaflux's prior written consent.

The obligations in this section will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Purchaser of any obligation herein; (b) Purchaser can show by written records was in Purchaser's possession prior to disclosure by Magnaflux; or (c) is legally made available to Purchaser by or through a third party having no direct or indirect confidentiality obligation to Magnaflux with respect to such information.

20. Infringement Indemnification. Except as set forth below, Magnaflux agrees to defend and indemnify Purchaser against any claims, costs, damages, liability and expenses resulting from actual patent, trademark or copyright infringement, misappropriation of confidential information, or violation of any other Intellectual Property right, domestic or foreign that may arise from the sale of Magnaflux's proprietary Product to Purchaser as such pertains to the subject matter of the Agreement (each, a "Claim"); provided, however, (a) Purchaser supplies Magnaflux written notice of such Claim immediately after the Purchaser has notice of such Claim, (b) Purchaser cooperates with Magnaflux in the defense and settlement of such Claim; and (c) Purchaser allows Magnaflux the right to defend and settle such Claim at Magnaflux's expense. If a suit or claim results in any injunction or order that would prevent Magnaflux from supplying any part or Product



falling under the Agreement, or if the result of such a suit or claim would, in the reasonable opinion of Magnaflux, otherwise cause Magnaflux to be unable to supply such parts or Products, Magnaflux may do one or more of the following: (i) secure an appropriate license to permit Magnaflux to continue supplying those parts or Products; (ii) modify the appropriate part or Product so that it becomes non-infringing; (iii) replace the appropriate part or Product with a non-infringing but practically equivalent part or Product; or (iv) if Magnaflux cannot reasonably accomplish the actions specified in subsections (i) – (iii), then in Magnaflux’s sole discretion, Magnaflux may discontinue selling the part or Product without any further liability to Purchaser. Notwithstanding the foregoing, Magnaflux shall have no liability or duty to defend and indemnify Purchaser against any Claim relating to: (1) the use of any part or Product,(2) the combination of any part or Product with any other part or product not supplied by Magnaflux, or (3) any part or Product or process that is designed or specified by Purchaser.

21. Software. In the event the Products include or incorporate software developed, owned or licensed by Magnaflux (“Software”), the use of the Software shall be subject to Magnaflux’s End User License Agreement (“EULA”), which EULA can be found in the applicable user manual or with the documentation accompanying the Product and is herein incorporated by reference. In the event of conflict between the terms of these Terms and Conditions and the EULA, the terms of the EULA shall govern.

22. Magnaflux Employees. Magnaflux sales and service employees do not have the training or authority to make legal representations or enter into any agreements or execute any Purchaser documents affecting legal responsibilities or waiving legal rights, including those regarding the transfer of intellectual property rights or related to privacy laws. Any such representations, agreements or documents will not be binding on Magnaflux or such Magnaflux employees.

23. Service Terms. The following terms and conditions apply to any on-site Services provided by Magnaflux:

A. Services will be provided at Magnaflux’s current service rates. At Magnaflux’s discretion, services may be provided by a Magnaflux Authorized Service Center.

B. Purchaser shall prepare the site, including, as applicable, the construction and proper configuration of all necessary foundations, anchor bolts, pneumatic hooks and electrical disconnects/connections. If the site is not prepared for the Services upon Magnaflux service personnel’s arrival at the agreed upon time and date for Services, Magnaflux may suspend Services or vacate the site and charge Purchaser for any delay and/or travel time at Magnaflux’s regular service rates.

C. Purchaser shall provide Magnaflux with advance notice of any rules, regulations, statutes and requirements applicable to the Services, including any required permits and licenses that are applicable to Purchaser’s local jurisdiction and site personnel safety requirements/training required of Magnaflux authorized service personnel.

D. Magnaflux may refuse, without any liability, to provide Services and to allow Magnaflux service personnel to suspend Services or vacate any site where, in Magnaflux’s opinion, performance of Services would pose a risk to the safety of any person. In such event, Purchaser is responsible for payment of any delay and/or travel time at Magnaflux’s regular service rates.

E. Purchaser is solely liable for all damages or injuries caused or contributed to by Purchaser that may occur on the site, except to the extent damages or injuries are directly caused by the gross negligence or willful misconduct of Magnaflux service personnel.

F. Purchaser must provide at least 48 hours’ notice of cancellation of any Service order. If Purchaser cancels with less than 48 hours’ notice, Purchaser is responsible for any costs incurred by Magnaflux caused by such cancellation.



24. Compliance. Purchaser agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Purchaser's obligations hereunder and Purchaser's use of the Products and Services, including safety regulations, licensing and inspection requirements, import/export laws, labor laws and anti-corruption laws.
25. Relationship of the Parties. Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint ventures or as agents for one another or as authorizing either party to obligate the other in any manner.
26. Force Majeure. Magnaflux will not be responsible for failure to perform in a timely manner under the Agreement when its failure results from events beyond its reasonable control (an event of "Force Majeure"), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Supplier's employees or the employees of others), raw material shortages and material increases in costs of raw materials. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Magnaflux to perform.
27. Assignment; Binding Effect. No assignment of any rights or interest or delegation of any obligation of Purchaser under the Agreement or Purchaser's purchase order may be made without the prior written consent of Magnaflux. Any attempted assignment will be void. Magnaflux may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon each of the parties hereto and their respective permitted successors and assigns.
28. Waiver. In the event of any default by Purchaser, Magnaflux may decline to ship Products or provide Services. If Magnaflux elects to continue shipping or otherwise fails to insist upon strict compliance with these Terms, Magnaflux's actions will not constitute a waiver of Purchaser's default or any other existing or future default, or affect Magnaflux's legal remedies.
29. Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder.
30. Dispute Resolution. Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. If either party commences litigation, or if the parties agree to alternative dispute resolution ("ADR"), concerning any provision of the Agreement, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney's fees in such litigation or ADR, provided that if each party prevails in part, such fees will be allocated in the manner as the court or arbitrator determines to be equitable in view of the relative merits and amounts of the parties' claims.
31. Survival. Any provisions in the Agreement which, by their nature, extend beyond the termination or expiration of any sale of Products or Services will remain in effect until fulfilled.
32. Severability. If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.
33. Integration/Modification. The Agreement constitutes the entire agreement between Magnaflux and Purchaser with respect to the Products and Services covered by the Agreement, and supersedes any prior agreements, understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.