

# Conic Systems Terms and Conditions of Sale

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## 1. Payment

Terms of payment are net cash in United States Dollars prior to shipment or 30 days from the date of invoice with Conic Systems' prior credit approval unless otherwise agreed by Conic Systems and Purchaser in writing. Purchaser shall pay Conic Systems a late penalty on all amounts past due computed at an eighteen percent (18%) annual rate of interest. Purchaser shall be liable for any and all costs and expenses arising out of, or in connection with, efforts by Conic Systems to collect any unpaid amounts hereunder, including, without limitation, attorney or collection agency fees and expenses. No forbearance, indulgence, or delay by Conic Systems in taking any action hereunder shall be deemed a waiver of any rights of Conic Systems Inc under this Agreement.

## 2. Taxes

Prices do not include any federal, state, local taxes, or input duties and tariffs which are in addition to the purchase price and must be paid by Purchaser in United States Dollars. Any and all foreign duties and taxes are the responsibility of Purchaser. Unless Purchaser furnishes Conic Systems with a tax exemption certificate, any sales, use, excise or other similar tax, where applicable, shall be the responsibility of Purchaser and shall be added to the quoted purchase price and invoiced by Conic Systems to Purchaser. The failure of Conic Systems to invoice such taxes does not excuse the Purchaser from responsibility for paying the same.

## 3. Freight and Insurance

All freight and insurance charges are the responsibility of Purchaser unless as otherwise agreed by Conic Systems and Purchaser in writing.

## 4. Inspection

Upon reasonable advance notice to Conic Systems, Purchaser shall have the right to inspect the goods sold hereunder (the "Goods") at Conic Systems' location during normal business hours prior to time of shipment.

## 5. Quantity and Delivery

Conic Systems shall have the right to decrease the quantity of the Goods stated in any Purchase Agreement, provided that fifteen (15) days prior written notice of such election is given by Conic Systems to Purchaser. Unless otherwise stated, the purchase price is F.O.B. Place of Shipment and excludes skidding or crating for shipment.

## 6. Limited Warranty

Conic Systems warrants that new product sold by the seller shall be free from defects in material or workmanship for a period of one (1) year from the date of shipment. If unit is found defective due to material or workmanship, it will be replaced or repaired at Conic Systems' discretion without charge. This Warranty is non-transferable and is applicable in the United States and Canada only.

The Buyer shall promptly notify the seller in writing of any alleged defect. Warranty claims must be made by the Buyer who originally purchased the product from the seller. This warranty is not transferrable to a third party.

**Warranty Exclusions:** Conic Systems will not be responsible for any expenses for transportation, installation, loss of time, loss of use of equipment, or other expenses which would be considered as incidental or consequential damages from product defect.

**Warranty Period:** Full repair or replacement for 1 year from ship date.

The provisions of this Limited Warranty:

- I. This Warranty applies to the Conic Systems component sets and gearheads that have been installed properly.
- II. This Warranty is limited to circumstances in which the product has been used under normal conditions for which it was designed and has been installed, operated and maintained in accordance with product specifications and handling instructions.
- III. This Warranty does not cover defects which are the result of misuse, improper installation or repair, alterations or modifications by the Buyer or any third party, outside the range of the Conic Systems' specifications.

#### 7. Non-Liability of Seller

Conic Systems shall not be liable for its failure to perform hereunder, due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, government laws, regulations, ordinances or codes, inability to obtain material or equipment and any similar or different contingencies. In no event whatsoever shall Conic Systems or any of its shareholders, directors, officers, successors and assigns, be liable to Purchaser or any of its shareholders, directors, officers, successors and assigns, for any loss or damages of any kind (including, but not limited to, damages for loss of revenue or profits, cost of capital, claims of customers for service interruptions or failure of supply, or costs and expenses incurred in connection with labor, overhead, transportation, installation or removal of products or substitute facilities or supply sources, even if Conic Systems shall have been advised of the possibility of such damages), whether direct, incidental, consequential, exemplary, special or otherwise relating in any way to this Agreement or acts or omissions in connection herewith, regardless of whether Conic Systems may be wholly, concurrently, partially, jointly or solely negligent or otherwise at fault.

#### 8. Purchaser's Responsibility and Indemnity

It shall be Purchaser's responsibility to ensure that any goods purchased from Conic Systems are installed and operated in a proper and safe manner. Purchaser also acknowledges that it may have to install or change guards, safeties, warnings or other components to ensure that the Goods will conform to all laws, regulations, ordinances, codes, insurance requirements and industry standards. Purchaser shall bear and pay all expenses, losses and damages that may arise from the transportation of the Goods after they shall have been delivered by Conic Systems to the Place of Shipment, and all losses, damages, debts and liabilities incurred by Purchaser in connection with the sale of the Goods and every other expense relating or incidental thereto, except such costs, damages or expenses as may arise from any action or proceeding brought against Purchaser with respect to the title of the Conic Systems to the Goods and Conic Systems' right to sell and advertise the same. Purchaser agrees to defend, indemnify and hold harmless Conic Systems from and against all suits, claims, costs, damages and expenses, including, but not limited to, reasonable attorneys' fees, arising out of, or in connection with, the transportation, purchase, ownership or use of the Goods.

## 9. Modifications

Purchaser acknowledges that these are the only terms and conditions of sale, are intended by the parties as a complete and exclusive statement of the terms of their agreement, supersede all prior agreements, written or oral, and upon issuance of Conic Systems' invoice or acknowledgment will become part of that invoice or acknowledgment. No course of prior dealings between the parties, no usage of the trade, nor any forms submitted by Purchaser containing different or conflicting terms shall be part of this Agreement nor shall they be relevant to supplement or explain any term herein. Acceptance or acquiescence in a course of performance rendered shall not be relevant to determine the meaning of any agreement with Conic Systems even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code ("Code") is used herein, the definition contained in the Code shall control. Any variation from the terms hereof contained in Purchaser's acceptance is hereby rejected. This Agreement of which these terms are a part can be modified or rescinded only by a writing signed by both parties or their duly authorized agents.

## 10. Quotations/Prices

All quotations are made for immediate acceptance and are subject to withdrawal, change and prior sale at any time and without notice. Quotations do not include Tax per(2). Except as otherwise stated, prices quoted in writing are firm for orders placed within 30 days of the quotation date. All prices are F.O.B. Shipping Point, unless otherwise specified. Prices do not include the cost of any qualification tests, unless otherwise stated. All prices are in U.S. dollars.

## 11. Limitation of Remedies

No claim of any kind arising out of, or in connection with, directly or indirectly, this agreement shall be greater in amount than the purchase price of the goods purchased hereunder in respect of which such damages are claimed, and failure to give notice of claim within twelve (12) months from the date of delivery or the date fixed for delivery (in the event of non-delivery) shall constitute a waiver by purchaser of all claims in respect of such goods. The remedy hereby provided shall be the exclusive and sole remedy of purchaser and any right to consequential and incidental damages is excluded.

## 12. Waiver of Right to Jury Trial/Submission to Jurisdiction/Designation of Law and Forum

In any action brought in any court by purchaser, or any successor or assignee of purchaser, arising out of, or in connection with, directly or indirectly, this agreement, or the goods purchased hereunder, purchaser hereby waives its right to a trial before a jury. The parties agree that the laws of the state of New York (without giving any effect to any choice of law or conflict of law rules or provisions) shall control in construing this agreement and in any action relating thereto and that all actions which arise out of or are related to this agreement shall be brought in a court of competent jurisdiction located in New York

## 13. Bankruptcy

In the event any one or more of the following shall occur, any and all obligations of Conic Systems hereunder, including, without limitation, any obligation to deliver the Goods to Purchaser, shall terminate immediately and without further action by Conic Systems. Purchaser files a petition in bankruptcy or is adjudicated a bankrupt, or a petition in bankruptcy is filed against Purchaser; Purchaser becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement

pursuant to any bankruptcy law; or Purchaser discontinues its business or a receiver is appointed for it or its business.

#### 14. Time for Bringing Action

Any action by Purchaser for breach of any agreement of which these terms are a part shall be commenced, and Conic Systems must be served, not later than (1) year after the cause of action has accrued.

#### 15. Customer Compliance with Applicable Export Laws

Customer agrees to abide by all applicable rules and regulations promulgated by Treasury Department's Office of Foreign Assets Control ("OFAC") and the Bureau of Industry and Security, Department of Commerce, Export Administration Regulations (15 CFR part 748) or any other applicable law or regulation relating to the export of goods to countries that are subject to embargoes or restrictions imposed by the United States Government or any of its offices. Customer warrants to Conic Systems that it will not reexport, resell, or otherwise dispose of any items to any country not approved for export by the Export Administration Regulations or any other Federal regulations. Customer warrants that any goods supplied by Conic Systems will not be processed or incorporated into any product that will be exported to any country not approved for export by the Export Administration Regulations or any other Federal regulations. Customer undertakes and assumes all obligations to inform itself of laws and regulations relating to the sale or export of goods to prohibited countries. Customer agrees to indemnify, defend and hold harmless Conic Systems for any damages sustained by Conic Systems in connection with Customer's violation of any Federal law which results in liability being imposed on Conic Systems.