



Terms and Conditions of Sale



**WORLD AUTHORITY
IN ADVANCED TECHNOLOGY FOR
MAGNETIC, VIBRATORY AND
INSPECTION APPLICATIONS**

ERIEZ MANUFACTURING CO

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Manufacturing Facilities in:

AUSTRALIA ■ BRAZIL ■ CANADA ■ CHINA ■ INDIA ■ JAPAN
MEXICO ■ SOUTH AFRICA ■ UNITED KINGDOM ■ UNITED STATES

1. Contract Formation.

1.1 Offer. Eriez' proposal form and/or Eriez' proforma invoice quote (collectively, the "Proposal") constitutes an offer for the sale of goods (the "Goods") and includes all the terms and conditions contained herein (the "Terms and Conditions").

1.2 Acceptance. Any purchase order or other form of acceptance issued by the Buyer in response to a Proposal from Eriez shall result in a contract for the purchase of the Goods at the price quoted in Eriez' Proposal and shall be subject to these Terms and Conditions. Eriez does not accept any terms contained in any purchase order or other documents issued by Buyer which are different from, conflict with, modify and/or add to these Terms and Conditions. Eriez' execution of any document issued by the Buyer shall constitute only an acknowledgement of receipt thereof, and shall not be construed as an acceptance of any of the terms therein. Unless Buyer shall have set forth each specific objection to these Terms and Conditions in a separate writing signed and dated by Buyer and delivered to Eriez contemporaneously with Buyer's purchase order or other acceptance document, Buyer shall be deemed to have accepted all of these Terms and Conditions. Buyer's issuance of a purchase order or other document which purports to reject some or all of these Terms and Conditions by virtue of Buyer's standard form language, or otherwise, shall not be sufficient objection. Where Buyer specifically objects to any of these Terms and Conditions, no contract shall be formed unless and until Eriez agrees to accept in writing Buyer's proposed modifications to these Terms and Conditions.

1.3 Entire Agreement. The Proposal and these Terms and Conditions shall constitute the entire understanding and agreement (the "Contract") between Buyer and Eriez. Any representation, promise, course of dealing, course of performance, custom or trade usage will not be binding upon either party. This Contract may not be amended or modified except by a writing executed by both parties.

2. Purchase and Sale. Subject to these Terms and Conditions, Buyer agrees to buy, and Eriez agrees to sell, the Goods, for the purchase price specified in the Proposal. Unless otherwise agreed in writing by the parties, Buyer assumes all responsibility for: (1) set-up, start-up, and installation; (2) safety equipment used with the Goods or by Buyer's employees or any third party handling or working with the Goods; and (3) signage related to the proper use and/or installation of the Goods. Eriez reserves the right to substitute substantially comparable goods for the Goods.

3. Taxes. Buyer shall be responsible for, and shall pay, any taxes (sales, excise, use, etc.) and any export or import duties which may be applicable to the sale and/or delivery of the Goods and to the performance of any warranty work on the Goods as may be required under Section 6.6. Buyer shall defend, indemnify and hold Eriez harmless from any claim, loss, damage, liability or expense incurred with regard to the payment of any such taxes or duties.

4. Payment; Security Interest.

4.1 Generally. Buyer shall pay the purchase price, all applicable taxes, freight charges, and all other applicable charges in full, in U.S. Dollars, without any deduction for claims, set-offs or recoupment on account of this Contract or any other matter between the parties within the time periods set forth in Section 4.2 and Section 4.3, below. Payment shall not be contingent upon installation or upon field tests. If payment is delayed beyond the date on which it is due, interest may accrue and be payable by Buyer on the unpaid balance at a rate of one and one-half percent (1 1/2%) per month.

4.2 Payment - Domestic Shipments Only. Unless otherwise specified by Eriez in the Proposal, the Buyer shall pay the purchase price within thirty (30) days from the date of delivery or the date of shipment, whichever is the earlier. If delivery or shipment is delayed by Buyer, payment shall be due thirty (30) days from the date Eriez notifies Buyer that the Goods are ready for delivery or shipment, whichever is the earlier. This Section 4.2 shall apply to domestic shipments only.

4.3 Payment - International Shipments Only. Unless otherwise specified by Eriez in the Proposal, the Buyer shall pay a non-refundable deposit of thirty percent (30%) of the purchase price upon the execution of this Contract with the balance due and payable at least five (5) business days before the date of delivery or the date of shipment, whichever is the earlier. The Proposal may specify that Buyer shall pay the purchase price and all applicable charges with an Irrevocable and Confirmed Letter of Credit or upon such other payment terms, as Eriez deems acceptable, in its sole discretion. If shipment is delayed by Buyer, payment of the balance of the purchase price shall be due within fifteen (15) business days from the date Eriez notifies Buyer that the Goods are ready for delivery or shipment, whichever is the earlier. This Section 4.3 shall apply to international shipments only.

4.4 Security Interest. Buyer hereby grants to Eriez a security interest in the Goods until all monies due Eriez under this Contract are paid in full. Eriez shall have the right to file financing statements and any other documents that may be necessary to evidence and perfect such a security interest in the Goods in any jurisdiction.

5. Delivery.

5.1 Date. Any delivery date stated in the Contract is approximate only and shall not constitute any guarantee of delivery on any particular date. Time shall NOT be of the essence of the Contract.

5.2 Terms. Unless otherwise specified by Eriez in the Proposal: (1) delivery of the Goods shall be Ex-Works Eriez' factory, 2200 Asbury Road, Erie, PA (Incoterms 2010); and (2) any delivery terms specified in the Proposal shall be construed in accordance with Incoterms 2010.

5.3 Freight. Notwithstanding the provisions of Section 5.2, above, unless otherwise directed by the Buyer in writing or otherwise expressly specified in the Proposal, Eriez shall arrange for carriage of the Goods. Buyer shall be solely responsible for the cost of carriage of the Goods, regardless of any delivery terms (including Incoterms) specified in the Proposal.

5.4 Risk of Loss; Title. Risk of loss shall pass from Eriez to the Buyer in accordance with the delivery terms applicable to this Contract, as specified in Section 5.2, above. Title to the Goods shall pass from Eriez to the Buyer upon the passage of risk of loss from Eriez to the Buyer.

5.5 Delay. Eriez shall not be responsible to Buyer or any third party for any damages resulting from any failure or delay in manufacturing or shipping due to any cause beyond Eriez' reasonable control, including, but not limited to: (1) intervening legal requirements or governmental directives; (2) acts of God; (3) force majeure; (4) labor disputes; (5) delays caused by Eriez' suppliers or vendors; or (6) war, terrorism, or similar disruptions. If shipment is delayed by Buyer, Eriez shall arrange for storage at Buyer's sole expense. In such event, risk of loss to the Goods shall pass to Buyer upon placing the Goods in storage, unless risk of loss has already passed to the Buyer pursuant to the delivery terms applicable to this Contract, as specified in Section 5.2, above, in which case risk of loss shall remain with the Buyer.

6. Warranties.

6.1 Limited Warranty. For the benefit of the Buyer only, Eriez warrants that all new Goods manufactured by Eriez shall be free from defects in material and workmanship for the periods specified in Section 6.2, below. Eriez' obligations under this limited warranty are conditioned upon Eriez receiving written notice of any defects no later than the expiration of the applicable warranty period.

6.2 Length. Unless otherwise specified in the Proposal, the limited warranty set forth in this Section 6 begins on the date that risk of loss to the Goods passes to the Buyer and extends for the following periods: (1) electrical coils of E-Z Tec® Metal Detectors - life; (2) electrical coils of Eriez SE 7000 Suspended Electromagnets - 60 months; (3) electrical coils of all other suspended electromagnets - 36 months; (4) drive units and trays of "B" Feeders, excluding non-standard customer-requested options and normal wear and tear of trays, tray liners and liner fasteners - 36 months; (5) 1200 Series Metal Detectors - 36 months; (6) E-Z Tec® Analog Metal Detectors - 30 months; (7) Metalarm Metal Detectors - 24 months; (8) E-Z Tec® Micro Processor Control Metal Detectors - 18 months; (9) all other Eriez products, excluding software - 12 months; and (10) software media only - 30 days.

6.3 Alteration; Abuse. The limited warranty set forth in this Section 6 shall be void with respect to Goods which have been: (1) altered by Buyer or any third party; (2) repaired by other than Eriez personnel or an Eriez approved contractor; (3) subjected to misuse, abuse, neglect or accident; or (4) damaged by improper installation or application.

6.4 Exclusions. The limited warranty set forth in this Section 6 shall not apply to, and no warranty is given with respect to: (1) parts, accessories or components manufactured by others, including, but not limited to, belts, springs and electrical components; (2) bearings and motors; (3) wear liners; (4) reducers; and (5) the functionality of software.

6.5 Exclusive Warranty. THE WARRANTY SET FORTH IN SECTION 7, BELOW, WITH RESPECT TO PATENT INFRINGEMENT, AND THE LIMITED WARRANTY SET FORTH IN THIS SECTION 6 ARE THE EXCLUSIVE WARRANTIES GIVEN BY ERIEZ WITH RESPECT TO THE GOODS AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, BOTH OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

6.6 Limitation of Remedies for Breach of Warranty. In the event of a breach of the limited warranty set forth in this Section 6, Buyer's sole remedy, and Eriez' sole obligation, is limited to the repair or replacement of the Goods by Eriez, at Eriez' option. Such limitation shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise. The expense of freight to and from the repair site shall be the sole responsibility of Buyer. If the repair site is other than an Eriez factory or a location designated by Eriez, reasonable out of pocket expenses, including, but not limited to, travel and lodging for Eriez' service personnel shall be the sole responsibility of the Buyer. Buyer shall be solely responsible for any costs associated with making the Goods accessible or otherwise available to Eriez for the performance of repair work on, or the replacement of, the Goods. Unless otherwise agreed in writing by Buyer and Eriez, Eriez shall not be responsible for any back charges of any nature whatsoever.

7. Patent Infringement.

7.1 Warranty. Eriez warrants that the Goods, and any part of the Goods which are manufactured to Eriez' design, shall be delivered free of any rightful claim of infringement of any United States patent.

7.2 Obligation to Defend. Upon prompt written notification by Buyer of any claim of patent infringement, Eriez shall defend or settle any claim of patent infringement at Eriez' sole cost and expense. Buyer shall provide any information and assistance requested by Eriez in providing such defense.

7.3 Remedies. Eriez shall pay all damages and costs awarded against Buyer incurred as a result of a breach of the warranty contained in this Section 7. In the event that the use of the Goods or parts is enjoined or in the event Eriez decides to defend or settle a claim of patent infringement, Eriez shall at its sole expense and option, either: (1) procure for Buyer the right to continue using such Goods or parts; (2) replace the Goods or parts so that they are non-infringing; or (3) remove the Goods or parts and refund the purchase price, less reasonable depreciation for any period of use. The remedies set forth in this Section 7.3 shall constitute the sole and exclusive remedies of the Buyer in the event of a breach of the warranties contained in this Section 7.

7.4 Exclusions. The warranty set forth in this Section 7 shall not apply to: (1) any Goods or parts specified by Buyer or manufactured to Buyer's design; (2) any Goods or parts altered or modified by Buyer; or (3) the use of any Goods in conjunction with any other product, not manufactured by Eriez. With respect to the Goods described in this Section 7.4, Eriez assumes no liability for patent infringement and Buyer shall defend, indemnify and hold Eriez harmless from any claims, liability, damages or expenses, including reasonable attorneys' fees, as a result of any patent infringement claims arising therefrom.

8. Limitation of Damages.

8.1 Exclusion of Certain Damages. In no event shall Eriez or Eriez' employees, officers, directors, representatives, affiliates and/or agents be liable for consequential, incidental or punitive damages incurred by Buyer or any third party in connection with any matter arising out of or relating to this Contract, or the breach thereof, regardless of whether such damages are characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise. Such limitations shall apply regardless of whether Eriez has been advised or otherwise made aware of the possibility of such damages arising. For purposes of this Section 8.1, consequential damages include, but are not limited to: (1) Buyer's lost production, sales and/or profits; (2) Buyer's loss of use of the Goods and/or any other equipment; (3) Buyer's cost of capital; or (4) any claims of customers of the Buyer against Buyer or Eriez.

8.2 Limitation on Amount. Notwithstanding any other provision of this Contract, the total liability, in the aggregate, of Eriez and Eriez' employees, officers, directors, representatives, affiliates and agents to Buyer or any third party claiming through or under Buyer for any claims, losses, damages, or costs arising out of or relating to this Contract, or the breach thereof, shall not exceed the total consideration received by Eriez from Buyer under this Contract. This Section 8.2 shall apply regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise.

9. Termination for Default. Eriez may terminate this Contract if Buyer: (1) becomes insolvent; (2) is unable to meet its obligations as they become due or admits such in writing; (3) enters bankruptcy or has a receiver or trustee appointed for it; (4) fails to timely make payments under this Contract or under any other obligation of Buyer to Eriez; or (5) fails to provide Eriez with adequate assurance of due performance within fifteen (15) days of Buyer's receipt of Eriez' written demand therefor. In the case of such a termination, Buyer shall be considered to have defaulted under this Contract and Eriez shall have such remedies as are available to it under this Contract and/or at law.

10. Credit Verification. Eriez reserves the right to perform a review of Buyer's creditworthiness following acceptance of Eriez' Proposal by Buyer. Notwithstanding any other provision of this Contract, Eriez shall not be obligated to perform the Contract if Buyer's creditworthiness is unsatisfactory to Eriez, in Eriez' sole discretion. In such case, Eriez shall not be obliged to proceed with the performance of this Contract, and Eriez may cancel this Contract at any time without any liability to Buyer, unless and until the Buyer shall have agreed to such terms of payment and such security therefor as is satisfactory to Eriez, in Eriez' sole discretion.

11. Export and Import Licenses - International Shipments Only. This Contract is contingent upon Eriez obtaining all export licenses and/or government approvals which may be required under applicable U.S. laws and regulations including, but not limited to, the Export Administration Act, the Trading with the Enemy Act, the Export Administration Regulations and the Foreign Assets Control Regulations. Prior to the date of shipment of the Goods, Buyer shall obtain, at its sole cost, all import licenses and/or other government approvals which may be required by the country of importation. Upon Eriez' request, Buyer shall provide Eriez with copies of such import licenses and/or government approvals to evidence Buyer's compliance with this Section 11. Buyer further represents and warrants that it is not, nor will Buyer, directly or indirectly, transfer the Goods to a person or entity listed as: (1) a Specially Designated National or Blocked Person by the U.S. Treasury Department; (2) a Denied Person by the U.S. Commerce Department; (3) a Denied Entity by the U.S. Commerce Department; or (4) a Debarred Party by the U.S. State Department. Buyer shall defend, indemnify and hold Eriez harmless from any claim, loss, damage, fines, penalties, liability or expense incurred with regard to Buyer's failure to comply with this Section 11.

12. Other Provisions.

12.1 Arbitration. Any dispute, controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. For domestic shipments, the arbitration proceedings shall take place in Erie, PA. For international shipments, the arbitration proceedings shall take place in Pittsburgh, PA. The decision of the arbitration panel shall be binding upon the parties and judgment on the award may be entered in any court of competent jurisdiction.

12.2 Limitation of Actions by Buyer. Any actions against Eriez with respect to any matter arising out of or relating to this Contract must be brought by Buyer, or anyone claiming through or under Buyer, within the earlier of: (1) one (1) year from the date that the claim in question accrued; or (2) the expiration of any applicable statute of limitations.

12.3 Governing Law. This Contract shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, without reference to any applicable principles of conflicts of law which would direct the application of the laws of another jurisdiction. The United Nations Convention on the International Sale of Goods, the 1974 Convention on the Limitation Period in the International Sale of Goods and the Protocol amending the 1974 Convention shall not apply to this Contract.

12.4 Waiver. The waiver of any right or default in any one instance shall not be deemed a waiver of any future right to enforce this Contract.

12.5 Assignment. This Contract may not be assigned by Buyer without the written consent of Eriez.

12.6 Severability. If any provision of this Contract is held to be invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect.

12.7 Safety Devices, Risks and Damages. Buyer assumes all responsibility for the safe operation of the Goods. Buyer shall provide all signage, warning labels, safety devices, guarding, shielding and other measures as may be necessary and/or appropriate, or which are required by federal, state, or local laws and regulations, for the safe operation of the Goods. Buyer acknowledges that the Goods may emit electromagnetic energy such as high magnetic fields, x-rays and/or other forms of radiation that, in the absence of appropriate safety measures, may: (i) be harmful and/or cause death of serious bodily injury to persons who may be pregnant, to persons operating the Goods, or to persons or animals in close proximity to Goods; and/or (ii) may cause damage or adversely affect certain equipment and/or products including, but not limited to, pacemakers, hearing aids, computers, devices for the storage of electronic information, and other electronic devices. Buyer shall defend, indemnify and hold Eriez harmless with respect to any property damage and/or personal injury, including death, which is caused by reason of the failure on the part of Buyer, and/or any employee, representative, operator or agent of Buyer, to comply with this Section 12.7.

12.8 Buyer Disclosures. Unless otherwise agreed to in writing by Eriez, any information or ideas transmitted by Buyer to Eriez in connection with this Contract shall not be regarded as a trade secret of, or submitted in confidence by, the Buyer.

12.9 No License or Sale of Intellectual Property. The sale of the Goods does not grant to, convey to or confer upon Buyer a license or any other rights, express or implied, under any patent, copyright or other intellectual property right of Eriez encompassed within, covering or relating to the Goods.

12.10 Recovery of Expenses. Eriez shall be entitled to recover from Buyer all costs and expenses (including, but not limited to, reasonable attorney's fees) which are incurred by Eriez in enforcing its rights under this Contract, including, but not limited to, the recovery of any amounts owed by Buyer to Eriez under this Contract.

12.11 No Third Party Beneficiaries. There are no third party beneficiaries with respect to this Contract between the Buyer and Eriez, including (but not limited to) any customers of the Buyer or any affiliates of the Buyer.

12.12 No Nuclear Use. The Goods which are the subject of this Contract shall not be used by Buyer or any third party in any nuclear installation or for the processing, handling, movement and/or storage of nuclear material. If any such use occurs, Eriez disclaims all liability for any damages, injury or contamination relating to or arising out of such use. Buyer shall defend, indemnify and hold Eriez harmless from any such liability, regardless of whether the claim is characterized as arising out of breach of warranty, contract, tort, strict liability, statutory liability, indemnity or otherwise.

12.13 Definitions. For purposes of these Terms and Conditions, the term "domestic shipments" shall mean any shipment to a destination within the fifty states or any possession of the United States including Guam, the Midway Islands, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands and Wake Island. The term "international shipments" shall mean any shipment to a destination outside of the fifty states or any possession of the United States, including Guam, the Midway Islands, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands and Wake Island. The term "Eriez" means Eriez Manufacturing Co., a Pennsylvania corporation.

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