



**MAGNESCALE AMERICAS INC.
TERMS & CONDITIONS FOR SALE**

These terms and conditions of sale ("Terms") are the only terms which govern the sale of scale, equipment, tools, and related goods (collectively, "Goods") by MAGNESCALE AMERICAS INC., or its affiliates (collectively "MAGNESCALE") to Buyer and MAGNESCALE will only sell the Goods subject to these Terms. All quotations, proposals, all Buyer's purchase orders, all service, and all confirmations or acknowledgments of Buyer's purchase orders by MAGNESCALE are subject to these Terms. If the Goods is sold by a party other than MAGNESCALE, these Terms do not apply except for paragraphs "Limitation of Warranty," "Limitation of Liability," and "Export Control" herein. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Buyer's written acknowledgment or payment of a deposit for the Goods shall be construed as Buyer's acceptance of these Terms. No additional or other terms with be binding on MAGNESCALE unless accepted in a writing signed by a duly authorized representative of MAGNESCALE. Buyer's payment, either in whole or in part, for the Goods shall be construed as acceptance of these Terms. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The "Buyer" herein refers to the customer of MAGNESCALE as listed on the sales order issued by MAGNESCALE ("Order").

PRICES. Except for the prices printed on the Order, all prices quoted are subject to change without notice. Prices do not include sales taxes, value-added taxes, business taxes, tariffs, sales, use, excise, property taxes and any other charges or taxes arising out of or relating to the sale or use of the Goods. If tax exemption is applicable to the Order, Buyer shall provide MAGNESCALE an exemption certificate or other document(s) satisfactory to the authority imposing the tax. Notwithstanding the above, Buyer shall indemnify, defend and hold MAGNESCALE harmless from and against the imposition and payment of such taxes or charges, whether or not they are stated in any invoice for the Goods. MAGNESCALE, at its option, may at any time separately bill Buyer and Buyer shall pay for any taxes not included in MAGNESCALE's invoice. Shipment of the Goods shall be charged separately.

PAYMENT TERMS. Unless otherwise stated in the Order or in a written contract signed by both parties, Buyer shall pay to MAGNESCALE within thirty (30) days from date of invoice, which will be sent to Buyer upon Shipment. Shipment shall mean when MAGNESCALE delivers the Goods to a carrier for shipment to Buyer. If acceptance of the Goods by Buyer (which shall not be unreasonably withheld) is delayed more than thirty (30) days from the date of delivery of the Goods because of conditions other than the Goods or services provided by MAGNESCALE, including but not limited to delay in the provision of goods or services by Buyer or other suppliers, Buyer agrees that MAGNESCALE may replevin the Goods or offset the unpaid Order price with any other payment MAGNESCALE owes to Buyer. In the event of legal action to enforce these Terms, Buyer shall reimburse MAGNESCALE for its reasonable costs and attorney's fees. MAGNESCALE reserves the right to cancel and to refuse to complete Buyer's purchases if, in MAGNESCALE's opinion, Buyer has not established credit to promptly meet the payment terms of the order. Acceptance and payment by Buyer with respect to the Goods shipped by MAGNESCALE shall not be delayed because of any delay in Shipment by MAGNESCALE of accessory or ancillary equipment not essential to the operation of the Goods already shipped; in such event, the payment terms set forth in this paragraph shall be applicable to the Goods shipped as of the date of Shipment and to subsequent Shipments of Goods as they occur.

DELIVERY. All dates stated by MAGNESCALE are approximate dates only and are estimated in good faith to the best of MAGNESCALE's ability, commensurate with foreseeable scheduling and subject to availability of product and transit. MAGNESCALE shall not be liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from MAGNESCALE's delayed Shipment of the Goods for any reason whatsoever.

TITLE AND RISK OF LOSS. Title and risk of loss shall pass from MAGNESCALE to Buyer at delivery. At such time that Goods are delivered to Buyer, Buyer hereby grants a purchase money security interest in the Goods to MAGNESCALE, proportionate to any remaining balance owed. Until such time that title to the Goods is delivered to Buyer, MAGNESCALE hereby grants Buyer a security interest in the Goods proportionate to any payment made related to the Goods. Each Party shall execute any such statements or other documentation necessary to perfect the other Party's security interest in such Goods. Notwithstanding the above, if delivery is arranged by Buyer or the carrier is selected by Buyer, the title and risk of loss shall pass from MAGNESCALE to Buyer at Shipment and from thereon, the carrier shall be deemed to be acting for and on behalf of Buyer. The terms of payment of the Goods shall not be affected by damage to or destruction of the Goods while in transit.

CLAIMS. Any claims regarding the performance of MAGNESCALE or its agents under the Order and these Terms, including but not limited to claims in connection to shortage, damages, specifications, functionality, and invoice, must be made in writing to MAGNESCALE within thirty (30) days after Shipment of the Goods. Unless otherwise agreed, the acceptance criteria for the Goods shall be the quantity and specifications outlined in the Order or as otherwise provided by MAGNESCALE in connection with the Order. MAGNESCALE STRONGLY RECOMMENDS THAT BUYER CONDUCTS AN INSPECTION OF THE GOODS IMMEDIATELY AFTER THE ARRIVAL OF THE GOODS. MAGNESCALE SHALL NOT BE RESPONSIBLE FOR THE CONSEQUENCES OF BUYER'S FAILURE TO INSPECT THE GOODS. MAGNESCALE reserves the right to inspect all Goods in connection to the claim and, at its sole discretion, resolve any Buyer claim relating to the Goods by repossessing such Goods and reimbursing Buyer the Order price for the Goods less depreciation arising from Buyer's use of the Goods.

CHANGES. Changes to the Order, including but not limited to changes in amount of Goods, specification of the Goods, date of delivery, location of delivery, or method of delivery, are subject to a mutual agreement between the parties. Until such mutual agreement is executed, MAGNESCALE has no obligation to perform according to the changes requested by Buyer.

CANCELLATIONS. Once the Order is issued, Goods cannot be cancelled, and Buyer shall liable for the full Order price.

LIMITATION OF WARRANTY. EXCEPT FOR WHAT IS PRINTED ON THE QUOTE ISSUED BY MAGNESCALE IN CONNECTION TO THE GOODS, MAGNESCALE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING BUT NOT LIMITED TO (a) ANY WARRANTY OF MERCHANTABILITY; OR (b) ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER DIRECT OR INDIRECT, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. MAGNESCALE MAKES NO WARRANTY AS TO THE QUALITY, FINISH, ACCURACY OR TOLERANCE, COMPLIANCE WITH ELECTRICAL, HYDRAULIC, PNEUMATIC OR OTHER SAFETY CODES REQUIRED BY ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL BODY, OR AS TO THE EFFICIENCY, PRODUCTIVITY OR PERFORMANCE OF ANY GOODS.

LIMITATION OF LIABILITY. MAGNESCALE'S LIABILITY WITH RESPECT TO GOODS SOLD TO BUYER SHALL BE LIMITED TO REFUNDING ANY PAYMENTS MADE BY BUYER AND RECEIVED BY MAGNESCALE WITH RESPECT TO GOODS RETURNED TO AND ACCEPTED BY MAGNESCALE. BUYER EXPRESSLY AGREES THAT IN NO EVENT SHALL MAGNESCALE BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER, ANY LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF OPPORTUNITY, LOSS OF BUSINESS, LOSS OF REPUTATION AS A RESULT OF ANY CLAIM BROUGHT BY BUYER OR A THIRD PARTY ARISING OUT OF OR RELATING TO: (i) ANY BREACH BY MAGNESCALE OF THESE TERMS; (ii) ANY REPRESENTATION, STATEMENT OR TORTIOUS ACT OR OMISSION (INCLUDING NEGLIGENCE) OF MAGNESCALE; AND (iii) ANY USE OF THE GOODS OR THE FAILURE OF THE GOODS TO OPERATE PROPERLY; EVEN IF SUCH LOSSES WAS IN CONTEMPLATION OF THE PARTIES OR WAS WHOLLY FORESEEABLE.

BUYER SHALL INDEMNIFY, DEFEND AND HOLD MAGNESCALE HARMLESS FROM AND AGAINST ALL CLAIMS, ACTIONS, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES) INVOLVING A THIRD PARTY CLAIM ARISING OUT OF BUYER'S USE OF THE GOODS EXCEPT TO THE EXTENT WHOLLY AND DIRECTLY CAUSED BY MAGNESCALE'S NEGLIGENCE OR WRONGFUL ACTS.

BUYER EXPRESSLY AGREES THAT IN NO EVENT SHALL THE AGGREGATE LIABILITY OF MAGNESCALE UNDER ANY THEORY OF RECOVERY EXCEED THE PURCHASE PRICE OF THE GOODS FROM WHICH LIABILITY AROSE. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF BUYER'S REMEDIES UNDER THESE TERMS FAIL OF THEIR ESSENTIAL PURPOSE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY MAGNESCALE, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

CONFIDENTIALITY. All drawings, designs, specifications, manuals, programs and prices furnished to Buyer by MAGNESCALE shall remain the confidential and proprietary property of MAGNESCALE. All such information, except as may be found in the public domain, shall be held in strict confidence by Buyer and shall not be disclosed by Buyer to any third parties. Copyright in all material made available by MAGNESCALE shall remain in MAGNESCALE at all times.

SAFETY PRECAUTIONS. Buyer shall require employees to use all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by MAGNESCALE. Buyer shall not remove or modify any such device, guard or sign. It is Buyer's responsibility to provide all the means that may be necessary to effectively protect all employees from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Goods. If Buyer fails to comply with provisions of this paragraph or the applicable standards or regulations aforementioned, Buyer shall indemnify, defend and hold MAGNESCALE harmless from and against any and all claims, losses or damages arising from such failure. It is the responsibility of Buyer to comply with all local laws, regulations and codes.

INFRINGEMENT. Buyer shall indemnify, defend and hold MAGNESCALE harmless from any infringement of any patent, trademark or copyright arising from Buyer's use of the Goods, including but not limited to the reimbursement of costs and expenses, including attorney's fees, incurred by MAGNESCALE with respect to a claim of infringement.

DESCRIPTIONS OF GOODS. All weights and measurements given are estimates, stated as correctly as possible and any minor deviations shall not constitute non-conformity of the Goods. Brochures, photographs and other illustrations representing the Goods are for illustration only and are not binding in detail. Brochures and product designs and specifications are subject to change without notice.

EXPORT CONTROL. The parties acknowledge that information subject to U.S. export control laws and regulations may be disclosed pursuant to this Agreement. Each party shall comply with all applicable export and import laws and regulations, including but not limited to, the International Traffic in Arms Regulations, as amended (22 C.F.R. Parts 120 - 130) ("ITAR"), the Export Administration Regulations, as amended (15 C.F.R. Parts 730 - 774) ("EAR") and Office of Foreign Assets Control ("OFAC") regulations. The parties shall not export, disclose, transfer, furnish or otherwise provide any article, technical data, technology, defense service, or technical assistance of the other party to any foreign country or foreign person as defined by applicable export control laws and regulations, including those working for a party, whether in the United States or abroad, without obtaining in advance proper United States government export authorization.

Buyer shall comply with applicable laws and regulations governing the exportation or re-exportation of the Goods. The Goods may be subject to export restrictions imposed by the United States, Japan, Germany and other countries and Buyer will not export or permit the export of the Goods anywhere without proper government authorization. Buyer further agrees that when requested by MAGNESCALE, it shall provide all necessary information, including but not limited to the end-user and end use of the Goods, to facilitate compliance with applicable export control laws.

Buyer also agrees that it will notify MAGNESCALE immediately in writing if Buyer or any of its related entities, or any of Buyer's customers for which a Good purchased from MAGNESCALE was used in any way to fulfill an order for such Buyer customer, is added to the Entity List in Part 744 in the EAR ("Entity List"). Buyer acknowledges that should Buyer be added to the Entity List, MAGNESCALE shall have the right to immediately cease any pending deliveries or if available, apply for any applicable export license, in which case delivery can only resume if export license is granted. MAGNESCALE shall have no liability (including for lost profits or business interruption or under the limited service warranty) for any delivery interruption as a result of any changes in export control laws and regulations.

ASSIGNMENT. Buyer may not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of MAGNESCALE. Any purported assignment of rights or delegation in violation of this paragraph is null and void. No assignment or delegation relieves Buyer of any of its obligations under these Terms.

FORCE MAJEURE. MAGNESCALE shall not be responsible for nonperformance or late performance of any part of the Order due to orders, regulations, and/or ordinances by government, act of God, war, blockade, insurrection, mobilization or due to any other causes or circumstances beyond MAGNESCALE's control. If an event of force majeure occurs, MAGNESCALE at its option may either extend the time of performing affected obligations during the period the event of force majeure continues or cancel the order.

GOVERNING LAW & ARBITRATION. These Terms shall be construed in accordance with the laws of the State of Illinois. The provisions of these Terms are divisible and the invalidity or unenforceability of any provision or provisions contained herein shall not in any way affect the validity of these Terms without the invalid or unenforceable provision or provisions. All disputes that may arise in connection with these Terms shall, unless settled by the parties, be submitted to arbitration in Chicago, Illinois in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any action to by Buyer relating to the Goods shall be commenced no later than one year from the date of alleged breach.

MERGER CLAUSE. The entire agreement is embodied in this writing. There are no understandings, agreements, representations, or warranties, either oral or written, relative to products or services, including statements made in or conduct implied from past dealings that are not fully expressed herein. No statement subsequent to the acceptance by MAGNESCALE of the purchase order purporting to modify the said terms and conditions shall be binding unless consented to in writing by a duly authorized representative of MAGNESCALE in a document making specific reference to this transaction. Any failure to enforce or apply a term, condition, or provision of these terms shall not constitute a waiver of that term, condition or provision or otherwise impair MAGNESCALE's right to enforce such term, condition or provision in the future.

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