

## General Terms & Conditions of Sale

**Definitions.** As used in these General Terms and Conditions of Sale, the term "Product" shall mean: the machinery, equipment, goods, products and other tangible property from time to time sold or offered for sale by "Seller"; the term "Customer" shall mean the person to whom such Goods or Services is sold or offered.

**Prices.** Unless otherwise stated, all prices are in U.S. Dollars. All prices offered are net prices with trade discounts already deducted. Market Sensitive Commodity items will be priced according to current market conditions, and may fluctuate from time of quotation to time of order.

**Payment Terms.** All payments shall be in U.S. Dollars, without offset, back charge, retention or withholding of any kind. All invoices shall be payable within terms stated on the invoice. Any amounts not paid when due will be subject to interest at the rate of 1½% per month or the highest no usurious rate permitted by applicable law, whichever is less. At the request of Seller, payments will be made through a confirmed irrevocable letter of credit in form and on banks acceptable to Seller.

**Sales Tax and Duties, Import Fees.** Seller is required to charge/collect national, state, local tax, applicable duties, and import fees on products for which Customer has not provided valid exemption certification. Customer assumes responsibility for, and unconditionally guarantees payment or reimbursement of, all applicable taxes, fees, licenses, import duties, and fees and licenses, and expenses as may be applicable. When ordering, Customer shall indicate clearly which product is tax exempt.

**Security Interest.** On any open account sale, Customer hereby grants to Seller a priority lien, purchase money security interest and/or chattel mortgage in the products and any accounts receivable or cash from resale thereof until full payment is made to Sage Parts Plus Inc. Customer agrees to file or permit Seller to file any financing statements or other appropriate documents with its governmental authorities to perfect the validity, priority, and enforceability of Seller's priority lien or security interest. Customer agrees to inform Seller immediately if it intends to use any import financing or has or will be granting a lien or security interest on its inventory to any third party.

**Credit Balance.** Customer agrees that any credit balance issued will be applied within one (1) year of its issuance. If not applied or requested within one (1) year, any credit balance remaining will be subject to cancellation, and Seller shall have no further liability.

**Shipping Charges and Freight Policy.** Unless otherwise varied, shipping terms are EXW (as defined by International Chamber of Commerce Terms, 2000), Seller's shipping warehouse. All shipments are freight collect from any of Seller's facilities. Customer shall be responsible for obtaining insurance. Title and risk of loss for products shall pass when made available to Customer on delivery to carrier in the United States; provided that if payment has not been made at the time of shipment. Seller shall retain title (but not risk of loss) until payment has been made. If product is damaged in transit, Customer must file claim exclusively with airline, carrier, vessel and/or insurance company; provided, however, that if Seller has not received payment in full at the time the product is damaged in transit, Seller shall have the right to file claim exclusively with airline, carrier, vessel and/or insurance company. Customer must retain original packing material and shipping container for inspection by freight carrier.

**Cancellation.** Any cancellation by Customer must be approved by Seller, and may be subject to restocking and other charges.

**Acceptance.** All Goods shall be finally inspected and accepted within ten (10) days after delivery. Failure of Buyer to provide Seller with an itemized list of defects within such ten (10) days or to permit Seller a reasonable opportunity to correct any listed defects shall be deemed acceptance of Goods or Services. In the event of multiple shipments, each individual shipment shall be separately accepted and shall be periodically inspected and accepted. Customer expressly waives any right to reject Goods or Services that substantially conform to the specifications relating thereto and any right to revoke acceptance after such ten (10) day period.

**Cross-Reference Information.** Product cross-reference comparisons do not imply that all products compared are available or perfectly comparable. CROSS-REFERENCED PRODUCTS ARE NOT REPRESENTED OR WARRANTED AS FUNCTIONAL OR PERFORMANCE EQUIVALENTS. Customer shall review all cross-referenced product specifications prior to purchase and use to determine suitability of the product for Customer's intended use.

**Product Return.** Before returning any product Customer believes is defective, or does not want to keep Customer shall (i) write or call the Seller's branch from which the product was purchased; or (ii) in the case of an Internet order, contact eSage with the date and number of the original invoice, the stock number, and a description of the defect, or reason for Return. Seller will provide an RMA number as well as information on where to send the return. RMAs are valid for a period of 30 days. Goods received after 30 days of invoice date or after RMA has expired may be returned to the customer without credit issued. Product must be shipped freight prepaid. Non-stocked, special order and custom products will not be accepted for return unless they can be returned to the original manufacturer. Customer will be responsible for all applicable restocking fees and return freight charges to the manufacturer. Product must be returned in original packaging and in resellable condition and include all component parts. The issuance of a return is not an acceptance by Seller, or its agents, of such return for credit, exchange, warranty or otherwise. All returns are subject to inspection and evaluation prior to

determination of issuance of credit. Seller assumes no responsibility for loss or damage of a return if an RMA number is not clearly marked on the merchandise being returned. A 15% restocking fee may apply for stockable parts. Restocking fees are waived when excluded by any Seller/Customer agreements. Special Order Returns are subject to a 15% restocking fee or fee imposed by vendor, whichever is greater. Non-stocked and special order items will not be accepted unless they can be returned to the supplier or are the result of Seller error. Freight charges incurred by returning to supplier may be deducted from Customer's final credit. Seller reserves the right to replace or repair defective products or refund the original purchase price. Defective product must be drained of all fluids with ports plugged where applicable. Drained product must be placed in a plastic bag and returned in the Manufacturer's original container.

**Core Return.** Cores must be drained of all fluids with ports plugged where applicable. Drained product must be placed in a plastic bag and returned in the Manufacturer's original container. Cores must be received by Seller fully assembled. All core returns are subject to inspection and evaluation prior to determination of issuance of credit. **The final credit amount will be subject to a core handling fee as well as any deductions charged by the supplier.**

**Manufacturer's Warranties.** The manufacturer warrants many of the products offered for sale to the final user. Manufacturer's warranty period begins on the date of delivery to Customer. The manufacturers make available copies of any applicable warranties. Seller will furnish such warranties free of charge to Customers upon their request. Call 1-877-SAGE(7243)-877 or 1-631-501-1300 with request. Provide the Seller stock number, manufacturer's model number (if shown) of each product for which a copy of the warranty is requested and the original invoice number it was purchased from Seller on. Seller assumes no responsibility for the content of such warranties by performing this service.

**Warranty/Liability Disclaimer.** ALL PRODUCTS TO BE SOLD AND DELIVERED ARE DONE SO "AS IS". SAGE MAKES NO REPRESENTATION OR WARRANTY THAT ANY PRODUCT SOLD WILL CONFORM TO THE MANUFACTURER'S SPECIFICATIONS IN RESPECT OF SUCH PRODUCT OR WILL BE FREE FROM DEFECTS IN MATERIAL, WORKMANSHIP, PROCESS OF MANUFACTURING OR DESIGN, AND SAGE HAS NO RESPONSIBILITY IN RESPECT OF SAME. SAGE'S REPRESENTATION AND WARRANTY CONTAINED HEROF IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. NO EXTENSION OR EXPANSION OF SUCH WARRANTY SHALL BE BINDING UPON SAGE UNLESS SET FORTH IN WRITING AND SIGNED BY SAGE'S AUTHORIZED REPRESENTATIVE.

**Force Majeure.** Seller shall not be liable for any delay in, or impairment of, performance resulting in whole or in part from acts of God, acts of war, acts of terrorism (whether actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines, labor disruptions, shortages, communication or power failure, fire, accident, explosion, inability to procure or ship product or obtain permits and licenses, supplies or raw materials, severe weather conditions, catastrophic events, or any other circumstance or cause beyond the reasonable control of Seller in the conduct of its business.

**No Third Party Benefit.** The provisions stated above are for the sole benefit of Seller and customer, and confer no rights, benefits or claims upon any person or entity not a party hereto.

**Waiver.** The failure of either Seller or Customer to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent nonperformance of any such term or condition by the other party.

**Severability.** If any portion of these Terms and Conditions is found to be invalid or unenforceable by a court of competent jurisdiction, the invalid or unreasonable term shall be redefined, or a new enforceable term provided, such that the intent of Seller and Customer in agreeing to the provisions of these Terms and Conditions shall be enforceable to the fullest extent of the applicable laws.

**Complete Agreement.** These terms and conditions, together with any other terms and conditions that Seller publishes or makes available to Customer (i) on an invoice or a packing slip, (ii) on eSage or (iii) in any document including, without limitation, those involving extension of credit by Seller, or export of products, represent the entire agreement between the parties and shall supercede all unwritten statements, agreements, and understandings between Seller and Customer pertaining to the subject matter of this agreement.

**Assignment.** Customer shall not assign any order, any interest therein, or this order without the prior written consent of Seller. Any actual or attempted assignment without Seller's prior written consent shall entitle Seller to cancel such order or to terminate this agreement upon notice to Customer.

**Governing Law; Limitations.** The rights and obligations of the parties under these Terms and Conditions shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods. Rather, these Terms and Conditions shall be governed by the laws of the State of New York, United States, including its provisions of the Uniform Commercial Code, but excluding its conflict of law rules. Notwithstanding the foregoing, any legal action by Customer with respect to any transaction must be commenced within one year after the cause of action has arisen.