



## GENSCO TERMS AND CONDITIONS OF SALE

Gensco Equipment (1990) Inc. and / or GENSCO AMERICA, Inc. (hereafter referred as the SELLER)

As used herein, and at the discretion of the seller, the term seller shall mean Gensco America Inc., a Georgia Corporation or Gensco Equipment (1990) Inc. an Ontario Corporation and the term "Buyer" shall mean the person or business executing the order for purchase of the equipment or product identified or described in the quote or invoice. (the "equipment" or "product (s)").

This document constitutes the full and final agreement of the parties for the purchase and sale of the goods and services described on this quote or invoice, and is not to be modified or amended by any prior or contemporaneous agreement, whether written or oral. No modification of this agreement shall be in effect unless in writing signed by the parties, and no modification shall be effected by the acknowledgment or acceptance of purchase order forms containing different terms or conditions. This sale is expressly made conditional on Buyers assent to, and Seller agrees to furnish the equipment only upon, these terms and conditions.

**INSPECTION:** BUYER IS ENCOURAGED TO, AND SHALL HAVE THE RIGHT TO INSPECT THE EQUIPMENT PRIOR TO THE TIME OF SHIPMENT. THE BUYER ACKNOWLEDGES THEY ARE A SOPHISTICATED PURCHASER OF MACHINERY AND HEREBY ACCEPTS RESPONSIBILITY FOR DEFECTS OR FAULT IN USED EQUIPMENT PURCHASED "AS-IS".

**IMPORTANT:** EQUIPMENT USE AND SAFETY. BUYER ACKNOWLEDGES THAT THE EQUIPMENT MAY CONTAIN CERTAIN UNAVOIDABLE RISKS, WHICH MAY ARISE DURING USE, OPERATION OR AFTER SALE, AND THAT THE EQUIPMENT MAY BE INHERENTLY DANGEROUS. BUYER ACKNOWLEDGES SUCH RISKS AND DANGERS, AND EXPRESSLY REPRESENTS AND WARRANTS THAT BUYER WILL ASSUME ALL RESPONSIBILITY FOR PERSONAL INJURIES ARISING FROM THE USE, OPERATION AND SALE OF THE EQUIPMENT.

BUYER ACKNOWLEDGES THAT THE EQUIPMENT MAY HAVE NEITHER BEEN DESIGNED NOR MANUFACTURED BY THE SELLER AND THAT THE SELLER DOES NOT KNOW OF BUYERS SPECIFIC APPLICATION.

BUYER REPRESENTS AND WARRANTS THAT IT IS BUYER'S SOLE RESPONSIBILITY TO PROVIDE PROPER SAFETY PRECAUTIONS (for example, but not limited to: EMPLOYEE TRAINING, USER INSTRUCTIONS, WARNINGS, LABELS, SCREENING, SAFETY GUARDS, EMERGENCY STOP SWITCHES AND OTHER SAFETY MECHANISMS AND DEVICES) TO SAFEGUARD BUYER AND OTHERS FROM HARM ARISING FROM THE USE, OPERATION OR SALE OF EQUIPMENT. BUYER REPRESENTS THAT IT WILL CONFORM THE EQUIPMENT TO ANY FEDERAL, STATE OR PROVINCIAL AND INDUSTRY SAFETY STANDARDS AND CONFORM THE EQUIPMENT TO MANUFACTURER'S WARNINGS AND INSTRUCTIONS PRIOR TO USE, OPERATION OR SALE.

**WARRANTY:** THE BUYER'S SOLE AND EXCLUSIVE WARRANTY, IF ANY, IS THAT PROVIDED BY THE PRODUCT'S MANUFACTURER. SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES. SELLER HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE EQUIPMENT SOLD BY SELLER, and buyer expressly agrees to assume all risks and liability for the use, operation and sale of the equipment, whether used, operated or sold singly or in combination with other equipment goods or products.



The description of the equipment provided in the invoice or quote form is for the sole purpose of identifying the same and does not constitute a representation or warranty that the equipment conforms to such description, condition or specification. **BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL SELLER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, ALL USED PRODUCTS, EQUIPMENT AND/OR SERVICES PROVIDED BY SELLER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS."**

**IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, PROPERTY DAMAGE, PERSONAL INJURY, REVENUE LOSS OR LOSS OF PROFITS OR CLAIMS OF CUSTOMERS OR BUYER FOR ANY SUCH LOSS OR DAMAGE, AND, NOT WITHSTANDING THE PROVISIONS OF ANY STATUTE OR LAW, THE TERMS AND CONDITIONS OF THIS CLAUSE SHALL CONSTITUTE THE EXCLUSIVE LIABILITY OF SELLER.**

**IN THE EVENT OF IMPROPER INSTALLATION, ALTERATION ABUSE, MISUSE, ACCIDENT, FIRE FLOOD OR ACTS OF GOD, ANY WARRANTIES WHICH MAY BE GIVEN BY SELLER TO BUYER ARE HEREBY REVOKED AND CANCELLED. BUYER SHALL HAVE THE RIGHT TO INSPECT THE EQUIPMENT AT THE PLACE OF SHIPMENT PRIOR TO THE TIME OF SHIPMENT AND IS ENCOURAGED BY SELLER TO DO SO.**

**TERMS:** Buyer agrees to pay for the equipment according to the Seller's payment terms. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to service charges at the rate agreed upon by the parties, otherwise at the maximum contract rate permitted by law. Buyer does hereby grant Seller a purchase money security interest in the products until such time as Seller is fully paid. Buyer will assist Seller in taking the necessary action to perfect and protect Seller's security interest. No equipment furnished by the Seller shall become a fixture by reason of being attached to real estate.

**REMEDIES OF SELLER:** Upon default by Buyer, Buyer agrees to reimburse Seller all attorney fees and court costs incurred by Seller in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller or (f) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

**GOVERNING LAW:** This transaction shall be governed in all respects by the laws of the Province of Ontario (excluding choice of law provisions). All actions, regardless of form, arising out of or related to this transaction or the products sold hereunder must be brought against Seller within the applicable statutory period, but in no event more than **ONE (1) YEAR** after the date of invoice.



**DELIVERY:** Seller will make a good faith effort to complete delivery of the equipment as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

**REPRESENTATIONS BY SELLER:** Buyer acknowledges that Seller does not make and specifically negates, renounces and disclaims any representations, warranties and/or guaranties of any kind or character, expressed or implied, with respect to (i) the products sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose, (ii) the maintenance or other expenses to be incurred in connection with the products, (iii) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, suppliers and employees or (iv) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of its products and/or rendering of its services. Any recommendations made by Seller concerning the use, design, application or operation of the products shall not be construed as representations or warranties, expressed or implied. Failure by Seller to make recommendations or give advice to Buyer shall not impose any liability upon Seller.

**INDEMNIFICATION:** The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products. Seller makes no promise or representation that the products or services will conform to any federal (CANADIAN or AMERICAN ) provincial, state or local laws ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an authorized representative of Seller..

Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the equipment. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the products by Buyer or of the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

**INSPECTION AND ACCEPTANCE:** Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product or service previously ordered by Buyer or its representatives or cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller. Specially fabricated or ordered items may not be canceled or returned, and no refund will be made. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the merchandise subject to the manufacturer's inspection and warranty.



**RETURNS:** Seller at its discretion may allow Buyer to return any product which Seller normally stocks with no restocking charge if: (i) it is in new condition, suitable for resale with all its original parts and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. Special orders or non-stock items may not be returned without authorization of Seller AND only if the manufacturer will accept the return. Except for items Seller stocks which meet (i) and (ii), above, credit memoranda issued for authorized returns shall be subject to the following deductions: (a) cost of putting items in salable condition; (b) transportation charges, if not prepaid; and (c) handling and restocking charges.

**SHIPMENTS:** All products are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier.

**TAXES & PRICES:** All prices listed and quoted by the Seller are exclusive of any federal, state, provincial or municipal sales, use or other similar taxes which Seller may be required to collect or pay upon such sale or delivery of its materials to Buyer and Buyer shall be responsible for payment of such taxes, unless otherwise stated on the quote form.

The amount of any sales, excise or other taxes, if any, applicable to the products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to Seller upon demand.

**SEVERABILITY:** These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance here from.

**SET-OFF:** Buyer shall not be entitled to set-off any amounts due Buyer against any amount due Seller in connection with this transaction.

**NON-WAIVER:** Seller's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Seller's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by Seller's Branch Manager.

**ENTIRE AGREEMENT:** This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by the Seller's Branch Manager. All transactions shall be governed solely by the terms and conditions contained herein.