



TERMS AND CONDITIONS

1. ORDERS AND ACCEPTANCE:

- a) **THE FOLLOWING TERMS AND CONDITIONS SHALL BE A PART OF ANY CONTRACT OF SALE ("Order") FOR GOODS AND/OR SERVICES WHICH MAY BE ENTERED INTO BETWEEN BUYER AND PINES ENGINEERING DIVISION of AJAX TOCCO MAGNETHERMIC CORPORATION ("PINES ") WHETHER PURSUANT TO ANY PROPOSAL, RESPONSE TO REQUEST FOR QUOTATION, PURCHASE ORDER OR OTHERWISE. ANY TERMS OR CONDITIONS IN BUYER'S PURCHASE ORDER, RELEASE DOCUMENT, ACKNOWLEDGMENT OR OTHER APPROVAL WHICH ARE IN CONFLICT OR INCONSISTENT WITH OR ADDITIONAL TO THE TERMS AND CONDITIONS HEREIN ARE EXPRESSLY REJECTED BY PINES AND WILL NOT BECOME A PART OF ANY RESULTING CONTRACT BETWEEN BUYER AND PINES WITHOUT PINES 'S EXPRESS WRITTEN CONSENT.**
- b) **NEITHER ACKNOWLEDGMENT OF BUYER'S ORDER NOR THE FILLING AND SHIPMENT OF SUCH ORDER SHALL CONSTITUTE ACCEPTANCE OF SUCH CONFLICTING, INCONSISTENT OR ADDITIONAL TERMS, NOR SHALL SUCH ACTIONS IN ANY WAY OPERATE TO MODIFY OR CHANGE THE TERMS AND CONDITIONS HEREIN.**
- c) **BUYER'S ACCEPTANCE OF SHIPMENT, COMMENCEMENT OF SERVICES AND/OR PAYMENT FOR THE GOODS AND/OR SERVICES CONSTITUTES ACCEPTANCE OF PINES 'S TERMS AND CONDITIONS.**
- d) **NO ORDER SHALL BE BINDING UPON PINES UNTIL ACCEPTED IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF PINES AND AN ACKNOWLEDGMENT SENT TO THE BUYER.**

2. QUOTATIONS: All written quotations shall automatically expire on the expiration date listed on the

quotation, but in no event later than ninety (90) days after issuance, and are subject to withdrawal by notice within that period. PINES , at its sole option, may extend the effective date of written quotations up to six months. Prices shown on published price lists and other literature issued by PINES do not represent unconditional offers to sell, and are subject to change without notice. PINES 's prices do not include installation or final on-site adjustment unless otherwise specified in the quotation.

3. TAXES: PINES 's prices do not include federal, state, or local taxes, including sales, use, property,

import/export, value added, excise or similar tax payments. PINES shall have the right at any time to bill Buyer for any and all such taxes as a separate invoice line item and Buyer agrees to pay and/or reimburse PINES for any such applicable taxes.

4. PAYMENT: Payment shall become due as stated in the Order Acknowledgement. PINES reserves the right at any time to demand full or partial payment or appropriate security before proceeding with the work to be performed hereunder, if in the sole judgment of PINES the financial condition of Buyer does not justify continuance under the terms of payment specified in the Order. If delivery is delayed or deferred by Buyer beyond the scheduled date, payment shall be due in full on the date when PINES is prepared to make delivery. PINES reserves the right to add a finance charge to all past due balances at a rate of 2% per month, or any fraction thereof, or at the maximum rate allowable under law, if less. Should the payments not be made in accordance with the schedule stated on the Order Acknowledgement, PINES reserves the right to terminate all or part of the Order, including the Warranty coverage.



- 5. DELIVERY AND DELAYS:** Delivery of goods will be Ex Works (Incoterms 2010) PINES 's shipping point; all shipping charges collect, unless otherwise specified. Buyer assumes all responsibility for risk of loss or damage to any goods furnished hereunder upon delivery to the carrier at PINES 's shipping point. Delivery dates are approximate and are subject to confirmation. PINES shall not be responsible for excusable delays, nor shall Buyer refuse to accept delivery because of any such delays. "Excusable delays" include, without limitation, delays resulting from accidents, acts of God, strikes, fire, floods, weather disturbances, acts of terrorism, governmental controls, inability to obtain materials from suppliers, failure of materials correctly ordered by PINES to meet specifications, or other causes reasonably beyond PINES 's control, including any delay attributable to the carrier. If Buyer delays shipment, Buyer will accept title to the equipment, the equipment will be invoiced and payment in full nevertheless shall be due thirty (30) days after the date of such invoice and the equipment shall be held at Buyer's risk and subject to reasonable storage charges. Any delays caused by Buyer will not extend the stated start-up or warranty period.
- 6. CHANGES:** Requested changes made by Buyer to an Order are subject to PINES 's approval and acceptance. Buyer shall reimburse PINES for all additional costs and expenses related to any such change.
- 7. CANCELLATION:** Orders will not be subject to cancellation by Buyer, either in whole or in part, without PINES 's written consent, and then only under terms that will reimburse PINES for all costs incurred by it, including, without limitation, preparation costs, costs of purchased materials, engineering costs, total factory costs of the items produced up to the date of acceptance of cancellation including factory direct labor and factory overhead, cancellation charges from PINES 's subcontractors and suppliers, any other expenses, and an amount equal to PINES 's customary profit, less the refund, if any, actually received by PINES on any purchased items which can be returned to vendors.
- 8. SAFETY DEVICES:** Safety and/or protective devices furnished with the equipment described in the Order or provided as part thereof shall be considered equipment and PINES 's liability for failure thereof is limited to the liabilities assumed under the terms of the warranty as set forth in PINES 's quotation or Order Acknowledgement (if no quotation was issued).
- 9. OSHA:** Proper application will enable the equipment provided by PINES to meet OSHA Regulations existing as of the date of the Order as interpreted by PINES in connection with Buyer's stated requirements. Some of the OSHA requirements may or may not be applicable depending upon the OSHA inspector and his interpretations of the regulations.



10. WARRANTIES AND REMEDIES: Unless otherwise specified in PINES 's quotation, PINES provides the following warranties, as applicable:

- a) Equipment: The warranty provided by PINES is limited to the warranty specified in PINES 's quotation or order acknowledgement. If no quotation or order acknowledgement was issued PINES warrants that the equipment manufactured by it shall, for a period of twelve (12) months from the date of shipment, be free from defects in material and workmanship. In the event that any part or parts, excepting expendable items such as, but not limited to coil liners, thermocouples, refractories and similar items, shall fail within the first twelve (12) months from date of shipment due to defects in material or workmanship, PINES shall at its option, repair or replace FOB shipping point, such defective part or parts. The warranty obligations of PINES with respect to equipment not manufactured by PINES shall conform to and be limited to the warranty actually extended to PINES by its suppliers. Notice of a claim for alleged defective equipment must be given within fifteen (15) days after Buyer learns of the defect. **THE DEFECTIVE PART OR PARTS SHALL BE RETURNED TO PINES , FREIGHT PREPAID, UNLESS OTHERWISE DIRECTED BY PINES .**
- b) Services: PINES warrants that the technical field services performed by it will be performed in a good and workmanlike manner. In the event of a breach of this warranty within thirty (30) days, PINES will re-perform the services. PINES shall not be responsible for the acts and workmanship of the employees, contractors, subcontractors or agents of Buyer or the consequences thereof.
- c) Installation Drawings: If PINES is, under the terms of the Order, required to prepare foundation and/or electrical and/or piping installation drawings to augment the equipment being furnished by it and/or others, it will prepare said drawings on the basis of the cost involved in the preparation of the drawings. In the event any said drawings are found to be in error due to the fault of PINES , then PINES warrants that it will modify or correct said drawings so that the final drawings represent the installation at the site.
- d) **THE WARRANTIES SET FORTH IN THIS SECTION 10 SHALL BE EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES AND PINES MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTIES OF ANY OTHER KIND, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHICH EXTEND BEYOND THE WARRANTIES AS SET FORTH ABOVE.**
- e) PINES shall have no obligation to Buyer if the equipment becomes defective in whole or in part as a result of installation or repairs not made by PINES , or as a result of the use of equipment or replacement parts not provided by PINES , or as a result of removal, operation above rated capacities, operation in conditions other than those recommended by PINES or misapplication or improper use of the equipment after it has been delivered to Buyer.
- f) The obligations of PINES and Buyer's **SOLE AND EXCLUSIVE REMEDIES** hereunder, shall be limited, at PINES 's option to the replacement or repair of any equipment or parts thereof, the re-performance of services, and the correction of drawings, all as set forth above in section 10.a) through c). Should the equipment or parts thereof be determined by PINES to be so defective as to preclude the remedying of warranted defects by replacement or repair, or should the re-performance of the services or correction