

# Terms and Conditions

- 1. General:** All orders for products or services of Phasetronics, Inc. D/B/A Motortronics (hereinafter "Company") are subject to these conditions of sale. No modifications of, or additions to, these terms will be recognized by the Company unless specifically agreed to in writing by an authorized Company officer. The Buyer hereinafter referred to as "the Purchaser" agrees to accept the following provisions in this instrument and any subsequent order or communication from the Buyer that are in conflict with these provisions will be governed by the provisions in this document.
- 2. Prices:** Prices are subject to change without notice. Published prices shown in Company's catalogs and price bulletins provide a price and catalog number guide for the selection and application of a specific product. All prices are subject to confirmation by authorized Company personnel. In the event of a net price change, the price of products on order but unshipped will be adjusted to the price in effect at the time of shipment. Downward adjustment of prices shall only apply to unshipped portions of outstanding orders. Written quotations must be for specific quantities, catalog number, price and delivery date(s). In lieu of catalog number, complete specifications must be included in the quotation. Unless noted otherwise on the written quotation, all quotes are conditioned upon acceptance by Purchaser within thirty (30) days from date issued and shall be considered as offers by Company to sell during such thirty (30) day period unless sooner terminated by notice.
- 3. Patents:** Company will hold Purchaser harmless against any liability for infringement of any apparatus claim of any United States patent, issued at the date of the contract, and arising out of the sale or use in the form supplied by Company of equipment designed and/or manufactured by Company. Company will assume no liability with respect to equipment specified by either Company or Purchaser, but not designed and/or manufactured by Company. Purchaser will hold Company harmless against any liability for infringement of any apparatus claim of any United States patent, issued at the date of the contract or order, and involving equipment furnished by Company, in accordance with drawings and/or specifications furnished by Purchaser. The party assuming liability, as stated above, shall be notified immediately of any assertion of infringement, and shall have the absolute control of the defense thereto, including the right to settle, defend against legal action, or make changes in the equipment to avoid infringement.
- 4. Weights and Dimensions:** Catalog weights and dimensions are carefully calculated estimates but are not guaranteed.
- 5. Taxes:** Published or quoted prices do not include sales, excise, use or similar taxes. Applicable taxes must be paid by the Purchaser.
- 6. Minimum Billing:** Orders amounting to less than \$100.00 net will be billed at \$100.00.
- 7. Orders:** All orders must be bona fide commitments showing definite prices, mutually agreed upon delivery dates, stipulated quantities and complete item descriptions.
- 8. Acceptance:** No order or commitment is binding upon the Company until accepted at a point of shipment by an authorized Company official.
- 9. Penalties and Delays:** No penalty clause of any kind will be effective unless approved in writing by an authorized Company officer. The Company will not be liable for any damages caused by delays beyond Company's reasonable control including, without limitation, fire, strike, act of the Purchaser, restrictions by civil or military authority, act of God, transportation failures or inability to obtain labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.
- 10. Cancellation:** Cancellation of any catalog item on an order to the Company will be accepted only on the following basis: Any items which upon receipt of a written notice of cancellation are within thirty (30) calendar days of completion, as determined by the Company's best estimate at the time of receipt of cancellation notice, will be completed and paid for by Purchaser in full under the regular terms and conditions of billing. All items which are not within thirty (30) days of completion when cancellation is requested may be canceled or altered by the Purchaser only upon payment of reasonable charges based upon expenses already incurred and commitments made by Company. Company reserves the right to manufacture ahead of the shipping schedule whenever it is deemed necessary and such advance manufacture shall not void Purchaser's responsibility for payment of cancellation or alteration charges.
- 11. Delivery:** Prices are F.O.B. Company plant or point of shipment, with freight collect, or when instructed by the customer, freight may be prepaid and added to the invoice. Please note that prepaid and add does not include insurance coverage on the shipment. A handling surcharge will be included.
- 12. Damage and Loss:** Company's products are packed in specifically designated cartons to protect the products from damage during shipment. Upon delivery to the carrier and his receipt for the products, all responsibility for delivery intact and undamaged to the destination rests with the carrier and not with the Company.

All shipments should be inspected upon receipt at the destination for visible or concealed damage. Claims for loss or damage should be filed with the carrier immediately. A concealed damage claim against the carrier is required when damage is not externally visible. Company will assist insofar as is practical in securing satisfactory adjustment of claims, however, all claims for loss and damage must be made by the Purchaser to the carrier.

13. **Terms of Payment and Reservations of Title:** Standard Terms to Purchasers determined by the Company to have satisfactory credit are as follows: Net 30 days. All quoted prices and payments shall be in U.S. dollars. Phasetronics, Inc. D/B/A Motortronics accepts Visa or MasterCard. Company reserves the right to require full or partial payment in advance of shipment where in the Company's opinion, exercised in its sole discretion; the financial condition of the Purchaser does not justify continuance of production or shipment on the terms of payment specified. Title to all products purchased from Company shall remain in the Company until Company receives payment in full for the products from the Purchaser at which time title shall pass to the Purchaser. Purchaser agrees, upon request of Company, to promptly execute and return to Company any documentation necessary to perfect Company's security interest in the products. Company agrees that upon receipt of payment in full for the products, it shall cause any existing perfected security interest in the products to be discharged.

#### **Payment Schedules**

Orders less than \$100,000: On orders having price of less than \$100,000 the standard terms of payment are cash in full within 30 days from the date of each invoice, except, in certain instances, international orders which could require Letters of Credit or Cash in Advance.

Orders for \$100,000 or more: On orders having a price of \$100,000 or more, the standard method of payment will be PROGRESSIVE DEPOSITS.

Progressive Deposits are deposits of fixed amounts or percentages at stated monthly intervals during the production period.

If, in the judgment of the Company, the financial conditions of the Purchaser at any time does not justify continuance of production or shipment on the terms of payment originally specified, the Company may require full or partial payment in advance, and, in the event of bankruptcy or insolvency of the Purchaser or if Purchaser fails to pay Company any sum when due, then upon seven (7) calendar days written notice, the Company may cancel any order then outstanding and Purchaser shall be responsible for compensating the Company for expenses incurred in the performance of the order which have theretofore not been paid.

Each shipment shall be considered a separate and independent transaction and payment, therefore, shall be made accordingly. If work covered by the purchase order is delayed by the Purchaser, upon demand by Company, payments shall be made on the purchase price based upon percentage of completion. Products held for the Purchaser shall be at the risk and expense of the Purchaser unless otherwise agreed upon in writing. The Company reserves the right to ship to its order and make collections by sight draft, C.O.D., or any other terms approved in writing by the Company's Credit Department.

14. **Late Payment and Past Due Accounts:** A finance charge of 1.5% per month (Annual Percentage of 18%) will be charged on any portion of the unpaid balance over 30 days old. All accounts which have unpaid balances for over 90 days may be turned over for collection or legal action and Purchaser shall be required to pay collection fees or the costs, including reasonable attorneys' fees, incurred by the Company in the trial court and on appeal for any such collection action.
15. **Responsibility:** Company is not responsible for the misuse or misapplication of its products, intentional or otherwise. Improper application, installation, failure to provide safety devices or protective measures, or operation above a product's rated capacity, and failure to properly maintain or service products are all beyond the control and responsibility of the Company. Under no circumstances shall Company be liable or loss of profits, indirect, incidental, special, consequential, or other similar damages arising out of the misuse, misapplication, or failure to maintain Company's products.
16. **Return of Products:** Under No Circumstances are Products to be returned to Company Without First Obtaining Company's Permission and a Returned Material Authorization Number (RMA). Unless authority has been granted for return and an RMA issued, shipment will be refused. Products built to a Purchaser's specifications cannot be returned for credit under any condition. Products which are authorized for return must be properly packed to protect against physical damage during shipment and must be shipped prepaid. Transportation charges are Purchaser's responsibility for all returned products. Credit towards future purchases will be allowed on authorized returned products on the following basis: Only unused products, in like new condition, which Company is currently selling, and which have been sold to the Purchaser, within sixty days of the return date will be considered. Products ordinarily carried in stock will be accepted for return subject to a minimum service charge of \$100.00 or 30% if the billing invoice is more than \$330.00 net. All products must be returned in perfect condition. Products built-to-order are not subject to return regardless of condition. No credit toward future purchase will be issued where any amount less than \$100.00 is involved except to correct errors made by Company. If return is authorized by Company due to a recognized fault of Company, full credit will be allowed for the returned products including all transportation charges, except those shipments shipping across international borders. Due to customs regulations, the Purchaser will be responsible for those costs in those instances.
17. **Warranty:** Company warrants its products to be free from defects in material and/or workmanship for a period of one year from the date of installation, to a maximum of eighteen months from the date of shipment as indicated by the unit's date code. The Company reserves the right to repair or replace any malfunctioning units under warranty at Company's sole option. All warranty repairs must be performed at the Company's factory or on site by factory authorized service firm or personnel approved by the Company. The actual service time and parts to repair the warranty failure will be provided by Motortronics. Travel time to the site and living expenses while on the site, including any waiting time at the site to perform the repairs will be paid for by the customer. Failures which are caused by unauthorized repairs, mechanical, electrical, chemical, environmental or physical abuse, or acts of God such as lightning, fires or floods are excluded. Company shall not be responsible for misuse or failure to maintain its products. See Section 15 - Responsibility, above. Except as Specifically Provided Herein, There Are No other Warranties, Express or Implied, Including, But Not Limited To, Any Implied Warranties of Merchantability or Fitness for a Particular Purpose. Solid state controls have different operating characteristics from those of electromechanical equipment. Because of these differences and the wide variety of applications for solid state controls, each application designer must verify that the solid state equipment is acceptable for his particular application. In no event will company be responsible or liable for indirect or consequential damages resulting from the use or application of its products. The diagrams and illustrations, if any, found in documents and/or manuals accompanying Company's products are included solely for illustrative purposes. Because of the number of different applications of Company's products, Company cannot be responsible or liable for actual use based on the examples or diagrams.
18. **Governing Law:** Interpretation and enforcement of any rights and obligations between Company and Purchaser arising out of the sale of the Company products shall be governed by the laws of the State of Florida and any action brought to enforce those rights and/or obligations shall be brought in the court of competent jurisdiction located in Pinellas County, Florida.