

Terms and Conditions of Sale

- 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 Company unless specifically agreed to in writing by an authorized Company officer. Buyer (hereinafter "Purchaser") agrees to accept the following provisions in this instrument and any subsequent order or communication from Purchaser 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. Purchaser must pay applicable taxes, this includes, manufacturer's tax, retailer's occupational tax, use tax, sales tax, excise tax, duty, customs agent or broker fee, inspection or testing fee, freight cost (unless otherwise agreed to), insurance, Consular or Embassy fees, Chamber fees, and any other fees associated with or in connections with these fees or documents. The Buyer will bear the cost of transport of any such documents to and from the required locations and to their requested locations. This includes hard copies of any of these documents or hard copy invoices.
- 6. Minimum Billing:** The minimum dollar order amount is \$100.00 dollars. Any orders received under \$100.00 dollars will carry a \$25.00 processing fee.
- 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 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. Company will not be liable for any damages caused by delays beyond Company's reasonable control including, without limitation, fire, strike, act of 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 Company will be accepted only on the following basis: Any items that upon receipt of a written notice of cancellation are within thirty (30) calendar days of completion, as determined by 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 that are not within thirty (30) days of completion when cancellation is requested may be canceled or altered by 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, Title and Risk of Loss:** Title of the product will pass from Company to the Buyer upon shipment from the factory. This transfer will not include the exclusive right, title or interest in any copyright, trademark, intellectual property, confidential information, proprietary engineering or design data embodied shop drawings used in the completion of any order and shall remain the property of Company. The 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 Risk of Loss:** Company is not responsible for any loss or damage, or delay that may occur after Product(s) have been accepted for shipment by a transportation company. Any claim relating thereto should be made to the carrier. Company products are packed in specifically designated packaging in order 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 Company.

Purchaser shall inspect all shipments upon receipt at the destination for visible or concealed damage. Purchaser shall file all claims for loss or damage 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 Purchaser to the carrier.

Claims for shortages or other errors must be made in writing to the Company within ten (10) days after the receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by the Buyer. Partial shipments shall be allowed.

- 13. Terms of Payment and Reservations of Title:** Standard Terms to Purchasers determined by 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 Company's opinion, exercised in its sole discretion; Purchaser's financial condition does not justify continuance of production or shipment on the terms of payment specified. Title to all products purchased from Company shall remain with Company until Company receives payment in full for the products from Purchaser at which time title shall pass to 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 for international orders and other instances, to be determined in Company's sole discretion, where Letters of Credit or Cash in Advance will be required.

Orders for \$100,000 or more: On orders having a price of \$100,000 or more, the standard method of payment will be PROGRESS BILLINGS, as follows:

- 30% percent upon receipt of order
- 20% percent upon release to manufacturing
- Balance due net approved terms from date of invoice

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

Company will consider each shipment a separate and independent transaction and Purchaser will make payment accordingly. If Purchaser delays work covered by the purchase order, upon demand by Company, Purchaser shall make payments on the purchase price based upon percentage of completion. Products held for Purchaser shall be at the risk and expense of Purchaser unless otherwise agreed upon in writing. 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 Company's Credit Department.

- 14. Late Payment and Past Due Accounts:** Company will charge a finance charge of 1.5% per month (Annual Percentage Rate of 18%) 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 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 Company. Under no circumstances shall Company be liable or loss of profits, indirect, incidental, special, consequential, punitive or other similar damages arising out of the misuse, misapplication, or failure to maintain Company's products.
- 16. Return of Products:** Under no circumstances shall Purchaser return Products to Company without first obtaining Company's permission and a Returned Material Authorization (RMA) number. Unless Company grants authority for return and an RMA issued, Company will refuse the shipment. Purchaser cannot return products built to a Purchaser's specifications for credit under any condition. Purchaser must properly pack and ship prepaid products that Company authorizes for return to protect against physical damage during shipment. Transportation charges are Purchaser's responsibility for all returned products. Company will allow credit towards future purchases on authorized returned products on the following basis: Company will consider for return only unused products, in like new condition, that Company is currently selling and that Company sold to Purchaser within sixty days of the return date. Company will accept Products ordinarily carried in stock for return subject to a service charge of 30% of the billing invoice with a minimum charge of \$100.00. Purchaser must return all products in perfect, new and unused condition. Products built-to-order are not subject to return regardless of condition. No credit toward future purchases will be issued where any amount less than \$100.00 is involved except to correct errors made by Company. If Company authorizes a return due to a recognized fault of Company, Company will allow full credit for the returned products including all transportation charges, except those shipments shipping across international borders. Due to customs regulations, Purchaser will be responsible for the customs and duties 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. 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 Company's factory or on site by factory authorized service firm or personnel approved by Company. Motortronics™ will provide the actual service time and parts to repair the warranty failure. 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 that 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 without limitation, 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 from or related to the sale of Company's products shall be governed by the laws of the State of Florida. Any action brought to enforce those rights and/or obligations shall be brought exclusively in a court of competent jurisdiction located in Pinellas County, Florida.