

SELLER'S STANDARD TERMS OF SALE  
POWERBRACE CORPORATION

1. GENERAL

- A. Seller's prices are based on these sales terms and ( i ) this document, together with any additional writings signed by Seller, represents a final, complete and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence. Buyer's purchase order, a course of dealing, Seller's performance or delivery, or in any other way except in writing signed by an authorized representative of Seller, and (ii) these terms are intended to cover all activity of Seller and Buyer hereunder, including sales and use of products parts and all related matters (references to products include parts). Any references by Seller to Buyer's specifications and similar requirements are only to describe the products covered hereby, and no warranties or other terms therein shall have any force or effect. Catalogues, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof.
- B. The agreement formed hereby and the language herein shall be construed and enforced under the Uniform Commercial Code as in effect in the State of Seller's head office on the date hereof.

2. TAXES

Any sales, use or other similar type taxes imposed on this sale or on this transaction are not included in the price. Such taxes shall be billed separately to the Buyer. Seller will accept a valid exemption certificate from the Buyer if applicable; however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved and the Seller is required to pay the tax covered by such exemption certificate. Buyer agrees to promptly reimburse Seller for the taxes paid.

3. PERFORMANCE, INSPECTION AND ACCEPTANCE

- A. All products shall be finally inspected and accepted within ten (10) days after receipt at point of delivery. All claims whatsoever by Buyer (including claims for shortages) excepting only those provided for under the WARRANTY AND LIMITATION OF LIABILITY AND PATENTS Clauses hereof must be asserted in writing by Buyer within said ten (10) day period or they are waived. If this contact involves partial performances, all claims must be asserted within said ten (10) day period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products and Buyer's remedy for lesser defects shall be those provided for under the WARRANTY AND LIMITATION OF LIABILITY Clause.
- B. Seller shall not be responsible for nonperformance or delays in performance occasioned by any causes beyond Seller's reasonable control, including, but not limited to labor difficulties, delays of vendors or carriers, fires, governmental actions and material shortages. Any delays so occasioned shall effect a corresponding extension of Seller's performance dates which are, in any event, understood to be approximate. In no event shall Buyer be entitled to incidental or consequential damages for late performance or failure to perform.
- C. If Buyer wrongfully rejects or revokes acceptance of items tendered under this agreement, or fails to make a payment due on or before delivery, or repudiates this agreement, Seller shall have a right to recover damages as stated herein. Upon recovery of the damages, the items involved shall become the property of the Buyer. If payment is not made upon demand and default occurs, Buyer promises to pay all costs and expenses of collection and reasonable attorney's fees incurred by Seller hereof on account of such collection, whether or not suit is filed thereon. In any action brought under or arising out of this transaction, the Buyer, including its successors or assigns, hereby consents to the jurisdiction of any competent court within the State of Wisconsin, and consent to service or process by any means authorized by Illinois law.
- D. Seller reserves the right to modify product details not affecting application or strength, if necessary to facilitate manufacture.
- E. If Buyer fails to pay any invoice beyond terms herein stated, Seller reserves the right to charge interest at the maximum rate allowable under the law.

4. TITLE AND RISK OF LOSS

Full risk of loss (including transportation delays and losses) shall pass to the Buyer upon delivery of products to the F.O.B. point. However, Seller retains title, for security purposes only, to all products until paid for in full in cash and Seller may, at Seller's option, repossess the same, upon Buyer's default in payment hereunder, and charge buyer with any deficiency.

5. WARRANTY AND LIMITATION OF LIABILITY

- A. Seller warrants that its products and parts, when shipped, will meet all applicable specification (unless otherwise noted in writing) and other specific product requirements (including those of performance) if any, of the agreement, will be of good quality, and will be free from defects in material and workmanship. All claims for defective products or parts under this warranty must be made in writing immediately upon discovery and, in any event, within one (1) year from shipment of the applicable item. Defective items must be held for Seller's inspection and returned to the original F.O.B. point upon request. THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS.
- B. Upon Buyer's submission of a claim as provided above and its substantiation, Seller shall at its option either ( i ) repair or replace its product or part at the original F.O.B. point of delivery or (ii) refund an equitable portion of the purchase price.
- C. The foregoing is Seller's only obligation and Buyer's only remedy for breach of warranty, and except for gross negligence, willful misconduct, and remedies permitted under the PERFORMANCE, INSPECTION AND ACCEPTANCE and the PATENTS Clause hereof, the foregoing is Buyer's only remedy hereunder by way of breach of contract, tort or otherwise, in no event shall Buyer be entitled to incidental or consequential damages. Any action for breach of this agreement must be commenced with two (2) years after the cause of action has accrued.
- D. BUYER FURTHER ACKNOWLEDGES THAT IT HAS CONTROL OVER THE INSTALLATION, MAINTENANCE AND OPERATION OF THE EQUIPMENT IDENTIFIED IN THIS SALES AGREEMENT, AND ACCORDINGLY AGREES: ( i ) TO PROPERLY TRAIN AND SUPERVISE ITS EMPLOYEES, AGENTS AND OPERATORS IN THE OPERATION AND MAINTENANCE OF THE EQUIPMENT; ( ii ) TO DISCLOSE TO AND TO HAVE AVAILABLE TO ITS EMPLOYEES, AGENTS AND OPERATORS A COPY OF THE MAINTENANCE, SAFETY INSTRUCTIONS AND WARNINGS PROVIDED BY SELLER; (iii) NOT TO MODIFY, ALTER OR MISUSE THE EQUIPMENT; AND (iv) TO ACCEPT ALL RESPONSIBILITY AND LIABILITY FOR INJURY TO PERSON OR PROPERTY ARISING FROM THE REMOVAL OF SAFETY EQUIPMENT AND WARNINGS OR FROM BUYER'S DECISION NOT TO PURCHASE SAFETY EQUIPMENT RECOMMENDED BY SELLER OR ITS DISTRIBUTOR.

6. PATENTS

Seller agrees to assume the defense of any suit for infringement of any United States patents brought against Buyer to the extent such suit charges infringement of an apparatus or product claim by Seller's product in and of itself provided ( i ) said product is built entirely to Seller's design, (ii) Buyer notifies Seller in writing of the filing of such suit with ten (10) days after the service of process thereof, and (iii) Seller is given complete control of the defense of such suit, including the right to defend, settle and make changes in the product for the purpose of avoiding infringement. Seller assumes no responsibility for charges of infringement of any process or method claims, unless infringement of such claims is the result of following specific instructions furnished by Seller.

7. SPECIAL TOOLING

Notwithstanding any tool, die or pattern charges or amortization in connection herewith, all special tooling and related items shall be and remain the property of Seller.

8. Any clause required to be included in a contract of this type by any applicable and valid Federal, State or local law or administrative rules or regulation or order having the effect of law shall be determined to be incorporated herein.

9. Seller values highly the confidence and good will of its customers and suppliers. We offer our products only on their merit, and we expect our customers to judge and purchase our products and services solely on the basis of quality, price, delivery and service. Likewise, we buy only on merit, and we judge and purchase solely on the basis of quality, price, delivery and service. This is our corporate policy and it applies in all relationships with our customers and suppliers.

10. STATE OF CALIFORNIA PROPOSITION 65

- A. **⚠ WARNING:** These products can expose you to chemicals including trace levels of lead, arsenic, cadmium, nickel, hexavalent chromium, mercury, formaldehyde, methanol, carbon black, and cobalt sulfate heptahydrate which are known to the State of California to cause cancer and birth defects and other

reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov). Customer hereby acknowledges that it has been informed of these risks and assumes all liability for disclosing the above to its customers in California and in complying with California Proposition 65.

- B. Why does Powerbrace Corporation provide a Proposition 65 warning? When a manufacturer utilizes a Proposition 65 warning label, it means that one or more listed chemicals are present in its product, even if it is only present in trace quantities. Powerbrace Corporation products use common materials and processes such as zinc coating and hot dip galvanizing or other processes that contain one or more chemicals on the California Prop 65 list. Powerbrace Corporation has chosen to inform its customers that its products contain these chemicals even if they are in trace amounts and there is little to no risk of any exposure. It is important to understand that even though a product may contain a Proposition 65 listed chemical, it does not mean that the use of the product will cause any adverse health impacts, nor does it mean that the product is unsafe in any way or manner. In order to ensure compliance with Proposition 65 requirements, it was decided to include this notice in all contracts and purchase order confirmations regardless of where the products are purchased or sold.

PRICES AND SPECIFICATIONS SUBJECT TO CHANGE WITHOUT NOTICE. PRICES U.S. DOLLARS, F.O.B. KENOSHA, WISCONSIN U.S.A.

NOTES: Compliance to state and local codes is the responsibility of the end user.