



## TADANO AMERICA CORPORATION Terms & Conditions

- Parties.** All references to "TAC" refer to Tadano America Corporation (hereinafter "TAC"). TAC and Buyer may be collectively referred to herein as the "Parties."
- Entire Agreement.** These Terms & Conditions, the Purchase Order (or Contract of Purchase, as applicable) to which they are attached, the Delivery Report, and the TAC Limited Warranty (which may be amended from time to time) (collectively, the "Agreement") constitute the entire agreement between the parties regarding the equipment listed in the Purchase Order. Any prior or contemporaneous agreements or representations, whether conflicting or not, shall be deemed null, void and of no force, effect or consequence.
- Modification.** The Agreement shall not be waived, modified, or amended without the express written consent of TAC's President.
- Arbitration.** Disputes arising under the Agreement shall, on the demand of either Party, be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held and the award shall be issued in Houston, Texas.
- Governing Law.** The Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of Texas, without regard to the principles of conflicts of law.
- Representations and Warranties.** Each party hereby represents and warrants to the other party that (a) such party has duly executed and delivered the Agreement; (b) the Agreement constitutes such party's legal, valid and binding obligations, enforceable against it in accordance with its terms; (c) the execution, delivery and performance of the Agreement (i) are within such party's authority and have been duly authorized by all proper and necessary corporate action, (ii) will not violate or conflict with any provision of law or with such party's charter or by-laws or other governance, and (iii) will not conflict with, or constitute a default under, or result in a violation of, any agreement, instrument, judgment, decree, statute, rule or regulation to which such party or any of such party's assets is subject; and (d) that such party has not corruptly provided anything of value for the purpose of influencing the action of the other party or to obtain or retain a business advantage related to the execution of this Agreement.  
**Warranties/Disclaimers.** TAC warrants the Equipment listed on the Purchase Order only to the extent provided by the TAC Limited Warranty. As a condition precedent to the effectiveness of the TAC Limited Warranty, all amounts due and owing to TAC under the Agreement, whether disputed or not by Buyer, must be fully paid. TAC's sole liability, if any, to Buyer shall be strictly limited to the written express warranties specified in the TAC Limited Warranty. EXCEPT AS PROVIDED FOR IN THE TAC LIMITED WARRANTY, TAC EXPRESSLY DISCLAIMS AND BUYER WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND THE PARTIES HERETO STIPULATE THAT ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.  
**Interest/Costs of Collection.** Any and all payments deferred after the due date specified in the Purchase Order shall bear interest at the greater of the rate of ten percent (10%) per annum or a rate equal to the maximum non-usurious rate under applicable law. If payment under the Purchase Order becomes past due, is placed in the hands of an attorney for collection, if collected by any legal proceeding(s) (including arbitration), or if the Agreement is relevant to any other disputes between the parties, in addition to any other amount(s) and damage(s) recovered by TAC, Buyer agrees to pay TAC any and all attorneys' fees and costs incurred in such proceeding(s), together with interest, expenses, and any other changes, which attorneys' fees shall not be less than thirty percent (30%) of the total amount payable. "Costs" incurred in the collection of sums as used herein is not to be limited to costs incurred in arbitration and/or litigation, but includes without limitation, copying and mailing expenses, lien fees, lost management time, inspection expenses and expert witness expenses in addition to taxable costs incurred in arbitration and/or litigation.
- No incidental or consequential damages.** Notwithstanding any other agreement to the contrary, BUYER HEREBY AGREES AND STIPULATES THAT TAC SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES

WHICH BUYER MAY SUFFER FOR ANY REASON, INCLUDING REASONS ATTRIBUTABLE TO TAC, INCLUDING BUT NOT LIMITED TO LOSS PROFITS, OTHER BUSINESS INTERRUPTION, OR OTHER SIMILAR DAMAGES, WHICH ARE HEREBY WAIVED, WHATEVER THE THEORY OF RECOVERY OR CAUSE OF ACTION, WHETHER STATUTORY, TORT OR CONTRACT, INDEMNITY OR OTHER PROVISION, AND WHETHER DUE TO A NEGLIGENT OR GROSSLY NEGLIGENT ACT OR OMISSION, WHETHER SOLE, JOINT, OR CONCURRENT, PRODUCTS OR STRICT LIABILITY, OR ANY OTHER CAUSE.

- No liability for affiliates.** Unless otherwise provided, it is not the intent of the parties to create by the Agreement (or by any performance of a Party's obligations under the Agreement) any liability of affiliates. Notwithstanding the foregoing, however, all limitations of liability and damages in this Agreement shall apply equally to affiliates of the Parties.
- Indemnity.** BUYER ASSUMES ENTIRE RESPONSIBILITY AND LIABILITY FOR ANY AND ALL CLAIMS OR ACTIONS BASED ON OR ARISING OUT OF INJURIES, INCLUDING DEATH, TO PERSONS OR DAMAGE TO OR DESTRUCTION OF PROPERTY (WHETHER BELONGING TO BUYER OR ANY THIRD PARTY), SUSTAINED OR ALLEGED TO HAVE BEEN SUSTAINED IN CONNECTION WITH OR TO HAVE ARISEN OUT OF OR INCIDENTAL TO THE PERFORMANCE OF THE AGREEMENT BY BUYER, ITS AGENTS AND EMPLOYEES, AND ITS SUBCONTRACTORS, THEIR AGENTS AND EMPLOYEES, INCLUDING CLAIMS OR ACTIONS **FOUNDED IN WHOLE OR IN PART UPON THE ALLEGED ACTS, OMISSIONS, NEGLIGENCE OR FAULT OF TAC, TAC'S REPRESENTATIVES, OR THE EMPLOYEES, AGENTS, INVITEES, OR LICENSEES THEREOF.** BUYER FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS TAC AND ITS REPRESENTATIVES, AND THE EMPLOYEES, AGENTS, INVITEES AND LICENSEES THEREOF IN RESPECT OF ANY SUCH MATTERS AND AGREES TO DEFEND ANY CLAIM OR SUIT OR ACTION BROUGHT AGAINST TAC, TAC'S REPRESENTATIVES, AND THE EMPLOYEES, AGENTS, INVITEES AND LICENSEES THEREOF.
- Waiver of Consumer Rights.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER HEREBY WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT, SECTIONS 17.41 THROUGH 17.63 INCLUSIVE, OF THE TEXAS BUSINESS AND COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS, AFTER CONSULTATION WITH LEGAL COUNSEL OF BUYER'S CHOOSING. BUYER VOLUNTARILY CONSENTS TO THIS WAIVER.
- Successors and Assigns.** The terms and provisions of the Agreement shall be binding on and inure to the benefit of TAC and its successors and assigns. TAC shall have the right to assign the Agreement to any successor in interest of TAC, whether by merger, consolidation, purchase of assets or otherwise.
- Non-Waiver.** No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of the Agreement will be construed as a waiver of any other default or defaults whether of a like kind or different nature.
- Severability.** Any provision or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under the Agreement.
- No Conflicting Terms.** The Parties agree that the terms of this Agreement shall prevail over any conflicting terms and conditions in any purchase order or any other instrument or document provided by the Buyer. Any additional or different terms or conditions in any purchase order or other instrument or submission from the Buyer shall be deemed objected to by TAC without the need of any further or additional notice of objection, and such additional or different term(s) shall be of no effect or in any way binding upon TAC.
- Survival.** All indemnity rights will survive the termination of the Agreement.
- Remedies Cumulative.** Except as expressly provided otherwise in the Agreement, all remedies in the Agreement are cumulative, and use of any remedy shall not preclude any other remedy in the Agreement or under applicable law.