



# Web Sales: Standard Offer of Sale

**Terms and Conditions of Sale:** The terms and conditions of sale contained in this Agreement apply to, and shall exclusively govern, all descriptions, quotations, proposals, offers, acknowledgments, acceptances and sales made, and purchase orders entered into, by Teknic, Incorporated ("Teknic") for orders placed via Teknic's website. These terms and conditions supersede and replace any terms and conditions attached to Buyer's order, and Teknic's acceptance of any offer to purchase by Buyer is expressly conditional upon Buyer's assent to all the terms and conditions stated herein, including any terms in addition to, or inconsistent with those contained in Buyer's offer. Buyer's acceptance of any offer to sell is limited to these terms and conditions. Any terms and conditions in addition to, or inconsistent with those stated herein, proposed by Buyer in any acceptance of any offer by Teknic, are hereby expressly rejected. No waiver, alteration or modification of any of the provisions hereof (whether express, implied or otherwise) shall be binding unless in writing, signed by a duly authorized representative of Teknic. In the event of a conflict between the provisions on the face of any acknowledgment or quotation which is annexed and made a part thereof, and these terms and conditions, then the terms and conditions on the face of the acknowledgment or quotation shall govern. Buyer's order for any goods described in its document, when communicated to Teknic verbally or in writing, or Buyer's acceptance of Teknic's goods, shall constitute acceptance of this Agreement.

**Payment:** Payment shall be made by Buyer using a method offered by Teknic's website (the "Payment Vehicle"). By entering payment information: Buyer is stating that Buyer is an authorized user of the Payment Vehicle and that the associated information entered (account holder name, account number, billing address, etc.) is accurate and true. Buyer authorizes Teknic to charge the amount Buyer has requested to your Payment Vehicle. Buyer also authorizes Teknic to return to the Payment Vehicle account any funds due to Buyer by Teknic. If a charge is declined or reversed by the Payment Vehicle issuer or network, Buyer agrees to pay Teknic a service charge and to reimburse Teknic for all reasonable costs of collection. If the issuer or network for the Payment Vehicle does not honor an online payment transaction, then Teknic has the right to charge the amount of any such transaction to Buyer's account and to collect the amount from Buyer.

Each shipment shall be considered a separate and independent transaction, and payment therefor shall be made accordingly. Buyer grants Teknic a purchase money security interest in all articles under this Agreement until such time as full purchase price is paid. If said articles or their proceeds upon disposition are unidentifiable, Teknic's security interest extends to Buyer's accounts receivable and inventory. Teknic reserves the right to charge and Buyer agrees to pay, interest on all overdue amounts at the rate of 1.5% per month or part thereof during which any balance due Teknic remains unpaid. All costs of collection of unpaid amounts due Teknic, including, but not limited to, court costs and attorneys' fees shall be borne by Buyer.

**Delivery:** Delivery shall be made FCA Teknic's plant, and therefore in all cases, Buyer assumes risk of loss or of damage to goods in transit. Any delivery dates shown are made in good faith and are approximate only. Teknic shall have no liability for any delays in delivery. The method of shipment and carrier shall be selected by Teknic.

**Acceptance of Goods:** Buyer shall inspect the goods delivered hereunder immediately upon their arrival and shall within five (5) days of their arrival give written notice to Teknic of any claim that the goods do not conform with the terms of the Agreement. If Buyer fails to give notice, the goods shall be deemed to conform, and Buyer shall be bound to accept and pay for the goods in accordance

with the terms of the Agreement. Buyer expressly waives any rights he may have to revoke acceptance after such five (5) day period.

**Warranty:** The "Warranty Period" for any goods sold hereunder is the period specified in the applicable product specification sheet measured from the date of shipment, and in no case to exceed three (3) years. Teknic warrants that the goods sold hereunder shall be free from defects in material or workmanship for the Warranty Period, provided that Buyer requests a Return Authorization prior to its return to Teknic and within thirty (30) days from the date any such defect is first discovered; and that the product has been used under normal conditions for which it was designed; and installed, operated and maintained in accordance with Teknic's instructions and in accordance with generally accepted industrial practices. Product failures due to misuse, abuse or normal wear and tear are not covered by this warranty. Products repaired or replaced during the Warranty Period are covered by the foregoing warranty for the remainder of the original Warranty Period or one (1) year from date of the repair or shipment of the replacement, whichever is longer. Buyer is responsible for shipment to Teknic; and for assuring that the returned package is protected from damage in transit. Teknic will be responsible for the cost of return shipment. Products returned under warranty may be refurbished or remanufactured goods.

THIS WARRANTY COMPRISES THE SOLE AND ENTIRE WARRANTY PERTAINING TO GOODS PROVIDED HEREUNDER. TEKNIC MAKES NO OTHER WARRANTY, GUARANTEE, OR REPRESENTATION OF ANY KIND WHATSOEVER. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR PURPOSE, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, TRADE USAGE, OR COURSE OF DEALING ARE HEREBY DISCLAIMED.

**Limitation of Remedy:** TEKNIC'S CUMULATIVE LIABILITY (INCLUDING THAT OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS) ARISING FROM OR IN ANY WAY RELATED TO OR CONNECTED WITH THE GOODS SOLD HEREUNDER, OR THIS AGREEMENT, SHALL BE LIMITED EXCLUSIVELY TO, AT TEKNIC'S SOLE OPTION, (i) REPAIR, REPLACEMENT OR PURCHASE PRICE REFUND OF THE PRODUCTS SOLD, OR (ii) AN AMOUNT EQUAL TO ONE MONTH'S AVERAGE PAYMENTS RECEIVED BY TEKNIC HEREUNDER FROM BUYER AVERAGED OVER THE YEAR IMMEDIATELY PRIOR TO THE DATE SUCH CLAIM AROSE, IN EITHER CASE WITH RESPECT ONLY TO THE PRODUCT THAT IS THE SUBJECT OF A CLAIM HEREUNDER. IN NO EVENT SHALL TEKNIC BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR ANTICIPATED PROFITS ARISING FROM OR IN ANY WAY RELATED TO OR CONNECTED WITH THIS AGREEMENT OR GOODS SOLD HEREUNDER, OR FROM INABILITY TO USE THE PRODUCTS OR PROGRAMS, WHETHER ALLEGED TO ARISE FROM PURCHASE, INSTALLATION, REMOVAL, REPAIR, OPERATION, USE OR BREAKDOWN OF THE PRODUCTS OR PROGRAMS, BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE APPLICABLE PURCHASE PRICE OR LICENSE FEE FOR THE PRODUCTS HAS BEEN NEGOTIATED IN CONSIDERATION OF THEIR AGREEMENT TO LIMIT TEKNIC'S LIABILITY AS STATED HEREIN.

**Safety Warning:** IMPROPER SELECTION, IMPROPER USE, OR FAILURE OF TEKNIC'S PRODUCTS CAN CAUSE PROPERTY DAMAGE, PERSONAL INJURY AND/OR DEATH. BUYER ASSUMES ALL RESPONSIBILITY FOR FINAL SELECTION OF PRODUCTS AND MUST DETERMINE APPROPRIATENESS OF BUYER'S USE THROUGH BUYER'S OWN ANALYSIS AND TESTING REGARDLESS OF ANY ADVICE OR SUPPORT PROVIDED BY TEKNIC. BUYER FURTHER ASSUMES ALL RESPONSIBILITY FOR ASSURING THAT ALL SAFETY, WARNING, AND PERFORMANCE REQUIREMENTS ARE MET, INCLUDING BUT NOT LIMITED TO PROVIDING ELECTRICAL ISOLATION FOR USERS, SAFETY SHIELDS AND GUARDS, PROTECTION OF THE PRODUCTS FROM LIQUIDS OF ANY NATURE AND VOLATILE OR FLAMMABLE SUBSTANCES, AND ADEQUATE WARNINGS AND INSTRUCTIONS TO USERS REGARDING SAFETY CONSIDERATIONS. BUYER INDEMNIFIES AND HOLDS TEKNIC HARMLESS FROM ANY CLAIMS WHATSOEVER ARISING FROM DAMAGES, WHETHER PERSONAL OR PROPERTY, ARISING FROM THE USE, MISUSE OR FAILURE OF TEKNIC'S PRODUCTS. BUYER WILL, AT ITS SOLE COST, CARRY LIABILITY INSURANCE ADEQUATE TO PROTECT BUYER AND TEKNIC AGAINST SUCH CLAIMS.

Buyer certifies that all personnel responsible for installation, operation, maintenance, or use of Teknic products have been adequately trained in their safe and proper use. Buyer acknowledges receipt of all applicable safety warnings and instructions provided by Teknic, including documentation accompanying the products, and confirms their understanding and agreement to comply with such warnings.

**Changes, Reschedules and Cancellations:** Buyer may request to modify the quantities and/or delivery dates for goods ordered under this Agreement, or may request to cancel all or part of an order governed by this Agreement, however, no such requested modification or cancellation shall become part of the Agreement between Buyer and Teknic unless accepted by Teknic.

**Taxes:** Unless otherwise indicated on the face hereof, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, sale or delivery of the goods sold hereunder. If any such taxes must be paid by Teknic or if Teknic is liable for the collection of such tax, the amount thereof shall be in addition to the amount for the goods sold. Buyer agrees to pay all such taxes or to reimburse Teknic therefor upon receipt of its invoice. If Buyer claims exemption from any sales, use or other tax imposed by any taxing authority, Buyer shall provide Teknic with a tax-exemption certificate as required by the taxing authorities, and Buyer shall save Teknic harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the goods are held to be taxable.

**Intellectual Property:** No transfer or license of any intellectual property right whatever is given or implied by this Agreement. Buyer agrees to not infringe the intellectual property in the goods where such property belongs to Teknic. Buyer agrees to not copy or otherwise reproduce, translate, adapt, vary, modify, disassemble, decompile or reverse engineer the whole or part of any Teknic goods.

**Force Majeure:** Teknic does not assume the risk of and shall not be liable for delay or failure to perform any of Teknic's obligations by reason of circumstances beyond the reasonable control of Teknic (hereinafter "Events of Force Majeure"). Events of Force Majeure shall include without limitation, accidents, acts of God, strikes or labor disputes, acts, laws, rules or regulations of any government or

government agency, fires, floods, delays or failures in delivery of carriers or suppliers, shortages of materials, acts or omissions of Buyer, and any other cause beyond Teknic's control.

**Assignment:** Except as herein expressly provided to the contrary, the provisions of this Agreement are for the benefit of the parties to the Agreement and not for the benefit of any other party. Any assignment of this Agreement or any rights hereunder by the Buyer without written consent of Teknic shall be void.

**No Waiver:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, constitutes a continuing waiver unless the writing so specifies.

**Severability of Agreement:** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

**Consent to Jurisdiction and Forum Selection:** The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State and Federal courts located in the County of Monroe, State of New York. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts located in the County of Monroe, State of New York shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each party consents to service of process by registered or certified mail, return receipt requested, to its address of record. Final judgments may be enforced in any jurisdiction as provided by law.

**Entire Agreement/Governing Law:** This Agreement, together with any amendments, modifications and any different terms or conditions expressly accepted by Teknic in writing, constitutes the final, complete, and exclusive statement of the terms and conditions of the agreement between the parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings or agreements of the parties. This Agreement may not be contradicted by evidence of any prior or contemporaneous statements or agreements. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, agreement, commitment or warranty outside those expressly set forth in this Agreement. No oral modifications to this Agreement shall be valid or enforceable. Any modifications or amendments must be in writing and signed by an authorized representative of Teknic to be binding. This Agreement shall be governed in all respects by the law of the State of New York excluding any laws that direct the application of another jurisdiction's laws. No actions arising out of the sale of goods sold hereunder or this Agreement, except for Buyer's failure to make full payment of all amounts due Teknic, may be brought by either party more than two (1) year after the cause of action accrues.