

Seakeeper, Inc.
Standard Terms & Conditions

Except as otherwise provided in a written agreement between Seller and Buyer, the following Standard Terms and Conditions shall apply

1. PRICES.

Prices are quoted EXW Seller's Factory (Ex Works INCOTERMS 2000). Partial shipments on quantity orders shall be deemed a separate and independent contract for billing.

2. TAXES.

Prices do not include any sales, use, excise, property, import, export or such taxes that may be levied on the transaction by local, state, federal or foreign governments. Any such taxes shall be the responsibility of Buyer.

3. DELIVERY.

Delivery to a common carrier or licensed trucker shall constitute tender of delivery to Buyer and all risk of loss or damage in transit shall be borne by Buyer. Method and route of shipment are at Seller's discretion, unless Buyer supplies explicit instructions that are accepted by Seller in writing in accordance with these Terms and Conditions.

4. TERMS OF PAYMENT.

Terms of payment are 20% down at time of order and balance due prior to shipping. Late charges at the interest rate (i) of 1.5% per month (18% annually) or (ii) the maximum rate permitted under applicable law, whichever is less, may be charged on past due accounts. All shipments on open account are subject to approval of Seller's credit department.

5. LIMITED WARRANTY.

Seller warrants that the Goods sold hereunder are free from defects in material and workmanship for a period of 24 months from the date of manufacture or 2000 hours of operation whichever event occurs first. Seller warrants its Good(s) only to the original Buyer or first User. This express warranty is in lieu of and excludes all other warranties, express or implied, by operation or law or otherwise including THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER KNOWN TO SELLER OR NOT), all other such warranties being hereby expressly disclaimed by Seller and waived by Buyer/User. Written notice of claimed defects shall have been given to Seller within the Warranty Period, and within thirty (30) days from the date any such defect is first discovered. The Goods or parts claimed to be defective must be returned to Seller, accompanied by a Return Material Authorization (RMA) issued by Seller's facility responsible for supplying Goods, with transportation prepaid by Buyer/User, with written specifications of the claimed defect. If a warranty claim is valid, Seller shall pay reasonable one-way costs of transportation of the defective Goods from either the original destination or the location where defect occurred, whichever is closest to Seller's facility. Under no circumstances shall Seller be liable for removal of Seller's Goods from Buyer/User's equipment or re-installation into Buyer/User's equipment. No person including any agent, distributor, or representative of Seller is authorized to make any representation or warranty on behalf of Seller concerning any Goods manufactured by Seller. ANY MODIFICATION OF THE UNIT AS SHIPPED WILL RESULT IN VOIDING THE WARRANTY.

6. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING OUT OF THE PERFORMANCE, DELAYED PERFORMANCE OR BREACH OF PERFORMANCE OF THIS ORDER REGARDLESS WHETHER SUCH LIABILITY BE CLAIMED IN CONTRACT, EQUITY, TORT OR OTHERWISE. SELLER'S OBLIGATION IS LIMITED SOLELY TO REPAIRING OR REPLACING (AT ITS OPTION AND AS SET FORTH IN SECTION 5), AT ITS APPROVED REPAIR FACILITY, ANY GOODS OR PARTS WHICH PROVE TO SELLER'S SATISFACTION TO BE DEFECTIVE AS A RESULT OF DEFECTIVE MATERIALS OR WORKMANSHIP, IN ACCORDANCE WITH SELLER'S STATED WARRANTY. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE TOTAL PURCHASE PRICE SET FORTH IN THIS ORDER.

7. PROPERTY RIGHTS.

Except where otherwise expressly agreed, all patterns, tools, jigs and fixtures, drawings, designs, software and other materials and data developed, fabricated by Seller shall be and shall remain Seller's property. Except as specifically provided for in the order, Buyer shall have no right in any technical data, Intellectual Property Rights, and computer software associated with the order. Buyer shall not use or permit the use of the Goods that in any way could result in the disclosure Seller's proprietary information.

December 2008

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8. NON-WAIVER BY SELLER.

Waiver by Seller of a breach of any of the Terms and Conditions shall not be construed as a waiver of any other breach. Any failure at any time of Seller to enforce any provision of these Terms and Conditions shall not constitute a waiver of such provisions or prejudice Seller's right to enforce such provisions at any time. Should any provision of these Terms and Conditions be or become void or not enforceable by force or operation of law, all other provisions shall remain valid and enforceable.

9. ASSIGNMENT.

Buyer shall not assign, subcontract, or otherwise transfer the order, in whole or in part, without the prior written consent of Seller, and any such assignment, subcontract, or transfer without Seller's prior written consent shall be void.

10. RESERVATION OF RIGHTS.

Seller reserves the right to make subsequent improvements and changes in the design of Goods without imposing any obligation to make such changes or improvements upon Goods sold to Buyer.

11. GOVERNING LAW; LIMITATION ON ACTIONS.

This order shall be governed and construed in accordance with the laws of the State Delaware. No actions arising out of the sale of Goods covered by an order, other than an action by Seller to recover the purchase price of such Goods, may be brought by either party more than one (1) year after the cause of action accrues.

12. R

Buyer acknowledges that the Goods and any technical data related to the Goods may be controlled for export by the U.S. Department of Commerce or Department of State and that such items may require authorization prior to export from the United States or re-export. Buyer agrees that it will not export, re-export, or otherwise distribute the Goods or any technical data related thereto, in violation of any export control laws or regulations of the United States.