



# Pemco Standard Terms and Conditions of Sale

## 1. GENERAL

The terms and conditions set forth herein (the “**Terms**”) as well as any terms and conditions printed on the face of Pemco’s order acknowledgment constitute the sole and entire agreement between Pemco and the buyer (“**Buyer**”) of goods and/or services from Pemco with respect to the subject matter hereof. Any term or condition in any printed form of Buyer, including but not limited to any order, confirmation or other document, which is in any way inconsistent with or in addition to the terms and conditions hereof is hereby expressly rejected, and Pemco’s acceptance of any offer or order of Buyer is hereby expressly made in reliance on Buyer’s assent to all terms and conditions hereof. If Buyer objects to any of the terms or conditions hereof, such objection must be made in writing and received by Pemco within three (3) calendar days after placing a purchase order. Failure to so object shall be conclusively deemed to be acceptance of the terms and conditions hereof. Pemco’s failure to object to any term or condition in any oral or written communication from Buyer, whether delivered before or after the date hereof, shall not constitute an acceptance thereof or a waiver of any term or condition hereof. Electronic commerce transactions between Buyer and Pemco will be solely governed by this Agreement, and any terms and conditions on Buyer’s internet site or communicated by other electronic means will be null and void and of no legal effect on Pemco. These Terms cannot be waived, varied, modified or amended in any manner (including subsequent conduct between the parties) except in a writing signed by Pemco. Any portion deemed invalid or unenforceable shall be struck and the remainder of these Terms shall continue to be effective and binding. These Terms shall bind and inure to the benefit of the parties and their respective successors and assigns.

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## 2. TAXES

All prices are exclusive of any present or future sales, revenue or excise tax, value added tax, turnover tax, import duty (including brokerage fees) or other tax applicable to the manufacture or sale of any product. Such taxes, when applicable, shall be paid by Buyer unless Buyer provides a proper tax exemption certificate.

## 3. PRICES

The sale price(s) for goods delivered hereunder (“**Products**”) are accepted as stated on Pemco’s order acknowledgment. All quotations of Pemco expire thirty (30) calendar days from the date given. The price to Buyer for any Products shall be the applicable published price or valid quote in effect at the time of order entry. All prices are subject to change without notice and may be subject to any increase which may be in effect on the date of shipment. Except as otherwise expressly stated herein, any service calls or other service work performed by Pemco shall be at Buyer’s expense in accordance with Pemco’s standard rates for such services. Buyer acknowledges that the pricing of the Products and services and the other terms of this Agreement have been set based on the sections of this Agreement providing for an agreed allocation of the risk for any defective Products or services between the parties. Buyer further acknowledges that the pricing and terms would have been different if there had been a different allocation of the risk.

## 4. DELIVERY; TITLE PASSAGE AND RISK OF LOSS

**(a) Delivery.** Delivery or shipping dates are approximate only and merely represent Pemco’s best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transaction(s) covered by this Agreement, except with respect to Buyer’s obligation to make all related payments. Pemco’s obligations hereunder will be dependent upon Pemco’s ability to obtain the necessary raw materials. Pemco will not be liable for any loss or expense (incidental, indirect, economic, consequential, or otherwise) incurred by Buyer as a result of any delay in delivery for any reason other than arbitrary refusal by Pemco to perform. Pemco reserves the right to make partial deliveries and ship in advance of shipping date. Lead time on orders and rescheduling are designated at Pemco’s sole discretion.

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**(b) Title Passage and Risk of Loss.** All deliveries hereunder will be FOB (INCOTERMS 2020) Pemco's plant via a carrier selected by Buyer at its option, or otherwise by Pemco, freight collect, to Buyer, or at Pemco's option, Pemco will select such carrier and ship the Products freight prepaid and added to the price of the relevant Products. In all such cases title and risk of loss or damage will pass to Buyer upon Pemco's delivery of the Products to the initial carrier for shipment to Buyer and no loss or damage will relieve Buyer of any obligation hereunder, including payment for lost or damaged Products. Buyer shall reimburse Pemco for any and all costs of storage incurred by Pemco after the date that Pemco is prepared to make shipment.

## **5. PAYMENT TERMS**

Unless otherwise agreed in writing, payment terms shall be net thirty (30) days from the date of invoice. Buyer agrees to pay interest on any unpaid balance at a rate of 1.5% per month or the maximum rate under applicable law. No surcharge will be charged for payments made by debit card. Unless otherwise agreed in writing, all payments are to be in United States dollars. Pemco may require payment to be secured by an irrevocable letter of credit or a bank guarantee acceptable to Pemco. Where payment is made by letter of credit, all costs of collection shall be for Buyer's account. In the event that Pemco brings legal action to collect delinquent accounts, Buyer agrees to pay Pemco's reasonable attorneys' fees and costs of suit.

## **6. NON-CONFORMING DELIVERY**

Pemco's weights taken at Pemco's shipping point shall govern. Buyer shall notify Pemco of any visible defects, quantity shortages or incorrect Product shipments within seven (7) days of receipt of the shipment. Failure to notify Pemco in writing of any visible defects in the Products or of quantity shortages or incorrect shipments within such period shall be deemed an unqualified waiver of any rights to return Products on the basis of visible defects, shortages or incorrect shipments and Buyer shall be deemed to have accepted the Products without qualification, and cannot, thereafter, reject any Products. Once used, Products are deemed to be fully conforming to these Terms.



## **7. SECURITY INTEREST**

Buyer hereby grants to Pemco a security interest (or the equivalent under Buyer's local law) in all Products and all proceeds and products thereof until all amounts due or to become due hereunder have been paid. Any repossession and removal of Products shall be without prejudice to any of Pemco's other remedies at law or in equity. Buyer agrees, at any time and without further consideration, to do or cause to be done, executed and delivered, all such further acts and instruments (including without limitation financing statements appropriate for filing) as Pemco may reasonably request in order to perfect Pemco's security interest (or the equivalent under Buyer's local law).

## **8. EXPORTS**

Buyer warrants that it is and will remain in compliance with all export and reexport requirements, laws and regulations of the United States of America and any other applicable export and reexport laws and regulations.

## **9. BUYER'S FINANCIAL CONDITION**

This Agreement and all shipments made hereunder shall at all times be subject to the approval by Pemco of Buyer's financial condition. If the financial condition of Buyer at any time becomes unsatisfactory to Pemco, in Pemco's sole discretion, or if Buyer fails to make any payment when due, in addition to any other rights Pemco may have, Pemco may defer or decline to make any shipment or shipments hereunder or may condition any such shipment upon receipt of satisfactory security or cash payments in advance.

## **10. LIMITED WARRANTY**

Except as specified below, Products sold hereunder shall, at the time of delivery, be free from defects in materials and workmanship and shall conform to Pemco's specifications or other specifications accepted in writing by Pemco at the time of delivery. The foregoing warranty does not apply to any Products which have been subject to misuse, neglect, accident or modification or which have been altered such that they are not capable of being tested under normal test conditions. Pemco shall make the final determination as to whether the Products are defective. Pemco's sole obligation for Products failing to comply with this warranty shall be, at its option, to replace or issue credit for the

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nonconforming Products where, within fourteen (14) days of delivery, (i) Pemco has received written notice of any nonconformity; (ii) after Pemco's written authorization, Buyer has returned the nonconforming Product to Pemco; and (iii) Pemco has determined that the Product is nonconforming and that such nonconformity is not the result of improper installation, repair or failure of a condition set above or other misuse.

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PEMCO DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. Buyer shall pass this warranty to any third-party Buyer of PEMCO Products.

PEMCO'S LIABILITY UNDER THE WARRANTY SET FORTH ABOVE SHALL BE LIMITED TO A REFUND OF THE PURCHASE PRICE OF THE PRODUCT. IN NO EVENT SHALL PEMCO BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS BY BUYER OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY THIRD PARTIES.

#### **11. LIMITATION OF LIABILITY AND INDEMNITY**

NOTWITHSTANDING ANY OTHER PROVISION HEREIN OR IN ANY OTHER DOCUMENT OR COMMUNICATION, (A) PEMCO'S LIABILITY AND OBLIGATIONS WITH RESPECT TO ANY CLAIM(S) RESULTING OR ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER IN CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, AND EVEN IF BUYER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, SHALL IN NO EVENT EXCEED IN THE AGGREGATE THE TOTAL PURCHASE PRICE RECEIVED BY PEMCO FOR THE PRODUCTS OR SERVICES (OR, IN THE CASE OF OBLIGATIONS ARISING FROM OR RELATING TO PARTICULAR PRODUCTS OR SERVICES RENDERED IN CONNECTION HEREWITH,) THE PURCHASE PRICE OF SUCH PRODUCTS OR AMOUNT RECEIVED BY PEMCO FOR SUCH SERVICES, RESPECTIVELY, AND (B) PEMCO SHALL IN NO EVENT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY, WHETHER IN CONTRACT, STRICT

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LIABILITY, TORT OR OTHERWISE, FOR SPECIAL, CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY THIRD PARTIES. By accepting delivery of the Products ordered, Buyer agrees that it indemnifies and holds harmless Pemco from and against all claims, loss, damage and liability, including without limitation for personal injury, property damage or commercial loss of whatever kind, directly or indirectly arising from or relating to the hazards inherent in Buyer's facilities or activities

## **12. FORCE MAJEURE**

Pemco shall not be liable for any damage or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of god, acts of the Buyer, act of civil or military authority, war, riots, concerted labor action, shortages of materials and transportation facilities, or any other causes beyond the reasonable control of Pemco. The anticipated delivery date and/or date of performance shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this provision.

## **13. ASSIGNMENT**

Buyer may not transfer or assign this Agreement or any interest herein, by operation of law or otherwise, without the prior express written consent of Pemco. Any attempted transfer or assignment without such consent shall be void. Pemco may assign its rights and delegate its duties hereunder.

## **14. ENTIRE AGREEMENT; MODIFICATION**

This Agreement supersedes all prior written and oral agreements and understandings between Pemco and Buyer with respect to the Products and services specified herein. No representation or statement not contained herein shall be binding upon Pemco as a representation, warranty or condition or otherwise. No addition to or waiver, modification or cancellation of any provision hereof shall be binding upon Pemco unless in writing and signed by a duly authorized representative of Pemco.

## **15. NOTICES**

All notices and other communications hereunder shall be in writing and shall be mailed by first-class, registered, express or certified mail, postage prepaid, to

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the parties hereto at their respective designated addresses, subject to the right of either party to change such address upon ten (10) calendar days prior written notice.

#### **16. WAIVER**

Failure by Pemco to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

#### **17. APPLICABLE LAW**

Unless otherwise agreed in writing, the terms and conditions contained herein shall be governed by and construed under the laws of the state of Delaware, USA, without regard to its conflicts of laws principles.

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