

MaxBotix[®] Inc.

“Creating vision for the future”

TERMS AND CONDITIONS OF SALE

1. **Limited Warranty.** Seller warrants (i) that its products supplied to Buyer will materially conform to Seller's specifications and drawings as set forth in its current technical literature, (ii) that it will convey good title to the products supplied to the Buyer free of all liens and (iii) that the products supplied to the Buyer shall be of merchantable quality and free of defects in workmanship and materials. The Seller further declares that, to its actual knowledge, any products labeled “RoHS compliant” will be in compliance with the provisions of the EU RoHS Directive, but such statement is not intended to enlarge or modify Seller's obligations to Buyer under these Terms and Conditions of Sale. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. FURTHER, NO LATER TECHNICAL ADVICE RENDERED BY SELLER SHALL BE DEEMED TO ENLARGE THESE WARRANTIES OR CREATE NEW WARRANTIES RELATED TO THE PRODUCTS.**

2. **Warranty Claims.** Any claim for defect or breach of warranty shall be made, and Seller shall be notified and given an opportunity to inspect, within thirty (30) days after products reach their destination, or discovery of such defect or variance, whichever occurs later, but no claim for defect may be made after one (1) year from the delivery date. Upon notice of a warranty claim from Buyer, Seller shall issue a Return Material Authorization (RMA) pursuant to which Buyer will return the product to Seller and Seller's Technical Support Department will inspect the product and determine if it does to function properly or otherwise breaches the warranty set forth in Section 1. Failure of Buyer to observe this provision or any action by Buyer, which impedes identification of an alleged defect, shall operate as a waiver of Buyer's rights to make any such claim. In the event that it is determined that the warranties made by Seller in Section 1 of these Terms and Conditions of Sale have been breached, the liability of Seller and the remedies available to Buyer will be limited to the repair or replacement of the products supplied by Seller or the return of the purchase price of such products, as determined by Seller in its sole discretion. If Seller elects to repair or replace the products, Seller shall have a reasonable time to make such repairs or replace the products. If Seller concludes that the products are not defective, Seller shall notify Buyer and return the products to Buyer, at Buyer's expense together with a reasonable charge made for Seller's time in examining and testing the products. **SELLER'S LIABILITY FOR ANY OTHER CLAIM RELATING TO THE PRODUCTS SUPPLIED TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS SAVINGS, BUSINESS INTERRUPTION OR LOSS OF ANTICIPATED BENEFITS, ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCTS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ALL CLAIMS AGAINST THE SELLER RELATED TO THE PRODUCTS SUPPLIED UNDER THIS AGREEMENT MUST BE MADE WITHIN ONE YEAR FOLLOWING THE DELIVERY DATE. THE REMEDIES SET FORTH IN THIS SECTION 2 SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR BUYER WITH RESPECT TO A DEFECT OR BREACH OF WARRANTY.**

3. **IMPORTANT RESTRICTIONS ON USE OF PRODUCT.** Buyer assumes all risk and responsibility related to the use of the product, including all legal and regulatory requirements related to the use of the products. The product is not designed for use in safety-critical applications (such as life support) or other applications where a failure of the product could cause severe personal injury or death. The product is not designed for use in military or aerospace applications or environments. The product is not designed to be mounted on or in automobiles, snowmobiles, boats, aircraft or other motorized vehicles (whether land, water or air based) regardless of whether they require registration with a government entity. Buyer acknowledges that Seller is not liable for any damage or personal injury (including death) resulting from Buyer's use of the product and Buyer indemnifies and holds harmless Seller, its shareholders, directors, employees and agents (each a “Seller Indemnified Party”) from and against any and all liabilities, expenses, losses, damages, claims, fines, penalties and costs (including all reasonable attorney's fees) that a Seller Indemnified Party may sustain or incur (including those sustained or incurred as a result of a claim by a third party) as a result of: (1) any injury or death of any of Buyer's employees arising out of or in any way relating to these Terms and Conditions of Sale; (2) damage to any property or person (including death) caused by a product that material conforms to Seller's specifications and drawings as set forth in its current technical literature; (3) damage to property or person (including death) that arise out of the improper use of the product (including any of the uses prohibited in this Section 3); (4) any recall or corrective action arising from or related to product defects or conditions due to Seller's alteration of the specifications and drawings at Buyer's request; (5) any modifications to the product or use of the product in connection with Buyer's designs; and (6) any technical support or assistance that Seller may have provided to Buyer through its support services.

4. **Technical Assistance and Design Support Services.** As an accommodation and convenience for the Buyer, the Seller offers technical support on the products via e-mail and telephone. E-mail is the preferred method for receiving requests for

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technical support. The Seller's general response time for technical support is one (1) to two (2) business days, but response time may be longer or shorter depending on the volume of requests. Telephone support is also provided Monday through Thursday between the hours of 9:00am and 4:00pm CST, and Fridays between the hours of 9:00am and 11:00am CST. While this support is typically free to all users of the products during the product's usable life, extensive technical support may require time and fees negotiated between the Seller and the Buyer. Buyer is solely responsible for its use or inability to use the product and Buyer's reliance upon any information or recommendation provided by Seller's Technical Assistance and Design Support Services Personnel. Seller's Technical Assistance and Design Support Services personnel strive to provide useful information regarding the products, but does not guarantee that any information or recommendation provided is accurate, complete, or correct or relevant to Buyer's intended application or use of the product. Buyer is responsible for analyzing and determining the appropriateness of any information or recommendation provided by the Seller's Technical Assistance and Design Support Services Personnel as it relates to Buyer's proposed use for the product and no such information or recommendation shall be deemed a warranty with respect to the use of the product. Buyer's reliance on such information or recommendation is at its sole risk and discretion. The Seller reserves the right to deny technical support to any Buyer on any grounds.

5. **Refund Policy.** Buyer may return the products for a full refund within thirty (30) days of the date the products were delivered to Buyer. All refunds must be directed to the original place of purchase. If Buyer purchased products from Seller's website, Seller will refund the purchase price, less any shipping and handling costs. Custom orders of products, regardless of size, are not eligible for a refund. Product orders, having a quantity of 100 or more, are not eligible for a refund.

6. **Buyer Inspection.** Buyer shall examine and inspect the products promptly after delivery. Buyer shall immediately notify Seller in writing of any missing or damaged Products by referencing the accompanying bill of lading. The Products shall be deemed to conform to the applicable specifications despite minor discrepancies that are usual and customary in the trade, and Buyer shall not be entitled to abatement of the purchase price for such minor discrepancies. All products shall be deemed accepted unless Seller is notified in writing of any defects within thirty (30) days from delivery.

7. **Product Modifications.** Seller reserves the right to modify, correct, enhance, improve or make other changes to the products or the product specifications without Buyer's consent and Buyer shall remain liable for payment of the purchase price for the products.

8. **Change Orders.** Any changes to an order after the Seller has acknowledged the Buyer's order shall only be effective if in writing signed by Seller accepting the change.

9. **Delivery.** Delivery and shipment dates indicated on any of Seller's documents are estimated but not guaranteed and Seller will not be liable for any loss or expense incurred by Buyer resulting from a delay in delivery. Unless otherwise consented to in writing by Seller, all shipments are made F.O.B. Seller's plant (Brainerd, Minnesota), and any price which includes freight is quoted solely for Buyer's convenience and is subject to adjustment to the extent of any increase or decrease in transportation charges. Products shall be deemed delivered to Buyer when they are placed in the possession of the carrier at Seller's plant and such date shall be referred to as the Delivery Date. If Buyer intends to cancel its order for the products prior to delivery, Buyer must give Seller thirty (30) days' advance written notice. In such event, Buyer shall pay to Seller an amount equal to 50% of the purchase price for each item of product that was cancelled, along with all costs and expenses, including labor and raw material, incurred by Seller in performing its obligations under Buyer's order, which costs shall include a reasonable allowance for pro-rated expenses and anticipated profits.

10. **Risk of Loss.** Unless otherwise waived in writing by Seller, Seller reserves the right to require payment in cash before shipment of any of the products. Risk of loss, title to and liability for damage to the products shall pass to Buyer upon delivery by Seller to the carrier. No loss or damage to the products during transportation shall relieve Buyer of its obligations to pay Seller for the products.

11. **Payment and Collection.** Buyer shall pay the list price for the products unless the Seller otherwise agrees. Buyer shall also pay all costs of insurance, transportation, import duties, taxes and other expenses that are not included in the list price for the products. To the extent Seller issues an invoice, invoices are due 30 days from the date of the invoice. Interest will be charged on unpaid balances at the rate of 1.0% per month, but not to exceed the maximum rate allowed by law, beginning 30 days after receipt of invoice. If Buyer fails to pay the purchase price when due, Seller may exercise any remedy available to it under law or at equity and may decline to make further shipments. Further, in such case, Buyer agrees to pay all costs associated with collection of the amount owed (even if Seller is not required to commence a legal action), including without limitation, collection fees, reasonable attorneys' fees, court costs and other enforcement expenses.

12. **Intellectual Property.** Nothing in these Terms and Conditions of Use gives the Buyer any right, title or license to any of the Seller's intellectual property, including proprietary information or manufacturing processes used in manufacturing the products, all of which remains the sole property of the Seller. Buyer agrees that it will not duplicate any of the Seller's proprietary information or attempt to reverse engineer, decompile or otherwise duplicate the products.

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13. **Legal and Export Compliance.** Buyer warrants that it is in compliance with all applicable federal, state and local laws and regulations. Export of the products may be subject to export license control by the U.S. government and it is Buyer's responsibility to obtain any export licenses required to transport the products.

14. **No Third Party Beneficiaries.** These Terms and Conditions of Sale are intended to benefit Seller and Buyer only and no other person or entity.

15. **Acceptance of these Terms and Conditions is a Material Condition.** Acceptance of Buyer's order by Seller is expressly made conditional upon Buyer's acceptance of these Terms and Conditions of Sale, and the provisions contained in these Terms and Conditions of Sale are the exclusive terms and conditions of sale, notwithstanding receipt or acknowledgement of a purchase order from Buyer containing additional or different terms, or conflicting oral representations by any agent of Seller. Seller objects to any additional or different terms in Buyer's purchase order or other documents and such terms will not be binding upon Seller and are void unless specifically agreed to by Seller in writing. If Buyer objects to any provision of these Terms and Conditions of Sale, Buyer must deliver its objection in writing to Seller within ten (10) days of receipt of these Terms and Conditions of Sale. Notwithstanding any timely made objection, Buyer's acceptance of the products constitutes acceptance of these Terms and Conditions of Sale to the sale of the products. No modification, waiver, or discharge of these Terms and Conditions of Sale shall bind Seller unless contained in a writing signed by an authorized representative of Seller.

16. **Governing Law and Interpretation.** The sale of products to Buyer shall be governed by and construed in accordance with the laws of the State of Minnesota (regardless of the laws that might be applicable under principles of conflicts of laws) as to all matters. Buyer and Seller irrevocably consent to the exclusive jurisdiction of the State and Federal courts having jurisdiction over Crow Wing County, Minnesota, and the courts to which an appeal therefrom may be taken, for any matter relating to the sale of products to Buyer and waive any contention that any such court is an improper venue for such matters. The failure of Seller to insist upon performance of any provision or to exercise any right or privilege granted to Seller under these Terms and Conditions of Sale shall not be construed as waiving such provision or privilege. The invalidity of any terms or provisions of this Agreement shall not affect the validity of the remaining terms or provisions, and these Terms and Conditions of Sale shall be construed as if such invalid terms or provisions had been omitted.

17. **Force Majeure.** Seller shall not be in default of its obligations with respect to the sale of the products to Buyer or otherwise liable to Buyer to the extent that its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, civil disorders, acts of any civil or military authority, judicial action, terrorist acts, natural disasters, shortage of raw materials and strikes and other labor problems or shortages. Upon the occurrence of any such contingency, Seller shall have the right to suspend or reduce deliveries during the continuation of such event or apportion its deliveries among Buyer and other customers of Seller and Seller shall have no liability to Buyer for any such delay in supply occasioned by such suspension or reduction.

18. **Entire Agreement.** These Terms and Conditions of Sale constitute the entire agreement between the Seller and the Buyer with respect to the sale of the products and there are no other agreements between the parties with respect to the sale of the products. These Terms and Conditions of Sale may not be modified, except in a writing signed by both Seller and Buyer that specifically refers to the parties' intention to modify these Terms and Conditions of Sale.

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