

# Terms and Conditions of Sale

SENATOR INTERNATIONAL, INC., an Ohio corporation d/b/a ALLERMUIR (“SIC”) does business with its Buyers under the terms and conditions set forth herein. SIC hereby rejects any terms and conditions contained in any Buyer purchase order or other business forms or in correspondence or elsewhere or implied by trade, custom, practice or course of dealing unless specifically included or varied in writing by a director or other authorized representative of SIC which are different from or in addition to the terms stated herein. “Buyer” means the person or entity whose order for the goods is accepted by SIC. “Goods” means the goods (including any installment of the goods or any parts of them) which SIC is to supply in accordance with these conditions. Any reference in these terms and conditions to singular includes plural.

## 1. Acceptance of Orders

All orders are subject to the approval of SIC, and SIC shall not be committed to honor any order until SIC has provided to Buyer written acceptance of the order.

## 2. General Terms of Payment and Financial Requirements

a) Terms of payment are NET 30 DAYS from date of invoice, except where otherwise specified in writing by SIC. Credit amounts are subject to satisfactory references and verification by our credit insurers (Euler Trade indemnity). Time of payment shall be of the essence for all contracts between SIC and Buyer.

b) A LATE PAYMENT CHARGE OF 2.5% PER MONTH WILL BE IMPOSED ON ANY PORTION OF ACCOUNT NOT PAID WITHIN TERMS STATED ON INVOICE. However, if this rate exceeds the maximum rate permitted under applicable law or regulations, the charge shall be reduced to the maximum allowable rate.

c) SIC may offer special payment and/or shipment terms. In such event, these special terms shall supersede the general terms of payment and/or shipment, provided that such special terms are fully stated in a SIC INVOICE, signed by an authorized representative of SIC.

d) If Buyer shall  
(i) commit any breach hereunder;

(ii) file for or become subject to bankruptcy or receivership;

(iii) liquidate or cease business;

(iv) make arrangement with or composition for the benefit of any of his or its creditors; or

(v) if in the opinion of SIC, Buyer's credit becomes impaired, SIC shall still have the following rights and remedies in addition to any other rights and remedies provided by applicable law.

(i) All sums shall become immediately due and payable, notwithstanding any credit terms previously in effect.

(ii) SIC may refuse any order placed by Buyer.

(iii) SIC may cancel any accepted orders or delay shipment of any order without any liability to Buyer therefore.

(iv) No order may be cancelled by Buyer without SIC's consent in writing, and such cancellation will be subject to a charge of 25% of order value or 15% if the product can be reused.

(v) If credit previously has been extended by SIC to Buyer, and SIC elects to make further sales to Buyer, SIC may require payments on a C.O.D. or cash-in-advance basis.

(vi) In the event collection of sums due from Buyer to SIC is referred to lawyers or debt recovery agents or if proceedings are brought to collect such sums or to enforce the rights of SIC, Buyer agrees to pay all costs and reasonable fees, including attorney fees and such costs and fees incurred in any proceedings or appeal and in executing on any judgement.

e) SIC shall have the right to change its financial requirements of Buyer at any time.

f) Prices stated do not include sale or use taxes, tariffs, and any other governmental changes, taxes, or duties payable by SIC, which will be added to invoice wherever applicable. If any of the foregoing changes are assessed after delivery of Goods, Buyer will pay same upon demand of Seller.

g) SIC shall be entitled to a general lien on any Goods and other property owned by Buyer in SIC's possession (although the Buyer may have paid for the same in full) in satisfaction of the whole or part as the case may be of the unpaid price of any

Goods sold and delivered to Buyer under any contract. SIC shall be entitled to offset any sum or sums owing by it to Buyer against any sums owed by Buyer to SIC.

## 3. Warranty

SIC's only warranties shall be those expressly set forth herein and SIC makes no other representations or warranties concerning the Goods including, but not limited to, any warranty of fitness for a particular purpose. SIC warrants that the Goods shall be free from defects in workmanship or materials for the twelve (12) months following delivery by SIC to Buyer. Any remedy claimed for failure of such warranty shall be only upon the terms and conditions as limited by this Agreement. Buyer must notify SIC, in writing, of any claimed defect as soon as practical after discovery thereof by Buyer. Upon such notification, SIC may, at its option, confirm that the Goods are, in fact, defective. Upon such determination, SIC may, at its option, either

(i) repair such defective Goods at Buyer's location at no cost to Buyer or

(ii) require that Buyer return the defective Goods as set forth in the following Section 4 for either replacement by SIC or refund of the purchase price (at SIC's option). Buyer's remedies for any breach of warranty shall be limited as set forth herein and any other remedy is hereby waived by Buyer (including any claim for consequential damages, loss of profits, good will, reputation, bodily injury, or claims from third parties). In no event shall SIC's liability to Buyer (whether for breach of warranty, breach of contract, negligence, misrepresentation, or otherwise) exceed the cost of the Goods which gave rise to such claim liability. SIC does not accept (and expressly disclaims) any responsibility for electrical work installation which SIC's personnel do not supervise and all electrical installation must be undertaken by Buyer through a competent and qualified licensed electrician.

## 4. Returns and Replacements

Defective Goods will be accepted only with prior authorization from SIC's head office and receipt of SIC's RETURN/AUTHORIZATION NUMBER. Goods returned are not to exceed quantity authorized. All returns must have freight prepaid. Credit will be issued (or Goods replaced) only after Goods are inspected and approved and will be based on Buyer's cost for the Goods in

question, less any costs for transport and re-packaging.

a) Goods defective on delivery may be returned for exchange or full credit.

b) Goods incorrectly delivered by SIC may be returned for full credit.

c) Goods incorrectly ordered may be returned subject to a handling charge of 25% of invoice.

d) Samples will be credited in full if returned in good condition within 60 days of delivery.

Payment must be made in full for all samples not returned within this period.

## 5. Changes

a) SIC shall have the right to Reduce, or increase prices to Buyer at any time without prior notice, except with respect to orders which have been accepted prior to such price modification.

b) SIC may at any time add, change or cease making available any Goods without notice to Buyer, and Buyer shall have no claim against SIC for failure to furnish Goods of the type previously sold.

c) SIC may at any time change warranty without incurring any liability to Buyer.

## 6. General Terms of Transport

a) Unless otherwise quoted All shipments are F.O.B. point of shipment, freight prepaid and allowed, excluding fuel surcharges. Shipments outside of the Continental United States and Canada are freight prepaid and allowed to port of exit. Allermuir reserves the right to select the most appropriate carrier and routing on all shipments that are shipped. Allermuir reserves the right to implement a fuel surcharge. Buyer shall accept all risk of loss or damage to the Goods while in transit.

b) Delay in transport or delivery of any particular installment or delivery of faulty Goods in any one installment shall not entitle the Buyer to repudiate the whole order nor relieve Buyer of its obligation to accept and pay for the remaining installments..

c) SIC shall endeavour to make deliveries within a reasonable time. HOWEVER,

SIC SHALL NOT BE LIABLE TO BUYER FOR ANY DAMAGES, WHETHER INCIDENTAL, CONSEQUENTIAL OR OTHERWISE, FOR FAILURE TO FILL ORDERS, DELAYS IN DELIVERY OR ANY ERROR IN THE FILLING OF ORDERS.

d) Time of delivery shall not be of the essence to any contract to which these Terms and Conditions apply and shall not be made so by the service of any notice.

e) Notwithstanding delivery and passing of risk, the Goods shall remain the property of SIC until such time as Buyer shall have paid to SIC the agreed price in full (together with any accrued interest) and all other amounts owned by Buyer to SIC in respect of any other contract for the sale of Goods and until such payment the Buyer shall hold the Goods as Bailee on behalf of and in a fiduciary capacity for SIC and the Buyer shall insure the Goods for their full market value. SIC shall have the right, at its option, to file one or more UCC financing statements with governmental offices to indicate SIC's rights as owner of such Goods (or as security interest holder in such Goods and for purposes thereof, this Agreement shall be deemed a Security Agreement).

f) In the event that the Buyer sells the Goods prior to payment to SIC in full, the Buyer acknowledges that the entire proceeds of sale are held in trust for SIC and shall not be mixed with other monies or paid into any overdrawn bank account and shall at all times be identifiable as SIC's monies.

## 7. Force Majeure

a) SIC shall not be liable to Buyer for any loss or damage which may be suffered by Buyer as a direct or indirect result of the supply of Goods by SIC prevented, hindered, delayed, cancelled or rendered uneconomic by reason of circumstances or events beyond SIC's reasonable control (“force majeure circumstances”) including, but not limited to, strikes; lockouts; labour disputes; act of God; war; riot; civil commotion; malicious damage; compliance with any law or governmental order, rule, regulation or direction; accident; breakdown of plant or machinery; fire; flood; storm; difficulty or increased expense in obtaining workers; material or transport or other circumstances affecting the supply of the Goods or of raw materials by SIC's normal source of supply of the manufacture of the Goods by SIC's normal means or the delivery of Goods by SIC's normal route or means of delivery.

b) In force majeure circumstances, SIC may (in its sole discretion) terminate any contract for the supply of goods pursuant to the Terms and Conditions or cancel delivery of Goods to Buyer or may, with the agreement of the Buyer, deliver Goods at an agreed rate of delivery commencing at a reasonable time after the termination of the force majeure circumstances.

c) If due to force majeure circumstances SIC has insufficient stocks to meet all its commitments, SIC may apportion available stocks between its customers at its sole discretion.

## 8. Miscellaneous

a) If any of these Terms and Conditions is held to be invalid, illegal or unenforceable in any respect, whether in whole or in part, such invalidity, illegality or unenforceable shall not prejudice the effectiveness of the rest of the remainder hereof.

b) No waiver by SIC of any breach of contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

c) Any contract to which these Terms and Conditions shall be governed by, and construed in accordance with, the laws of the State of Ohio. Buyer consents to the jurisdiction of, and venue in, state and/or federal courts sitting in Lucas County, Ohio.