



## Terms and Conditions of Sale

### Formation of Contract

The contract (the "Contract") shall be deemed to have been entered when, on receipt of a written order from you ("Buyer"), we, Rossi N.A. or its affiliates ("Rossi" or "Seller") acknowledge acceptance thereof in writing. All orders are accepted at the main office of Rossi in Suwanee, GA, and no field representative has the authority to change terms or conditions, or to otherwise bind Rossi without authorization from Rossi. The terms of this Contract prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend the terms of this Contract.

### Scope of Contract

The goods to be supplied (the "Goods") and the work to be performed under the Contract shall be as specified in the acknowledgment of order attached hereto and incorporated herein by reference. Items not referred to therein shall be charged for separately.

### Quotations

Pricing and other terms for all quotation are valid for not more than 30 days from date of quote unless an exception is noted in writing. An extra charge for special packaging and international shipments may apply.

### Price and Payment

Net payment is due thirty (30) days upon shipment of the Goods. Buyer shall pay the full amount of each invoice, without discount, adjustment or set-off, so that such payment is deposited into Rossi's account within the agreed upon net payment days. If Buyer disputes the accuracy of any portion of any invoice, Buyer shall promptly notify Rossi in writing, specifying the amount in dispute and the reasons therefor. If Buyer fails to notify Rossi within ten (10) business days following the date of any invoice, any claims with respect to such invoice shall be deemed to be barred and to have been waived, and the invoice shall be deemed accepted in all respects by Buyer. In the event of a disputed invoice, Buyer shall nevertheless make timely payment of Rossi's invoice, and the parties will promptly attempt to resolve the dispute, whereupon, if Rossi determines that Buyer is entitled to a refund, Rossi shall promptly issue a credit to Buyer or, at Rossi's option, a check refunding any overpayment.

All prices are subject to change without notice and are therefore considered not binding. In the case of verbal or written quotations, such quotations shall be valid for a period of thirty (30) days. Unless otherwise agreed by the parties in writing, all Goods are billed at the prices in effect at the time of shipment. Possession of certain price information by any representative or agent of Buyer is not to be construed as an offer to sell Buyer the Goods at the particular price set forth therein.

Minimum order value is \$250.00. Orders with a total value less than \$250.00 will be invoiced at \$250.00.

If Buyer fails to comply with any of the stated payment terms, Rossi, without limitation, may: (i) suspend deliveries until all payments are made in full; (ii) reclaim delivered Goods; (iii) place Buyer on a cash-in-advance status; (iv) exercise rights of recoupment or setoff with respect to any sums due by Rossi or its affiliates to Buyer or its affiliates; and/or (v) initiate legal action to recover sums due and owing. Rossi shall have the right to collect interest on all past due amounts at the lower of (i) 1.5% per month (18% per annum) or (ii) the maximum non-usurious rate permitted by applicable law. In the event that Buyer tenders payment to Rossi or its agents in a manner purported by Buyer to serve as payment in full of an invoice, Rossi or its agent's acceptance of such payment shall not act as an accord and satisfaction and shall be without prejudice to Rossi's right to pursue full payment of such invoice, in accordance with applicable law.

### Delivery

Delivery is F.O.B. shipping point (FCA shipping point as per incoterms 2010). Rossi's risk of loss to all Goods ordered hereunder passes to Buyer upon Rossi's tender of such Goods to the carrier for shipment. Transit risks are borne by Buyer, even in cases where the Goods are delivered free of charge. Delivery dates as indicated in quotations may be subject to contingencies beyond Rossi's control, such as fires, accidents, or strikes. While Rossi will exercise reasonable efforts to meet specified delivery dates, any time quoted by Rossi for delivery is an estimate only. Rossi is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver the Goods or delay in delivery of the Goods. Any additional costs arising out of, or resulting from, shipping delays will be charged to Buyer. No delay in the shipment or delivery of any Goods relieves Buyer of its obligations under this Contract, including without limitation accepting delivery of any remaining installment(s) of Goods.

Rossi will ship to any authorized distributor location.

### Freight

All orders are F.O.B. shipping point (FCA shipping point as per incoterms 2010). Expedited shipping charges shall be the responsibility of Buyer. If Buyer specifies special routing involving any excess expense, those freight charges will be charged back in full to Buyer on Rossi's invoice. No allowance is made for cartage. Rossi reserves the right to ship from any stocking location in the U.S. Certain solutions

require special D.O.T. (HazMat) approved packaging and handling. Costs for these services are additional and are not included under any free freight allowances.

### Design

The Seller may discontinue the manufacture and sales of any model or product, or to make changes in the design for product improvement, at any time for any reason whatsoever, without incurring an obligation or liability to continue to furnish or install the same or any product previously furnished.

### Title and Risk of Loss

Title to the Goods and risk of loss of the Goods shall pass from Rossi to Buyer upon tender of the Goods to the carrier for shipment.

### Shortages

Shortages must be reported to Rossi's office within five (5) days of receipt. No subsequent claims will be entertained.

### Return of Goods

Products which are normally stocked by the Seller for sale (specifically excluding any assembled products, custom products or products integrating third party components) ordered in error may be returned, at the Buyer's expense, within thirty (30) days of delivery of credit, less a restocking charge. No product is to be returned by the customer without the prior written consent, acceptance and authorization of the Seller and all returns require a return authorization number which must be included on all shipping paperwork. The Seller shall have no liability for products damaged during shipment.

### Order Acknowledgement and Cancellation

Rossi forwards an immediate acknowledgement of all orders entered directly to Buyer via fax or e-mail. To protect the Buyer from errors, Buyer is required to check its order acknowledgement for accuracy immediately upon receipt. Orders will be considered accurate and accepted by Buyer within Rossi's acknowledged lead times, unless Buyer informs Rossi of any discrepancy.

Cancellation or suspension of orders by Buyer is subject to Rossi's express written consent. Buyer shall be responsible for all costs incurred up to the time of cancellation or suspension.

### Contingencies

Rossi expressly reserves the right to cancel the order in whole or in part in the event that Rossi, in its sole discretion, determines that manufacturing the Goods has been rendered difficult or impossible due to unforeseen causes. In such cases Rossi shall not be liable to Buyer for any compensation relating to such cancellation or for subsequent delivery of the Goods.

### Limited Warranty

Subject to the limitations set forth, the products are warranted against defects in material and workmanship under normal use for intended purposes, and regular service and maintenance for a period of 3 years from the date of delivery of the products by the Seller. The 3 year warranty applies to products operating in two, eight hour shifts (two years, for operating in three, eight hour shifts). For the accessories purchased on the market (such as, by way of non-limiting example, couplings, baseplates, motors, the warranty shall have a one year warranty). The warranty does not cover parts that are subject to natural wear or deterioration (such as, by way of a non-limiting example, seals and bearings). No other compensation of any kind envisaged by the warranty, neither can there be any question of claims for damages of any kind, direct or indirect, (including third parties), even in respect of temporarily suspended use of the merchandise purchased. Examination of such defects and the causes thereof is to be carried out of one of the Seller's factories, by the Seller. Expenses relating to operations (such as, for example, labor, dismantling, reassembly, transport, board and lodging) by the Seller's personnel to outside locations for the purpose, are chargeable to the Buyer, even in case the right to repairs under warranty has been acknowledged. The Seller will be chargeable only for the costs of replaced parts and the time needed to replace them. The warranty ceases to be effective for products chosen (specifically, as a non-limiting example, in relation to: service factor, daily lifetime, radial loads, etc.) stored, installed (protection from bad weather, irradiation, pollution, lubricants) utilized or maintained in a negligent or improper manner, i.e. not in accordance to the Seller's instructions, or modified and/or repaired in any way whatsoever, or entirely or partially disassembled (see "Installation and Maintenance Instructions for gear reducers and gearmotors which can be downloaded from our website at www.rossi.com. The warranty also excludes damaged and/or defects and/or abnormalities deriving from external components (such as, by way of non-limiting example, couplings, pinions, pulleys, motor for gearmotors without motor, etc.) or their wrong assembly.

The Buyer's entitlement to the warranty mentioned shall be null and void in the case of non-performance of even just one of the contractual obligations assumed, including the conditions of payment.

Notice of any request for repairs under warranty is required to be given in writing by the Buyer to the Seller. Buyer shall not return products under warranty back



to the Seller until Buyer receives Seller's Return Material Authorization and Buyer follows the instructions set forth therein. For replaced or repaired parts and for these alone, the warranty period expires three months after the conclusions of the replacement or repair operation.

EXCEPT FOR THE WARRANTY SET FORTH IN THIS LIMITED WARRANTY SECTION, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

#### Claims

Claims must be made immediately following receipt of product within 30 days of receipt of product. We are not responsible for breakage, damage after the products are delivered to the transportation company. Consignee must make such claim directly to the transportation company. Before accepting goods, Buyer shall have the transportation company acknowledge on the freight bill any shortage or damage.

#### Indemnification; Limitation of Liability

Rossi agrees to indemnify, defend and hold harmless Buyer and its employees, officers, directors, shareholders, legal representatives, successors and assigns from and against any suit, loss, damage, injury, fine, penalty or expense (including reasonable attorneys' fees actually incurred) arising from Rossi's material breach of any term or provision of this Contract which remains uncured for a period of thirty (30) days after receiving notice of the material breach from Buyer. Any action arising out of this Contract must be commenced within one (1) year after the cause of action has accrued under applicable law. Rossi shall not be liable for any personal injury or property damage incurred in connection with the handling, transportation, storage, possession, sale or other use of the Goods by Buyer or any other person or party after delivery hereunder, unless such personal injury or property damage is due to the gross negligence or intentional or willful misconduct of Seller or its agents or representatives. Upon delivery of the Goods to Buyer hereunder, Buyer shall defend, hold harmless and indemnify Rossi and its parent company, affiliates and related companies, and its or their employees, officers, directors, shareholders, legal representatives, successors and assigns from and against all risks and liability whatsoever towards users and other third parties resulting from the handling, storage, possession, sale or other use of the Goods, except if caused by the gross negligence or intentional or willful misconduct by Rossi or its agents or representatives.

ROSSI'S TOTAL LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, STRICT LIABILITY, OTHER TORT OR OTHERWISE) SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE TOTAL AMOUNT PAID FOR GOODS PURCHASED HEREUNDER. IN NO EVENT SHALL ROSSI BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, DIRECT, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS CONTRACT REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

#### Termination

(a) Either party may terminate this Contract if the other party breaches any of the provisions of this Contract and fails to remedy such breach within thirty (30) days after delivery of written notice of the breach from the non-breaching party.

(b) Should either party (i) make a general assignment for the benefit of creditors; (ii) institute proceedings to be adjudicated as voluntarily bankrupt; (iii) consent to the filing of a petition of bankruptcy against it; (iv) be adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seek reorganization under any bankruptcy act; (vi) consent to the filing of a petition seeking such reorganization; or (vii) have a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of such party's property or providing for the liquidation of such party's property or business affairs; then, in any such event, the other party, at its option and without prior notice, may terminate this Contract effective immediately.

(c) Upon the termination of this Contract for any reason, (i) Rossi shall be responsible for the delivery of all Goods ordered by Buyer through the date of termination and (ii) Buyer shall be responsible for the payment of all Goods ordered through the date of termination, as well as all works in progress, custom items and labeling designed for Buyer.

#### Force Majeure

Neither party shall be liable for failure or delay in performance of its obligations under this Contract to the extent such failure or delay is caused by an act of God, act of a public enemy, war or national emergency, rebellion, insurrection, riot, epidemic, quarantine restriction, government order, law, or actions, fire, flood, explosion, storm, earthquake, interruption in the supply of electricity, power or energy, terrorist attack, labor dispute or disruption, or other event beyond the reasonable control of such party and without the fault of or negligence by such party (each, a "Force Majeure Event"). If a party's performance under this Contract is affected by a Force Majeure Event, such party shall give prompt written notice of such event to the other party, stating the date and extent of such suspension and the cause thereof (the "Force Majeure Notice"), and shall at all times use commercially reasonable efforts to mitigate the impact of the Force Majeure Event on its performance under this Contract; provided, that such party shall take measures to overcome the condition that are consistent in all material respects with the measures taken in connection with such party's business. The parties shall promptly confer, in good faith, on what action may be taken to minimize the impact, on both parties, of such condition. In the event of a Force Majeure Event that affects either or both parties' ability to perform under this Contract, the parties agree to cooperate in good faith to resume performance as soon as commercially possible to the extent commercially reasonable; provided, however, if the Force Majeure Event continues for three (3) months following the Force Majeure Notice and Rossi was the party providing the Force Majeure Notice, Rossi shall be entitled to terminate any open purchase orders between Rossi and the Buyer, and Rossi shall not be responsible for costs or damages.

#### Assignment

Buyer may not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Rossi. Rossi may assign any of its rights or delegate any of its obligations to any Affiliate or to any Person acquiring all or substantially all of Rossi's assets. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under this Contract.

For the purpose of this Section, "Affiliate" of any individual, partnership, corporation, trust, limited liability entity, unincorporated organization, association, or any other entity (collectively, "Person") means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

#### Governing Law

This Contract, including all related documents and exhibits, schedules, attachments and appendices attached to this Contract and thereto, and all matters arising out of or relating to this Contract, are governed by, and construed in accordance with, the laws of the State of Georgia, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Georgia. This Contract shall be deemed to have been made in Gwinnett County, Georgia. Wherever the term "Uniform Commercial Code" is used herein, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Georgia as of the date of this Contract. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

#### Arbitration

Any controversy or claim arising out of or relating to this Contract, or any alleged breach thereof, shall be fully and finally settled by arbitration in Atlanta, Georgia, administered by the American Arbitration Association under its Commercial Arbitration Rules, under its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

#### Variance of Conditions

If this offer is made in response to a written order from Buyer which contains terms and conditions additional to or different from the terms and conditions contained herein, then ROSSI'S ACCEPTANCE OF BUYER'S ORDER IS HEREBY EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT. IN THE EVENT OF ANY CONFLICT BETWEEN THIS CONTRACT AND THE TERMS AND CONDITIONS SET FORTH IN BUYER'S WRITTEN ORDER, THIS CONTRACT SHALL CONTROL.

#### Confidentiality

Each party acknowledges that all information and trade secrets relating to any of the other party's products and the Goods, including but not limited to, pricing, product specifications, product formula, packaging specifications, production process and process specifications, production volumes both current and forecasted, business and financial information, marketing and promotion plans,



any changes or improvements therein, including any cost savings measures, is the confidential and proprietary information of such other party ("Confidential Information"). Neither party will disclose any Confidential Information of the other party to any third party or use it for its own benefit or the benefit of a third party, and each party will take all commercially reasonable measures to protect the confidentiality of Confidential Information of the other party and prevent its disclosure to others.

Each party may disclose the Confidential Information of the disclosing party to its employees and agents who are directly involved in the material performance of this Contract, who have a need to know and who are obligated to honor the restrictions on disclosure and use of such Confidential Information set forth in this Contract (the persons to whom such disclosure is permissible being collectively known as "Representatives"). Each party agrees to be responsible for any breach of this Section by its Representatives. The parties will not disclose, without the prior written consent of the disclosing party, any of such disclosing party's Confidential Information that it has learned either during the course of this Contract or in discussions and proposals leading up to this Contract, except as may be required by law or government agency. The parties will not use the Confidential Information of a disclosing party for any purpose other than that for which it was disclosed.

All Confidential Information of Buyer and Rossi will remain the property of each respective party. Upon any termination or expiration of this Contract, each party will return to the other party the other party's original version of all Confidential Information in document form, including any electronic media version, and will confirm to such other party in writing that all such documents and other media have been so provided and that all copies thereof have been destroyed. The foregoing will not apply to any Confidential Information that is in the public domain, Confidential Information that a party can demonstrate was known prior to receipt from the other party or Confidential Information that was subsequently received from a third party without any obligation of confidentiality to the other party.

Each party's obligation with respect to the Confidential Information of a disclosing party will expire two (2) years after the termination or expiration of this Contract; provided, however, that each party's obligations with respect to the trade secrets of a disclosing party will remain in effect throughout the Term and at all times thereafter so long as such information remains a trade secret.

Notwithstanding any provision in this Contract to the contrary, if there is a conflict between the terms herein and an existing confidentiality agreement (or any similar agreement) executed by the parties that defines the non-disclosure obligations of the parties, then the terms of such confidentiality agreement shall control and are hereby incorporated by reference.

#### **Amendment; Waiver**

This Contract, any of the instruments referred to herein and any of the provisions hereof or thereof shall not be amended, modified or waived in any fashion except by an instrument in writing signed by the parties hereto. The waiver by a party of any breach of this Contract by another party shall not operate or be construed as the waiver of the same or another breach on a subsequent occasion, nor shall any delay in exercising any right, power or privilege hereunder constitute a waiver thereof.

#### **Severability**

If any provision under this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Contract.

#### **Entire Agreement**

All of the exhibits, schedules and attachments referred to in this Contract are incorporated herein by reference. In the event of any conflict between the terms of this Contract and any exhibit, the exhibit shall control the interpretation thereof. This Contract and the other written instruments specifically referred to herein embody the entire understanding of the parties and supersede in their entirety all prior communication, correspondence and instruments, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

#### **Miscellaneous**

Nothing contained in this Contract is intended to confer any rights or remedies upon third parties or shall be construed to create a relationship of joint venturers or partners. All notices required or given under this Contract must be in writing and shall be delivered to the other party by express overnight courier service or by certified mail, return receipt requested or by facsimile or email so long as confirmed after the fact by express overnight courier services or by certified mail, return receipt requested. Any party may change its address by giving written notice to the other party in accordance with the notice requirements specified above. Notice given in accordance with this paragraph shall be effective when actually delivered. No usage of trade, course of performance or course of dealing purporting to modify, vary, explain or supplement the terms of this Contract shall be binding upon the parties unless made in writing and signed by the party against whom enforcement is sought. The captions and headings contained in this Contract are for convenience and reference only and do not define, limit, extend or describe the scope or intent of any part of this Contract. The order form and all exhibits are part of this Contract and incorporated herein by reference. All references to days under this Contract shall mean calendar days unless otherwise specified. The language used in this Contract shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any party. The individuals signing below have the authority to bind their respective companies to the terms and conditions of this Contract without any further documentation or approvals. This Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. The parties agree that this Contract may be executed and delivered by facsimile or other electronic transmission.