



**World Headquarters: 500 S. Spencer Rd, Newton, Kansas 67114**  
Tel: (316) 284-2020 Fax: (316) 283-4975 www.buntingmagnetics.com

# Terms and Conditions of Sale

Rev. December 1, 2009

## **PURCHASE CONTRACT**

The Bunting® Magnetics Co. (Bunting) proposal and Pro-forma Invoice documents which accompany these Terms and Conditions of Sale constitute Bunting's offer to sell goods and/or services. As is expressly stated in the Proposal and Pro-forma Invoice documents, these Terms and Conditions of Sale supersede and take precedence over any and all inconsistent or differing Terms and Conditions of Purchase provided by the Buyer. As used herein, the Buyer constitutes both the Company named as purchaser and each and every individual named as guarantor upon a separate and accompanying Guarantee Agreement, if any. The Buyer agrees that any inconsistency shall be resolved in accordance with the provisions of these Terms and Conditions.

## **PRECEDENCE**

In all Bunting sale transactions, these Terms and Conditions of Sale will prevail over the Buyer's Terms and Conditions of Purchase, if any.

## **PRICE**

Prices quoted by Bunting upon the Proposal and Pro-forma Invoice documents are valid for a period of thirty (30) days after the date appearing on those documents. If the Buyer attempts to accept a proposal beyond that date, Bunting reserves the right to re-quote within (5) business days of receipt of the Buyer's attempted acceptance. In any event, the Buyer's acceptance outside of said 30 day time period shall constitute only a counter-offer rather than any binding contractual acceptance.

## **QUANTITY**

The Buyer agrees to accept delivery, and to pay, at the price quoted for the actual quantity delivered by Bunting, including overruns and under-runs, up to, but not exceeding ten (10%) per cent of the quantity ordered of each item on large quantity orders.

## **DELIVERY**

The date quoted by Bunting for shipment (delivery) is approximate and is not to be considered a guarantee of product availability on a specific date. However, Bunting strives to meet or beat quoted shipping dates.

## **TRANSPORTATION**

Bunting ships **Ex-works Newton/EGV Origin** using the Buyer's requested freight provider and using the Buyer's collect account number. If no collect account number is available, Bunting will add a handling fee to the cost of the total invoiced charges.

## **TAXES**

If the subject sale is subject to any excise, sales, occupation, or use taxes imposed by any governmental agency, such taxes shall be in addition to the quoted prices and are the sole responsibility of the Buyer.

## **ORDER ACCEPTANCE**

Bunting requires that acceptance by the Buyer be in the form of a written purchase order returned by the Buyer. Pricing and payment terms placed by the Buyer upon such Purchase Order shall refer to and be consistent with the corresponding Bunting quote. Freight collect orders must include a freight collect account number. Buyer's Purchase Orders must reflect the correct information before Bunting's shipment can be made.

## **ACKNOWLEDGEMENT OF PURCHASE ORDER**

Upon the Buyer's acceptance of a Bunting sales offer by means of a returned Buyer's Purchase Order, Bunting will mail to the Buyer a written acknowledgement of the Buyer's acceptance of the purchase offer.

## **PAYMENT**

Bunting's payment terms are Net 30 Days based solely upon the date of Bunting's payment invoice. Payment term exceptions shall be recognized only upon authorization in writing by Bunting. Bunting reserves the right to require different or stricter payment terms via written notification upon its sales proposal or quote. Buyer's acceptance by means of a return Purchase Order constitutes a grant unto Bunting of a purchase money security interest in all listed purchased products, the security interest being in the amount of all monies due or to become due from the Buyer under any and all debt obligations owed by the Buyer. From and after said 30<sup>th</sup> day, interest shall accrue upon all unpaid balance at the rate of 15% per annum. In the event that legal proceedings are required for the enforcement of payment, the Buyer shall additionally pay and be liable to pay all costs of litigation, including reasonable attorney's fees.

## **CONSIGNMENT/PRODUCT TRIAL**

In the event the Buyer requests a trial application of a standard Bunting product in order to assess the product's performance, the following shall apply: a) A designated Bunting manager must approve the product trial in writing prior to the product delivery; b) the Buyer must issue a Purchase

Order to Bunting for the sale price of the product and must sign a Bunting's consignment document; c) the Buyer must pay freight both ways (receive and return); and d) the consigned product(s) must be returned in 'new' condition within the required consignment period, or charges will be invoiced to return the product to new condition, or to compensate for the wear and tear or damage.

#### **NON-CONFORMING GOODS/SERVICES**

Bunting endeavors to provide high quality goods and services in conformity with the specifics of the Buyer's Purchase Order. In the event the Buyer claims that the goods or services supplied are not as ordered, the Buyer must notify Bunting within ten (10) business days of the receipt of the shipment or performance of the service. Where a claim is made by the Buyer that a product or materials do not conform to specifications, Bunting reserves the right to re-inspect the product or materials at the Buyer's plant before acting on the claim. In the event the Buyer's claim is sustained, Bunting may at its option, repair or replace the product or materials, or credit the Buyer on a pro-rata basis for any portion of materials rejected. Bunting shall not be liable at any time for any expenses or costs incurred, including incidental and/or consequential damages, incurred by the Buyer in the use of the rejected or defective materials or services. The Buyer understands and agrees that Bunting's liability for any and all consequential damages related to or arising out of Bunting's provision of goods and/or services shall be limited to the amount of purchase price paid,

#### **RETURNS**

Stock items returned for credit will be subject to a 30% restocking charge. Standard catalog items returned for credit will be subject to a 50% restocking charge. Custom manufactured items are not subject to return.

#### **CANCELLATIONS**

Cancellations of existing orders by the Buyer, or extensions of delivery dates, are subject to Bunting's consent and agreement, the specific terms and conditions of which shall be set forth in writing.

#### **BUYER'S WARRANTY RELATED TO CUSTOM MANUFACTURED GOODS**

In the event that Bunting manufactures a product for the Buyer in accordance with custom design specifications provided by the buyer, no manufacturer's or seller's warranty against patent infringement shall be given by Bunting to the Buyer in relation to the subject matter of the custom design specifications, and instead, the Buyer agrees that a warranty and indemnity obligation shall be extended by the Buyer to Bunting regarding such matter. In particular, the Buyer warrants and represents that the Buyer has sufficient right under U.S. patent law (or trade secret law as applicable) to manufacture, sell, and to cause others to manufacture and sell the custom product within the U.S., and the Buyer obliges itself to indemnify Bunting and hold it harmless from any and all damages from, and costs of, defense of colorably asserted claims.

#### **TOLERANCES**

All dimensions must be limited by a specified tolerance. When not specified by the Buyer and accepted by Bunting, it is understood that factory commercial tolerances will apply to all products produced by Bunting.

#### **BUYER SUPPLIED MATERIALS**

Bunting is not responsible for the Buyer's drawings, samples, models or tooling supplied for the purpose of this quotation, provided that upon Buyer's request for return within 30 days after quote, Bunting will attempt to effectuate the return.

#### **USE OF BUNTING PROPRIETARY DATA**

At no time and in no way are Bunting-supplied documents, descriptions, equipment or component prints, or price quotes to be used by the Buyer in any way detrimental to Bunting's interests. Specifically, Bunting-supplied documents or files (proprietary prints, pricing, etc.) are not to be incorporated into the Buyer's quote solicitation process and/or be included in the Buyer's discussions with Bunting competitors.

#### **REGULATORY COMPLIANCE**

Bunting makes no warranty or representation that the equipment it furnishes in response to a Buyer Purchase Order complies with any specific OSHA regulation, or with any local or state standard of a similar nature. Compliance with such standards or regulations shall be the sole responsibility of the Buyer, and Buyer's obligation of payment of purchase price shall in no way be affected by regulatory compliance issues.

#### **FORCE MAJEURE**

We assume no responsibility or liability for any loss or damage occurring by reason of any delay, or Bunting's inability to deliver, which is caused by: fire, strikes, accidents, embargoes, material shortages, common carrier delays, insurrection, riot, acts of civil and military authorities – or acts of God or from any other cause which is unavoidable or beyond our reasonable control. If delays from such causes should occur, our delivery time shall be correspondingly extended.

#### **GOVERNING LAW/SUBMISSION TO JURISDICTION**

Any contract arising out of the making and acceptance of a Bunting offer or quote shall be deemed to have been made in the State of Kansas, and shall be construed according to the laws of the State of Kansas. The Buyer stipulates that any resultant agreement is substantially performable by the parties and that jurisdiction exists solely within the state of Kansas.

#### **ENTIRE AGREEMENT**

The Buyer's purchase order, upon acknowledgment by Bunting, Bunting's Terms and Conditions of Sale, and the Bunting Product Warranty represent the entire agreement between Bunting and the Buyer.