

TERMS AND CONDITIONS OF SALE

ACCEPTANCE / ENTIRE AGREEMENT: All sales between Promand, hereafter referred to as the Seller and Buyer by quotation, purchase order, acknowledgment, sale agreement, shipment, or other performance shall be unqualified, unconditional, and subject to and expressly limited to the terms and conditions of these Terms and Conditions of Sale (hereafter "Agreement"). No agent, salesperson or other party is authorized to bind the Seller by any agreement, warranty, statement, promise or understanding not herein expressed. Any quotation, order acknowledgment or sales agreement, as applicable, unless otherwise stated, is for immediate acceptance by Buyer, subject to approval by the Sellers' home office, and is expressly conditioned upon Buyer's acceptance of all of the terms and conditions this Agreement. Any additional or different terms or conditions which may appear in any communication from Buyer are hereby expressly rejected and shall not be effective or binding, unless specifically agreed to in writing by the Seller and no such additional or different terms or conditions in any document submitted to the Seller by Buyer shall become part of the contract between Buyer and the Seller, unless such written acceptance by the Seller specifically recognizes and assents to their inclusion. Any objection by Buyer to the terms and conditions of this Agreement shall be ineffective unless the Seller is advised in writing thereof within two (2) days of the date of any quotation, order acknowledgment or sale agreement, as applicable. The Seller may, at any time, revoke this offer with or without cause. The following Terms and Conditions apply equally and with full force to products manufactured, remanufactured, repaired, serviced or sold by and through the Seller.

QUOTES, PRICE, PAYMENT, CREDIT:

1. Price quotes shall remain firm until the Expiration Date provided in the header of page 1 on the applicable quotation, but otherwise prices are subject to change without notice. Clerical errors are subject to correction.
2. Buyer shall pay for Goods according to the terms of payment specified on the face hereof or those terms specifically quoted to Buyer in writing. Products held for the Buyer shall be at the risk and expense of the Buyer unless otherwise agreed upon in writing. Buyer shall pay all costs of collection, including reasonable attorneys' fees.
3. If Buyer shall fail to fulfill the terms or payment or if the Seller at any time shall have any doubt as to Buyer's financial responsibility, the Seller, without liability to Buyer, may decline to make further shipments except against cash or satisfactory security, at its option.
4. If the Seller is prevented from revising prices or from continuing any price already in effect by any action of government or by compliance with any request of government, the Seller may cancel this Agreement, or any undelivered portion thereof, without liability to Buyer, upon written notice of such termination to Buyer.
5. The Seller retains and Buyer hereby grants to the Seller, a security interest in the Goods until payment in full has been made. In the event of default by Buyer under this Agreement, the Seller shall have all rights and remedies of a secured creditor. Buyer agrees to execute such financing statements and other documents as the Seller may request in order to perfect the Seller's security interest.
6. If the financial condition of Buyer is reasonably determined by Seller not to justify the terms of payment specified, Seller may demand full or partial payment in advance before proceeding with supplying the products, or satisfactory security or guarantees that invoices will be promptly paid when due, or, at its option, without prejudice to other lawful remedies, may defer delivery of the products or disable software associated with the products.
7. In the event of default by the Buyer under this agreement the Seller, may without prejudice to other lawful remedies withhold services, products, parts or disable software associated with the products.
8. Prices are ex-works unless quoted otherwise by the Seller.
9. (Buyer shall pay a late payment charge on all amounts not paid in full when due at the rate of one and one half percent (1.5%) per month or at the maximum legally permissible rate, whichever is lower.

SALES: All sales will be invoiced in accordance with the payment terms as most recently quoted by the Seller and accepted by the Buyer with the issuance of a Purchase Order.

QUANTITY PRICES: Prices for items quoted with a quantity greater than one are based on that full quantity being ordered. Prices for quantities less than quoted may be higher.

TAXES, DUTIES AND EXCISES: All taxes, duties and excises are to buyer's account unless otherwise stated in this quotation.

SHIPMENT AND INSURANCE: Buyer is responsible for shipping, packaging, and handling costs and insurance on freight unless otherwise stated in this quotation. All claims for breakage and damage whether concealed or obvious must be made to the carrier as soon as possible after receipt of shipment. The Seller will extend all possible cooperation to enable adjustment from the carrier. All item prices are exclusive of packing for shipment. Shipping, packaging and handling shall be quoted as a separate item when requested and invoiced accordingly. Customer arranged shipments shall require the Buyer to pay the Seller for packaging and handling.

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INTERNATIONAL TRADE: Prices quoted do not include any costs for such things as handling, export packaging, duties, tariffs, or any other fees associated with international trade unless specified in this quotation. All payments must be made in AUD or USD and in accordance with the agreed payment terms on the account as granted by the Seller.

DELIVERY: Date of shipment estimates are made in good faith. Shipping dates appearing on acknowledgments of orders or given to the purchaser (Buyer) in any other manner are approximate.

TITLE AND RISK OF LOSS: Title and risk of loss and damage to material purchased by Buyer under this Agreement shall vest in Buyer when the material has been delivered at the F.O.B. point to an agent of the Buyer, including a common carrier. The Seller has the option to select point of origin shipment, method of transportation and routing of shipment. In no event will the Seller be liable for any delay, loss or damage in transportation however occasioned.

CHANGES: Buyer is required to submit a Change Order for any desired changes, however minor they might be. Any change made in design or manufacture of equipment may result in an increase in price to cover additional costs and an extension of shipment date. The Change Order process is handled in the same manner as an original quotation and purchase order process.

CANCELLATION: The Buyer may cancel orders only upon payment of reasonable cancellation charges, which shall include expenses already incurred and commitments made by the Seller. Deposits are non-refundable. Any refund will be at the sole discretion of the Seller.

WARRANTY, REMEDIES AND LIMITATIONS: The Seller warrants its products against defects in materials and workmanship for a period of 18 months (1.5 years) from the date of shipment from our facility or 12 months (1 year) from the date of installation, whichever comes first, provided the equipment is properly installed and maintained, correctly lubricated, and operated under normal conditions with competent supervision. This warranty does not cover calibration or normal maintenance. The foregoing is the Seller's sole warranty with respect to its products. THIS DISCLAIMER AND WARRANTY AGREEMENT IS EXPRESSLY IN LIEU OF AND EXCLUDES ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES.

The foregoing warranty shall be void if the product has been damaged by accident, misuse, negligence, or use not in accordance with instructions furnished by the Seller, or if the product has been serviced or modified by an agent other than an authorized representative of the Seller. No claim for service or adjustment by others will be allowed except for work done with the written consent of the Seller.

The foregoing warranty is expressly limited to:

1. The repair, replacement or adjustment of Seller-supplied parts or products, which upon examination shall be found defective. Such items must have been returned, freight prepaid, to the factory or repaired, replaced or adjusted onsite by an authorized representative of the Seller. Transportation and daily living expenses incurred by an onsite authorized representative of the Seller are expressly not covered by the warranty. Repaired, replacement and adjusted items will be shipped, freight prepaid, to the customer. The warranty DOES NOT include express shipping.
2. At the Seller's discretion, the purchase price will be refunded once such items have been returned, freight prepaid, to the factory

Such remedy shall be buyer's sole and exclusive remedy. Buyer agrees that no other remedy shall be available to him and that THE SELLER SHALL NOT, IN ANY EVENT, BE LIABLE FOR INCIDENTAL DAMAGES OR FOR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, LOSS OF TIME, LOST SALES, INJURY TO PERSONAL PROPERTY, LIABILITY BUYER INCURS WITH RESPECT TO ANY OTHER PERSON, LOSS OF USE OF THE DYNAMOMETER, ITS ACCESSORIES OR ITS INSTRUMENTATION OR FOR ANY OTHER TYPE OR FORM OF CONSEQUENTIAL DAMAGE OR ECONOMIC LOSS.

The salespersons of the Seller are not authorized to make warranties about the Seller's products. the Seller's salespersons' ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES, shall not be relied upon by the buyer, and are not part of any contract for sale. All of the warranties of the Seller are embodied in this writing and NO OTHER WARRANTIES are given beyond those set forth herein.

Any action for breach of this contract for sale or any other action otherwise arising out of this contract must be commenced within one (1) year from the date the right, claim, demand or cause of action shall first occur, or be barred forever.

Any component claimed to be defective during the warranty period should be reported to the Seller for return authorization or replacement. Authorized returns should be directed to the Seller's facility.

Excluding equipment made for integrated systems supplied or made by the Seller, the Seller makes no warranty on the use of the equipment in combination with other products or in the practice of any process and if a claim, suit or action is based thereon, Buyer shall defend, indemnify and save the Seller harmless therefrom.

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LIMITATION OF LIABILITY: The Sellers' liability for defective or nonconforming products, whether based on breach of warranty negligent manufacture or product liability, is exclusively limited to repair or replacement, at the Sellers' election, of such products. The Seller assumes no risk and shall be subject to no liability for any damages or loss resulting from the specific use or application made of the Products. The Sellers' liability for any other claim, whether based on breach of contract, negligence or product liability, relating to the products shall not exceed the price paid by Buyer for such Products. In no event will the Seller be liable for any special, incidental or consequential damages, including loss of use, loss of profit, claims of third parties, or damages arising from bodily injury, or death, however caused, whether by the negligence of the Seller or otherwise.

EQUIPMENT MADE BY OTHERS: Any items supplied that are not manufactured by the Seller are covered by the original manufacturer's warranty and not by the Seller's warranty.

BUYER SUPPLIED PRODUCT: The Seller accepts Buyer provided equipment as a courtesy only. The Seller is not responsible for determining suitability of Buyer's equipment for a particular purpose. Repair or configuration of Buyer-supplied equipment will be charged at The Seller's normal rate.

CONFIDENTIAL RELATIONSHIP: All specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral or otherwise furnished by the Seller to Buyer under this Agreement or in contemplation of this Agreement shall be considered by Buyer to be confidential and proprietary.

DELAY / FORCE MAJEURE: Buyer acknowledges that delivery dates for Goods sold hereunder are based on the assumption that there will be no delay due to causes beyond the reasonable control of the Seller. The Seller shall not be held responsible for any delay or failure in performance of any part of this Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, pandemic, act of God, act or omission of carriers or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party or its subcontractors. In the event of such a condition, the Sellers' obligations shall be suspended for a reasonable time during which such conditions exist and Buyer shall not be relieved of its obligations to accept delivery.

CHOICE OF LAW / JURISDICTION: The construction, interpretation and performance of this Agreement and all transactions under it shall be governed by the laws of Australia.

ARBITRATION: Buyer and the Seller agree to meet and confer in good faith on all matters of common interest or all disputes relating to this Agreement. In the event a dispute is not resolved by the parties, Buyer and the Seller agree to submit such dispute to binding arbitration under the Commercial Rules of Australia.

RETURN / CREDIT POLICY: A 15% re-stocking fee is charged on any return. All returns must occur within 30 days of original shipment, be approved by Power Test LLC with an issued RMA number, be unopened and in like new condition. All return shipping charges are the responsibility of the Buyer. The Buyer will receive a credit on their account for the value of the returned goods less the 15% re-stocking fee.

REASONABLE CHARGES / BILLABLE EXPENSES: When applicable, Seller travel expenses that are billable to the Buyer will be in accordance with the then current Seller's Travel and Expense Policy. Contact a representative for a copy if desired or required. Itemized receipts provided upon request.