

THE HILLIARD CORPORATION
Elmira, New York 14901
TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS.** The word "Seller" as used herein shall mean The Hilliard Corporation. The word "Buyer" shall mean the party to whom the Hilliard product is sold. The term "Product" means filters, clutches, parts, and any other equipment sold by Seller.

2. **ACCEPTANCE.** All Contracts and orders are subject to final acceptance at the Home Office of the Seller at Elmira, New York.

The terms and conditions herein contained any additional "Supplement to Terms and Conditions of Sales" and terms and conditions stated in the Seller's quotation shall constitute the only agreement between the Seller and the Buyer. Any terms and conditions originating with the Buyer are hereby expressly rejected and shall not be or become a part of the contract between the Buyer and the Seller unless specifically accepted in writing by a duly authorized officer of the Seller. The Sellers, quotation is made subject to prior sales to third parties. In any event, said quotation will become void if not accepted by the Buyer within 30 days from the date of the offer.

Seller reserves the right to hold shipment of telephone or oral orders until written confirmation has been received from Buyer. Buyer assumes full responsibility for inaccurate or incomplete data supplied on special orders.

3. **PRICES.** All prices are subject to change without notice at any time and are based in part on the applicability of the Terms and Conditions set forth herein. Should the Buyer desire other or different terms, the prices may be adjusted accordingly.

Prices are F.O.B. point of shipment for equipment boxed, crated, or skidded for domestic shipment (export packing charges are extra). Prices are those in effect at the time the order is shipped.

Seller reserves the right to cancel Buyer's order in the event that (a) any government price regulation, schedule or ceiling prescribes a price lower than Seller's price as established in the order acknowledgment, or in any way **prevents Seller** from purchasing or otherwise acquiring any commodity or service necessary to the performance of the order, or in any way prevents Seller from adjusting its prices when the cost of any such commodity or service is increased and, (b) in the event any major change in economic conditions renders Seller's performance unprofitable.

4. **TAXES.** Prices do not include any sales, use, excise, property, or other such taxes that may be levied on the transaction by local, state, federal or foreign governments. Any taxes Seller is required to collect from Buyer will be added to the invoice or billed separately to the Buyer.

5. **TERMS OF PAYMENT - DOMESTIC** - unless otherwise specified in the Seller's quotation the terms of payment will be net cash 30 days from date of invoice, subject to credit approval by Seller's credit department. In cases where shipment of a completed product is delayed at request of Buyer, Seller reserves right to issue invoice for the product as of the date it becomes ready for shipment. Late charges at the rate of 1- 1 1/2% per month (18% annually) may be charged on past due accounts.

FOREIGN - unless otherwise specified in the quotation and upon Seller's acceptance of the order, the terms of payment shall be through an irrevocable letter of credit, all payments to be made in United States Dollars. Letter of Credit to be established through and confirmed by a New York bank and shall provide for payment against Seller's sight draft accompanied by a commercial invoice and Buyer's forwarding agent's receipt acknowledging delivery of equipment to a United States port and by such other documents, if any, as may be required by the governments involved.

6. **PRODUCTION ESTIMATES.** Any projected production figures and performance data are estimates based on Seller's understanding of the machineability of material, amount of material to be removed, accuracy desired, available facilities, operator skill, and other specified factors affecting production, and do not constitute a guarantee of production.

7. **DELIVERY, FORCE MAJEURE, AND NOTICE.** The quoted delivery dates are approximate, and a more specific date will be established upon the Seller's acceptance of Buyer's order. Delivery dates are subject to revision at any time due to causes beyond the Seller's control. These would include, but not be limited to, delay in receipt of purchaser's signed order or complete specifications, fire, shortages of material, transportation delays, strikes, failure of suppliers or subcontractors to meet delivery schedules, war, riots, and any action by or priority system imposed by authority of any government agency or other events causing impracticability of production or delivery. Any delay or non-delivery caused by the foregoing shall not result in liability for the Seller.

Delivery to a common carrier or licensed trucker shall constitute tender of delivery to the Buyer and all risk of loss or damage in transit shall be borne by the Buyer. In no event shall the Seller be held liable for damages or contingent expenses caused by delays in delivery.

Seller reserves the right to stoppage in transit and to repossess equipment notwithstanding delivery to the carrier, until payment in full has been made to Seller and as further security for payment, Buyer hereby grants a security interest in all products until paid for in full to Seller with all of the rights and remedies of a secured party under the Uniform Commercial Code.

No claim relating to quantity, condition, loss, or damage to the goods made by Buyer will be accepted by Seller after thirty (30) days after date of shipment.

8. **WARRANTY, DISCLAIMER, LIMITATION OF LIABILITY AND REMEDY.** **Seller warrants to the original Buyer that products manufactured by the Seller and sold directly by Seller or through an authorized representative will be free from defects which are not commercially acceptable in material and workmanship for a period of 12 months from date of shipment when used by the original Buyer within limits of rated and normal usage.**

The terms of this warranty do not in any way extend to any product or part thereof which has a life under normal usage inherently shorter than the one-year period indicated above or which was not manufactured by the Seller. Seller's obligation and liability with respect to components not manufactured by the Seller shall be limited to the extent of express warranties received by Seller from such component manufacturers.

This warranty is void and of no effect and Seller shall not be liable for any breach of warranty, express or implied, if the equipment or any part or component thereof shall have been repaired or altered by person other than the Seller unless expressly authorized in writing by Seller, or if the equipment is operated or installed contrary to Seller's instruction or subjected to misuse, negligence or accident.

Written notice of any claimed defect within the warranty period must be presented to the Seller immediately upon Buyer's discovery of the defect.

Seller shall have the option to inspect any parts claimed to be defective either at the Seller's place of business or at the Buyer's place of manufacture while the product is in the claimed defective condition. No return shall be accepted unless Seller has had an opportunity to inspect the equipment or has expressly authorized the return. Operation of the product must be suspended until written clearance is issued for continued operation provided that Seller upon receipt of written notice of a claimed defect will proceed without unreasonable delay to remedy any defect coming within the warranty which is found to exist. During the warranty period, parts found to be defective by Seller's inspection will be furnished free of charge, shipment F.O.B. Point of Origin.

THERE ARE NO OTHER WARRANTIES THAT EXTEND BEYOND THE WARRANTY HEREIN CONTAINED. THE WARRANTY STATED HEREIN IS IN LIEU OF ALL. OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITIES ON SELLER'S PART. No statement, oral or written, inconsistent with this warranty is binding on the Seller. No agent, employee, or representative of the Seller, other than an officer, duly authorized, has any authority to bind the Seller to any confirmation, representation or warranty concerning the Seller's product beyond that specifically included in the warranty contained herein. **UNDER NO CIRCUMSTANCES WILL THE SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGE OR EXPENSE OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURIES AND LOSS OF PROFITS, ARISING IN CONNECTION WITH ANY CONTRACT OR WITH THE USE, ABUSE, UNSAFE USE, OR INABILITY TO USE SELLER'S PRODUCTS. Seller's maximum liability shall not exceed, and Buyer's remedy is limited to either (a) Repair or replacement of the defective part or product, or at the Seller's option, (b) Return of the product and refund of the purchase price; and such remedy shall be the Buyer's entire and exclusive remedy.**

The sole purpose of the stipulated exclusive remedy shall be to provide the Buyer with free repair or replacement of defective products, or refund of the purchase price, in the manner provided herein. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective products, or to refund the purchase price, in the prescribed manner.

9. REPAIRS AND SERVICE - NON-WARRANTY. The cost of all servicing of equipment not provided for in preceding sections may be charged for by the Seller at a per diem rate per man per workday plus transportation and living expenses.

10. CANCELLATION. Upon written request from Buyer to cancel all or part of an order, the Seller will stop all work as promptly as possible. Any and all work that is complete on date of notification in writing to stop work or cancel shall be invoiced and paid in full. For work that is not completed, a cancellation charge will be rendered in lieu of liquidated damages. Cancellation charge will be computed on the basis of the Seller's full cost plus 15% (for all engineering work, all work in process and raw materials, all supplies and all commitments made by the Seller in connection with the order,) less such allowances as the Seller may be in position to make for any standard components and for the balance of the material as scrap. Buyer shall promptly instruct Seller as to the disposition of the product and the Seller, if instructed, shall hold the product for Buyer's account. All costs of storage, insurance handling, boxing or other costs in connection therewith shall be borne by the Buyer.

11. PROPERTY RIGHTS. Seller retains for itself any and all property rights in and to all designs, engineering details and other data pertaining to any equipment designed in connection herewith and to all rights of discovery, invention or patent rights arising out of work done for Buyer. The Buyer expressly agrees that it will not assert any property rights therein, except the rights for itself and subsequent owners to use the equipment. Any prints, brochures, drawings, or other information furnished to the Buyer by the Seller are intended solely for the confidential use by the Buyer and shall remain the property of the Seller and shall not be used to the detriment of the Seller's competitive position.

12. PATENT INDEMNITY. If any product furnished by the Seller is rightfully claimed to infringe any United States patent issued at the time Buyer's order is accepted. Seller agrees at its option: (1) to procure for Buyer the right to use the product, or (2) to modify or replace the product so as to avoid infringement, or (3) to accept redelivery of the product and reimburse Buyer for the purchase price and any transportation expenses incurred. by Buyer. Should any litigation be instituted against Buyer based on a claim that any product in the condition received from Seller infringes any United States patent. Seller will undertake the defense thereof in Buyer's behalf and pay any damages and costs awarded therein against Buyer, provided Seller is given prompt written notice and is furnished with copies of all demands, process and pleadings, and Buyer cooperates fully in giving Seller authority, information, and assistance at Seller's expense for such defense, as well as control over the defense and any negotiations with regard to settlement.

THE FOREGOING REPRESENTS SELLER'S ENTIRE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CHARGE OF PATENT INFRINGEMENT. SELLER SHALL HAVE NO RESPONSIBILITY INSOFAR AS ANY PRODUCT IS MODIFIED BY BUYER OR IS MADE OR MODIFIED BY SELLER IN ACCORDANCE WITH BUYER'S ORDER AND BUYER SHALL INDEMNIFY SELLER IN ACCORDANCE WITH THE INDEMNITY IN PARAGRAPH 12 ABOVE FOR ANY CLAIM WHICH ARISES OUT OF SELLER'S COMPLIANCE WITH BUYER'S SPECIFICATIONS. SELLER SHALL ALSO HAVE NO RESPONSIBILITY WITH REGARD TO ANY SETTLEMENT, ADMISSION OR PROMISE MADE BY BUYER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, NOR SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS, CLAIMED TO HAVE BEEN SUSTAINED BY BUYER OR ANY USER OF THE PRODUCT ARISING OUT OF ANY CLAIM OF INFRINGEMENT.

Seller is entitled to indemnity from certain of its suppliers and the rights and options vested in Seller shall extend to such suppliers and may be exercised by them.

13. RESERVATION OF RIGHTS. Seller reserves the right to make subsequent improvements and changes in design in its products without imposing any obligation to make such changes or improvements upon products sold to the Buyer.

14. LIMITATION OF ACTION. Any action for breach of Seller's warranty must commence within twelve (12) months from the time the cause of action accrues unless the period for action shall be extended by Seller in writing. In the interpretation of this limitation of action for breach of Seller's warranty it is expressly agreed that there are no warranties of future performance of the equipment that would extend the period of limitation herein contained for bringing an action.

IT IS EXPRESSLY UNDERSTOOD THAT ANY EFFORT BY BUYER, SELLER OR AGENTS TO REPAIR ANY PRODUCT SHALL NOT EXTEND THE TWELVE (12) MONTH PERIOD OF LIMITATION UNLESS SELLER AGREES IN WRITING THE WARRANTY SET FORTH IN PARAGRAPH "8" APPLIES TO REPLACEMENT PARTS AS WELL AS EQUIPMENT ORIGINALLY SOLD, AND NOTHING EXCEPT SELLER'S WRITTEN CONSENT SHALL EXTEND ITS OBLIGATION IN WARRANTY MORE THAN TWELVE (12) MONTHS BEYOND SHIPMENT DATE OF THE ORIGINAL PRODUCT.

15. INSTALLATION COSTS. All costs incident to installation or erection or both of any product shall be borne solely by the Buyer.

16. EXPORT CONTROL: Buyer acknowledges that the goods sold by Seller are subject to export control laws and regulations of the United States of America. Seller will have no obligation to sell or delivery goods until Buyer shall have obtained all required export authorizations, if required. Buyer agrees that it will not use, distribute, transfer, or transmit the goods except in compliance with United States laws and regulations and the laws and regulations of any other jurisdiction.

17. INTERPRETATION. Any contract resulting from Seller's quotation shall be governed by and construed in accordance with the laws of the State of New York excluding any conflict of laws principles.

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