

**FUJIKURA COMPOSITES Inc.**

**Pneumatic Control Equipment Division Terms and conditions of sale**

**International sales**

All sales of products (the "Products") by FUJIKURA COMPOSITES Inc. (hereinafter referred to as "FUJIKURA COMPOSITES") to a buyer anywhere in the world (each a "Buyer" and collectively the "Buyers") are subject to the following terms and conditions (the "Terms"), which form an integral part of a contract for the sale of Products by FUJIKURA COMPOSITES. Any modification hereto must be in writing signed by FUJIKURA COMPOSITES. Unless otherwise agreed to in writing by FUJIKURA COMPOSITES, the Terms and conditions provided for herein shall prevail in the event of any conflict between these Terms and any differing Terms submitted by the Buyer in connection with any order.

**1. ORDERS AND DELIVERIES**

1.1. All orders are subject to written acceptance by FUJIKURA COMPOSITES.

1.2. Delivery schedules (even if accepted or agreed to in writing by FUJIKURA COMPOSITES) are tentative and based upon best information available at the time of quotation or acceptance of an order. All reasonable steps to meet delivery schedules will be taken by FUJIKURA COMPOSITES.

1.3. The method and route of shipment shall be as mutually agreed in each accepted purchase order. All costs of transportation, including, without limitation, taxes and standard insurance, shall be assessed by Seller and borne by Buyer unless otherwise agreed to in writing by Seller. Unless expressly stated and agreed to in writing by Seller, quoted prices do not include shipping and handling charges, sales, use, excise or similar taxes or duties. Buyer shall pay these taxes directly if the law permits or shall reimburse Seller if Seller is required to collect and pay them.

1.4. Partial deliveries are allowed. Buyer shall bear all risk of loss to the Products while in transit. Title shall pass to the Buyer upon payment in full.

1.5. The Buyer shall arrange for the acceptance of the Products in accordance with the agreed upon delivery schedule. In the event that the Buyer fails to so accept the Products, FUJIKURA COMPOSITES may, without further notice, arrange for storage. The Buyer shall be liable for all storage charges.

1.6. Any claim arising out of or in connection with the condition or quality or quantity of the Products shall be made in writing or Email to FUJIKURA COMPOSITES in Tokyo, Japan, within ten (10) days after the

delivery of said Products. A failure to present such claim within this period shall constitute a waiver of such claim.

1.7. If Buyer wrongfully rejects or revokes acceptance of the Products or fails to make payment due on or before delivery, or repudiates all or part of the contract for any Products shipped, FUJIKURA COMPOSITES may withhold delivery, or stop delivery of Products or cancel the contract and/or sue for damages at FUJIKURA COMPOSITES 's exclusive option. If Buyer causes a delay in the delivery of Products or any part thereof, FUJIKURA COMPOSITES, at its exclusive option, may extend the period of delivery by a period reasonable in consideration of the circumstances, and, if the delay causes FUJIKURA COMPOSITES substantial inconvenience, FUJIKURA COMPOSITES has the right to cancel the delivery of the Products whose delivery is delayed. FUJIKURA COMPOSITES reserves the right to recoup any expenses incurred or damages suffered as a result of such delays.

## 2. PRICES AND QUOTATIONS

2.1. Prices are subject to change without notice, but any such changes shall not affect accepted orders scheduled for shipment within 30 days from the date the order is entered. Prices of Products scheduled for shipment after that period shall be those as published and in effect at the time of shipment. However, Buyer may, by written notice within 5 days of receipt of the information on price increases, elect to cancel the order for said Products.

2.2. Price quotations are firm for 30 days.

## 3. PAYMENT

3.1. 100% payment in advance before the shipment for the other customers unless otherwise specified by Seller.

3.2. FUJIKURA COMPOSITES may charge interest from the due date of payment at the rate of 1.5 % per month, or at the maximum lesser rate allowed by law. In the event of collection of the amount due by an attorney, FUJIKURA COMPOSITES shall be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees which the parties agree are twenty percent (20%) of the amount of the non-payment. All further rights and remedies are expressly reserved.

## 4. RETURN POLICY

4.1 Returns for credit are not allowed without FUJIKURA COMPOSITES Inc.'s prior written consent. Only unused standard Products in original packaging and suitable for resale will be considered for credit, provided that such Products are received within 60 days of the original invoice date. Special order Products (including but not limited to non-stocked items, specifically designed Products, non-standard length cylinders, special assemblies and valve manifolds, control systems, and electronic Products) are not returnable for credit.

4.2 Credit will be based on price at the time of original invoice. All returns will be assessed a 30% restocking fee, however FUJIKURA COMPOSITES Inc reserves the authority to adjust to a higher restock percentages if needed due to various concerns, such as higher than normal inventory levels, discontinued series, or weak invoice history.

4.3 All return shipping charges must be prepaid by the Buyer. Product not accepted for credit (such as used or damaged products, or products with missing accessories or packaging materials) will be returned freight collect to the Buyer.

## 5. ORDER CANCELLATIONS

5.1 Except as otherwise expressly provided in the Seller's order acknowledgment, the Order shall be cancelled only by mutual written consent of the parties. Notice is hereby given that Seller shall not consent to cancellation if Buyer has bound itself to purchase the Goods.

5.2 Order cancellations by Buyer are subject to a reasonable charge, to be determined by and at the sole discretion of FUJIKURA COMPOSITES. Orders for Special order Products (as defined under section "Return Policy") may not be cancelled. A cancellation charge of the higher of 10% of the purchase price invoiced for such Products or FUJIKURA COMPOSITES's documented costs and expenses resulting from such cancellation will be applied to any order cancellation.

5.3 If Buyer is in default by failure to pay any previous invoice within credit terms at the expected date of shipment of the Goods or any part thereof, or if Seller has received any adverse credit information about Buyer, Seller may delay shipment and/or cancel the unshipped balance of the Goods without liability. In the event of U.S. or foreign government intervention, trade restrictions, and/or quotas, which may delay or prevent delivery of the Goods or any part thereof, Seller, at Seller's option, may cancel the unshipped balance of the Goods without liability. In the event any of the Goods shall become subject to any governmental fees or duties not presently in effect or to any increase in any existing fee or duty, including any antidumping duty or countervailing duty, Seller shall have the right to cancel the unshipped balance

of the Goods without liability.

## 6. WARRANTY

6.1. FUJIKURA COMPOSITES warrants to Buyer that the Products will be free of defects in material and workmanship appearing within 12 months from the date of shipment provided the Products are used for the purpose intended and are maintained, handled, serviced and operated in accordance with the written instructions and manuals supplied by FUJIKURA COMPOSITES or the manufacturer of the Products.

6.2. If a warranty defect arises, FUJIKURA COMPOSITES will, at its option, repair or replace the defective Product or refund the purchase price thereof. Such repair, replacement or refund shall be the sole liability of FUJIKURA COMPOSITES and the sole remedy of Buyer with respect to the defective Product. FUJIKURA COMPOSITES will not be liable to remove defective parts or material, or install replacement parts or material, or to pay for the same. In no event shall any warranty claims be made more than twelve (12) months after delivery of the purchased Products.

6.3. FUJIKURA COMPOSITES shall have no responsibility to repair, replace or issue refunds for Products damaged as a result of (a) inadequate installation, handling, operation or maintenance of Products (including without limitation, the installation, handling, operation or maintenance of Products contrary to written instructions and/or recommendations of FUJIKURA COMPOSITES), or (b) acts of Buyer or third parties, acts of God or Nature, modification, misapplication, abuse, or other similar events.

6.4. This warranty is provided in lieu of all other express or implied warranties; and FUJIKURA COMPOSITES specifically disclaims any and all implied warranties of merchantability or fitness for a particular purpose. No agent, distributor or employee of FUJIKURA COMPOSITES has authority to extend the scope of this warranty or make any other representation, promise or warranty with respect to the Products.

## 7. LIMITATION OF LIABILITY

7.1. In no event shall FUJIKURA COMPOSITES be liable for any indirect, special, incidental, consequential, punitive damages of any kind, or damages caused by delay in performance, including but not limited to lost profits or revenue, cost of substitutes, arising from or in any way connected to this agreement or order, whether for breach of warranty or other breach of contract, negligence or other tort. FUJIKURA COMPOSITES's maximum liability for any claims arising from or in any way connected to this agreement or order, whether in contract or tort or otherwise, shall not exceed the invoiced purchase price of the

product(s) giving rise to the claim.

7.2. It is agreed and acknowledged that the provisions of these Terms allocate the risks between FUJIKURA COMPOSITES and the Buyer in a fair and equitable manner, FUJIKURA COMPOSITES's pricing reflects this allocation of risk, and but for this allocation and limitation of liability, FUJIKURA COMPOSITES would not have agreed to sell the Products to Buyer.

7.3. In jurisdictions that limit the scope of, or preclude limitations or exclusions of, remedies or damages or of liability such as liability for gross negligence or willful misconduct or do not allow implied warranties to be excluded, the limitation or exclusion of warranties, remedies, damages or liability set forth herein are intended to apply to the maximum extent permitted by applicable law.

## 8. INDEMNIFICATION

8.1. Subject to the limitations set forth in these Terms, Buyer agrees to diligently defend, and hold harmless and indemnify, FUJIKURA COMPOSITES and its directors, officers, employees, shareholders, affiliates, agents and representatives from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including, without limitation, attorney's fees and costs, expert's fees and costs, and court costs, (the "Losses") arising from any third party claim (i) due to any use of the Products of any nature, except to the extent such Losses have been incurred as a direct result of a breach of FUJIKURA COMPOSITES's warranty, FUJIKURA COMPOSITES's willful and knowing infringement of the intellectual property rights of any third party, or FUJIKURA COMPOSITES's gross negligence or willful misconduct, or (ii) arising out of any breach of any of Buyer's representations or covenants or other Terms contained in these Terms or any contract in which these Terms are incorporated or to which these Terms are attached or made part of, or (iii) arising out of the improper use, storage, handling, transportation, maintenance, modification or alteration of Products by or on behalf of Buyer or any third party; or (iv) arising out of a design or specification which is provided by or on behalf of Buyer.

8.2. Subject to the limitations set forth in these Terms, FUJIKURA COMPOSITES agrees to diligently defend, and hold harmless and indemnify, Buyer and its directors, officers, employees, shareholders, affiliates, agents and representatives from and against any and all Losses arising directly or indirectly out of (i) FUJIKURA COMPOSITES's strict liability, negligence or willful misconduct with respect to any product liability claims, or (ii) any breach or misrepresentation of any of FUJIKURA COMPOSITES's representations or covenants or other terms contained in these Terms or any contract in which these Terms are incorporated or to which these Terms are attached or made part of.

8.3. Each indemnitee shall notify the indemnitor in writing within 10 days of the receipt of any claim, suit or proceeding, including any incidents involving personal injury or damage to property. The indemnitee shall cooperate with the indemnitor with regard to the defense of any suit or threatened suit. In the event of a claim involving an accident or safety issue, the indemnitor shall make available all statements, reports and tests concerning the incident. The indemnitor may assume control of the defense of any such claim, proceeding or suit and shall have the authority to settle or otherwise dispose of any such suit or threatened suit, and to appeal any adverse judgment which may be entered, except that the indemnitor shall obtain the indemnitee's prior written consent to any settlement.

## 9. PROPRIETARY RIGHTS

All inventions (whether patented or not), methods, processes, know-how, layouts, models, designs, sketches, drawings, blueprints, patterns, trade secrets, copyrights, mask works, trade names, registered and unregistered trademarks and service marks, proprietary materials or other intellectual property and all improvements or modifications relating to any of the foregoing, incorporated into or in any manner associated with or attached to the Products or otherwise provided to Buyer (the "FUJIKURA COMPOSITES Intellectual Property") are and shall at all times remain the sole property of FUJIKURA COMPOSITES or its Licensors. Buyer agrees not to (a) modify, translate, decompile, reverse engineer, copy or duplicate the FUJIKURA COMPOSITES Intellectual Property, nor to remanufacture or have remanufactured any products which incorporate the FUJIKURA COMPOSITES Intellectual Property, (b) to use any of FUJIKURA COMPOSITES's trademarks, service marks or trade names in any manner without the prior written permission of FUJIKURA COMPOSITES, or (c) to infringe, or permit a third party to infringe, any such FUJIKURA COMPOSITES Intellectual Property or to adapt the Products in any way or to create a derivative work of any of the FUJIKURA COMPOSITES Intellectual Property, except as may be authorized in writing by FUJIKURA COMPOSITES. Any act or omission of Buyer contrary to the provisions of this Section 12 shall be a material breach of these Terms.

## 10. FORCE MAJEURE

10.1. FUJIKURA COMPOSITES shall not be liable for delays in performing contractual obligations due, in whole or in part, to any contingency beyond its reasonable control, including acts of God, fires, accidents, strikes, labor disputes, floods, wars, terrorism, sabotage, or governmental laws, ordinances, rules or regulations or any other events, occurrences or conditions beyond FUJIKURA COMPOSITES's control.

10.2. If Buyer fails to accept delivery of any Products due to reasons beyond FUJIKURA COMPOSITES's control, Buyer shall nonetheless pay the purchase price for the Products to FUJIKURA COMPOSITES.

## 11. APPLICABLE LAW AND JURISDICTION

11.1. These Terms and any contracts and the performance thereof shall be governed by the laws of the State of Illinois without giving effect to the principles of conflicts of law thereof or the UN Convention on Contracts for the International Sale of Goods of 1980.

11.2. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts for Illinois, for the adjudication of any dispute hereunder or in connection with any transaction contemplated or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

## 12. NO ASSIGNMENT

Buyer may not assign its orders or any contract in which these Terms are incorporated or to which these Terms are attached or made part of, or any right or interest herein or therein, or any other obligation arising hereunder or thereunder without the prior written consent of FUJIKURA COMPOSITES.

## 13. SEVERABILITY

If any provision contained in these Terms is held by final judgment of a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of these Terms, and the remainder of these Terms shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in these Terms, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under these Terms by one party to the other, the remaining provisions of these Terms shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

#### 14. MISCELLANEOUS

14.1. In the event of a violation or threatened violation of FUJIKURA COMPOSITES's proprietary rights, FUJIKURA COMPOSITES shall have the right, in addition to such other remedies as may be available pursuant to law or these Terms, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that FUJIKURA COMPOSITES would suffer irreparable harm.

14.2. The waiver by FUJIKURA COMPOSITES of any breach or violation of these Terms by Buyer shall not be construed as a waiver of any other existing or future breach or breaches by Buyer.

14.3. The parties hereto are independent contractors and nothing in these Terms will be construed as creating a joint venture, partnership, employment or agency relationship between the parties.

14.4. These Terms shall apply to all sales of Products to Buyer and shall survive the termination or cancellation of any other agreements, including but not limited to development agreements, service agreements or supply agreements, between FUJIKURA COMPOSITES and Buyer.

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