

## **UMBILICALS INTERNATIONAL INC. TERMS AND CONDITIONS OF SALE**

**UMBILICALS INTERNATIONAL INC. ("SELLER") ACCEPTS YOUR ORDER ON THE EXPRESS CONDITION THAT YOU ASSENT TO THE TERMS AND CONDITIONS BELOW (THE "CONTRACT"), AND NO OTHERS. YOUR ACCEPTANCE AND RECEIPT OF SELLER'S GOODS OR SERVICES SHALL CONSTITUTE YOUR ASSENT TO THE CONTRACT. IF YOU DESIRE DIFFERENT OR ADDITIONAL TERMS, PLEASE MAKE THEM THE SUBJECT OF A SEPARATE LETTER TO SELLER. SELLER SHALL NOT BE BOUND TO YOUR DIFFERENT OR ADDITIONAL TERMS UNLESS SELLER ACCEPTS SUCH TERMS IN A SIGNED WRITING.**

### **1. Prices:**

Unless otherwise agreed in writing, all prices and charges specified herein are based on U.S. dollars, FOB origin and are effective for: (a) the time period set forth in Seller's written quotation for the goods; or thirty (30) days from the date of the quotation. Transportation shall be by common carrier, at Buyer's risk and expense, with the transportation, insurance, and related charges added to the quoted price. Should the delivery date be postponed by Buyer, Seller shall have the right to adjust the price of the undelivered goods to Seller's price at the time of shipment.

### **2. Taxes:**

Any sales, use, excise, or manufacturer's tax which may be imposed upon the sale or use of the goods or any property tax levied after readiness to ship or any excise tax license or similar fee required under this transaction shall be in addition to the quoted prices and paid by Buyer. If Buyer is exempt from any taxes, Buyer shall furnish to Seller an appropriate tax exemption certificate in a form acceptable to the taxing authority.

### **3. Payment:**

(a) Unless otherwise agreed by Seller's Credit Department in writing, payment terms for standard or stock products are net thirty (30) days from date of invoice subject to account status. Custom-built or special products require a minimum 30% down payment with order. A service charge of 1.5% per month, not to exceed the maximum rate allowed by law, shall apply to the portion of Buyer's outstanding balance which is not paid when due. If legal action is taken by Seller, Buyer shall be liable for Seller's reasonable attorney fees, plus other costs of such action.  
(b) Unless otherwise agreed in writing, payment on export orders shall be made by irrevocable confirmed letter of credit payable in U.S. dollars against Seller's invoice and standard shipping documents. Such letter of credit shall be in amount equal to the full purchase price of the goods and shall be established in a bank acceptable to Seller.

### **4. Delivery, Risk of Loss, Shipment, and Acceptance:**

(a) Delivery and performance dates specified herein or otherwise communicated to Buyer are approximate only and are based on conditions at the time Seller accepts Buyer's purchase order, unless otherwise agreed in writing delivery estimates shall not be considered contractual obligations.  
(b) Delivery shall be complete upon transfer of possession to common carrier, FOB origin or FCA factory, as the case may be, whereupon title and all risk of loss, damage or destruction to the goods shall pass to Buyer. Full title to the goods remains with Seller until payment in full has been received.  
(c) In the absence of specific instructions by Buyer, the carrier will be selected by Seller. In no event shall Seller be liable for any delay in delivery by the carrier, nor shall the carrier be deemed an agent of Seller.  
(d) Seller reserves the right to make partial shipments and to submit invoices for partial shipments. All cable, hose and umbilical sales, required in specified continuous lengths are subject to a manufacturing and measuring tolerance of +/- 10%. Seller also reserves the right to ship overages of weight, length, size and/or quantity [not to exceed five percent 5%] or as quoted, unless Buyer advises Seller in writing not to ship quantity variances prior to or at the time of Buyer's order.  
(e) Goods not expressly rejected in writing delivered to Seller within fifteen (15) days of delivery shall be deemed to have been accepted.

### **5. Reels:**

Charges for standard protective packaging and wrapping are either included in the price of goods or separately itemized. Buyer has no right to a credit or refund if non-returnable reels, protective wrapping, or other packaging materials are returned.

### **6. Changes and Cancellation:**

Orders accepted by Seller are not subject to change or cancellation by Buyer after materials have been ordered or manufacturing commences, except with Seller's written consent and upon payment of an appropriate charge to cover the cost or loss incurred by Seller. Unless otherwise agreed in writing, such charge shall not be less than fifteen percent (15%) of the price of the goods subject to the change or cancellation.

### **7. Warranty:**

(a) Seller warrants that on the date of shipment all goods manufactured by Seller shall be free from defects in material and workmanship under normal use and service.  
(b) No warranty extended by Seller shall apply to:

- any goods which have been modified or altered by persons other than Seller;
- any goods subjected to any misuse, neglect, improper storage or handling, installation or accidental damage; or
- any goods manufactured by a third party.

Seller's exclusive obligation under this warranty is, at Seller's option, to repair the defective goods, to supply replacement goods free of charge (FOB origin or FCA factory, appropriately), to refund to Buyer the purchase price paid for the defective goods, or to grant credit for the value of

any goods found to be defective under this warranty in installment sales. Seller shall not reimburse or make any allowance to Buyer for any labor charges incurred by Buyer for replacement or repair of any goods unless such charges are authorized in advance by Seller.

(c) This warranty is made on the condition that Buyer gives Seller immediate written notice of any defect (notice must be delivered to Seller within one (1) year from the date of shipment), that Buyer gives Seller access to the goods and Buyer's relevant records and data, and that Seller's inspection reveals that Buyer's claim is valid under the terms of this warranty. No returns will be accepted by Seller unless accompanied by Seller's Return Material Authorization.

(d) With respect to third party goods, Seller's only warranty to Buyer is that such goods are free of any rightful claims of their manufacturer. To the extent any warranties extended to Seller by their manufacturer are transferable, Seller shall transfer such warranties to Buyer. THIS WARRANTY APPLIES TO THE GOODS ONLY AND NOT TO ANY COMBINATION OR ASSEMBLY OF THE GOODS OR ANY SERVICES OF SELLER. SELLER MAKES NO WARRANTY OTHER THAN THE WARRANTY SET FORTH HEREIN. SUCH WARRANTY 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.

#### **8. Limitation of Liability:**

Neither Seller, nor its suppliers, shall be liable, whether in contract, warranty, failure of a remedy to achieve its intended or essential purposes, tort (including negligence), strict liability, indemnity or any other legal theory, for loss of use, revenue or profit, labor costs, or for the costs of capital or of substitute use or performance, or for indirect, special, liquidated, incidental, or consequential damages, or for any other loss or cost of a similar type, or for claims by Buyer for damages of Buyer's customers. The Seller's maximum liability under this Contract shall be the Contract price. Buyer and Seller agree that the exclusions and limitations set forth in this section are separate and independent from any other remedies which Buyer may have.

#### **9. Force Majeure:**

If Seller suffers a delay in performance due to any cause beyond Seller's reasonable control, the time for Seller's performance shall be extended a period of time equal to the period of delay and its consequences. Seller will give Buyer written notice within a reasonable time after Seller becomes aware of such delay.

#### **10. Export:**

The goods may be subject to export controls and regulations of the U.S., the country of manufacture, or the country of shipment, and export may require a valid export license. Seller's acceptance of Buyer's order and delivery of goods is conditioned on compliance with applicable export controls. Seller will have no obligation to sell or deliver any product until all required US and/or other export licenses have been granted and there are no other impediments arising from any applicable export regulations. No goods sold to Buyer may be exported or re-exported unless such export or re-export complies fully with all applicable export regulations.

#### **11. Changes to the Goods:**

Seller reserves the right to change the part number, design, dimensions, weight or specifications of the goods. However, Seller shall not make any change to goods ordered by Buyer without the Buyer's consent if the change impairs the performance or function of the goods.

#### **12. General:**

(a) Any drawings, data, designs, software programs or other technical information supplied by Seller to Buyer in connection with the sale of the goods shall remain Seller's property and be held in confidence by Buyer. Such information shall not be reproduced nor disclosed to others without Seller's prior written consent.

(b) The laws of the State of Texas, without regard to conflicts of law principles, shall govern the validity, interpretation and enforcement of the Contract. It is expressly agreed to exclude from this Contract the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

(c) Seller may only waive a breach of any provision contained herein in writing. Any such waiver shall not constitute or be deemed to be a waiver of any other breach of the Contract. No amendment to or modification or alteration of the Contract shall be effective against Seller without Seller's specific written agreement thereto. Buyer shall not assign this Contract, any interest in the Contract or rights under the Contract without Seller's prior written consent.

(d) Disputes arising out of this Contract, not otherwise settled by mutual agreement between the parties, shall be settled exclusively by binding arbitration in Fort Bend County, Texas, U.S.A. pursuant to the Commercial Arbitration Rules of the American Arbitration Association then in effect. Buyer agrees that the party against whom the award is rendered shall pay the entire cost and expense of the arbitration, including the other party's attorney's fees, costs, and expenses.



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**Umbilicals International Inc. - dynamic cable & umbilical solutions**

10711 Cash Road, Stafford, Texas 77477

t: 281 275 6600 e: info@umbilicals.com w: www.umbilicals.com