

## TERMS AND CONDITIONS OF SALE (U.S.A.)

All proposals, quotations and orders for the sale of MAZAK CORPORATION ("MAZAK") products, or for the rendering of services by MAZAK, are subject to the following terms and conditions.

- DEFINITIONS.** For purposes hereof; (i) The term "BUYER" means the person or company purchasing as indicated on the front hereof or otherwise on the Agreement; (ii) The term "Products" means MAZAK machine tools or related equipment, machine control, or parts or components thereof specified on the front hereof or otherwise; (iii) The term "Non-customized Products" shall mean those Products that MAZAK determines, in its sole discretion, to be of a standard type routinely manufactured by MAZAK and for which there is relatively continuous purchaser demand; (iv) The term "Customized Products" shall mean those Products that MAZAK determines, in its sole discretion, to be of a non-standard type specially manufactured for a specific number of orders and for which there is not relatively continuous purchaser demand; (v) The term "Agreement" means these terms and conditions and those expressly referenced herein and (a) any MAZAK proposal, bid or similar document setting forth the prices of any Products and (b) any MAZAK Sales Order Confirmation, Acknowledgment or Installation Form provided by MAZAK and relating to the Products, and (c) any document evidencing or relating to the purchase of any Product; and (vi) The term Electronic Signature means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by an authorized person with the intent to sign the record.
- ACCEPTANCE OF AGREEMENT. ACCEPTANCE BY MAZAK OF BUYER'S ORDER OR BUYER'S ACCEPTANCE OF MAZAK'S PROPOSAL OR AGREEMENT, IS EXPRESSLY LIMITED TO AND CONDITIONED UPON BUYER'S ACCEPTANCE OF AND ASSENT TO, THESE TERMS AND CONDITIONS AND THOSE REFERRED TO HEREIN. ANY ADDITIONAL, INCONSISTENT OR DIFFERENT TERMS AND CONDITIONS CONTAINED IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENTS SUBMITTED BY BUYER TO MAZAK AT ANY TIME, WHETHER BEFORE OR AFTER THE DATE HEREOF, ARE HEREBY EXPRESSLY REJECTED BY MAZAK. BUYER ACKNOWLEDGES THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ITS PURCHASE ORDER OR OTHER DOCUMENTS, RECEIPT AND ACCEPTANCE BY BUYER OF MAZAK PRODUCTS SHALL CONSTITUTE ACCEPTANCE BY BUYER OF THESE TERMS AND CONDITIONS. ALL ORDERS ARE SUBJECT TO ACCEPTANCE BY MAZAK AT ITS OFFICE AT 8025 PRODUCTION DRIVE, FLORENCE, KENTUCKY. MAZAK SALES PERSONNEL AND DISTRIBUTORS ARE NOT AUTHORIZED TO ACCEPT ORDERS ON BEHALF OF MAZAK.**
- PRICES; TAXES; DELIVERY.** Prices are subject to change by MAZAK due to increases in costs or otherwise without notice to BUYER. Prices do not include taxes, which are separately itemized. BUYER shall pay all excise, sales, occupation, use or similar taxes, levies, governmental charges or surcharges applicable to the Products, or the sale or use thereof, whether now in effect or hereafter imposed. Unless otherwise mutually agreed upon in writing, all Products shall be shipped F.O.B. point of origin, except that (i) Products shipped from outside the continental United States shall be shipped F.O.B. Port of Entry and (ii) Products assembled or manufactured in MAZAK's Florence, Kentucky plant shall be shipped F.O.B. Florence, Kentucky. "Port of entry" shall mean any port at the borders of the continental United States at which a customs-house or revenue office is established for the execution of U.S. laws imposing duties on vessels and imported goods. Where the scheduled delivery of Products is delayed by BUYER or by reason of any contingency referred to in Section 16 hereof, MAZAK may deliver such Products by moving them to storage, and BUYER shall be liable for any storage charges or price increases in effect at the date of shipment to BUYER. Should the carrier designated by BUYER fail to pick up the Products within two (2) days after being given notice, MAZAK reserves the right to select and make shipment by an alternate carrier and charge BUYER for such shipment.
- RISK OF LOSS; TITLE; SECURITY INTEREST.** Notwithstanding Section 3 hereof, all risk of loss or damage shall pass to BUYER, and delivery shall be deemed to be completed, upon delivery of the Products to the carrier, its agent or designee, or upon moving the Products into storage, whichever shall occur first, at the point of shipment. MAZAK reserves, and BUYER hereby expressly grants to MAZAK, a purchase money security interest in the Products until the purchase price has been fully paid. BUYER agrees to execute, and hereby appoints MAZAK as its attorney-in-fact to execute on BUYER's behalf, any documents requested by MAZAK which are necessary for attachment and perfection of its security interest. If BUYER defaults, MAZAK will have all the rights of a secured creditor under the Uniform Commercial Code as enacted in the State of Kentucky. If any Products are placed on any real property subject to any mortgage, lien or encumbrance, BUYER shall ensure that the Products shall be expressly excluded from the terms of such mortgage, lien or encumbrance.
- SHIPMENT AND PRODUCTION ESTIMATES.** The shipping date is estimated upon the basis of immediate receipt by MAZAK of BUYER's acceptance of the Agreement or of MAZAK's acceptance of BUYER's purchase order and all information required to be furnished by BUYER. MAZAK shall, in good faith, endeavor to ship by the estimated shipping date but reserves the right to vary such date free of any liability to BUYER, notwithstanding any commitment or representation to the contrary. Production data, where given, is estimated only based upon the Products being maintained and operated under normal working conditions with competent, trained operators and maintenance personnel and upon MAZAK's analysis and understanding of the limits of accuracy, machinability and stability of materials, amount of material to be removed, suitability of designated locating points and handling facilities provided. PRODUCTION ESTIMATES ARE APPROXIMATIONS AND ARE NOT GUARANTEED OR WARRANTED unless otherwise expressly provided in the Agreement. Unless expressly provided by this Agreement, MAZAK makes no warranty or representation regarding part accuracies, which are the responsibility of BUYER.
- PHOTOGRAPHS.** Photographs, illustrations, brochures, manuals or advertising materials represent in general the Products offered, but are not binding in detail. Only written detailed specifications shall be binding.
- WEIGHTS AND SPECIFICATIONS.** All weights, measurements and powers given by MAZAK are estimates stated as correctly as practicable. Any minor deviations shall not invalidate the sale of the Products or entitle BUYER to any price adjustment. Only the written detailed specifications shall be binding.
- INSTALLATION AND ACCEPTANCE.** Installation by MAZAK shall be deemed to have occurred upon the execution of the Mazak Installation Form by a Mazak Service Engineer. Except as otherwise set forth in this Section 8 or in MAZAK's Installation Form, MAZAK shall have no obligation to provide any erection or installation services in respect of the Products. BUYER shall be solely responsible for timely site preparation for any erection, installation, warranty or other services that MAZAK may provide. Unless BUYER provides MAZAK with written notice, within forty-five (45) days after the date of shipment, of (i) any incomplete item with respect to the order of the Products or (ii) any defect in the Products, then BUYER's acceptance of the Products shall be deemed to have occurred on the earlier of BUYER's written acceptance to MAZAK or on the forty-fifth (45th) day after the date of shipment. In the case of proper and timely written notice to MAZAK from BUYER, then BUYER's acceptance shall be deemed to have occurred on the date MAZAK reasonably corrects such incomplete order or defect. Notwithstanding the foregoing, any assignment of the Products by Buyer to a bank or other financing company for the purpose of an equipment lease or other financing transaction shall be deemed to be an acceptance of the Products.
- CANCELLATION BY MAZAK; REMEDIES FOR BREACH.** MAZAK may, by written notice to BUYER and without any liability, cancel BUYER'S order if BUYER (i) fails to perform any of the terms and conditions hereof and does not cure such failure within a period of ten (10) days after receipt of written notice from MAZAK specifying such failure, provided, that, no such cure period shall apply to BUYER's failure to pay in a timely manner; (ii) in MAZAK's opinion, has not established or maintained credit to meet promptly the payment terms of MAZAK's Standard Terms of Payment or has defaulted on the payment terms of any other transaction with MAZAK; (iii) becomes insolvent, makes an assignment in favor of creditors, or becomes subject to any bankruptcy, dissolution or similar proceedings; or (iv) is merged into, or all or a substantial part of its assets are sold to, another company. Upon any such cancellation, BUYER shall be liable to MAZAK for a cancellation charge in accordance with Section 10 below. As a nonexclusive alternative to cancellation, MAZAK may, for any reason referenced in subsections (i)-(iv) of this Section 9, without any liability, (a) suspend any of its obligations hereunder (including MAZAK's warranty obligations), (b) physically render the Product unusable and/or (c) exercise any and all of its rights as a secured creditor under the Uniform Commercial Code.
- CANCELLATION BY BUYER.** (a) Non-Customized Products. BUYER may, by prior written notice to MAZAK, (i) if within thirty (30) days of MAZAK's acceptance of BUYER's order, cancel an order for Non-Customized Products, subject to a cancellation charge to be paid to MAZAK equal to ten percent (10%) of the purchase price of such Products or (ii) if more than thirty (30) days has elapsed from the date of MAZAK's acceptance of BUYER's order, cancel an order for Non-Customized Products, subject to a cancellation charge to be paid to MAZAK equal to fifteen percent (15%) of the purchase price of such Products plus payment of any costs incurred by MAZAK in performing its obligations hereunder. (b) Customized Products. BUYER shall not cancel any order with MAZAK for Customized Products (or any order for Non-Customized Products which includes any customized or specialized modifications, tooling, options, parts or accessories or added services or runoff that MAZAK has agreed to provide) without MAZAK's prior written consent. If MAZAK authorizes the cancellation of any such order, then BUYER shall be liable to MAZAK as follows: (i) for cancellation of an order for such Products for which MAZAK's production is within thirty (30) days of the scheduled completion date, MAZAK shall complete such production and hold such Products for BUYER's disposition, with BUYER liable to MAZAK for full payment within thirty (30) days after completion, or (ii) for cancellation of an order for such Products for which MAZAK's production is not within thirty (30) days of the scheduled completion date, BUYER shall pay MAZAK (A) the actual costs and overhead expenses, determined in accordance with generally accepted accounting principles, for work in progress, order entry expenses, engineering process expenses and costs of materials and supplies procured or for which definite commitments have been made by MAZAK in connection with BUYER's order and (B) fifteen percent (15%) of the contract price of the order. Unless otherwise agreed by MAZAK in writing, under no circumstances shall BUYER have the right to delay shipment, delivery or acceptance of Products hereunder.
- WARRANTY REPAIR/REPLACEMENT REMEDY.** MAZAK warrants that any Product is free from defects in material or workmanship at the time of tender of delivery. For a period of two (2) years from the date of Original Start-Up of such Product, MAZAK will repair or, if determined appropriate by MAZAK, replace any Product (except for consumable wear parts) which is (i) determined by MAZAK to be defective and (ii) is returned within said two (2) year period to MAZAK at its factory at 8025 Production Drive, Florence, Kentucky, or such other place as MAZAK may designate in writing, with all transportation charges prepaid by BUYER. Except as otherwise quoted for specialty or high-speed spindles, the spindle part component is warranted for two (2) years or 4,000 hours, whichever is earlier. For purposes hereof, the term "Original Start-Up" means the date a Product is placed under power or two (2) months from the date of delivery, whichever is earlier. MAZAK's repair/replacement costs are limited only to repair or replacement (at MAZAK's option) at MAZAK's designated location. Return of any repaired or replaced Products to BUYER shall be at BUYER's risk and expense. This repair/replacement remedy also is conditioned upon BUYER furnishing satisfactory evidence that the Product alleged to be defective has been properly maintained and correctly operated under normal conditions with competent supervision and within the operating limits for which such Product is offered and sold. This remedy shall not apply to any Product that has been subjected to misuse, abuse, neglect, or improper storage, handling, maintenance or operation. BUYER shall be solely responsible for proper training of all persons operating, maintaining or programming the Product. Should the services of a field service technician be required, MAZAK shall make every reasonable effort to send a technician as soon as practicable. Without liability, MAZAK shall have the right to withhold repair or replacement service on any Product in the event that BUYER's accounts with MAZAK are not current. **EXCEPT AS EXPRESSLY STATED IN THIS SECTION 11, MAZAK MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR OTHERWISE, WITH RESPECT TO ANY PRODUCT OR LABOR FURNISHED IN CONNECTION WITH THE SALE, DELIVERY OR SERVICING OF ANY PRODUCT. GOODS AND MATERIALS NOT MANUFACTURED BY MAZAK CARRY THE STANDARD GUARANTEE OF THE MANUFACTURER THEREOF. IF ANY, AND MAZAK SHALL NOT BE RESPONSIBLE FOR ANY DEFECTIVE PART THEREOF.**
- LIMIT OF MAZAK'S LIABILITY; CUSTOMER'S REMEDY.** IN NO EVENT SHALL MAZAK BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION DAMAGES FOR INJURY TO PERSON OR PROPERTY, LOST PROFITS OR REVENUE, LOST SALES OR LOSS OF USE OF ANY PRODUCT. BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST MAZAK AND ITS DISTRIBUTORS OR SALES REPRESENTATIVES SHALL BE THE REPAIR OR REPLACEMENT OF DEFECTIVE PARTS AS PROVIDED HEREIN. MAZAK'S LIABILITY ON ANY CLAIM, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH BUYER'S ORDER, SHALL IN NO CASE EXCEED THE PURCHASE PRICE OF THE ORDER. The sole purpose of the stipulated exclusive remedy provided for herein shall be to provide BUYER with repair or replacement of defective Products in the manner provided for herein. Such remedy shall not be deemed to have failed of its essential purpose so long as MAZAK is willing and able to repair or replace defective Products in the prescribed manner. Any claim or action by BUYER arising out of or in connection this Agreement or the Product, whether in contract, tort or otherwise, must be commenced within one (1) year after the cause of action has accrued or be barred.
- NO RIGHT OF SET OFF.** BUYER has no right to deduct or set off from the purchase price of the Product any damages or costs incurred by BUYER as a result of any action on the part of MAZAK or otherwise.
- PROPRIETARY INFORMATION.** This Agreement and all notes, brochures, technical information concerning processes, devices, machines, marketing strategies and techniques, catalogs, listings, sales forecasts, agreements, know-how, designs, drawings, specifications, data sheets, memoranda, correspondence or special purpose manufacturing prototypes or samples ("Proprietary Information") supplied to BUYER by MAZAK are, and shall remain, the property of MAZAK and may be covered by one or more MAZAK patents, patent applications or copyrights. BUYER shall not at anytime disclose or make available to any person, firm or corporation, other than MAZAK, Proprietary Information or use such information for any purpose other than the purposes for which supplied hereunder, and shall provide effective security measures to prevent unauthorized persons from obtaining Proprietary Information. All technical, industrial and commercial information and material that BUYER discloses heretofore and hereafter to MAZAK is on a non-confidential basis. MAZAK grants no rights to BUYER under any MAZAK patent, design patent, copyright, trademark or know-how, except as may be necessary to fulfill MAZAK's obligations under BUYER's order.
- INDEMNIFICATION.** BUYER agrees to indemnify, defend and hold MAZAK harmless from and against all judgments, decrees and costs (including attorneys' fees) resulting from BUYER's use and/or resale of the goods delivered hereunder. Further, without limiting the generality of the foregoing, if the goods delivered hereunder are to be prepared for manufacture according to BUYER's specifications, BUYER shall indemnify, defend and hold MAZAK harmless against any claims or liability for patent or trademark infringement on account of such preparation or manufacture.
- FORCE MAJEURE.** Except with respect to the payment of monies due hereunder and BUYER's obligations under Sections 14 and 15 hereof, neither party hereto shall be responsible for failure to perform hereunder or for any loss or damage due to causes beyond its reasonable control, including but not limited to acts of God, fires, civil disobedience, war, acts of terrorism, riots, strikes, work stoppages, floods, water/elements, changes in governmental requirements or inability to secure equipment, raw materials or transport. Notice to this effect ("Notice of Force Majeure") shall be given at once to the other party. Performance shall be resumed as soon as practicable after the cessation of the cause of a delay.
- ENTIRE AGREEMENT.** The entire agreement between MAZAK and BUYER with respect to BUYER's order is embodied solely within the Agreement, which supersedes all prior agreements, understandings, representations or warranties, whether oral or written, between MAZAK and BUYER relating to such order. No statement, recommendation or assistance made or offered by MAZAK through its representatives in connection with suitability, capacity, performance or compliance with customer's specification of the Products sold shall be or constitute a waiver by MAZAK of any provision hereof. No statements subsequent to the acceptance of the Agreement and these terms and conditions shall be binding upon MAZAK, nor shall the Agreement or such terms or conditions be amended or modified, unless consented to in writing by a duly authorized officer of MAZAK in a document referencing these terms and conditions. These terms and conditions of sale shall remain effective as between MAZAK and BUYER, regardless of any arrangement or agreement for financing of BUYER's purchase of the Product, whether such financing is provided by MAZAK, any subsidiary of MAZAK or any entity related to MAZAK.
- ATTORNEY'S FEES.** In the event of any litigation or collection action arising out of BUYER's purchase of Products, MAZAK shall be entitled to reimbursement from BUYER for its actual reasonable attorney's fees and costs.
- NON-WAIVER.** Failure by MAZAK to enforce any rights under or to insist upon strict performance of any provision in the Agreement shall not constitute a waiver of any breach or a waiver of such provision, irrespective of the length of time for which such failure continues.
- SURVIVAL; SEVERABILITY; ASSIGNMENT.** Notwithstanding any expiration or cancellation of BUYER's order, BUYER shall remain obligated under all those provisions of the Agreement which expressly or by their nature extend beyond and survive such expiration or cancellation. If any provision or any portion of any provision in the Agreement shall be held to be void or unenforceable, the remaining provisions hereof and the remaining portions of any provisions of the Agreement held void or unenforceable in part shall continue in full force and effect. The Agreement shall not be assigned, subcontracted, or delegated, in whole or in part, without MAZAK's prior written consent.
- GOVERNING LAW; FORUM; MAZAK'S ARBITRATION OPTION.** The Agreement, and BUYER's purchase of Products, shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky, U.S.A. In no event do the parties intend that the United Nations convention for the international sale of goods apply to any dispute arising out of, or related to, this agreement or the relationship governing the parties hereto. ANY LEGAL ACTION OR PROCEEDING ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE COMMONWEALTH OF KENTUCKY OR IN THE U.S. DISTRICT COURT, EASTERN DISTRICT OF KENTUCKY AT COVINGTON. BUYER hereby irrevocably consents to service of process out of said State of Kentucky or U.S. Court in any such action or proceeding by mailing copies thereof by U.S. mail to BUYER or any other method of service permitted by such courts. AT THE SOLE OPTION OF MAZAK, ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCT MAY BE REFERRED TO BINDING ARBITRATION, WHICH SHALL BE ADMINISTERED BY, AND CONDUCTED IN ACCORDANCE WITH THE COMMERCIAL RULES OF THE AMERICAN ARBITRATION ASSOCIATION, WITH THE HEARING THEREIN TO BE HELD IN THE COMMONWEALTH OF KENTUCKY.
- EXPORT CONTROL LAW.** BUYER shall not sell, consign, give, lease or otherwise transfer the Products or any interest therein nor in any manner disclose or make the Products available to any person or entity in violation of (i) the Export Administration Act, 50 U.S.C. App. §§ 2401-2420, as amended, (ii) the Nuclear Non-Proliferation Act of 1978, 22 U.S.C. §§ 3201-3282 and 42 U.S.C. §§ 2011-2160(a), as amended, (iii) export control regulations of the Bureau of Export Administration of the U.S. Department of Commerce, 15 C.F.R. Parts 768-799 or (iv) export control regulations of the Office of Foreign Assets Control, U.S. Department of the Treasury, 31 C.F.R. Parts 500-580.
- ELECTRONIC CONTRACTING.** BUYER agrees that if this Agreement is transmitted electronically BUYER shall not contest the validity thereof, on the basis that this Agreement, acknowledgement or ancillary agreement exists only in electronic form, an electric record was used in its creation or formation, or it contains only an Electronic Signature. Further, BUYER agrees that transmission of this Agreement electronically shall have the same force and effect as delivery of an original signature and that such facsimile signature may be used as evidence of the execution and delivery of the Agreement to the same extent that an original signature could be used.