

# POLLOCK INDUSTRIES

## STANDARD TERMS AND CONDITIONS OF SALE

1. TAXES: Prices do not include any applicable taxes. Pollock Industries, Inc. (PII) will add taxes to the sales price where (PII) is required by law to collect them, and will be paid by Buyer unless Buyer provides (PII) with a tax-exemption certificate.

2. PRICES AND RELEASES: Prices apply only if the quantity ordered is released within twelve (12) months and shipments scheduled no more than eighteen (18) months from the date (PII) received Buyer's order. Otherwise, (PII)'s standard prices in effect on such release date for the quantity actually shipped shall apply.

In the event of extraordinary increases in the market prices of fuels, metals, raw materials, equipment and other production costs, (PII) shall have the right and Buyer shall have the obligation to renegotiate in good faith the price of the goods hereunder not yet shipped, and if agreement is not reached, (PII) shall have the right to cancel this contract without liability.

3. TITLE AND DELIVERY: Domestic shipments of goods within the U.S. shall be delivered F.O.B. shipping point. Title and liability for loss or damage shall pass to Buyer upon (PII)'s tender of delivery of the goods to a carrier for shipment to Buyer and any subsequent loss or damage shall not relieve Buyer from any obligation.

Shipments of goods to destinations outside of the U.S. shall be delivered "Ex Works" (EXW) at a named point of origin i.e. ex warehouse (White River, VT). In this case, (PII) agrees to place the goods at the disposal of the buyer at the specified place on the date or within the period fixed. Title and liability for loss or damage shall pass to Buyer upon (PII)'s tender of delivery of the goods to a carrier for shipment to Buyer and any subsequent loss or damage shall not relieve Buyer from any obligation.

If (PII) agrees to pre-pay charges for any shipment, Buyer shall reimburse (PII) for costs of insurance and transportation on such shipments and shall be responsible for all import duties, taxes and any other expenses incurred or licenses or clearances required at port of entry and destination.

(PII) may deliver the goods in installments. Delivery dates are estimates. (PII) shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer if (PII) fails to meet the estimated delivery dates because of unavoidable production or other delays.

POLLOCK INDUSTRIES, INC. PO Box 1003, White River, VT 05001  
toll-free 1-866-665-5434 (603) 888-2467 [support@electracool.com](mailto:support@electracool.com)

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4. TERMS AND METHOD OF PAYMENT: Where (PII) has extended credit to Buyer the terms of payment shall be net thirty (30) days from date of invoice. The amount of credit or terms of payment may be changed or credit withdrawn by (PII) at any time for any reason. If the goods are delivered in installments, Buyer shall pay for each installment in accordance with the terms of payment hereof. When Buyer fails to make each payment when it is due, (PII) reserves the right to withdraw credit and thereby suspend or cancel performance under any or all purchase orders or agreements in which (PII) has extended credit to Buyer. (PII)'s suspension of performance may result in a rescheduling delay contingent on current product availability.

If in (PII)'s judgment, Buyer's financial condition does not justify the terms of payment specified herein, (PII) may cancel this contract unless Buyer shall immediately pay for all goods which have been delivered and pay in advance for all goods to be delivered.

5. CONTINGENCIES: (PII) is not liable, either wholly or in part, for nonperformance or a delay in performance due to force majeure or contingencies or causes beyond the reasonable control of (PII), including but not limited to, shortage of labor, fuel, raw material or machinery or technical or yield failure where (PII) has exercised ordinary care in the prevention thereof. (PII) may allocate production and deliveries in a reasonable manner in the event of shortage of goods.

6. CRITICAL APPLICATIONS: Certain applications using thermoelectric modules may invoke potential risks of death, personal injury or severe property or environmental damage ("Critical Applications"). (PII) goods are not designed and are not warranted to be suitable for use in life-support applications, devices or systems or other Critical Applications. Use of (PII) goods in such Critical Applications is understood to be fully at the risk of Buyer.

7. WARRANTIES AND RELATED REMEDIES: THE FOLLOWING ARE IN LIEU OF ALL CONDITIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED CONDITIONS OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ANY OTHER WARRANTY OBLIGATION ON THE PART OF (PII).

(PII), except as otherwise provided below, warrants the goods against faulty workmanship or the use of defective materials and warrants that the goods conform to (PII)'s published specifications or other mutually agreed upon written specifications on the date of shipment. Testing and other quality control techniques are utilized to the extent (PII) deems necessary to support this warranty. Specific testing of all parameters of each device is not necessarily

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performed, except those mandated by government requirements. (PII) warrants that at the time of delivery, (PII) has title to the goods free and clear of any and all liens and encumbrances. These warranties are the only warranties made by (PII) and can be amended only by a written document signed by an (PII) officer.

Continued use or possession of the goods after 30 days shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of Buyer.

(PII) makes NO WARRANTY as to software products, which are supplied "AS-IS", or as to experimental or developmental goods or goods not manufactured for or by (PII). For goods not manufactured for or by (PII), (PII), to the extent permitted by (PII)'s contract with its supplier, shall assign to Buyer any rights (PII) may have under any warranty of the supplier.

If (PII) breaches its warranties as contained herein, (PII)'s sole, maximum liability shall be (at (PII)'s option) to repair, replace, or credit Buyer's account for any goods which are returned by Buyer during the applicable 30 day period set forth above, provided that (a) (PII) is promptly notified in writing upon discovery by Buyer that the goods failed to conform to this contract with a detailed explanation of any alleged deficiencies, AND a Return Authorization Number (RMA) is issued (b) the goods are returned to (PII) , Freight Pre-Paid (with (PII)'s RMA# clearly visible on the outside of the package) to the (PII) location from which goods were shipped, and (c) (PII) 's examination of the goods shall disclose that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing. If the goods fail to conform to the warranty, (PII) shall reimburse Buyer for the transportation charges paid by Buyer for the goods. If (PII) elects to repair or replace the goods, (PII) shall have a reasonable time to make the repair(s) or replacement. Such repair, replacement or credit shall constitute fulfillment of all liability of (PII) to Buyer whether based in contract, tort, indemnity, statutory provision or otherwise.

(PII) MAY PROVIDE TECHNICAL, APPLICATIONS OR DESIGN ADVICE, QUALITY CHARACTERIZATION AND RELIABILITY DATA OR SERVICE IN CONNECTION WITH BUYER'S ORDER. PROVIDING THESE ITEMS SHALL NOT EXPAND OR OTHERWISE AFFECT (PII)'S WARRANTIES SET FORTH ABOVE AND NO OBLIGATION OR LIABILITY SHALL ARISE FROM (PII)'S PROVISION OF SUCH ITEMS.

8. INTELLECTUAL PROPERTY: THE SALE BY (PII) OF THE GOODS ORDERED HEREUNDER DOES NOT GRANT TO, CONVEY OR CONFER UPON BUYER OR BUYER'S CUSTOMERS, OR UPON ANYONE CLAIMING UNDER BUYER, A LICENSE, EXPRESS OR IMPLIED, UNDER ANY PATENT RIGHT, COPYRIGHT, MASK WORK RIGHT OR OTHER INTELLECTUAL

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PROPERTY RIGHT OF (PII) OR ADVANCED THERMOELECTRIC, COVERING OR RELATING TO ANY COMBINATION, MACHINE OR PROCESS IN WHICH SAID GOODS MIGHT BE OR ARE USED. THE FOREGOING STATES THE SOLE LIABILITY OF THE PARTIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, IN REGARD THERETO.

9. LIMITATION AND DISCLAIMER OF DAMAGES: If (PII) breaches any provisions of this contract other than its warranties as contained in Section 7, (PII)'s sole liability shall not exceed the total contract price specified herein less the purchase price for any items delivered and accepted hereunder. Remedies for breach of warranty are limited to those stated in Section 7.

IN NO EVENT SHALL (PII) BE LIABLE TO ANYONE FOR SPECIAL, COLLATERAL, INDIRECT, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY OF THE PROVISIONS OF THIS CONTRACT, SUCH DAMAGES TO INCLUDE BUT NOT BE LIMITED TO, COSTS OF REWORK, RETESTING OR REMOVAL AND REINSTALLATION OF GOODS, LOSS OF GOODWILL, LOSS OF PROFITS, OR LOSS OF USE.

10. TERMINATION AND CANCELLATION: Buyer may terminate this contract in whole or, from time to time, in part upon ninety (90) days' advance written notice for Standard Products and one hundred eighty (180) days' advance written notice for Custom Products. In such event Buyer and Seller may negotiate reasonable termination charges for losses incurred by Seller.

12. NON-WAIVER OF DEFAULT: In the event of any default by Buyer, (PII) may decline to make further shipments. If (PII) elects to continue to make shipments, (PII)'s action shall not constitute a waiver of any default by Buyer or in any way affect (PII)'s legal remedies for any such default.

13. GOVERNING LAW: The validity, performance and construction of this contract shall be governed by the laws of the State of Vermont.

14. U.S. GOVERNMENT CONTRACTS: If the goods are to be used in a U.S. Government contract or subcontract, those mandatory clauses, except as noted below, of the applicable U.S. Government procurement regulations shall be incorporated by reference. Unless otherwise agreed upon in writing, certified cost or pricing data will not be provided and Cost Accounting Standards, Defective Pricing, and Audit requirements will not apply.

15. ASSIGNMENT: This contract shall not be assignable by either party without the written consent of the other party. Unauthorized assignment shall be void.

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16. MODIFICATION: THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF THE GOODS DESCRIBED ON ANY (PII) QUOTATION, INVOICE OR STATEMENT AND SUPERSEDES ALL PREVIOUS COMMUNICATIONS, REPRESENTATIONS, OR AGREEMENTS, EITHER ORAL OR WRITTEN, WITH RESPECT TO THE SUBJECT MATTER HEREOF. NO REPRESENTATIONS OR STATEMENTS OF ANY KIND MADE BY ANY REPRESENTATIVE OF (PII), WHICH ARE NOT STATED HEREIN, SHALL BE BINDING ON (PII). NO ADDITION TO OR MODIFICATION OF ANY PROVISION UPON THE FACE OR REVERSE OF THIS CONTRACT SHALL BE BINDING UPON (PII) UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF (PII). NO COURSE OF DEALING OR USAGE OF TRADE OR COURSE OF PERFORMANCE SHALL BE RELEVANT TO EXPLAIN OR SUPPLEMENT ANY TERM EXPRESSED IN THIS CONTRACT.

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