



**GANTREX**<sup>®</sup>  
ON TRACK. WITH YOU.

# Terms & Conditions

## **SALES**

Gantrex sells its products only to qualified customers for resale or for direct use. Gantrex products are available to users through our its network of sales offices and manufacturer's representatives. For the representative nearest you, contact Gantrex. Please visit our website: [www.gantrex.com](http://www.gantrex.com). Gantrex reserves the right to approve any and all requests for literature and customer orders.

## **ACCURACY OF INFORMATION**

All the information provided on this Web Site is subject to change without notice. While efforts have been made to make this Web Site helpful and accurate, due to the open nature of this Web Site and the potential for errors in the storage and transmission of digital information, Gantrex does not warrant the accuracy of information obtained from this Web Site.

## **ACCESS AND USE OF INFORMATION**

Access to this Web Site is limited to viewing the linked Web pages solely for legitimate business purposes to access the information provided by Gantrex at the Web Site.

**TERMS AND CONDITIONS OF SALE:** Unless otherwise expressly agreed in writing by Gantrex ("Seller"), all orders and agreements for the supply of goods and services are subject to the following terms and conditions of sale. These terms and conditions shall constitute the exclusive terms and conditions of sale regarding all materials, equipment and services (hereinafter collectively called "Goods") sold by Seller to the Buyer identified in this order acknowledgment ("Buyer"). Acceptance of Buyer's order is expressly conditioned upon Buyer's assent to these terms and conditions, whether such assent is in writing or by conduct that recognizes the existence of a contract. These terms and conditions constitute notification of Seller's objection to and rejection of any terms or conditions, whether contained in Buyer's purchase order, bid documents or any other document, that are different from, inconsistent with or additional to these terms and conditions. These terms and conditions shall constitute the complete agreement of the parties with respect to the subject matter hereof, and there are no other promises, conditions, understandings, representations or warranties, oral or written, relating thereto. All sales, contracts and orders become effective only if and when approved and accepted in writing by Seller by issuance of its order acknowledgment form.

**CREDIT, PRICES AND PAYMENT TERMS:** Quotations are made, and Buyer's orders are accepted, by Seller subject to credit investigation and approval by Seller. Unless otherwise agreed in writing by Seller, each shipment by Seller pursuant to an order by Buyer will be billed at Seller's prices, in United States Dollars, in effect on the date of shipment. Changes in specifications will permit a price adjustment by Seller. Typographical or clerical errors may be corrected by Seller. Any tax, levy, duty or other government charge now or hereafter levied upon production, sale, purchase, storage, use or shipment of Goods ordered shall be paid for by Buyer. Such taxes and other charges are not included in the price unless expressly so stated on the quotation. Unless otherwise specified, payment terms for shipments to locations in North America shall be Net 30 Days from date of invoice. If, in Seller's judgment, Buyer's financial condition at any time does not justify the terms specified, or if for any reason deliveries must be extended over a lengthy period of time, Seller may require special terms. Interest will be charged on any overdue amount, at the rate of 2% per month or such lesser rate, if any, as is the maximum allowable finance charge under applicable law. If Buyer fails to make payment in accordance with this paragraph, Seller may defer or discontinue further shipments until payment is made or until Seller receives adequate assurance of Buyer's performance. Confirmed Irrevocable Letter of Credit (stating ship from any North American port) or Telegraphic Transfer before shipping shall be required for all shipments to Mexico and offshore countries.

**SHIPMENT AND RISK OF LOSS:** Prices are F.O.B. Seller's warehouse. Delivery to the initial carrier constitutes delivery to Buyer. Notwithstanding any specified shipment terms or other provisions in these terms and conditions or in any other writing, the risk of loss for any damage to or loss or destruction of Goods shall pass to Buyer immediately upon the Goods leaving Seller's facilities for delivery to Buyer, whether such delivery is to be made by common carrier or otherwise. Buyer shall maintain in force insurance to protect itself and Seller against such risk of loss. Such insurance shall name Seller as an additional insured. If Goods are lost or damaged in transit, Buyer shall immediately notify the carrier in writing of such loss or damage, do all things necessary to prosecute a claim against the carrier for such loss or damage, and cooperate fully with Seller in any claim Seller may assert against a carrier for such loss or damage.



**PRODUCTION AND DELIVERY:** Orders accepted by Seller are not subject to cancellation by Buyer. Goods manufactured to customer order cannot be returned for credit under any circumstances. Orders are accepted subject to Seller's production schedules and ability to obtain needed materials and labor. Factors beyond Seller's control and product improvement may require changes in products from time to time. Seller reserves the right to make reasonable changes of any kind without notice, and to deliver revised models of Goods against any order. Shipping dates are approximate and based upon prompt receipt of all necessary information and approvals from Buyer. Seller may ship Goods in lots of any size that Seller deems reasonable. If shipment is delayed at Buyer's request, Seller may bill Buyer immediately for Goods held at Seller's facilities and include charges for reasonable storage costs incurred and finance charges calculated in accordance with these terms and conditions. Seller shall not be liable for any delay or failure of delivery or any loss or damage when such failure, delay, loss or damage results from any cause beyond Seller's reasonable control, including but not limited to fire, flood or other act of God, strike or labor difficulty, accident at Seller's facilities, acts or requirements of government or civil authority, riot, war, embargo, transportation shortage, delay or difficulty, or Seller's inability to obtain necessary labor, materials or facilities due to any cause beyond Seller's control. If any such event occurs, Seller may apportion available supplies among its customers, including Buyer, in any manner that Seller deems fair, and in the event of delay because of any such cause, the delivery date shall be postponed for a period of time equal to the period of such delay.

**TITLE:** Notwithstanding any other provision in these terms and conditions or in Buyer's purchase order or any other document, title to all Goods remains solely in Seller until the entire purchase price has been paid in full, and Seller may repossess such Goods by any lawful means in the event of default by Buyer in any of its obligations under these terms and conditions. The installation and/or attachment of Goods to any equipment, building, structure or other real property shall not in any manner affect Seller's title.

**PATENTS:** Seller agrees to hold Buyer harmless against any claim of infringement of any patents now issued to Seller relating to the Goods, provided Seller is immediately notified in writing of any such claim and is permitted to control defense of the claim. If alleged infringement is based upon Goods furnished by Seller in accordance with drawings and/or specifications furnished by Buyer, Seller shall bear no liability whatsoever and shall be held harmless by Buyer against any and all such claims.

**WARRANTY CLAIMS AND LIMITATIONS OF LIABILITY:** Unless otherwise agreed in writing by Seller, all Goods will be within Seller's current published specifications and free from defects in materials and workmanship that appear within one year from the date of shipment of the Goods from Seller's facilities. Seller's obligation under the foregoing warranty shall be limited to replacement, F.O.B. original shipment point, or repair, at Seller's sole option, of any Goods determined by Seller to be defective, and such replacement or repair shall be Buyer's exclusive remedy for any defect or deficiency in or relating to the Goods or any failure of the Goods to perform for any reason whatsoever, whether remedy is sought in contract, tort (including but not limited to negligence and strict liability) or otherwise. Buyer must notify Seller in writing of any defect for which remedy is sought within 30 days of the appearance of the defect and, in any event, before alteration of the Goods. Before returning any Goods to Seller, Buyer shall obtain shipping instructions from Seller. Seller shall not be responsible for any repairs made without Seller's prior, express written authorization. The foregoing warranty is the exclusive warranty made by Seller and is made in lieu of any and all other warranties, express or implied, including but not limited to all warranties of merchantability and fitness for particular purpose, relating to the Goods, the quality of the Goods, their performance or compliance of the Goods with any laws, rules or regulations. Under no circumstances will Seller be liable for special, incidental or consequential damages, including but not limited to damage to or loss of other property or equipment, loss of time, delay in delivery, loss of use, loss of profits or revenue, claims of customers, or employees of Buyer, or costs and expenses of installation, use, testing or reinstallation or replacement, whether such damages are sought in contract, in tort (including but not limited to negligence and strict liability) or otherwise, and Seller's liability shall in no event exceed the purchase price of the goods or part of such goods on which such liability is based. If any Goods sold by Seller are manufactured by an entity other than Seller and the manufacturer provides its own warranty, any such other warranty shall be a warranty only of that manufacturer, and Seller shall have no liability or other obligations under any such warranty. Buyer waives and may not rely as a basis for remedy upon any defects that could have been discovered by a reasonable inspection upon delivery, unless Seller is notified in writing of such defect within 10 days of receipt of the Goods by Buyer. Claims for shortage in shipment of Goods must be made within 10 days of receipt of the Goods by Buyer. Buyer assumes all risk and liability for loss, damage or injury to persons or to property of Buyer or others arising out of use or possession of the Goods, and Buyer shall indemnify and hold Seller harmless for any such loss, damage or injury.



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**REMEDIES:** In addition to remedies under these terms and conditions, Seller shall have any and all remedies otherwise available under applicable law and all such remedies shall be cumulative. If Buyer refuses or fails, for any reason, to accept any Goods produced by or on behalf of Seller for Buyer, Buyer shall pay Seller for all materials consumed and labor expended to produce such Goods and reimburse Seller for all special, incidental and consequential damages incurred by Seller because of Buyer's failure or refusal to accept delivery. If the credit of Buyer becomes impaired or otherwise unsatisfactory to Seller, or if Buyer is in default under any of its obligations under any contract with Seller, Seller may require advance cash payment or satisfactory security to be given by Buyer upon demand by Seller, or any other credit terms that Seller deems reasonable. Seller may withhold shipments or cease production of work in process until all such requirements are satisfied. In the event (i) Buyer is adjudicated a bankrupt, (ii) an order appointing a receiver of all or a major part of Buyer's property is entered, (iii) a voluntary or involuntary petition or other pleading is filed seeking to have Buyer adjudicated a bankrupt or seeking reorganization under the federal Bankruptcy Act or any similar law, (iv) Buyer makes an assignment for the benefit of creditors or (v) Buyer admits in writing its inability to pay its debts generally as they become due. Seller may terminate the contract to sell Goods to Buyer. Such termination shall not relieve Buyer of any of its obligations to Seller, including but not limited to payment obligations, that have accrued as of the date of termination.

**WAIVER, MODIFICATION AND SEVERABILITY:** Any waiver by Seller of any default by Buyer or any of Buyer's obligations under these terms and conditions, and any failure by Seller to enforce any right under these terms and conditions, shall not be a waiver of any other default or of the Seller's rights to enforce its rights in any other circumstances. No modification, limitation, waiver, rescission or discharge of all or any part of the contract between Seller and Buyer shall be binding upon Seller unless set forth in writing and signed by Seller's authorized employee. If any provision of these terms and conditions is held by a court of competent jurisdiction to conflict with any law or otherwise is held to be invalid or unenforceable, such provision shall be deemed to be of no force and effect, and these terms and conditions shall be construed as if such provision had not been included.

**APPLICABLE LAW AND FORUM:** All contracts for the sale of Goods by Seller to Buyer shall be governed by the laws of the Commonwealth of Pennsylvania, including its Uniform Commercial Code, without regard to its laws relating to conflicts and choice of law. Buyer consents to suit regarding any dispute relating to the sale of Goods by Seller to Buyer in the state or federal courts in the Commonwealth of Pennsylvania, and Buyer waives all objections and defenses it may have to jurisdiction and venue in such courts. All legal proceedings commenced by Buyer relating to the sale of Goods by Seller to Buyer must be filed in the state or federal courts in Pittsburgh, Allegheny County, Pennsylvania.

**ASSIGNMENT:** No contract between Seller and Buyer relating to the sale of Goods, or any rights or obligations under any such contract, may be assigned by Buyer without the prior written consent of Seller; provided that, in the event of any actual or attempted assignment by Buyer, its obligations under these terms and conditions shall be binding on its successors and assigns.

**CREDIT CARDS:** Gantrex accepts Visa & MasterCard for payment of invoices, subject to a 2% processing fee.