# Terms and Conditions of Sale

Form CTM – 1003M (03/17/25)

**AGREEMENT:** These terms and conditions shall apply to all offers and purchase agreements for GOODS, PARTS, and/or SERVICES where Curtis-Toledo, Inc. dba FSCURTIS, hereinafter "SELLER", acts as a provider or seller to the customer, hereinafter "BUYER", whose name is identified on the face of BUYER's purchase order to SELLER or a purchase agreement, hereinafter "AGREEMENT". "GOODS" shall mean new full package apparatus. "PARTS" shall mean original equipment manufacturer and aftermarket parts, including, but not limited to, repairs, rebuilds, airend replacements, airend reates, and control panel upgrades. "SERVICES" shall mean services, including, but not limited to, on-site services, installation, technical or advisory services, shop services or training. Except as otherwise stated herein, no other terms and conditions shall be applicable to this AGREEMENT. All other terms and conditions, including those of BUYER or BUYER's customer, are hereby expressly rejected. If the GOODS, PARTS or SERVICES require BUYER-supplied information, BUYER shall be solely responsible for the content, accuracy and effect thereof on SELLER supplied GOODS, PARTS or SERVICES.

**PRICE AND TERMS OF PAYMENT:** The price shall be as set forth on SELLER's invoice. Payment terms are Cash on Delivery (COD) until account terms are established. Once established, default terms will be net thirty (30) days from the date of SELLER's invoice unless otherwise agreed upon in writing by both the SELLER and the BUYER. progress payments will be required for orders valued in excess of US$75,000.00, unless otherwise stated in SELLER's quotation or SELLER's acknowledgement. Installation of GOODS or PARTS is not included in the price and is the sole responsibility of BUYER unless otherwise specified by BUYER and agreed to in writing by SELLER. Delays caused by BUYER or the failure of BUYER's customer to pay BUYER shall not excuse non-payment. The price does not include any taxes. SELLER may suspend its performance hereunder if BUYER fails to make timely payment(s) of SELLER's invoice(s). Any costs associated with such suspension(s) shall be for BUYER's account. Acceptance of payment shall not waive or limit any right or remedy of SELLER. Acceptance of specially-endorsed checks of any kind shall not waive or limit any right or remedy of SELLER. In the event BUYER fails to pay an amount when due, (i) BUYER shall be liable for expenses, including reasonable attorneys' fees, associated with collections, and (ii) such amount(s) shall be subject to interest at the rate of 1.5% per month for each month or pro-rated portion thereof during which such amount is overdue or the maximum lawful rate allowable under applicable law, whichever is less, until such amount is received by SELLER.

**DELIVERY:** SELLER shall not be held responsible for any delay, loss or damage arising from fire, strikes or labor troubles, governmental intervention, weather, acts of God or nature, raw materials shortages, pandemics or epidemics, suspension due to lack of timely payment from BUYER to SELLER or any other act or force beyond the control of SELLER. Any dates that refer to the completion of manufacture and DELIVERY of GOODS or PARTS or completion of SERVICES are SELLER's best estimate thereof and are subject to change. "DELIVERY" shall mean EX-WORKS point of


1905 Kienlen Avenue,
St. Louis, MO 63133
314.383.1300
www.fscurtis.com

manufacture (Incoterms 2020). Title, risk of loss and responsibility for loss or damage to GOODS or PARTS shall pass to BUYER upon DELIVERY. SELLER shall retain a security interest in the GOODS or PARTS until SELLER receives payment in full. SELLER shall have the right to make partial DELIVERY of GOODS or PARTS and invoice accordingly. All costs associated with any delay caused in whole or in part by BUYER shall be for BUYER's account.

**WARRANTY: GOODS and PARTS:** SELLER warrants against defects on all GOODS and PARTS in accordance with SELLER's Warranty Policies and Procedures available on the FS-Curtis Distributor Portal. SERVICES: SELLER warrants against defects in workmanship on all SERVICES performed by SELLER for a period of ninety (90) days from the date of completion of such SERVICES. SELLER's obligation to repair or replace any defective GOODS or PARTS or reperform any defective SERVICES during the warranty period shall be BUYER's sole and exclusive remedy and SELLER's sole liability arising under this warranty or any warranty claim made by BUYER. In order to be entitled to the foregoing warranties, BUYER must notify SELLER in writing of defects within thirty (30) days of the date of discovery of same during the applicable warranty period. **EXCEPT AS MAY BE OTHERWISE EXPRESSLY SET FORTH IN WRITING HEREIN, THIS WARRANTY IS PROVIDED IN LIEU OF, AND SELLER EXPRESSLY EXCLUDES ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR ANY EXPRESS OR IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR USE.** BUYER shall bear any and all costs of providing free and clear access to the GOODS and PARTS (including removal and replacement of systems and structures), de-installation, re-installation and transportation of GOODS and PARTS to SELLER and back to BUYER. No allowance will be made for repairs or alterations made by others without SELLER's prior written consent. If repairs or alterations are attempted without SELLER's prior written consent, this warranty shall be null and void. SELLER assumes no responsibility for damages caused by accident, neglect, damage during transport, improper installation, use, handling, or maintenance, including installation by unauthorized third parties, or by operation in violation of rated operating conditions, internal or otherwise, or normal wear and tear or defects or damages resulting from the use of parts not authorized by the original equipment manufacturer or from BUYER's failure to store, install, maintain, and/or operate the GOODS or PARTS in accordance with SELLER's operating manuals, service manuals, instructions, drawings, and good engineering practice. None of the GOODS or PARTS furnished by SELLER shall be deemed defective by reason of chemical or abrasive action, excessive heat or failure to resist the action of excessive heat, erosive or corrosive gases or liquids or the deposition of foreign material from such gases or liquids. SELLER's receipt of payment in full of all sums due to SELLER shall be a condition precedent to SELLER's warranty obligations, and the making of any warranty claim by BUYER shall not excuse BUYER's obligation to make timely payment of all sums due to SELLER. No repair, replacement or reperformance by SELLER shall extend the applicable warranty period.

**CANCELLATION:** This AGREEMENT may be canceled by BUYER only upon the prior written consent of SELLER and upon payment by BUYER and receipt by SELLER of cancellation charges which shall be calculated in accordance with SELLER's cancellation curve Form CT - 1007.


1905 Kienlen Avenue,
St. Louis, MO 63133
314.383.1300
www.fscurtis.com

**RETURNED MATERIALS:** Return of GOODS or PARTS shall require prior written approval of SELLER. Only requests for the return of standard price book products will be considered. GOODS or PARTS built to specifications supplied by BUYER will not be accepted for return. Any costs incurred by SELLER to put the GOODS or PARTS in first class condition, either for resale or reuse, will be paid for by BUYER. GOODS or PARTS accepted for return are subject to a restocking charge of thirty-five percent (35%) of the billing invoice, plus all transportation charges. All such returns shall be in accordance with procedures reasonably established by SELLER, and such procedures shall be available upon request.

**PATENTS:** SELLER shall indemnify BUYER against liability and damages for claims based solely on infringement of any United States Letters Patent arising out of SELLER's manufacture or BUYER's use of any GOODS or PARTS of SELLER's manufacture, provided however, BUYER must promptly notify SELLER of any such claim and BUYER shall give SELLER ample opportunity to defend itself against such claim and provide SELLER reasonable cooperation with respect to any such claim. SELLER shall not be obligated for infringement when it results from GOODS or PARTS manufactured by parties other than SELLER and/or parts of special design, construction, or manufacture specified by BUYER, or a particular process or system specified by BUYER, or from the equipment of others which have been specified by BUYER or when an infringement arises from the use of the GOODS or PARTS in combination with equipment outside of SELLER's scope of supply.

**LIMITATION OF LIABILITY:** Notwithstanding any provision in this AGREEMENT or elsewhere to the contrary: (a) SELLER's maximum liability arising at any time from any cause whatsoever, whether in contract, tort (including negligence and/or gross negligence), strict liability or otherwise, shall not exceed the contract price of the GOODS, PARTS or SERVICE at issue and; (b) SELLER shall not be liable, in contract, tort (including negligence and/or gross negligence), strict liability or otherwise, for any special, incidental, indirect or consequential loss or damage of any nature, arising at any time, from any cause whatsoever, including lost usage, financing, revenue or profit, and all claims therefore are hereby expressly waived by BUYER.

**LAWS:** SELLER warrants that the GOODS, PARTS and SERVICES furnished hereunder shall meet only those requirements (including any applicable taxes, surcharges or other levies) of any governmental regulatory authority that have been specified by BUYER in writing to SELLER and where SELLER has accepted same in writing. This AGREEMENT shall be governed by the laws of the State of Missouri, without regard to its principles on conflicts of laws. BUYER hereby agrees to subject itself to and consents to the jurisdiction and venue of either the Circuit Court of St. Louis County, Missouri, or the United States District Court for the Eastern District of Missouri, Eastern Division, and BUYER agrees that such venue shall be the exclusive forum regarding disputes arising out of this AGREEMENT. If jurisdiction cannot be obtained in either the Circuit Court of St. Louis County, Missouri, or the United States District Court for the Eastern District of Missouri, Eastern Division, then all controversies, disputes or claims arising out of or relating to this AGREEMENT or the performance, enforcement, breach, termination or validity thereof, including the determination of the scope of the AGREEMENT to arbitrate, shall finally be resolved by arbitration in St. Louis, Missouri, conducted in the English language by three neutral arbitrators, in accordance with the rules of the American Arbitration Association.

Any arbitration decision shall be final and non-appealable. The basis for the arbitrators' decision shall be based solely on this AGREEMENT and any documents incorporated thereby. Otherwise, the laws of SELLER's jurisdiction shall be applied. BUYER agrees to be joined in any arbitration or other legal or dispute resolution proceeding involving any third party and which relates in any manner to this AGREEMENT or the GOODS, PARTS or SERVICES supplied by SELLER pursuant to this AGREEMENT. BUYER and SELLER expressly agree and acknowledge that the United Nations Convention for the International Sale of Goods shall not apply to this AGREEMENT.

**CONFIDENTIAL & PROPRIETARY INFORMATION:** Any information which is designated "Confidential" or "Proprietary" by SELLER and is disclosed by SELLER to BUYER is disclosed in confidence and the BUYER shall not publish or otherwise disclose such information to others without the express written consent of SELLER. SELLER further hereby specifically designates, and BUYER acknowledges, that all information contained in any materials supplied pursuant to this AGREEMENT, including but not limited to, operating manuals, service manuals, instructions and drawings is also proprietary, despite any lack of markings indicating same. Such information is supplied by SELLER to BUYER for the sole and exclusive use of the BUYER and BUYER shall not furnish, reveal or impart this information to any third party for any reason whatsoever without the express written consent of an authorized representative of the SELLER. Nothing herein shall limit the BUYER's right to disclose any information provided by the SELLER hereunder which (i) was furnished by the SELLER prior to this AGREEMENT without restrictions; or (ii) legitimately becomes knowledge available within the public domain; or (iii) is received by BUYER from a third party without restriction and without breach of this or any other agreement.

**INDEMNIFICATION:** To the fullest extent not prohibited by law, BUYER indemnifies and agrees to defend and hold harmless SELLER and SELLER's officers, directors, agents, employees and insurers from and against all claims, damages, liquidated damages, losses, expenses, and claims relating to indemnification and/or liability contractually assumed by SELLER, including but not limited to the fees of attorneys, consultants or experts, arising out of or resulting from, or allegedly arising out of or allegedly resulting from, the purchase or use of the GOODS or PARTS or the performance of the SERVICES, including without limitation all claims, damages, losses or expenses attributable to delays, breach of this AGREEMENT, bodily injury, sickness, disease, death, or injury to or destruction of tangible property, including loss of use resulting therefrom, caused or alleged to be caused by the negligence, gross negligence, acts, errors, omissions, breach of contract, or willful misconduct of BUYER or anyone directly or indirectly employed by BUYER or anyone for whose acts BUYER may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. In claims against any person or entity indemnified hereunder by an employee of BUYER, or anyone directly or indirectly employed by BUYER, or anyone for whose acts BUYER may be liable, the indemnification obligations of BUYER under this AGREEMENT shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for BUYER under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.


1905 Kienlen Avenue,
St. Louis, MO 63133
314.383.1300
www.fscurtis.com

**UNLAWFUL CONDUCT:** BUYER warrants and covenants that it will not violate any applicable law or regulation of any country or political subdivision thereof, including the U.S. Foreign Corrupt Practices Act, in performing or purporting to perform any act arising out of or in connection with this AGREEMENT. BUYER warrants that it is purchasing GOODS and PARTS for its own use and that there will be no diversion of any shipment or any reshipment to any country, nation or political subdivision that is contrary to any law of the United States of America. Pursuant thereto, BUYER agrees to maintain such records as are required by such applicable laws and regulations and to provide all written assurances required by SELLER in connection therewith. Further, any such unlawful conduct shall constitute grounds for SELLER to immediately terminate this AGREEMENT for cause.

**ADDITIONAL TERMS:** All price quotations made by SELLER to BUYER shall remain valid for thirty (30) days unless otherwise specified by SELLER in writing. In the event of a conflict between the terms of this AGREEMENT and any incorporated terms, the terms of this AGREEMENT shall prevail. SELLER reserves the right to file a mechanic's or other lien in the case of BUYER's failure to pay for GOODS, PARTS or SERVICES. Neither this AGREEMENT nor any right, responsibility or obligation of BUYER hereunder may be assigned by BUYER without the prior written consent of an authorized representative of SELLER. SELLER will use reasonable efforts to permit BUYER inspection and expediting. Arrangements for same must be approved in advance by SELLER and arranged by BUYER at least thirty (30) days in advance. All BUYER-incurred costs relating to inspection and/or expediting shall be for BUYER's account. SELLER reserves the right to source material from anywhere in the world. BUYER warrants that no part of the GOODS or PARTS shall be utilized in any type of nuclear use, plant, and operation or otherwise, unless expressly acknowledged by SELLER in SELLER's final proposal.

**GENERAL PROVISIONS / ENTIRE AGREEMENT:** Except as otherwise provided herein, these terms and conditions and the face of BUYER's purchase order to SELLER (and if the Agreement is for SERVICES, SELLER's applicable Labor Rate Sheet) shall constitute the entire agreement between BUYER and SELLER and can only be modified by a writing signed by duly authorized representatives of both BUYER and SELLER. Should any part of the AGREEMENT be deemed invalid by a court of law that shall not constitute an invalidation of any other part of the AGREEMENT. Section headings are for purposes of guidance only and are not to be considered a part of the AGREEMENT. SELLER's acceptance of BUYER's purchase order is expressly made conditional on BUYER's assent to these terms and conditions and the rejection of any other terms and conditions. Acceptance by BUYER of GOODS, PARTS, or SERVICES shall constitute unequivocal acceptance of these terms and conditions. Past practice, industry standards or practices or previous course of dealing or trade shall not supersede or replace these terms or conditions. Failure of SELLER to effect any available right or remedy shall not operate as a waiver of same. BUYER acknowledges the import of these terms and conditions and understands the contractual obligations created.


1905 Kienlen Avenue,
St. Louis, MO 63133
314.383.1300
www.fscurtis.com