

GENERAL TERMS AND CONDITIONS OF SALE

The following General Terms and Conditions of Sale (“Terms and Conditions”) govern the sales of parts (“Product”) by SETTIMA USA Inc. (“SETTIMA USA”) to you (“Buyer”). Any term or condition in any order, confirmation or other document furnished by Buyer which is additional to, different from, or conflicting with these Terms and Conditions is expressly rejected and will not be binding upon SETTIMA USA unless specifically agreed to in writing by SETTIMA USA.

- 1. ACCEPTANCE OF ORDERS.** All orders of Buyer are subject to acceptance by SETTIMA USA through SETTIMA USA’s issuance of a written order confirmation, which contains the Buyer’s order details (“Order Confirmation”).
- 2. CANCELLATION OF ORDERS.** SETTIMA USA’s Order Confirmation is final and binding. Orders may not be cancelled after SETTIMA USA issues its Order Confirmation without the prior written consent of SETTIMA USA.
- 3. PRICES.** Prices are as stated on SETTIMA USA’s Order Confirmation.
- 4. PAYMENT.** Payment terms as stated on SETTIMA USA’s Order Confirmation. Interest in the amount of 1% per month (12% per year) or the highest rate allowed by law, whichever is less, shall apply on all past due balances until such balances are fully paid. Should it become necessary for SETTIMA USA to collect any past due balances by legal proceedings or otherwise, Buyer agrees to pay all costs of collection, including, without limitation, reasonable attorney’s fees and court costs, incurred by SETTIMA USA.
- 5. SHIPPING.** Shipping terms are as stated on SETTIMA USA’s Order Confirmation according to Incoterms[®] 2020 Unless otherwise agreed in writing by SETTIMA USA (i) Buyer shall make all arrangements (and shall pay all costs) for the transportation and handling of the Product, (ii) delivery shall be deemed complete and title and risk of loss or damage to the Product shall pass to Buyer upon acceptance of shipment by a carrier, subject to SETTIMA USA’s right to be paid in full, (iii) SETTIMA USA shall not be responsible to obtain and/or maintain for the account of Buyer any insurance against loss or damage to the Product in transit and the cost of any such insurance shall be borne by Buyer.
- 6. DELIVERY.** The delivery dates set forth in SETTIMA USA’s Order Confirmation are estimates only. SETTIMA USA shall make commercially reasonable efforts to deliver the Product in accordance with these dates; provided, however, that SETTIMA USA shall not be liable for failure to deliver the Product as estimated.
- 7. RETENTION of TITLE.** The Product supplied shall remain the property of SETTIMA USA until the date of the full payment by Buyer of the entire price of the Products and of all amounts due to SETTIMA USA. Until SETTIMA USA receives the full payment, Buyer shall hold the Products as SETTIMA USA’s fiduciary agent and shall keep the Products properly stored, protected and insured and shall not resell, assign, pledge, or place any lien on the Products.

8. CLAIMS. All claims against SETTIMA USA for defects, errors or shortages must be made by Buyer in writing and notified to SETTIMA USA within ten (10) days of receipt of the Product by Buyer. Failure by Buyer to make any claim against SETTIMA USA within ten (10) days of receipt of the Product shall be deemed acceptance of the Product and a waiver of any and all defects, errors or shortages. Notwithstanding the foregoing, any use or transfer of the Product by Buyer, its agents, employees, contractors or licensees, for any purpose, after delivery thereof, shall constitute acceptance of that Product by Buyer.

9. RETURNS OR EXCHANGES. All sales of Product are final. No Product may be returned or exchanged without the prior written consent of SETTIMA USA.

10. INTELLECTUAL PROPERTY RIGHTS. Any sale of Product hereunder shall not convey any express or implied license under any patent, copyright, trademark or other proprietary rights owned or controlled by SETTIMA USA, whether relating to the Product or any manufacturing process or other matter. All rights under any such patent, copyright, trademark or other proprietary rights are expressly reserved by SETTIMA USA. Buyer shall indemnify, hold harmless and defend SETTIMA USA against any claim, loss, damage, expense and cost, including, without limitation, reasonable attorney's fees, resulting from or otherwise relating to any claimed infringement of patent, copyright, trademark or other proprietary rights arising out of compliance by SETTIMA USA with Buyer's designs, specifications and instructions.

11. WARRANTY; DISCLAIMER OF WARRANTIES. Settima USA warrants all Products solely to Buyer and exclusively as set forth in the maintenance or user guide issued for each Product, which warranty is in lieu of all other warranties either express, implied, or statutory. SETTIMA USA DISCLAIMS AND MAKES NO WARRANTY TO BUYER OR BUYER'S CUSTOMERS THAT THE PRODUCT DELIVERED TO BUYER HEREUNDER IS MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE, AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION OF THE PRODUCT CONTAINED ON SETTIMA USA'S ORDER CONFIRMATION AND PRODUCT USER GUIDE. SETTIMA USA MAKES NO WARRANTY TO BUYER OR BUYER'S CUSTOMERS THAT THE PRODUCT IS DELIVERED FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR THE LIKE.

12. LIMITATION OF LIABILITY. SETTIMA USA'S LIABILITY FOR ANY LOSS, DAMAGE OR CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING SETTIMA USA'S ACTIVE OR PASSIVE NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE SHALL IN NO EVENT EXCEED IN THE AGGREGATE THE TOTAL PURCHASE PRICE RECEIVED BY SETTIMA USA FOR THE PRODUCT. IN NO EVENT SHALL SETTIMA USA BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTED EQUIPMENT OR PARTS, FACILITIES OR SERVICES, DOWN-TIME COSTS, LABOR COSTS, OR CLAIMS OF BUYER OR BUYER'S CUSTOMERS. THE FOREGOING LIMITATIONS APPLY TO BOTH BUYER AND BUYER'S CUSTOMERS.

13. FORCE MAJEURE. SETTIMA USA shall not be liable for any loss, damage, delay or failure to perform, in whole or in part, resulting from causes beyond the control of either SETTIMA USA or SETTIMA USA's suppliers, including, without limitation, acts of God, war, acts of terrorism, insurrections, riots, embargoes, fires, strikes, delays in transportation, inability to obtain supplies of raw materials, blackouts or governmental laws, regulations, orders or actions.

14. PRODUCT SAFETY. Buyer shall be solely responsible for compliance with all laws, rules, regulations and industry safety standards applicable to the distribution, sale and use of the Product supplied by SETTIMA USA. Buyer shall cause all individuals and entities buying or otherwise obtaining the Product from Buyer to comply with such laws, rules, regulations and industry safety standards. Buyer shall indemnify, hold harmless and defend SETTIMA USA against any claim, loss, damage, expense and cost, including, without limitation, reasonable attorney's fees and court costs, resulting from or otherwise relating to any claimed failure by Buyer to comply or cause any individual or entity to comply with such laws, rules, regulations and industry safety standards.

15. EXPORT CONTROL. Buyer shall comply fully with all administration and export control laws and regulations of the U.S. government as may be applicable to the export, resale or other disposition of any Product purchased from SETTIMA USA.

16. APPLICABLE LAW. The laws of the State of Illinois (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to these Terms and Conditions, including, without limitation, its validity, interpretation, construction, performance, and enforcement. With respect to international sales, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms and Conditions.

17. DISPUTES. Any party bringing any legal action or proceeding against the other party arising out of or relating to these Terms and Conditions shall bring such legal action or proceeding in the United States District Court for the Northern District of Illinois or in any court of the State of Illinois sitting in DuPage County. Notwithstanding the foregoing, any controversy or claim, including, without limitation, any controversy or claim based on misrepresentation, negligence or strict liability, arising out of or relating to these Terms and Conditions, which involves an amount in excess of \$50,000, exclusive of interest and costs, shall be settled by arbitration in DuPage County, Illinois, in accordance with the rules of the American Arbitration Association then in effect. The arbitration is to be held before a single arbitrator. The decision in such arbitration shall be final and binding and any award rendered thereon may be entered in any court having jurisdiction.

18. NOTICES. Any notice required or permitted to be given under these Terms and Conditions shall be made in writing and shall be deemed to have been given (i) if personally delivered, or (ii) if sent by registered or certified mail, postage prepaid, return receipt requested, or (iii) if sent by nationally or internationally recognized delivery service, to the address indicated by SETTIMA USA in its first Order Confirmation and by Buyer in its first order to SETTIMA USA. Notices shall be deemed to have been received (i) immediately, if personally delivered, or (ii) upon receipt as indicated by the date on the signed receipt, if sent by registered or certified mail, postage prepaid, return receipt requested, or by nationally or internationally recognized delivery service. Either party may from time to time change the address to which notices to it shall be given by giving notice of such change to the other party in the manner provided for herein.

19. GENERAL PROVISIONS. These Terms and Conditions and SETTIMA USA's Order Confirmation constitute the final and integrated agreement of SETTIMA USA and Buyer and supersede all prior negotiations, proposals, quotations, proforma invoices, understandings and agreements (except any prior written commercial credit agreement in effect between the parties), whether oral or written, relating to the Product or the subject matter of these Terms and Conditions. Any representation, warranty, course of dealing or trade usage not expressly contained or referenced herein shall not be binding upon SETTIMA USA. No modification, amendment, rescission, waiver or other change in these Terms and Conditions shall be binding upon SETTIMA USA unless specifically agreed to in writing by SETTIMA USA. The invalidity or unenforceability, in whole or in part, of any provision herein shall not affect the validity or enforceability of any other provision herein. Failure or delay on the part of SETTIMA USA to exercise any right, power, privilege or remedy herein shall not constitute a waiver hereof. The section headings contained herein are for convenience of reference only and are not to be used in the construction or interpretation of these Terms and Conditions. All words used herein shall be construed to be of such gender and number as the circumstances require.