

## TERMS & CONDITIONS AND LIMITED WARRANTY

All quotations, products and services provided by Hardy Process Solutions Inc. ("Hardy") to any customer, distributor, original equipment manufacturer, end-user or other purchaser ("Buyer") are furnished only on the terms and conditions stated herein. By ordering and accepting delivery of products and/or services from Hardy, Buyer agrees to and accepts these terms and conditions and agrees that, unless modified by separate negotiated agreement as provided below, these terms and conditions, together with the item, quantity, price, and similar terms as confirmed in Hardy's order acknowledgement and/or invoice, constitute the entire agreement of the parties, superseding all other communications and documentation. Hardy hereby expressly rejects any different or additional terms, preprinted or otherwise, contained or referenced in any purchase order or other documentation furnished by Buyer, whether before or after delivery of the products or services, even if receipt thereof is acknowledged by signature or otherwise. **No modification of these terms shall be effective unless set out in a separate negotiated agreement signed by an authorized officer of Hardy.**

**QUOTATIONS & PRICES:** All prices are in US Dollars and, unless otherwise specified by Hardy in a separate written agreement or quotation, are subject to change without notice. Verbal quotations for custom products or special services expire at the close of business on the date made, if not first accepted in writing or withdrawn. Written quotations are valid for the period specified therein or, if not otherwise specified, for 30 days from date of issuance, and may be changed or withdrawn at any time prior to acceptance. Quotations to non-U.S. Buyers are solicitations for offers to purchase. Clerical or typographical errors are subject to correction. Quoted prices and delivery dates are valid only for the quantities, terms and payment schedule specified and may be subject to increase based on increases in wage and/or materials costs. All proposals and price quotations prepared by Hardy are confidential and remain the property of Hardy. Prices do not include, and Buyer is responsible for payment of, any applicable sales, use, value added, goods and services, excise, property, customs, stamp, documentary, import/export, or other taxes, tariffs, fees, duties, permits, withholdings or like charges, whether domestic or foreign, related to the products and/or services supplied hereunder. Any such amounts paid by Hardy (including any payment upon subsequent audit) will be invoiced to and payable by Buyer unless Buyer provides an exemption certificate acceptable to the applicable government authority.

**ORDERS & ACCEPTANCE:** Orders must be presented in writing or via electronic means acceptable to Hardy and will be binding upon Hardy only when accepted at its principal office by written or electronic acknowledgement. Hardy reserves the right, at its option and without liability, to refuse any order, in whole or in part, or to specify an alternate delivery schedule if orders from all sources exceed its inventory or ability to deliver. For custom products or special services ordered without a prior quotation, Hardy may provide a quotation or order acknowledgement outlining its terms of acceptance, including any necessary clarifications to terms, specifications, pricing, and/or delivery. Where orders are placed, acknowledged, and/or invoiced by electronic transmission, the data transmitted will be deemed "in writing" and "signed," and any printout of electronic transmissions maintained in the ordinary course of business will be considered an "original" and admissible as between the parties to the same extent and under the same conditions as other records maintained in documentary form. Hardy will be entitled to assume that persons placing orders on behalf of Buyer (electronically or otherwise) are authorized to do so and to accept the terms and conditions herein.

**PAYMENT TERMS:** For customers without approved credit terms, all orders require payment prior to shipment by COD, letter of credit, or other payment method approved by Hardy. Deposits or stage payments, if any, are non-refundable. Credit terms, if any, require Hardy's written approval and are measured from date of invoice. Payment terms will not be affected by any delay in delivery, installation or acceptance; provided, however, that if shipment of products is delayed due to Buyer's acts or omissions, payment will be due on the scheduled shipment date, and the products will be stored at Buyer's expense and risk for the duration of such delay. Notwithstanding credit approval, Hardy reserves the right to modify credit terms or require prior payment, letter of credit, or COD when, in the opinion of Hardy, Buyer's financial condition or previous payment record so warrants. If Buyer becomes delinquent in any payment due, Hardy in its discretion may take any actions permitted by law, including set off, and may institute credit hold procedures on all open orders. Future orders will not be confirmed until Buyer's account is brought current, including any outstanding interest charges. A service charge of 1½% per month will be charged on all past due balances. If Hardy deems it necessary to refer an account to an agent or attorney for collection, all costs and expenses of collection (including, without limitation, reasonable attorneys' fees) will be charged to Buyer's account, up to the maximum amount allowed by law.

**DELIVERY & INSPECTION:** All product sales are Ex-Works Factory (Incoterms 2010), unless otherwise stated on Hardy's order acknowledgement. Title will pass upon delivery to the carrier at Hardy's dock, as evidenced by a signed bill of lading, and, if not previously accepted, receipt of delivery by or on behalf of Buyer will constitute acceptance of these terms and conditions. For Ex Works shipments, Buyer will bear all risk and expense for delivery of goods, including without limitation, shipping, loading, unloading, storage, freight, and insurance and any shipping contracts made by Hardy will be for Buyer's account. Shipments may also be prepaid by Hardy and invoiced to Buyer. Hardy will endeavor to deliver accepted orders promptly; it is understood, however, that dates indicated for delivery or performance represent Hardy's best current estimates only and Hardy will have no liability for failure to perform within such dates. Buyer must inspect all products upon arrival and provide written notice to Hardy, within 10 days following receipt, of any claim for shortage or other nonconformance. If Buyer fails to give timely notice, all products will be deemed accepted. Use or resale of products in any manner following delivery will also constitute acceptance by Buyer. Any claim for loss or damage in transit should be made directly to the delivering carrier.

**CHANGE & CANCELLATION:** Changes requested by Buyer after order acceptance must be submitted in writing and are subject to written acceptance by an authorized representative of Hardy. Costs and/or delays resulting from such changes will be solely determined by Hardy and binding upon Buyer. Unilateral cancellation of a purchase order by Buyer will constitute a breach of contract and is subject to a cancellation/restocking charge. This charge will be a minimum of 30% of the purchase order value and a maximum of costs and commitments incurred by Hardy toward fulfillment of the order through the date of termination. Orders for special order or custom products are non-refundable and cannot be cancelled once in production. Hardy's performance is subject to approval of Buyer's credit and Hardy, with reasonable cause, may cancel or suspend performance of any order if Buyer fails to meet any of its obligations as provided herein.

**SERVICE & INSTALLATION:** Product prices are exclusive of any required installation, start-up or field services. Such services, if requested, will be provided at Buyer's expense.

**LIMITED WARRANTY:** Hardy products and services are warranted in accordance with the following limited warranties. These warranties are effective only upon payment in full for the product(s) or service(s) to be warranted, extend only to the original Buyer, and may not be transferred to end users or other third parties, by operation of law or otherwise. Warranties will be those in effect on the date of purchase; Hardy may alter or terminate its warranties in whole or in part for future sales and service at any time, without prior notice.

**Standard Products.** Standard products manufactured by Hardy are warranted against defects in workmanship and materials under normal use in a typical operating environment for two (2) years from date of product shipment from Hardy's facility, except where otherwise specified in product documentation. Exceptions to the two year warranty include the Enviro Bench Scale & Floor Scales, which are warranted for one (1) year from date of shipment.

**Custom or Special Products.** Custom or special products manufactured by Hardy in accordance with Buyer's written specifications, drawings, plans and designs are warranted to reasonably conform to such specifications, drawings, plans and designs as confirmed and detailed in Hardy's written quotation or order acknowledgement for one (1) year from date of shipment by Hardy from its factory.

**Third Party Products.** Products or components not manufactured by Hardy are warranted only by the original manufacturer and only if and to the extent set forth in the original manufacturer's warranty, and Hardy will not be liable for any damage or loss of any nature with respect to such third party products or failure of any such supplier to perform under its warranty.



**Limited Remedy.** To exercise the warranty, Buyer must return any non-conforming product freight prepaid to Hardy's designated repair facility within the applicable warranty period. Products found to be defective by factory inspection will be repaired or replaced with new or refurbished products or parts, at Hardy's option and without charge, and returned to Buyer. The repaired or replaced product is then warranted for the remaining term of the applicable warranty or 90 days, whichever is longer. Hardy will not be responsible for any other costs or charges, including without limitation costs of dismantling, de-installation, removal, or reinstallation. If Hardy is not able, using reasonable efforts, to correct or remedy a defect, its sole obligation will be to refund an equitable portion of the purchase price paid to Hardy for the defective item. Service required beyond the normal scope of warranty (see *Exclusions* below) or after expiration of the warranty period are billable repairs and will be invoiced to Buyer at Hardy's then-current rates and charges. A Buyer purchase order may be required for billable repairs. Buyer may also be billed for costs of testing and inspection of returned products with no trouble found.

**Exclusions.** Any warranty claim, support claim, or liability is excluded, and Buyer will be solely responsible, for any claim, damage, or liability arising out of (1) inadequate or faulty installation (unless performed by Hardy), (2) accident, misuse, abuse, or neglect, (3) improper use or failure to follow Hardy's operating instructions and safety precautions, including any use of products outside of normal or specified operating or environmental conditions, (4) defects, problems, or failures created by third party equipment, components, accessories, services or their interface with Hardy's products, (5) acts of God or other causes external to the products, or (6) latent defects discovered after expiration of the applicable warranty period. Modification of products, other than as specifically authorized by Hardy in writing, is prohibited and will void all warranties. Hardy's responsibility will in all events be limited to repair or replacement of the defective Hardy product(s), and will not include any liability for or arising out of third party products, with which Hardy's products may be installed, combined or used.

**TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING LIMITED WARRANTIES AND REMEDIES ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, REPRESENTATIONS, TERMS, OR CONDITIONS, WRITTEN OR ORAL, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, CORRESPONDENCE WITH DESCRIPTION, AND NONINFRINGEMENT, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. HARDY DOES NOT ASSUME ANY LIABILITY FOR LOSS, DAMAGE, DELAY OR ACCIDENT DUE TO OR CAUSED BY ANY DEFECT IN WORKMANSHIP AND/OR MATERIALS.**

**Certain Legal Limitations:** When, under applicable law, implied warranties are not allowed to be excluded in their entirety, such warranties will be limited to the duration of the applicable written warranty. No employee, agent, or other person is authorized to modify, vary, or extend Hardy's warranties as set out herein or to assume for Hardy any other liability in connection with its products.

**PRODUCT SPECIFICATIONS AND VALIDATION:** All products, when delivered by Hardy, will conform to specifications as set out in Hardy's technical files; however, Buyer will be responsible for validation of each specific product application and any use of products as a component of or in conjunction with any products not provided by Hardy for such purpose, including all necessary testing and qualification, and will put in place all necessary systems and protections to ensure that any failure or defect relating to the products will not result in any other or further damage. Hardy reserves the right to discontinue or change the design or specifications of any product or component at any time, and will use commercially reasonable efforts to notify Buyer of any decision to discontinue products or material changes in specifications affecting form, fit or function.

**SOFTWARE & FIRMWARE:** Any software or firmware provided by Hardy ("Software") is licensed, not sold, and Hardy grants Buyer, only for so long as Buyer owns the product, a limited, personal, non-transferable, nonexclusive license to use such Software only in machine readable form and only as part of the normal operation and maintenance of the product(s) with which it is provided. All rights in and to such Software not expressly granted to Buyer are hereby expressly reserved. The foregoing license terminates when Buyer discontinues use of the products with which the Software is provided.

**USE RESTRICTIONS & REQUIREMENTS:** Buyer is responsible for compliance with all applicable laws, regulations, codes, recommendations and requirements of government authorities

pertaining to the products, their import, export, transfer, sale, installation, service, storage and use, it being understood that Hardy makes no warranty of any kind regarding compliance with such requirements. Each party shall defend, indemnify and hold harmless the other from all liabilities, claims, losses, damages, and expenses (including without limitation reasonable attorneys' fees) arising out of any breach of these terms and conditions, except as limited herein.

**PROPRIETARY INFORMATION:** Buyer acknowledges that Hardy's products are based upon and embody various confidential and/or proprietary technology, processes, methods, information, know-how, and trade secrets of Hardy. Hardy (or its suppliers or licensors, where applicable) shall exclusively own all inventions, technology, know-how, trade secrets, and other proprietary information of any kind used or embodied in the products, documentation, drawings, specifications, Software, and other items furnished by Hardy, all intellectual property rights with respect thereto, and all reproductions or derivatives thereof in any form ("Proprietary Information"). Buyer shall neither acquire nor claim any right, title or interest in, and shall exercise reasonable care to maintain the confidentiality of, Hardy's Proprietary Information, and shall use the same solely as required for its authorized use of the products supplied hereunder. Buyer may not (i) copy, adapt, develop, reverse engineer, recast, compile, decompile, translate, or create derivative works from any Products or materials provided by Hardy, or permit any other person to do so, (ii) remove, alter, or obscure any copyright, trademark, logo, government restricted rights, or other notices or legends from any items provided by Hardy, or (iii) disclose or use Proprietary Information for commercial purposes or in a manner detrimental to Hardy. Disclosures of Proprietary Information may be made only to Buyer's personnel having a specific need to know and an obligation to protect such information no less restrictive than the restrictions herein, and Buyer will be responsible for any breach by its personnel. It is understood that any breach of this Section may cause irreparable harm for which recovery of damages would be inadequate, and that immediate injunctive or other equitable relief is appropriate and available to Hardy to prevent any violation, threatened or actual, of this Section, in addition to any other remedies and without proof of actual damages.

**LIMITATION OF LIABILITY:** Any action against Hardy arising out of the products or transactions to which these terms apply must be brought within 2 years after the cause of action arises or performance hereunder is completed or terminated, whichever first occurs. Such action must be brought in the courts of the State of California or of the United States located in San Diego County, California, and Buyer submits to the jurisdiction of such courts for the purpose of any such action. **HARDY'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE FOR ANY AND ALL CAUSES WHATSOEVER SHALL BE LIMITED TO THE TOTAL PURCHASE PRICE PAID TO HARDY UNDER THE APPLICABLE PURCHASE ORDER. IN NO EVENT WILL HARDY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT LOSSES OR DAMAGES, HOWEVER CAUSED, WHETHER FORESEEABLE OR NOT, AND EVEN IF ADVISED OF THE POSSIBILITY THEREOF. THESE LIMITATIONS WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER CONTRACT, TORT, STRICT LIABILITY, INDEMNIFICATION, OR OTHERWISE, NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.** Buyer acknowledges that these limitations of liability are a material part of the bargain between the parties and are reflected in product pricing, which would be higher without these limitations.

**FORCE MAJEURE:** Neither party will be liable for non-performance or delay in performance of any obligation (other than payment of sums due) to the extent caused by events or circumstances beyond its reasonable control and without negligence on its part, provided the affected party uses reasonable efforts to avoid or remove any causes of nonperformance and continues performance with reasonable dispatch whenever such causes are removed. For delays resulting from such causes, performance will be correspondingly extended.

**GOVERNING LAW:** These Terms and Conditions, all transactions to which they may apply, and any disputes arising out of products or services supplied hereunder, shall be governed by the laws of the State of California and the United States of America, excluding any conflict of law provisions thereof. The United Nations Convention on Contracts for The International Sale of Goods, the Uniform Law on the Formation of Contracts for the International Sale of Goods, and any applicable international discovery and service of process conventions will be inapplicable.



**Returns:** No approval shall be granted for the return of Goods under any circumstances where the original invoice date for such Goods is more than one hundred eighty (180) days prior to the date that a request is made to Hardy for such approval. A minimum Restocking charge of 30% of the purchase order value will be applied for all items returned that are not due to Hardy errors or negligence. No credit will be issued for returned Goods where the net amount involved is less than \$100.00, or for special/nonstandard products, except when an error made by Hardy is to be corrected. Once a RMA number is assigned, the product must be returned to Hardy within 30 days. For **International customer only**, if the return is being made via ocean transport, goods must be on the boat and in route to Hardy within 30 days.