

***J.R. Merritt Controls, Inc. • 55 Sperry Avenue • Stratford, CT 06615 • 800.333.5762***

## **TERMS AND CONDITIONS OF QUOTATION AND SALES**

### **DISCLAIMER**

The applications for J.R. Merritt Controls, Inc. ("J.R. Merritt") products are virtually unlimited. Given the variety of machinery and standards these products may be subject to, it is impossible for J.R. Merritt, its employee's and agents to give expert advice on the suitability of our products for a specific application. It is the Buyer's responsibility to obtain and apply expertise specific to their industry as to a particular product application. The Buyer is responsible for determining the suitability of J.R. Merritt products for their different applications and that J.R. Merritt products are installed and utilized in accordance with all local, state, and federal regulations and laws and all applicable health and safety standards. If J.R. Merritt products are used in an application that is safety critical, the Buyer must conduct or obtain appropriate safety testing of the products, and provide adequate safety devices, guards, and warning notices, and machine specific training to the Buyer's customers as needed to protect product operators from injury.

J.R. Merritt can offer guidance in the product selection process and in certain situations provide samples for testing and examination. J.R. Merritt has made all reasonable efforts to accurately present the information in our catalog but shall not be responsible for any incorrect information which may result from unintentional oversights. Due to continuous product improvements, the product specifications as stated in the catalog are subject to change at any time and without notice. The Buyer is responsible for consulting a sales representative of J.R. Merritt for detailed information and to determine any changes of information in the catalog.

J.R. Merritt Controls, Inc. can be contacted regarding any questions at (203) 381-0100.

### **TERMS AND CONDITIONS OF QUOTATION AND SALES**

#### **1. ACCEPTANCE**

"Any order, written or verbal emanating from a quotation, will only be accepted by J.R. Merritt Controls, Inc. ("J.R. Merritt") under the terms and conditions set out below, unless otherwise agreed in writing."

#### **2. QUOTATIONS & PRICES**

Written quotations automatically expire sixty (60) calendar days from the date issued unless sooner terminated by notice. J.R. Merritt's publications are maintained as sources of general information and are not quotations or offers to sell. Orders amounting to less than \$100.00 net will be billed at \$100.00. All clerical errors are subject to correction.

#### **3. SALES, USE, AND SIMILAR TAXES**

Unless otherwise specifically agreed, the amount of any sales, use, excise taxes, or any similar taxes for which J.R. Merritt is legally liable, either initially or through failure of payment by Buyer, shall be added to the price quoted or to the purchase price and Buyer agrees to pay the same to J.R. Merritt and/or to hold J.R. Merritt harmless there from.

#### **4. VARIATIONS IN DUTIES AND TAXES**

Buyer shall bear any increases, after the date of this contract, in or any new imposition of duties, levies or taxes relating to the product sold hereunder. Buyer shall further bear any additional cost and expense to J.R. Merritt due to increases, subsequent to the date of this contract, in freight or insurance rates pertaining to the product sold. The same shall apply to currency exchange fluctuations.

#### **5. PAYMENT**

Payment is due no later than 30 days after the date of J.R. Merritt's invoice for the goods. J.R. Merritt may require prepayment of some or all of the invoice amount prior to delivery. J.R. Merritt may at its option charge interest expense on any balance outstanding more than 60 days at a rate of 0.5% (one-half percent) per month.

#### **6. SECURITY INTEREST & TITLE**

In jurisdictions governed by the Uniform Commercial Code, this contract shall serve as the security agreement, reserving in J.R. Merritt a security interest in the goods until full payment of purchase price. The provisions of the uniform Commercial Code regarding security interest shall have preference and apply if inconsistent with other terms of the conditions of sale herein. In jurisdictions where the Uniform Commercial Code does not apply, title to the goods shall remain in J.R. Merritt or its assigns until full payment of the purchase price. Buyer agrees to execute forthwith any and all documents in such as J.R. Merritt may require for filing or recording the security interest under the Uniform Commercial Code with the proper registers or offices, or for filing or

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recording the conditional sales contract.

**7. BUYER'S DEFAULT**

Upon Buyer's default, J.R. Merritt may make any disposition of the goods that is deems fit and, if it desires to resell the same, may do so at private or public sale, with or without notice, and with or without the property being at the sale, subject, however, to applicable Federal and State Laws. J.R. Merritt or its assigns shall have the right to bid at such sale and may become the purchaser of the property. The proceeds of the sale shall first be applied to the expenses incurred in retaking, repairing, storing and selling the goods, reasonable attorney's fees included, and then shall be applied to the payment of the balance due under the contract. Any surplus remaining shall be paid to Buyer. If a deficiency results after resale, the Buyer agrees to pay same forthwith, together with reasonable attorneys' fees, for the recovery thereof incurred by J.R. Merritt.

**8. GOODS IN TRANSIT**

If prior to delivery or while the goods is in transit, Buyer becomes bankrupt or insolvent, or any petition in bankruptcy or for reorganization, or for a state court receivership is filled against Buyer than J.R. Merritt may forthwith terminate this contract by giving written notice of such termination, and may take possession of any goods theretofore sold to Buyer, in connection with which the full purchase price has not been paid. Any such steps shall not prejudice J.R. Merritt's rights to any amounts then due under the contract.

**9. REFUSAL OF DELIVERY OR ORDER CANCELLATION**

(a) If Buyer refuses to accept delivery of any goods tendered for delivery hereunder, then J.R. Merritt, without prejudice to J.R. Merritt's other lawful remedies, may either store or cause such goods to be stored in a warehouse, for Buyer's account and at Buyer's cost, risk and expense, or sell such goods (without notice) to any Buyer at public or private sale, and hold Buyer liable for any difference between (i) the contract price for such goods stipulated herein and (ii) the price at which such goods are resold less the costs and expense of such resale including shipping and brokerage costs. (b) In the event of cancellation of an order, once entered, J.R. Merritt will be entitled to a cancellation charge not to exceed its cost plus anticipated profit. Alternatively, if the equipment ordered can be restocked or reasonably used for other customers a restocking charge will apply.

**10. SHIPMENT AS UNITY**

Each shipment by J.R. Merritt shall be treated as a separate and distinct unit with respect, but only with respect to forwarding, terms of payment, and the making of claims by Buyer; however, Buyer defaults in the payment of any obligation to J.R. Merritt or any installments thereof, under any agreement between Buyer and J.R. Merritt, or if Buyer refuses to accept any goods when tendered for delivery hereunder or under any other contract between Buyer and J.R. Merritt, J.R. Merritt may, on fifteen (15) days written notice to Buyer either defer further performance until the defaulted payments are made in full, or make future deliveries for cash in advance only, or treat the entire contract or contracts with Buyer as breached by Buyer and pursue its remedies for breach.

**11. DELIVERY**

Unless otherwise agreed, delivery of the goods to any carrier shall constitute delivery to Buyer, and thereafter the risk of loss or damage to the goods shall be upon Buyer.

**12. INSURANCE**

Buyer shall keep the goods insured against damage by fire, water or other casualty as required by J.R. Merritt, with a company acceptable to J.R. Merritt, with loss payable to J.R. Merritt for the total amount owing hereunder, until J.R. Merritt is fully paid. J.R. Merritt, if it so elects, may place said insurance at Buyer's expense; J.R. Merritt may cancel such insurance at any time and without notice and may receive the return premium, if any.

**13. SHORTAGE AND NON-CONFORMITY**

Any claim of shortage or that the goods do not conform with the specifications of the order or model must be made in writing within ten (10) days after delivery of the goods (as to which such claim is made) to J.R. Merritt or its nominees, , otherwise such claim shall be deemed waived. In the event that Buyer has a claim of shortage or of nonconformity of the goods to the specifications of the order or the model, and if such claim has been submitted within the required time limits as set forth above, J.R. Merritt shall, at its own expense, make up for the shortage of the goods, or replace or repair the goods, as the case may be, but in no event shall J.R. Merritt be or become liable to Buyer or to any other person or persons for any loss or damage, direct or indirect, nor for loss of profits, business or good will, arising out of or caused by the shortage.

**14. RETURN OF EQUIPMENT**

No equipment may be returned without first obtaining J.R. Merritt's authorization. Specially manufactured equipment can be accepted for return or credit only to the extent of value to J.R. Merritt, in each case, to be determined by J.R. Merritt. Equipment accepted for credit, not involving a Company error, shall be subject to J.R. Merritt's published Return for Credit policy. Returned

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equipment must be securely packed to reach J.R. Merritt without damage. Any cost incurred by J.R. Merritt to place equipment into condition for resale will be charged to Buyer.

**15. SUBSTITUTES**

J.R. Merritt may, upon notice to Buyer furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers. The samples, measurements, dimensions and weights contained in J.R. Merritt's catalogues, sales manuals, photographs, and drawings constitute only an approximate guide. J.R. Merritt reserves the right to make any changes that which J.R. Merritt, in its absolute discretion, considers necessary.

**16. LIMITED WARRANTY**

The sole warranty for products distributed by J.R. Merritt is the original equipment manufacturer's warranty. The warranty for Grammer seating is found at <http://www.grammer.com/english/665/>

The sole warranty for products manufactured by J.R. Merritt is as follows. J.R. Merritt warrants the goods sold hereunder to be free from defects in material, workmanship or design under normal use and service (not arising from misuse or accident) by the Buyer or Buyer's customers for the term of one (1) year following delivery of the goods to Buyer. **NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY.** This warranty is expressly in lieu of all other warranties, express or implied. J.R. Merritt's obligations under this warranty are limited to replacing or otherwise remedying any deficiencies in the goods at such place or places in the United States of America, as may be determined by J.R. Merritt at its sole discretion. In no event shall J.R. Merritt be liable to the Buyer or to any other person for any loss of profits, business, or good will, or any other direct or indirect loss or damage. J.R. Merritt shall not be liable under this warranty to any person or firm except Buyer.

**17. INDEMNIFICATION**

J.R. Merritt agrees to defend, at its expense, all claims and suits asserted or brought against the Buyer, and will indemnify and hold harmless the Buyer from and against any loss sustained as a result of a judgment against the Buyer based on defects of material, workmanship, or designs of J.R. Merritt's goods, to the extent the claim arises during the warranty period. However, J.R. Merritt will not be liable to the Buyer if the claim which results in any such judgment was caused in part or in full by the Buyer or its customers. Buyer is responsible for determining the suitability of J.R. Merritt products for Buyer's application and for their installation and use in accordance with all local, state, and federal regulations and laws and applicable health and safety standards, and Buyer agrees to defend, at its expense, all claims and suits asserted or brought against J.R. Merritt, and will indemnify and hold harmless J.R. Merritt from and against any loss sustained as a result of a judgment against J.R. Merritt based on Buyer's application of the goods.

**18. NOTIFICATION**

J.R. Merritt's warranty shall apply only if Buyer gives written notice of claimed defects to J.R. Merritt within thirty (30) days of learning of the defects, and such notice is delivered within fifteen (15) months of the delivery of such goods to Buyer. Buyer may be required to furnish J.R. Merritt with details of such defects and an ability to examine the goods. Buyer agrees to notify J.R. Merritt promptly and in any event no later than ten (10) days after notice or knowledge of and accident or malfunction involving J.R. Merritt's equipment which has caused personal injury or property damages and to cooperate fully with J.R. Merritt in investigating and determining the causes of such accident and malfunction. In the event that Buyer fails to give such notice to J.R. Merritt or to cooperate with J.R. Merritt, Buyer shall be obligated to indemnify and save J.R. Merritt harmless from any claims arising from such accident.

**19. MAINTENANCE**

Buyer shall use and shall require its employees and agents to use all safety devices and guards and shall maintain the same in proper working order. Buyer shall use and require its employees and agents to use safe operating procedures in operating the equipment. If Buyer fails to meet the obligations herein, Buyer agrees to indemnify and save J.R. Merritt harmless from any liability or obligation with regard to any personal injuries or property damage directly or indirectly connected with the operation of the equipment.

**20. UNAPPROVED USES - LIMITATION OF LIABILITY**

Unless otherwise agreed to in writing by J.R. Merritt, the parts manufactured by J.R. Merritt is not intended for use in aviation, aerospace, medical, and nuclear applications or activities. J.R. Merritt's products are not designed, intended or authorized for use as components in systems or applications in which the failure of the product could create a situation where damage, personal injury, death or nuclear contamination could occur. If so used and any damage, personal injury, death or nuclear contamination occurs, J.R. Merritt disclaims all responsibility and Buyer shall indemnify J.R. Merritt from any and all liability for such damage, personal injury, death or nuclear contamination arising out of such use, including J.R. Merritt's negligence.

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***J.R. Merritt Controls, Inc. • 55 Sperry Avenue • Stratford, CT 06615 • 800.333.5762*****21. SPARE PARTS**

- (a) J.R. Merritt is the only authorized dealer for spare parts for its products. While spare part sales/customer service suggestions and information is given it is not intended to be, represent or given as technical advice.
- (b) J.R. Merritt recommends that servicing and/or technical advice be sought for the repairing of its equipment and/or installation of spare parts. It is recommended that factory authorized J.R. Merritt trained personnel do all repairs and/or installation of spare parts.
- (c) J.R. Merritt shall in no event be liable to the Buyer or any other person for any loss or damage, direct or indirect where the repair and/or installation of a spare part was not performed by authorized J.R. Merritt trained personnel.
- (d) In no event and in any circumstance will J.R. Merritt be liable or responsible for any consequential loss or damages such as, without limitation, loss of profits, business or good will.

**22. MISCELLANEOUS PROVISIONS**

- (a) The obligation of J.R. Merritt hereunder shall be modified or excused as the case may be, for reasons of Act of God, war, governmental law or regulations, strikes or lockouts, fire, breakdown of machinery, whether in its own business enterprise, or if for any other cause beyond J.R. Merritt's control, the goods cannot be delivered or their delivery becomes delayed in whole or in part. In the above instances, time for delivery shall be extended for the period of the delay caused, with the proviso, however, that either party may cancel in writing the undelivered portion of the order or contract if the delay exceeds six (6) months from the delivery date originally confirmed by J.R. Merritt. In no event shall J.R. Merritt become liable in the aforesaid instances to Buyer or any third party for consequential damages or business loss.
- (b) Any contract and notice given hereunder may be assigned, transferred or negotiated by J.R. Merritt, or the time for the making of any payment due hereunder by Buyer may be extended by J.R. Merritt without derogation of any of the rights of J.R. Merritt or its assigns. Waiver by any party of any default shall not be deemed a waiver of any subsequent default.
- (c) This contract may not be assigned by Buyer without prior written consent of J.R. Merritt.
- (d) Any dispute arising under the contract herein may be brought before any court of proper jurisdiction. Buyer and J.R. Merritt agree to waive trial by jury in any action or other such proceedings arising out of or relating to the goods or this contract.
- (e) These Terms and Conditions are governed by the applicable laws of the State of Connecticut.
- (f) If for any reason a provision of the contract is legally invalid, then in such event the rest of the contract shall remain in full force and effect.
- (g) Any amendment to any contract or contracts shall require the consent in writing of both parties.
- (h) The terms and conditions contained herein shall govern in any instance where they conflict with the provisions of any forms used by Buyer.

**RETURN FOR CREDIT POLICY**

Your product has been made specifically to your design and application. Therefore, J.R. Merritt Controls, Inc. must bill a restocking fee and can only issue company credit. Credit requests must be made within 30-days from date of delivery. J.R. Merritt Controls, Inc. company credit is good for 1-year from issue date.

J.R. Merritt Controls, Inc. will not be able to credit non-stock or special order items.

A restocking charge of 20% minimum for stocked spare parts and 60% minimum for assembled controllers/systems will apply. The actual restocking figure will be determined at time of request.

J.R. Merritt Controls, Inc. will not pay or refund freight charges for the original shipment or when the goods are returned. Return freight must be pre-paid. No COD returns will be accepted.

In order to receive full credit goods must have an accompanying RMA number, must be returned in new condition and never installed and connected to power. The customer is responsible for any damage due to improper packing. All returns are subject to receipt and inspection by J.R. Merritt Controls, Inc. before credit can be given.

J.R. Merritt Controls, Inc. reserves the right to exchange or replace any defective material/product as per our standard Terms and Conditions of Sale.

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