



Poultry Management Systems, Inc. Terms and Conditions of Sale

All sales of products and services by Poultry Management Systems, Inc. (“**Seller**”) are made on the following terms and conditions. In these Terms of Sale, any products sold by Seller to the buyer named in Seller’s quotation or acknowledgment (“**Buyer**”) are referred to below as “**goods**,” and any services sold by Seller to Buyer are called “**services**.”

1. **Agreement.** If Buyer has not otherwise agreed to these Terms of Sale, then Buyer’s acceptance of delivery of, or payment for, the goods or services shall constitute Buyer’s agreement to these Terms. Seller objects to and will not agree to any terms that are additional to or different from these terms. Terms that are printed on or contained in a purchase order or other form prepared by Buyer which are additional to, in conflict with or inconsistent with those herein shall be considered inapplicable and shall have no force or effect.
2. **Payment Terms.** Unless otherwise specified in Seller’s quotation or acknowledgment, payment in full of the price is due 30 days after shipment of the goods or performance of the services, except that if at any time Seller determines that Buyer’s financial condition or credit rating does not justify a sale on credit or if Buyer is at any time in default in any indebtedness or obligation that Buyer owes to Seller, then Seller may require advance payment or may ship C.O.D. Any payment that is not made when it is due shall accrue a finance charge of 1-1/2% per month. Payment is to be mailed to Seller at 6425 W. Grand River Ave., Saranac, MI, 48881. Seller shall have the right to increase its prices at any time upon notice to Buyer to reflect any unusual or unforeseen increase in Seller’s costs, including but not limited to any increase in the cost of materials. Buyer may not offset or recoup any claim against amounts due Seller. Unless otherwise agreed in writing signed by Buyer and Seller, all payments shall be in U.S. Dollars.
3. **Delivery and Risk of Loss.** Unless Seller agrees otherwise in writing, Seller shall deliver the goods EXW (Incoterms 2000) Seller’s facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, from which the goods will be shipped, except that if Seller’s facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, and Buyer’s facility are both located in the United States, then Seller shall deliver the goods F.O.B. (Uniform Commercial Code term) Seller’s facility, or the point of origin of the goods if the goods are shipped directly to Buyer from a third party, from which the goods will be shipped. The risk of loss of the goods shall pass to Buyer upon identification of the goods to the contract between Buyer and Seller, whether such identification occurs at Seller’s facility or a point of origin other than Seller’s facility. Shipping, delivery and performance dates are estimates only, and time is not of the essence for Seller’s obligations hereunder. Seller may deliver all the goods at one time or in portions from time to time.
4. **Taxes.** Seller’s price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes,

whether or not Seller invoices Buyer for them.

5. **Unavoidable Delay.** If Seller is not able to finish and deliver the goods to Buyer, or to perform the services, on time because of anything Seller cannot control (such as casualty, labor trouble, accidents, unavailability of supplies or transportation, or Buyer's failure to approve production samples), then the estimated delivery or performance time shall be extended accordingly, and Seller shall not be liable to Buyer for any damages caused by the delay.
6. **Changes.** Seller shall have the right to make design or engineering changes in its parts, equipment, processes and methods of manufacture, but Seller will not, without Buyer's prior approval, make any changes in operational or dimensional specifications that Buyer submits. Stenographical and clerical errors in quotations are subject to correction.
7. **Limited Warranty; Remedies.**
 - a. Seller warrants to Buyer for a period of one year from delivery of the goods that (i) all goods manufactured solely by Seller ("Products") will be free from defects in material or workmanship under normal and intended use and service; and (ii) any software developed and provided by Seller to Buyer within the Products will substantially conform to the functional specifications, if any, specified in Seller's proposal.
 - b. The Products shall not be defective to the extent that (i) they conform with the functional specifications for or a sample of Products that have been approved by Buyer; (ii) they conform with Products, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by Buyer; (iii) they are damaged due to the method or length of storage, negligence, misuse or alteration by Buyer, including, without limitation, any change by Buyer or any party other than Seller to the software delivered with the Products; or (iv) to the extent they conform to the specifications as changed or waived if Buyer's representative agrees, either orally or in writing, to the change in or waiver of the specifications for any Product.
 - c. In the event of a defect in any Products constituting a breach of the warranty provided herein, Seller will at its option either (i) repair or replace such Product free of charge (F.O.B. Seller's plant), or (ii) in lieu of repair or replacement, refund to Buyer the original purchase price less the reasonable value of Buyer's use of the Products. Seller will not pay for any of Buyer's labor costs or charges for correcting defects or making additions nor will Seller accept any returned Products for credit unless the correction or return is authorized in advance by Seller in writing. Seller shall furnish to Buyer instructions for the disposition of the defective goods. Seller shall have the option of requiring the return of the defective goods, transportation prepaid, and proof that the goods were not used, installed or altered or subject to misuse or abuse to establish the claim. No goods shall be returned to Seller without its prior consent. The acceptance of any goods returned to Seller shall not be deemed an admission that the goods are defective or in breach of any warranty, and if Seller determines that the goods are not defective they may be returned to Buyer at Buyer's expense. This paragraph sets

forth Buyer's sole and exclusive remedies for any defect in the goods. The rights and obligation under this warranty may not be assigned or delegated to a third party by Buyer without the prior written permission of Seller. Neither Buyer nor any other person may modify or expand the warranty provided herein, waive any of the limitations, or make any different or additional warranties with respect to the Products. Any statements to the contrary are hereby rendered null and void unless expressly agreed to in writing by an authorized officer of Seller.

- d. EXCEPT AS STATED IN ABOVE, SELLER DOES NOT MAKE ANY WARRANTY AS TO THE GOODS OR SERVICES AND, IN PARTICULAR, DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE PRODUCTS.
 - e. Seller makes no representation or warranty regarding of its Products being used to alert Buyer of a failure or error in any production or other process or otherwise to use any of the Products as an alarm system. In the event Buyer is concerned about the health or safety of an animal, a separate alarm, safety, or back-up system should be purchased and installed by the Buyer. Further, Seller makes no representation or warranty regarding the security of its software and nothing in the Products or the software should be construed as preventing the possibility of being altered by a third party.
 - f. Regarding any goods or software not manufactured or developed by Seller, Seller makes no warranties for these goods or software. Seller shall assign to Buyer any warranty for such goods or software extended to Seller by the actual manufacturing of the goods or developer of the software and Buyer shall look solely to such warranty in the event of a claim or action relating to such goods or software.
 - g. SELLER SHALL NOT HAVE ANY TORT LIABILITY TO BUYER OR ANY OTHER PERSON WITH RESPECT TO ANY OF THE GOODS OR SERVICES AND SHALL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES ARISING FROM ANY PRODUCT DEFECT, DELAY, NONDELIVERY, RECALL OR OTHER BREACH. BUYER SHALL NOT HAVE ANY RIGHT OF REJECTION OR OF REVOCATION OF ACCEPTANCE OF THE GOODS.
8. **Solvency and Security Interest.** Buyer represents that Buyer is solvent.
- a. Buyer grants to Seller a security interest in and the right of repossession of the goods, including a purchase money security interest, until full and final payment for the goods and services (including notes and collection costs) has been made. In the event of default in any payment due from Buyer to Seller, the full amount unpaid shall be due and payable on demand, and Seller may at Seller's option either (i) recover the full amount unpaid or repossess the goods and all additions thereto, wherever found, free from all claims whatsoever; or (ii) treat this contract as void and retain all payments theretofore made hereunder as rent for the use of goods.
 - b. The goods or any part thereof, shall not be considered a fixture, or be incorporated

into any real property by reason of its attachment thereto, and may be separated from any real property, as well as personal property, for the purpose of repossession. Seller shall not be liable to Buyer nor shall Seller be subject to any legal proceedings, criminal or civil, for Seller's acts in such repossession. Seller shall not be liable to Buyer for the repayment of any money paid as part payment for the goods.

- c. Buyer agrees to execute any necessary instruments to perfect Seller's security interest in the goods and Seller shall have the benefit of the applicable Uniform Commercial Code and the remedies thereunder. Seller shall have the right to elect to assert a claim of a mechanic's lien against the real property upon which the goods are erected.
 - d. Buyer shall not grant any right or security interest in or to the goods prior to payment in full to Seller for all goods and services without the prior written consent of Seller.
 - e. Except as otherwise provided herein or required by law, pursuit of any right reserved herein or granted by law shall not preclude or waive the pursuit of any other such right.
9. **Permits and Compliance.** Seller is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the goods. Seller does not make any promise or representation that the goods will conform to any law, ordinance, regulation, code or standard.
10. **Safety Features.** Buyer shall install and operate the goods properly and according to Seller's operating instructions and shall not remove or change any safety device, warning or operating instructions that Seller placed on the goods.
11. **Components of Another Product.** If any of the goods constitute parts or components that are to be incorporated or installed in a product that is manufactured or assembled by or for Buyer or for a third party, then (a) Buyer shall obtain, or cause the end-user of the product to obtain, all permits, inspections and licenses required for installation or operation of the product, (b) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (c) Buyer shall place on the product all safety devices and warnings, and shall furnish to its buyer all operating instructions, that are necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.
12. **Resale.** On any resale of the goods, Buyer shall contractually limit its buyer's rights and remedies against both Buyer and Seller to the same extent that Paragraphs 7 and 8 above limit Buyer's rights and remedies.
13. **Quantities.** Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of goods must be submitted to Seller in writing within 15 days after Buyer receives the goods. If Buyer fails to do so, then it shall be conclusively presumed that the proper quantity was delivered.
14. **Intellectual Property and Confidentiality.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works

and matters that Seller creates or develops in the course of Seller's design, development or manufacture of the goods or performance of the services and all drawings and specifications that Seller provides to Buyer ("Intellectual Property") shall be Seller's sole property, and Buyer assigns, and agrees to assign, to Seller all right, title and interest that Buyer now has or in the future acquires in the Intellectual Property. Buyer shall not disclose or use any of the Intellectual Property or any information about Seller's business, operations or activities, except to the extent necessary for Buyer to use the goods or services.

15. Cancellation.

- a. Buyer does not have any right to cancel its agreement to buy the goods or services from Seller. If, however, Seller agrees in writing to permit cancellation, then Buyer shall immediately pay to Seller a cancellation charge in an amount equal to the purchase price (including any tooling charge) less allowances (in amounts that Seller determines) for (i) the realizable value to Seller of any standard components that Seller purchased or ordered before cancellation, (ii) the realizable scrap value to Seller of the remaining material and tooling that Seller purchased, fabricated or ordered before cancellation and (iii) any direct labor costs that Seller saved by reason of the cancellation.
- b. If Buyer fails to pay or perform any indebtedness or obligation that Buyer at any time owes to Seller, then Seller may consider Buyer's failure to be an anticipatory repudiation of any or all outstanding contracts that provide for Seller to sell goods or services to Buyer, and Seller may, without liability to Buyer, cancel any or all of those outstanding contracts.

16. Indemnity. Buyer shall indemnify and hold harmless Seller with respect to all damages, losses, claims and expenses, including consequential and incidental damages and attorney fees, that Seller incurs as a result of Buyer's breach of any of Buyer's obligations under these Terms of Sale or any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the goods, or performance of the services, to Buyer's specifications.

17. Seller's Rights. Seller has all rights and remedies that applicable law gives to sellers. Seller's rights and remedies are cumulative, and Seller may exercise them from time to time. Seller's waiver of any right on one occasion shall not be a waiver of any future exercise of that right.

18. Time For Bringing Action. Any action that Buyer brings against Seller for breach of this Agreement or for any other claim that arises out of or relates to the goods or their design, manufacture, sale or delivery or the services must be brought within one year after the cause of action accrues.

19. Governing Law and Language. This agreement between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law, excluding the United Nations Convention on Contracts for the International Sale of Goods. Either party may bring any action that arises out of or relates to this agreement in any federal or state court in Ionia County,

Michigan that has jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

20. **Complete Agreement; Amendment.** The terms on Seller's quotation and acknowledgment and these standard Terms of Sale contain the entire agreement between Buyer and Seller. Any change in this agreement must be by a writing signed by an authorized officer of Seller.



Poultry Management Systems,
Inc. · 6425 W. Grand River
Ave. · Saranac, MI 48881
Phone: (616) 642-9050
Fax: (616) 642-9826
www.pmsi.cc · info@pmsi.cc

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