



Poultry Management Systems, Inc. Standard Terms of Sale

All sales of goods and services by Poultry Management Systems, Inc. (“PMSI”) are made on the following terms and conditions, including PMSI’s warranty, set forth below (these “**Terms of Sale**”). In these Terms of Sale, any equipment, parts, components, software, products or other goods sold by PMSI to the original customer or original purchaser (collectively, “**Customer**”) are referred to individually and collectively as “**Equipment**”, and any services sold by PMSI to Customer are called “**Services**”.

1. **Agreement.** If Customer has not otherwise agreed to these Terms of Sale, then Customer’s acceptance of delivery of, or payment for, the Equipment or Services shall constitute Customer’s agreement to these Terms of Sale and this Agreement (as “Agreement” is defined in Paragraph 20 below). PMSI objects to and does not agree to any terms that add to or differ from these Terms of Sale or this Agreement. Terms that are printed on or contained in a purchase order or other form prepared by Customer shall be considered inapplicable and shall have no force or effect.
2. **Payment Terms.** Unless otherwise specified in PMSI’s quotation/proposal or acknowledgment or otherwise agreed by PMSI in writing, payment in full of the price is due 30 days after shipment of the Equipment or performance of the Services, except that any time PMSI determines that Customer’s financial condition or credit rating does not justify a sale on credit, or if Customer is at any time in default of any indebtedness or obligation that Customer owes to PMSI, then PMSI may require (a) advance payment for any future shipments of Equipment or future Services, and (b) immediate payment of all amounts then owing to PMSI. PMSI may also require a deposit with any order. Any payment that is not made when it is due shall accrue a finance charge of 1.5% per month or the maximum amount permitted by law, whichever is less. Payment is to be made to PMSI at the address specified in PMSI’s invoice. Customer may not offset or recoup any claim against amounts due PMSI. Unless otherwise agreed in writing signed by Customer and PMSI, all payments shall be made in U.S. Dollars. If Customer defaults on any payment owed to PMSI, PMSI may accelerate all amounts then owing to PMSI and those to be owing in the future, and all such amounts shall be immediately due and payable on demand. PMSI shall be entitled to recover from Customer all of PMSI’s actual attorney fees and other collection costs and expenses incurred (a) in collecting any amounts owed by Customer to PMSI, or (b) in enforcing PMSI’s rights under these Terms of Sale or this Agreement.
3. **Delivery, Risk of Loss and Transfer of Title.** Unless PMSI is installing the Equipment or unless PMSI agrees otherwise in writing, PMSI shall deliver the Equipment Ex Works (EXW Incoterms) PMSI’s facility, or Ex Works (EXW Incoterms) the point of origin of the Equipment if the Equipment is shipped directly to Customer from a third party. Title to and risk of loss of each item of Equipment shall pass to Customer upon tender of delivery of such item to Customer. Shipping, delivery and performance dates are estimates only, and time is not of the essence for PMSI’s obligations. PMSI may deliver all the Equipment at one time or in partial deliveries from time to time.
4. **Taxes and Other Charges.** PMSI’s price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Customer shall be liable for all such taxes.

5. **Unavoidable Delay.** If PMSI is not able to perform the Services or finish and deliver the Equipment to Customer on time because of anything PMSI cannot reasonably control (such as acts of God, weather conditions, governmental actions or laws/regulations, casualty, labor trouble, accidents, unavailability of supplies or transportation, actions of Customer or those under its control), then the estimated delivery or performance time shall be extended as reasonably determined by PMSI, and PMSI shall not be liable to Customer or any third party for any damages caused by the delay.
6. **Changes.** PMSI shall have the right to make design or engineering changes in the Equipment, processes and methods of manufacture, but PMSI will not, without Customer's prior approval, make any changes in operational or dimensional specifications that Customer submits. PMSI is not required to accept any changes from Customer. If PMSI does accept changes from Customer, however, PMSI shall be entitled to additional compensation in the amount specified by PMSI, which amount shall not be less than PMSI's additional costs plus profit margin. The preceding sentence shall apply regardless of whether Customer issues a change order or not. In the event that Customer or those under its control causes a delay or other increased costs to PMSI, then PMSI shall be entitled to additional compensation in the amount determined by PMSI, which amount shall not be less than PMSI's additional costs plus profit margin. Typographical, clerical or calculation errors by PMSI in quotations or other documents are subject to correction.
7. **Warranty.** PMSI'S SOLE AND EXCLUSIVE WARRANTY FOR THE EQUIPMENT AND THE SERVICES IS SET FORTH IN THE WARRANTY AT THE END OF THESE TERMS OF SALE, REGARDLESS WHETHER CUSTOMER IS AN END USER OR RESELLER.
8. **Solvency, Security Interest and Mechanic's Lien.**
 - a. Customer represents that Customer is solvent. Such representation is deemed made at each time that Customer orders Equipment or Services and at the time that such Equipment or Services are delivered or provided.
 - b. In order to secure payment of all amounts which are owing or may become owing in the future from Customer to PMSI, Customer hereby grants to PMSI (i) a continuing purchase money security interest in the Equipment now or hereafter purchased by Customer from PMSI, together with all proceeds of the foregoing; and (ii) a continuing security interest in all of Customer's equipment, fixtures, inventory, accounts, contract rights, chattel paper, instruments, investment property, general intangibles, letters of credit, and deposit accounts, now or hereafter acquired, together with all proceeds of the foregoing.
 - c. Customer agrees that PMSI may file and record a mechanic's lien and/or construction lien against the real property on which any of the Equipment is located.
 - d. Customer agrees to execute any necessary instruments to perfect PMSI's security interest in and lien on the Equipment. PMSI shall be entitled to all rights and remedies of a secured party under applicable law.
9. **Permits and Compliance.** PMSI is not responsible for obtaining any permit, inspection or license that is required for installation or operation of the Equipment.
10. **Safety Features.** Customer shall install and operate the Equipment properly and according to PMSI's operating instructions and shall not remove or change any safety

device, warning, or operating instructions that PMSI placed on the Equipment. Customer agrees to defend and indemnify PMSI from any and all claims, liabilities and damages (including actual attorney fees) arising out of or related to any breach of the foregoing or any modifications or changes made by Customer to the Equipment.

11. **Quantities; Damaged Equipment.** Any claim by Customer that PMSI failed to deliver the agreed-upon quantity of Equipment, or that any of the Equipment was damaged, must be submitted to PMSI in writing within 30 days after Customer receives the Equipment. If Customer fails to do so, then it shall be conclusively presumed that the proper quantity was delivered and that the Equipment was not damaged. For clarity, unless PMSI is responsible for installing the Equipment, PMSI is not obligated to make any loss or damage claims with any carriers and Customer shall be solely responsible for making such loss or damage claims.
12. **Intellectual Property and Confidentiality.** All inventions (whether or not patentable), devices, technologies, ideas, improvements, processes, systems, software and other works and matters that PMSI creates or develops in the course of PMSI's design, development or manufacture of the Equipment or performance of the Services and all drawings and specifications that PMSI provides to Customer (collectively, "**Intellectual Property**") shall be PMSI's sole property, and Customer assigns, and agrees to assign, to PMSI all right, title and interest that Customer now has or in the future acquires in the Intellectual Property. Customer shall not disclose or use any of the Intellectual Property or any information about PMSI's business, operations or activities, except to the extent necessary for Customer to use the Equipment or Services.
13. **Termination.**
 - a. Customer has no right to terminate or cancel its order or agreement to purchase the Equipment or Services from PMSI. If, however, PMSI agrees in writing to permit termination or cancellation, then Customer shall immediately pay to PMSI a termination/cancellation charge in the amount specified by PMSI, which amount shall not be less than PMSI's calculation of its losses and damages (including lost profit and lost revenue) due to the termination/cancellation. PMSI may also retain any deposit that Customer has paid to PMSI.
 - b. If Customer fails to pay or perform any indebtedness or obligation that Customer at any time owes to PMSI, then PMSI may consider Customer's failure to be an anticipatory repudiation of any or all outstanding contracts or orders between Customer and PMSI. Further, PMSI may, without liability to Customer, terminate any or all of those outstanding contracts or orders in addition to pursuing all other rights and remedies available to PMSI.
14. **Indemnity.** Customer shall defend, indemnify and hold harmless PMSI, its affiliates and its and their respective employees, agents and representatives from and against any and all third-party claims, damages, losses, liabilities and expenses (including without limitation actual attorney fees) that PMSI incurs arising out of or related to (a) Customer's breach of any of its obligations under this Agreement; or (b) any negligent acts or omissions or intentional misconduct by Customer or those under its control.
15. **Limitation of Liability.** In addition to the limitations set forth in PMSI's warranty at the end of these Terms of Sale:

- a. PMSI SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES, OR ANY LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOST OR DAMAGED DATA, OR LIQUIDATED DAMAGES. FURTHER, PMSI SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY (i) FOR ANY ACTUAL OR ALLEGED ILLNESSES, INJURIES, DAMAGES, DEATHS, LOSSES OR OTHER CONDITIONS RELATED TO ANIMALS OR ANY ACTUAL OR ALLEGED LACK OF PRODUCTIVITY WITH RESPECT TO ANIMALS; OR (ii) FOR ANY DAMAGE, LOSS OR DESTRUCTION TO REAL PROPERTY OR PERSONAL PROPERTY CAUSED OR ALLEGEDLY CAUSED BY THE EQUIPMENT OR THE SERVICES.
 - b. IN ADDITION TO THE LIMITATIONS SET FORTH IN SUBPARAGRAPH (a) ABOVE, THE AGGREGATE AMOUNT OF PMSI'S LIABILITY TO CUSTOMER FOR A CLAIM RELATED TO OR ARISING OUT OF THE EQUIPMENT, THE SERVICES OR THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO PMSI FOR THE SPECIFIC ITEM(S) OF EQUIPMENT OR THE SPECIFIC SERVICES GIVING RISE TO SUCH CLAIM.
 - c. THE LIMITATIONS OF LIABILITY SET FORTH IN SUBPARAGRAPHS (a) AND (b) APPLY REGARDLESS OF ANY THEORY OF RECOVERY ASSERTED BY CUSTOMER, INCLUDING CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE.
16. **Time for Bringing Action.** Any claim that Customer brings against PMSI for breach of this Agreement or for any other claim that arises out of or relates to the Equipment, the Services or this Agreement must be filed in the court specified in Paragraph 17 on or before the *earlier* of: (a) twelve (12) months after the claim accrues; or (b) twenty-four (24) months after PMSI's delivery of the particular item of Equipment or Services giving rise to the claim. Any claim not filed in compliance with the preceding sentence is deemed waived and shall be forever barred.
17. **Governing Law and Language.** This Agreement between PMSI and Customer 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 conflict of law principles and also excluding the United Nations Convention on Contracts for the International Sale of Goods. Any dispute that arises out of or relates to the Equipment, the Services or this Agreement shall be brought exclusively in a federal or state court located in, or whose jurisdiction includes, Ionia County, Kent County or Ottawa County, Michigan. Customer irrevocably consents and agrees that any such court shall have personal jurisdiction and venue over Customer and waives any objection that such court is an inconvenient forum.
18. **WAIVER OF JURY TRIAL.** CUSTOMER AND PMSI WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL ARISING OUT OF OR RELATED TO THE EQUIPMENT, THE SERVICES OR THIS AGREEMENT. THIS WAIVER OF A JURY TRIAL IS IRREVOCABLE.
19. **Independent Contractor Issues.** PMSI is and shall remain an independent contractor. PMSI is not responsible for any of Customer's obligations or liabilities. PMSI reserves the right to reject any of Customer's subcontractors (such as electrical subcontractors).

20. **Complete Agreement; Amendment; No Assignment; Sale of Equipment.** The terms in PMSI's quotation/proposal, PMSI's acknowledgment (if any) and these Terms of Sale contain the entire agreement between Customer and PMSI, all of which will be referred to collectively as this "**Agreement**". None of the terms on Customer's purchase order or any other Customer document shall apply. Any amendment or change to this Agreement must be by a writing signed by an authorized officer of PMSI. Customer shall not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of PMSI, which may be withheld or conditioned in PMSI's sole discretion.

If Customer is a distributor, dealer, general contractor or other intermediary (collectively, a "**Reseller**") and resells the Equipment as new and unused equipment to a first end user/end customer (the first end user/end customer will be referred to as the "**End User**"), then PMSI's warranty will apply to the End User as well as to the Reseller. On or before the resale of such Equipment to the End User, the Reseller shall obtain a written consent from the End User agreeing that the End User accepts and is bound by the terms of PMSI's warranty. If Reseller does not obtain such written consent from the End User on a timely basis, then (a) the Reseller shall be solely liable for all liabilities and obligations related to the resold Equipment or related to the End User; and (b) the Reseller shall defend and indemnify PMSI from all liabilities, damages and costs (including actual attorney fees) arising out of or related to the resold Equipment or claims asserted by the End User.

Poultry Management Systems, Inc. Warranty

Warranty (PMSI Manufactured Equipment and Services)

This warranty is provided by Poultry Management Systems, Inc. (“**PMSI**”) to the Purchaser (as defined below) of: (i) equipment, parts, components, software, products or other goods supplied by PMSI to Customer (each such item will be referred to separately and collectively as “**Equipment**”); and/or (ii) services provided by PMSI to Purchaser (the “**Services**”). In this warranty, the term “**Purchaser**” means, jointly and severally, the original purchaser of the Equipment or Services and, if different, the first end user that receives the Services and/or that receives and first operates the Equipment in a new/unused condition.

PMSI warrants that each item of Equipment manufactured solely by PMSI (each such item of PMSI-manufactured Equipment will be referred to separately and collectively as “**PMSI Manufactured Equipment**”) will be free from defects in material or workmanship under normal and intended use, conditions and service for a period of one (1) year from PMSI’s delivery of such item. Each item of PMSI Manufactured Equipment is not defective (and is not in breach of warranty) to the extent that (i) it conforms to drawings, specifications or samples that have been approved by Purchaser; (ii) it conforms with goods, testing results, dimensional layouts or manufacturing methods that have been submitted and approved by Purchaser; or (iii) it conforms to the specifications as changed or waived if Purchaser agrees, either orally or in writing, to the change in or waiver of the specifications.

PMSI warrants to the Purchaser that the Services will comply with all applicable laws and regulations in effect at the time PMSI accepted Purchaser’s order for the Services.

The warranty above is subject to the exclusions and limitations below.

Exclusive Remedy

1. In the event of a defect in any item of PMSI Manufactured Equipment (including any part or component of such item) constituting a breach of the warranty provided above, PMSI will at its option either (i) repair or replace such defective item thereof free of charge; or (ii) in lieu of repair or replacement, refund to the applicable Purchaser the purchase price paid by such Purchaser for such defective item less the reasonable value of the use of such item. If any item of PMSI Manufactured Equipment is defective and PMSI provides Purchaser with a repaired or replacement item (including any part or component for such item), then Purchaser shall be responsible for the labor associated with installing the repaired or replacement item (including any part or component) unless PMSI determines that it is necessary for PMSI to provide the installation due to its complexity. PMSI may require the return of the allegedly defective item to PMSI, transportation prepaid, and proof that the allegedly defective item was not subject to misuse, abuse or other conditions that would void the warranty. If PMSI determines that the item in question is not defective, such item may be returned to Purchaser at Purchaser’s expense.
2. In the event that PMSI provides Services constituting a breach of the warranty provided above, PMSI will at its option either (i) correct or redo the defective Services at no charge, or (ii) refund to the applicable Purchaser the purchase price paid by the applicable Purchaser for the defective Services.
3. THE REMEDIES ABOVE SET FORTH PURCHASER’S SOLE AND EXCLUSIVE REMEDIES FOR ANY DEFECT IN, OR ANY BREACH OF WARRANTIES FOR, THE PMSI MANUFACTURED EQUIPMENT OR THE SERVICES.

Exclusions, Limitations and Conditions

PMSI's warranty is subject to the following exclusions, limitations and conditions:

- PMSI makes no warranty for the following: (i) any Equipment that is not manufactured or developed by PMSI, such as electrical motors and controls, although such Equipment may be covered by separate warranties of the respective manufacturers or developers, and upon request PMSI agrees to assign whatever rights it may have under such warranties to Purchaser; (ii) the design of buildings, equipment, components or systems (including ventilation systems) that are not designed by PMSI; (iii) the security of PMSI's software, and nothing in this warranty should be construed as preventing the possibility of the software or the Equipment being altered or hacked by a third party; or (iv) any Equipment that is sold or transferred by Purchaser to a third party.
- The warranty is void and does not apply if: (i) PMSI did not supply all components of the system in which the Equipment is incorporated; (ii) the Equipment was not purchased from and installed by PMSI or a PMSI authorized distributor; (iii) the Equipment was not installed or operated in accordance with PMSI's specifications and instructions; (iv) any delivered or installed Equipment was not stored or located in a covered and secure facility, or if at any time such Equipment became subject to the elements for any reason; (v) there was any alteration, repair or modification of the Equipment by any person or entity other than with PMSI's prior written consent; (vi) the Equipment was subject to abuse, misuse, mishandling, accident or damage; (vii) there was a failure to properly repair or maintain the Equipment; (viii) Purchaser used the Equipment in connection with other non-approved equipment; (ix) after the original installation, the Equipment was moved to a new location (including a new location in a different building or a new location inside the same building); or (x) Purchaser breached any of the terms of this warranty, PMSI's standard Terms of Sale or any other agreement with PMSI.
- PMSI does not warrant that use of the software in the Equipment will be uninterrupted or error-free.
- Unless PMSI otherwise agrees in writing, PMSI does not warrant that the Equipment will conform to any laws, ordinances, regulations, codes or standards.
- The Equipment may include alerts or alarms regarding failures or problems in production or other processes. However, PMSI does not warrant that the alerts or alarms will work in every single instance or situation, and therefore Purchaser shall have multi-layers of alert/alarm redundancy for the health and safety of its animals and for protection of Purchaser's property. PMSI shall not be liable to Purchaser or any third party for any actual or alleged failure of the Equipment to provide an alert or alarm if Purchaser does not have multi-layers of alert/alarm redundancy.
- PMSI makes no warranty that individual animals, or any given population of animals, will utilize any of the Equipment in the manner for which the Equipment was intended or designated. PMSI makes no warranty regarding production results (by way of example, PMSI does not provide a warranty as to the size or production level of the animals, how fast the animals will grow, or how productive the animals will be).

EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY, PMSI MAKES NO WARRANTY AS TO THE EQUIPMENT (INCLUDING THE PMSI MANUFACTURED EQUIPMENT) OR PMSI'S SERVICES. IN PARTICULAR, PMSI MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. PURCHASER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE EQUIPMENT AND SERVICES.

Other Limitations

PMSI SHALL NOT BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES, OR ANY LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOST OR DAMAGED DATA, OR LIQUIDATED DAMAGES. FURTHER, PMSI SHALL NOT BE LIABLE TO PURCHASER OR ANY THIRD PARTY (i) FOR ANY ACTUAL OR ALLEGED ILLNESSES, INJURIES, DAMAGES, DEATHS, LOSSES OR OTHER CONDITIONS RELATED TO ANIMALS OR ANY ACTUAL OR ALLEGED LACK OF PRODUCTIVITY WITH RESPECT TO THE ANIMALS; OR (ii) FOR ANY DAMAGE, LOSS OR DESTRUCTION TO REAL PROPERTY OR PERSONAL PROPERTY CAUSED OR ALLEGEDLY CAUSED BY THE EQUIPMENT OR THE SERVICES.

IN ADDITION TO THE LIMITATIONS SET FORTH IN THE PARAGRAPH ABOVE, THE AGGREGATE AMOUNT OF PMSI'S LIABILITY TO PURCHASER FOR A CLAIM RELATED TO OR ARISING OUT OF THE EQUIPMENT, THE SERVICES, THIS WARRANTY OR ANY AGREEMENT BETWEEN PMSI AND THE PURCHASER SHALL NOT EXCEED THE AMOUNT PAID BY PURCHASER TO PMSI FOR THE SPECIFIC ITEM(S) OF EQUIPMENT OR THE SPECIFIC SERVICES GIVING RISE TO SUCH CLAIM.

THE FOREGOING LIMITATIONS OF LIABILITY APPLY REGARDLESS OF ANY THEORY OF RECOVERY BY PURCHASER OR THIRD PARTY, INCLUDING CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE.

Other Terms.

Purchaser's rights and obligations under this warranty may not be assigned or transferred to a third party by Purchaser without the prior written permission of PMSI, which may be withheld or conditioned in PMSI's sole discretion.

If Purchaser sells or transfers the Equipment to any third party without obtaining the third party's written agreement to accept the terms of PMSI's warranty then (a) Purchaser shall be solely liable for all liabilities and obligations related to the resold/transferred Equipment; and (b) the Purchaser shall defend and indemnify PMSI from all liabilities, damages and costs (including actual attorney fees) arising out of or related to the resold/transferred Equipment or claims asserted by the transferee.

No Purchaser nor any other person or entity (including without limitation any distributor) may modify or expand the warranty provided herein, change or waive any of the exclusions or limitations, or make any different or additional warranties with respect to the Equipment or the Services. Any statements to the contrary are hereby rendered null and void unless expressly agreed to in writing by an authorized officer of PMSI.

Purchaser shall install and operate the Equipment properly and according to PMSI's operating instructions and shall not remove or change any safety device, warning, or operating instructions that PMSI placed on the Equipment. Purchaser shall defend and indemnify PMSI from any and all claims, liabilities and damages (including actual attorney fees) arising out of or related to any breach of the foregoing or any modifications or changes made by Purchaser to the Equipment.

Any claim that Purchaser brings against PMSI for breach of this warranty or for any other claim that arises out of or relates to the Equipment or the Services must be filed in the court specified below on or before the *earlier* of: (a) twelve (12) months after the claim accrues; or (b) twenty-four (24) months after PMSI's delivery of the particular item of Equipment or Services giving rise to the claim. Any claim not filed in compliance with the preceding sentence is deemed waived and shall be forever barred.

This warranty shall be governed by and interpreted according to Michigan law, excluding conflict of law principles and also excluding the United Nations Convention on Contracts for the International Sale of Goods. Any dispute that arises out of or relates to the Equipment, the Services or this warranty shall be brought exclusively in a federal or state court located in, or whose jurisdiction includes, Ionia County, Kent County or Ottawa County, Michigan. Purchaser irrevocably consents and agrees that any such court shall have personal jurisdiction and venue over Purchaser and waives any objection that such court is an inconvenient forum. PURCHASER AND PMSI WAIVE ANY AND ALL RIGHTS TO A JURY TRIAL ARISING OUT OF OR RELATED TO THE EQUIPMENT, THE SERVICES OR THIS WARRANTY. THIS WAIVER OF A JURY TRIAL IS IRREVOCABLE



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