



## PIERCE TERMS & CONDITIONS OF SALE

These Terms and Conditions of Sale (these "Terms") apply to all sales by Pierce-Pacific Manufacturing, Inc. ("Pierce") to the identified dealer or other purchaser ("Customer").

### 1. DELIVERY.

Pierce will use reasonable efforts to deliver products or complete services by dates requested by Customer. Unless otherwise agreed in writing, Pierce will deliver products to Customer's address set forth on the applicable Pierce sales quote or order confirmation, using Pierce's standard methods for packing and shipping. Once a product is complete and ready to ship, Pierce will invoice and the risk of loss or damage will pass to Customer even if the product remains at Pierce at its request, until Customer makes satisfactory shipping arrangements (effectively establishing a Bill & Hold arrangement).

### 2. TAXES, FREIGHT AND PAYMENT.

- (a) Prices are F.O.B. Pierce's facilities, Portland, Oregon, and exclude sales, use, and similar taxes and duties. Pierce will invoice Customer for freight charges and, unless Customer provides a tax exemption certificate, applicable taxes.
- (b) Customer will make shipping arrangements and bears all risk of loss or damage during transport. Pierce will arrange for insurance during transport, at Customer's request and expense. Customer is to notify the carrier or insurer in case of damage during transport. Customer will be responsible for all loading costs and provide all equipment and labor necessary for receipt at the delivery point.
- (c) Payment terms are as stated on the applicable Pierce sales quote or order confirmation. Overdue amounts will bear a late payment charge of 1 1/2 percent per month or, if less, the maximum lawful rate, from the invoice date.
- (d) If Customer fails to pay amounts due Pierce, Pierce will have the right to cancel any orders already accepted but not yet delivered to Customer, to refuse to make further shipments, and to require payment in advance for further orders, in addition to other available remedies.

### 3. WARRANTY AND LIMITATIONS.

- (a) Pierce warrants that products and services will be free from defects in materials and workmanship for 90 days from delivery to Customer (or any longer period stated in a written warranty provided to Customer by Pierce for a specific product).
- (b) Pierce's warranty does not apply to (i) products that have been subjected to misuse or accident, (ii) products that are improperly installed by Customer, (iii) products that have been modified or repaired by anyone other than Pierce personnel without Pierce's written approval, or (iv) products, or components of products, that were manufactured by a third-party. Pierce passes through and assigns to Customer any third-party manufacturer warranty covering products or components of products to the extent Pierce is a beneficiary of the manufacturer warranty and permitted to assign such warranty.
- (c) EXCEPT FOR THE EXPRESS WARRANTY STATED ABOVE OR IN ANY WRITTEN WARRANTY DELIVERED TO CUSTOMER WITH A PRODUCT, PIERCE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES AGAINST INFRINGEMENT, OF MERCHANTABILITY, OR OF FITNESS FOR A PARTICULAR PURPOSE.

### 4. REMEDIES AND LIMITATIONS.

Customer's remedy for breach of any Pierce product warranty is limited to repair, replacement, or refund of the purchase price of any defective product (at Pierce's option). Customer's remedy for breach of any service warranty is limited to correction of or refund of the charge for any defective service (at Pierce's option). IN NO EVENT WILL PIERCE BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED. REGARDLESS OF THE THEORY OF LIABILITY, PIERCE'S LIABILITY WITH RESPECT TO ANY PRODUCT OR SERVICE WILL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT OR CHARGE FOR THE SERVICE.

### 5. ACCEPTANCE.

Customer must notify Pierce in writing of any defect in products or services within five business days following receipt of products or completion of services. Failure to so notify Pierce constitutes acceptance of products and services.

### 6. RETURNS.

Customer must obtain a Return Merchandise Authorization from Pierce before returning any product. Pierce will not accept and will not be responsible for any product returned without a Return Merchandise Authorization, and reserves the right to refuse to issue such an authorization other than for warranty purposes. Customer will pay all return transport costs. If Pierce permits return of a product other than for warranty service, Pierce reserves the right to charge a restocking fee.

### 7. REMOTE INSTALLATION.

Pierce offers remote installation assistance for certain products in conjunction with its dealers. Refer to the Pierce Installation Procedures for Pierce's scope of services for a given product, as well as dealer's supply requirements and the additional terms and conditions applicable thereto. In addition, any quoted dealer labor costs are estimates only based on historical data and subject to variation based on actual costs of installation and Customer requirements and circumstances. Pierce assumes no responsibility for dealer cost overruns of any nature. For additional detail please see <https://h468fc.p3cdn1.secureserver.net/wp-content/uploads/2024/03/pierce-installation-assistance-2024.pdf>

### 8. SECURITY INTEREST.

To secure payment of amounts due, Customer hereby grants to Pierce a security interest in all products sold by Pierce to Customer. In case of Customer's default in payment, Pierce will have the rights provided by these Terms and all rights of a secured party under the Uniform Commercial Code.

### 9. INDEMNITY.

Customer acknowledges that products such as heavy equipment can be extremely dangerous if not used as intended, and that such products must be used only by persons who have been instructed as to proper use and maintenance. Customer will indemnify Pierce against any loss, liability, or cost (including reasonable attorney fees at and before trial and on appeal) arising from Customer's selling the products to or permitting their use by persons who have not been instructed in their proper use and maintenance. The foregoing indemnity will not apply to the extent the loss, liability, or cost is due to Pierce's gross negligence or willful misconduct.

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### 10. INSURANCE.

For at least three years after Customer's purchase of any product, Customer will carry and maintain in full force and effect commercial general liability (including product liability) insurance in an amount not less than \$1,000,000 per occurrence from an insurer with an AM Best rating of A- VII or better. The insurance must name Pierce as an additional insured or include a blanket endorsement that covers Pierce and provide that it may not be modified or canceled except on 30 days' advance notice to Pierce. Customer will provide Pierce with evidence of such insurance upon Pierce's written request.

### 11. RESPONSIBILITY FOR CUSTOMER'S MATERIALS.

Pierce is not responsible or liable for damage to or loss or destruction of drawings, samples, patterns, fixtures, components, parts or other items provided by Customer. Pierce may dispose of such materials if Customer does not request their return upon delivery of products or completion of services. Customer will indemnify Pierce against all loss, liability, and cost (including attorney fees at or before trial and on appeal) incurred as a result of any claim that Pierce's use of such materials or any Customer design infringes the rights of any other party.

### 12. FORCE MAJEURE.

Pierce is not liable for any delay or failure of performance caused by governmental regulation, fire, flood, wind, strike, labor disturbances, accident, epidemic, embargo, act of God, or any other cause beyond Pierce's reasonable control, any of which will be considered an excused delay.

### 13. COMPLIANCE WITH LAW.

Customer must comply with all applicable laws, including export and import laws.

### 14. NOTICES.

Notices must be in writing and addressed to the intended recipient at the address set forth on the applicable Pierce sales quote or order confirmation, or to such other address as the recipient may have specified by notice. Notices are effective upon receipt.

### 15. GENERAL.

Any modification or waiver of these Terms must be in writing and refer specifically to these Terms. Nothing in these Terms, any warranty, or the applicable Pierce sales quote or order confirmation is intended to or shall confer any right or benefit on any other party. These Terms are governed by Oregon law, excluding choice of law rules. U.S. federal courts or Oregon state courts in each case located in Multnomah County, Oregon, will have exclusive jurisdiction over any suit, action, or proceeding relating to the sale of products or services, and each party irrevocably submits to the jurisdiction of such courts. If any provision of these Terms is unenforceable in any jurisdiction, such unenforceable will not affect other provisions or render that provision unenforceable in any other jurisdiction. These Terms, together with any separate warranty and the applicable Pierce sales quote or order confirmation, represent the entire agreement between Pierce and Customer. DIFFERENT OR ADDITIONAL PROVISIONS OF ANY PURCHASE ORDER OR SIMILAR DOCUMENT SUBMITTED BY CUSTOMER ARE OBJECTED TO AND ARE NOT BINDING ON PIERCE. Pierce's acceptance of any purchase order or similar document submitted by Customer is expressly conditioned on Customer's assent to these Terms.