



FRIMO Inc. • 50685 Century Court • Wixom, MI 48393, USA

FRIMO, Inc. Terms and Conditions for Delivery and Service

All sales of products and services by FRIMO, Inc. ("FRIMO") are made on the following terms and conditions. The products and services being sold by FRIMO are referred to below as the "Goods" and the purchaser of the Goods is referred to as the "Buyer".

- 1. Agreement.** These Terms and Conditions are specifically incorporated in and made a part of the order out of which the sale of Goods arises. If Buyer has not otherwise agreed to these Terms and Conditions, then Buyer's acceptance of delivery of, or payment for, the Goods shall constitute Buyer's agreement to these terms. If there is any discrepancy between the order and these Terms and Conditions, these Terms and Conditions shall control.
- 2. Orders.** FRIMO is not bound by an order until FRIMO accepts the order in writing. FRIMO may elect not to accept an order if, in FRIMO's judgment, FRIMO will be unable to meet the requested delivery date or fill the requested quantity or type of Goods ordered. FRIMO may also elect not to accept an order, or may delay shipment or cancel an accepted order without consequence if Buyer is in default in its obligation to FRIMO.
- 3. Payment Terms.** The payment terms shall solely be in accordance with the terms of the order.
- 4. Delivery and Risk of Loss.** Delivery shall be F.O.B. FRIMO's place of business unless stated otherwise in the order. Shipping, delivery and performance dates are estimates only and time is not of the essence. FRIMO may ship all the Goods at one time or in portions from time to time. FRIMO shall have the right to determine the method of shipment and routing for Goods and Buyer shall be responsible for any insurance, fees and applicable taxes.
- 5. Unavoidable Delay.** If FRIMO is unable to finish and ship the Goods to Buyer on time or perform the services because of anything FRIMO cannot reasonably control (such as acts of God, casualty, labor trouble, accidents, Buyer's actions or unavailability of supplies or transportation), the estimated delivery time shall be extended accordingly and FRIMO shall not be liable to Buyer for any damages caused by the delay.
- 6. Taxes.** Buyer shall be liable for any value-added, sales, excise, use, customs or other duties or other taxes whether or not invoiced by FRIMO.
- 7. Changes.** FRIMO shall have the right to make design or engineering changes in its parts, equipment processes or methods of manufacturing of the Goods as it sees fit to do so.



8. **Limited Warranty.** All Goods carry the following limited warranty: (i) a Six (6) month limited warranty for services performed by FRIMO beginning from the date the service is completed, (ii) a limited warranty extending One (1) year for a new FRIMO product purchased by Buyer from FRIMO and (iii) a limited warranty extending Sixty (60) days for a used FRIMO product purchased by Buyer from FRIMO. The limited warranty coverage for Goods other than services begins on the date of delivery to Buyer.

The limited warranty covers defects in materials or workmanship and excludes (i) normal wear and tear or environmental conditions, (ii) misuse, abuse, neglect, accidents, collision, fire, theft, freezing, vandalism, riot, explosion or objects striking the Good, (iii) altering, disassembling or modifying the Goods or any of its parts without first receiving FRIMO's written consent, (iv) adding non-FRIMO components to the Goods without first receiving FRIMO's written consent, (v) defects caused by or induced by failures, breakdowns or damage by other machines in the same facility, and (vi) acts of God, natural disasters and other similar causes.

9. **Remedy.** As Buyer's sole and exclusive remedy for the breach of the limited warranty described above, FRIMO will either re-perform the services, repair the Goods and/or replace the Goods at FRIMO's discretion and at FRIMO's own cost if the Goods are found by FRIMO to be defective in either material or workmanship. In no case will a refund be issued by FRIMO for Goods covered by the limited warranty and in no event shall Buyer have a right to revoke acceptance of the Goods.

10. Limitations/Exclusion of Liability.

- a. EXCEPT AS STATED IN PARAGRAPH 8, FRIMO MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE GOODS, WHETHER NEW OR USED, AND IN PARTICULAR, MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF GOODS. FRIMO SHALL HAVE NO TORT LIABILITY TO BUYER WITH RESPECT TO ANY OF THE GOODS, WHETHER NEW OR USED, AND SHALL NOT BE LIABLE FOR CONSEQUENTIAL, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES ARISING FROM ANY PRODUCT DEFECT, DELAY, NON-DELIVERY, RECALL OR OTHER BREACH. BUYER SHALL HAVE NO RIGHT OF REJECTION OR REVOCATION AFTER ACCEPTANCE AND/OR USE OF THE GOODS.
- b. FRIMO'S LIABILITY FOR ANY CAUSE OF ACTION, OF WHATEVER KIND AND NATURE, SHALL NOT EXCEED, AND BE LIMITED TO, THE AMOUNT OF MONEY ALREADY PAID BY BUYER TO FRIMO UNDER THE PURCHASE ORDER OUT OF WHICH THE LIABILITY AROSE OR FIVE HUNDRED THOUSAND US DOLLARS (\$500,000.00), WHICHEVER IS LESS.

11. **Permits and Compliance.** FRIMO is not responsible for obtaining any permits, inspections or licenses required for delivery, installation or operation of the Goods. FRIMO makes no promise or representation that the Goods will conform to any federal, state, local, foreign or other laws, ordinances, regulations, codes or standards unless specifically stated in the order.



12. **Components of Another Product.** If any of the Goods constitute parts or components to be incorporated or installed in a product manufactured or assembled by or for Buyer, then (i) 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, (ii) Buyer shall cause the product to conform to all applicable laws, ordinances, regulations, codes and standards and (iii) Buyer shall place on the product all safety devices and warnings, and shall furnish to its buyer all operating instructions, that shall be necessary or desirable to prevent any death, personal injury or property damage from being caused by any use or operation of the product.
13. **Safety Features.** Buyer shall itself, or cause the end-user, to install and operate the Goods properly and in accordance with any instructions that FRIMO provides, and Buyer shall not, and shall cause the end-user to not, remove or change any safety devices, warnings or operating instructions placed on the Goods by FRIMO.
14. **Indemnity.** Buyer shall indemnify and hold FRIMO harmless with respect to all damages, losses, claims and expenses, including court costs and reasonable attorney fees, that FRIMO incurs as a result of Buyer's acts or omissions or any alleged or actual breach by Buyer of any of its obligations pursuant to these Terms and Conditions or any claimed patent, trademark or copyright infringement or any other claim from a third party resulting from FRIMO's manufacture of the Goods to Buyer's specifications.
15. **Grant of Security Interest.** Buyer, as security for payment of all amounts now owing or which may hereafter be owing to FRIMO by the Buyer and for the observation and performance of all other obligations of the Buyer to FRIMO, Buyer hereby grants to FRIMO a security interest, including, without limitation, a purchase money security interest, in all Goods sold to Buyer by FRIMO, including without limitation, all Goods intended to be sold hereunder, now or in the future, together with all parts, accessories, attachments thereto and substitutions therefor, and all proceeds in whatever form, or any sale, transfer of or other disposition of the Goods sold to Buyer and without limiting the generality of the foregoing, all money or property that the Buyer received in replacement of or exchange for such Goods, including insurance monies, all of which shall be received and held by Buyer in trust for FRIMO and paid over to FRIMO promptly upon receipt. FRIMO is authorized without prior notice to Buyer, to file UCC financing statement(s) with the proper authorities or take such other actions FRIMO deems necessary to perfect its security interest hereunder. Buyer may not pledge or assign as security the Goods delivered by FRIMO. Buyer shall notify FRIMO immediately in the event of attachment, confiscation or other acquisition of the Goods by a third party. Buyer agrees and hereby appoints FRIMO as attorney in fact to perform all acts that FRIMO deems necessary to perfect and continue to perfect its security interest. Buyer shall reimburse FRIMO on demand for all attorney fees, legal expenses, and other expenses that FRIMO incurs in protecting and enforcing its rights pursuant hereto. This includes fees and expenses incurred in trying to retake possession of the Goods from Buyer, a trustee or receiver in bankruptcy, or any other person.



16. **Intellectual Property and Confidentiality.** Buyer shall not disclose or use any of FRIMO's intellectual property or any information about FRIMO's business, operations or activities, except to the extent necessary for Buyer to use the Goods. Buyer agrees that such information is confidential and proprietary, and that Buyer's subcontractors must be bound by a corresponding undertaking. Buyer shall not use or incorporate into any other product any of FRIMO's logos, trademarks, trade names or part numbers.
17. **FRIMO's Rights.** In addition to the rights and remedies under these terms and conditions, FRIMO has all the rights and remedies given to FRIMO by applicable law and FRIMO's rights and remedies are cumulative and may be exercised from time to time. No waiver by FRIMO of any right on one occasion shall be a waiver of any future exercise of that right.
18. **Time for Bringing Action.** Any action by Buyer against FRIMO for breach of any obligation of FRIMO to Buyer or for any other claim arising out of or relating to the Goods or their design, manufacture, sale or delivery must be brought within One (1) year after the cause of action accrues.
19. **Applicable Law.** This agreement between FRIMO 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, without reference to its conflicts of law rules. Any action arising out of or relating to this agreement shall be brought in any state or federal court in or for Oakland County, Michigan and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that these courts are an inconvenient forum.
20. **Complete Agreement; Amendment.** The terms of the order and these Terms and Conditions contain the entire agreement between Buyer and FRIMO. If there is a conflict between the order and these Terms and Conditions, these Terms and Conditions shall govern. Any change in this agreement must be by written instrument signed by an authorized FRIMO officer.