

Marathon Electric Manufacturing Corporation

MPN411 Terms and Conditions of Sale

ALL QUOTATIONS ARE MADE AND ALL ORDERS ARE ACCEPTED BY MARATHON ELECTRIC MANUFACTURING CORPORATION SUBJECT ONLY TO THESE TERMS AND CONDITIONS.

1. MODIFICATIONS OF SALES TERMS

Any Terms and Conditions contained in any purchase order or other form of communication from Marathon's customers which are additional to or different from these Terms and Conditions shall be deemed rejected by Marathon unless expressly accepted in writing by Marathon. In general, no modification, amendment, waiver or other change of any of these Terms and Conditions and those contained on the reverse side hereof and/or in attachments hereto ("Terms and Conditions"), or of any of Marathon's rights or remedies thereunder, shall be binding on Marathon unless expressly accepted in writing by Marathon's authorized officers. No course of dealing, usage of trade or course of performance shall be relevant to explain or supplement any of these Terms and Conditions. In case of conflict between the Terms and Conditions printed on this page and those contained on the face side or in attachments hereto, the latter shall control. If any document issued by any party hereto is sent by facsimile or another form of electronic document transmission, the parties hereto agree that (a) the copy of any such document printed on the facsimile machine or printer of the recipient thereof is a counterpart original copy thereof and is a "writing", (b) delivery of any such document to the recipient thereof by facsimile or such other form of electronic document transmission is authorized by the recipient thereof and is legally sufficient for all purposes as if delivered by United States mail, (c) the typewritten name of an authorized agent of the party sending such document on any such document is sufficient as a signature thereon and behalf of such party and the intent of such signature is to authenticate the writing, and (d) an electronically stored and reproduced copy of any such document shall be deemed to be legally sufficient evidence of the terms of such document for all purposes.

2. ACCEPTANCE OF ORDERS

Acceptance by Marathon of Buyer's purchase order(s) is expressly conditioned upon Buyer's assent to these Terms and Conditions. Buyer will be deemed to have assented to such Terms and Conditions unless Marathon receives written notice of any objections within fifteen (15) days after Buyer's receipt of this form and in all events prior to any delivery or other performance by Marathon of Buyer's order.

3. QUOTATIONS

Quotations by Marathon shall be deemed to be offers by Marathon to sell the equipment described therein subject to these Terms and Conditions, and acceptance of such offers is expressly limited to acceptance by Buyer of all of these Terms and Conditions within thirty (30) days from the date of the quotation. Purchase orders submitted by Buyer for the equipment quoted by Marathon shall be subject to and will be deemed to constitute acceptance of these Terms and Conditions. All purchase orders will be subject to approval by Marathon.

4. PRICES; PRICE CHANGES

All prices are net F.O.B. shipping point and are subject to change without notice. In the event of a change in Marathon's prices, the price for equipment unshipped will be the price in effect on the date of shipment. If Marathon's quoted price was based upon delivery to and acceptance by Buyer of a specified quantity of equipment, such price shall be subject to adjustment if Buyer does not accept the quantity at the times specified in Marathon's quotation, and Buyer will be invoiced at Marathon's standard price without quantity discounts, if any, for the quantity of equipment actually accepted by Buyer.

5. TAXES

In addition to any prices, Buyer shall pay the amount of any present or future manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Marathon and Buyer. In the event Marathon is required to pay any such tax, fee or charge, Buyer shall reimburse Marathon therefor; or, in lieu of such payment, Buyer shall provide Marathon at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing such tax, fee or charge.

6. TERMS OF PAYMENT

All orders are subject to the approval of Marathon. Terms of payment are cash in full no later than thirty (30) days from date of shipment, without discount. If, during the period of performance of an order, the financial condition of Buyer is determined by Marathon not to justify the terms of payment specified, Marathon may demand full or partial payment in advance before proceeding with the work, or satisfactory security or

guarantees that invoices will be promptly paid when due, or, at its option without prejudice to other lawful remedies, may defer delivery or cancel this contract. If delivery is deferred, the equipment may be stored as provided in Section 9 hereof and Marathon may submit a new estimate of cost for completion based on prevailing conditions. If Buyer defaults in any payment when due, or in the event any voluntary or involuntary bankruptcy or insolvency proceedings involving Buyer are initiated by or against Buyer, then the whole contract price shall immediately become due and payable upon demand, or Marathon, at its option without prejudice to its other lawful remedies, may defer delivery or cancel this contract.

Prorata payments shall become due as shipments are made. If shipments are delayed by the Buyer for any cause, payments shall become due from the date on which Marathon is prepared to make shipment and storage shall be the Buyer's risk and expense as provided in Section 9 hereof. If manufacture is delayed by the Buyer for any cause, a partial payment based upon the proportion of the order completed shall become due from the date on which Marathon is notified of the delay.

7. DELIVERY; RISK OF LOSS

All sales are F.O.B. Marathon's plant or other point of shipment designated by Marathon. Shipping dates are estimates only which are not guaranteed and are based upon prompt receipt from Buyer of all necessary shipping and other information. Marathon reserves the right to make delivery in installments, all installments to be separately invoiced and paid for by Buyer when due per invoice, without regard to subsequent deliveries.

Delivery of equipment to a commercial carrier at Marathon's plant or other loading point shall constitute delivery to Buyer, and any risk of loss and further cost and responsibility thereafter for claims, delivery, loss or damage, including, if applicable, placement and storage, shall be borne by Buyer. When equipment is delivered by Marathon's truck, unloading at Buyer's dock shall constitute delivery to Buyer. Claims for shortages or other errors in delivery must be made in writing to Marathon within ten (10) days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss or damage to equipment in transit by common carrier must be made to the carrier and not to Marathon.

Freight and handling charges by Marathon may not reflect actual freight charges prepaid to the carrier by Marathon due to incentive discounts earned by Marathon based upon Marathon's aggregate volume of freight tendered to a carrier or when a carrier must be used which charges a rate which is different than the rate upon which Marathon's freight and handling charges were based. When shipments are delivered in Marathon's private trucks, Buyer will be charged an amount approximating the prevailing common carrier rate.

8. EXCUSABLE DELAYS; FORCE MAJEURE

Marathon shall not be liable for any ordinary, incidental, or consequential loss or damage as a result of Marathon's delay in or failure of delivery or installation due to (i) any cause beyond Marathon's reasonable control, (ii) an act of God, act of the Buyer, embargo or other government act, authority, regulation or request, fire, theft, accident, strike, slowdown or other labor disturbance, war, riot, delay in transportation, or (iii) inability to obtain necessary labor, materials, components, or facilities.

Should any of the aforementioned events of force majeure occur, Marathon, at its option, may cancel Buyer's order with respect to any undelivered equipment or extend the delivery date for a period equal to the time lost because of delay. Notice of such election shall be given promptly to Buyer. In the event Marathon elects to so cancel the order, Marathon shall be released of and from all liability for failure to deliver the equipment, including, but not limited to, any and all claims on behalf of Buyer for lost profits, or any other claim of any nature which Buyer might have.

If shipping or progress of the work is delayed or interrupted by Buyer, directly or indirectly, Buyer shall pay Marathon for all additional charges resulting therefrom.

9. STORAGE

If the equipment is not shipped within thirty (30) days after notification has been made to Buyer that it is ready for shipping, for any reason beyond Marathon's control, including Buyer's failure to give shipping instructions, Marathon may store the equipment at Buyer's risk and expense in a warehouse or on Marathon's premises, and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates promptly following Marathon's submission of invoices for such costs.

10. WARRANTIES TO DISTRIBUTORS AND INDUSTRIAL OR COMMERCIAL CUSTOMERS

This warranty is extended only to Marathon's distributors and industrial or commercial customers and does not apply to consumer purchasers.

Warranty Period - (a) Marathon warrants the Fractional motors and Integral motors manufactured by or for it to be free from defects in materials and workmanship and to conform to Marathon's written specifications for a period of 12 months from date of first use, 18 months from date of manufacture, whichever period shall expire first. (b) Marathon warrants special products, as listed below, to be free from defects in materials and workmanship and to conform to Marathon's written specifications.

- Blue Chip® Severe Duty Explosion Proof and EPA compliant motors, 24 months from date of first use, 30 months from date of manufacture, whichever period shall expire first.
- Blue Max®, Black Max®, microMAX™ Inverter Duty motors and all XRI® motors, 36 months from date of first use, 42 months from date of manufacture, whichever period shall expire first.
- U-Frame Automotive Duty and IEEE-841 motors, 60 months from date of first use, 66 months from date of manufacture, whichever period shall expire first.

Warranty Remedies - If, prior to expiration of the foregoing applicable warranty period, any of such products shall be proved to Marathon's satisfaction to be defective or nonconforming, Marathon will repair or replace such defective equipment or components thereof, F.O.B. Marathon's plant or other destination designated by Marathon, or will refund or provide Buyer with a credit in the amount of the purchase price paid therefore by Buyer, at Marathon's sole option. Buyer's exclusive remedy and Marathon's sole obligation under this warranty shall be limited to such repair or replacement, F.O.B. Marathon's plant or other destination designated by Marathon, or refund or credit by Marathon, and shall be conditioned upon Marathon's receiving written notice of any defect within a reasonable period of time (but in no event more than sixty (60) days) after it was discovered or by reasonable care should have been discovered. In no event shall Marathon's liability for such defective or nonconforming products exceed the purchase price paid by Buyer therefor.

Exclusions - This warranty does not (i) cover shipping expenses to and from Marathon's factory or other destination designated by Marathon for repair or replacement of defective equipment or any tax, duty, custom, inspection or testing fee, or any other charge of any nature related thereto, nor does it cover the costs of disassembling or removing defective equipment or reassembling, reinstalling, or testing repaired or replaced equipment or finishing the reinstallation thereof, (ii) apply and shall be void with respect to equipment operated in excess of rated capacity or otherwise not in accordance with installation, maintenance, or operating instructions or requirements, to equipment repaired or altered by others than Marathon or Marathon's authorized service agencies, or to equipment which was subjected to abuse, negligence, misuse, misapplication, accident, damages by circumstances beyond Marathon's control, to improper installation (if by others than Marathon), operation, maintenance or storage, or to other than normal use or service, and (iii) apply to equipment or components not manufactured by or for Marathon. With respect to equipment or components not manufactured by Marathon, Marathon's warranty obligations shall in all respects conform and be limited to the warranty actually extended to Marathon by its suppliers, but in no event shall Marathon's obligations be greater than those provided under Marathon's warranty set forth in this Section 10.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES (EXCEPT TITLE), INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO EMPLOYEE, REPRESENTATIVE, OR AGENT OF MARATHON OTHER THAN AN OFFICER OF MARATHON IS AUTHORIZED TO ALTER OR MODIFY ANY PROVISION OF THIS SECTION 10 OR TO MAKE ANY GUARANTEE, WARRANTY, OR REPRESENTATION, EXPRESS OR IMPLIED, ORALLY OR IN WRITING, WHICH IS CONTRARY TO THE FOREGOING. Any description of the equipment, whether in writing or made orally by Marathon or Marathon's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the equipment and shall not be construed as an express warranty. Any suggestions by Marathon or Marathon's agents regarding use, application or suitability of the equipment shall not be construed as an express warranty unless confirmed to be such in writing by Marathon's authorized officer.

11. LIMITATIONS OF LIABILITY; CONSEQUENTIAL DAMAGES

Nuclear Use Disclaimer - Equipment sold by Marathon is not intended for use in connection with any nuclear facility or activity. If so used, Marathon disclaims all liability for any nuclear damage, injury or contamination, and Buyer shall indemnify and hold Marathon, its officers, agents, employees, successors,

assigns and customers harmless from and against any and all losses, damages or expenses of whatever form or nature (including attorneys' fees and other costs of defending any action) which they or any of them may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, by reason of such use.

Consequential Damage Disclaimer - Marathon's liability with respect to equipment proved to its satisfaction to be defective within the warranty period shall be limited to repair, replacement or refund as provided in Section 10 hereof, and in no event shall Marathon's liability exceed the purchase price of the equipment involved. Marathon shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence) or other theories of law, with respect to equipment sold or services rendered by Marathon, or any undertakings, acts or omissions relating thereto. Without limiting the generality of the foregoing, Marathon specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of equipment or any associated equipment, cost of capital, cost of substitute products, facilities or services, downtime, shutdown, or slowdown costs, or for any other types of economic loss, and for claims of Buyer's customers for any such damages.

MARATHON SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER. EVEN IF THE REPAIR OR REPLACEMENT REMEDY SHALL BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE UNDER SECTION 2-719 OF THE UNIFORM COMMERCIAL CODE, MARATHON SHALL HAVE NO LIABILITY TO BUYER FOR CONSEQUENTIAL DAMAGES, SUCH AS LOST PROFITS, LOST REVENUE, DAMAGE TO OTHER EQUIPMENT OR LIABILITY OR INJURY TO A THIRD PARTY.

12. INDEMNIFICATION BY BUYER

Buyer shall indemnify, hold harmless, and defend Marathon and Marathon's employees and agents from and against any and all damages, liability, claims, losses, and expenses (including reasonable attorneys' fees, court costs, and out-of-pocket expenses) arising out of or resulting in any way from claims by customers of Buyer or third parties against Marathon alleging a breach of contract or warranty by Marathon to the extent that such damages, liability, claims, losses, and expenses which may be payable by Marathon to Buyer pursuant to and as limited by Marathon's warranty and damage obligations as contained in Sections 10 and 11 hereof so as to effectively limit Marathon's obligations to customers of Buyer or third parties to those set forth in Sections 10 and 11 hereof.

13. PATENT INDEMNIFICATION

Marathon will, at its own expense, defend or settle any suits that may be instituted against Buyer for alleged infringement by the equipment of any United States patent, provided that (a) such alleged infringements consist of the use of the equipment for any of the purposes for which such equipment was sold, (b) Buyer shall have made all payments for such equipment then due hereunder, (c) Buyer shall give Marathon immediate notice in writing of any such suit and transmit to Marathon immediately upon receipt all processes and papers served upon Buyer, and (d) Buyer shall permit Marathon through its counsel, either in the name of Buyer or in the name of Marathon, to defend such suit(s) and give all needed information, assistance and authority to enable Marathon to do so.

In case of a final award of damages in any such suit, Marathon will pay such award but will not be responsible for any compromise or settlement made without its written consent. In case the equipment itself is in such suit held to infringe any valid patent issued in the United States and its use enjoined, or in the event of a settlement or compromise approved by Marathon which shall preclude future use of the equipment sold to Buyer hereunder, Marathon shall, at its own expense and at its sole option, either (a) procure rights to continue using such equipment, (b) modify the equipment to render it non-infringing, (c) replace the equipment with non-infringing equipment or (d) refund the purchase price paid by Buyer for the equipment after return of the equipment to Marathon. Notwithstanding the foregoing, Marathon shall not be held responsible for infringements of combination or process patents covering the use of equipment in combination with other goods or materials not furnished by Marathon.

The foregoing states the entire liability of Marathon for patent infringement, and **IN NO EVENT SHALL MARATHON BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ATTRIBUTABLE TO AN INFRINGEMENT** nor for infringement based on the use of the equipment for a purpose other than that for which sold by Marathon. As to any equipment furnished by Marathon to Buyer manufactured in accordance with designs proposed or furnished by Buyer or any claim of contributory infringement resulting from the use or resale by Buyer of equipment sold hereunder, Buyer shall indemnify Marathon for any award made against Marathon or settlement by Marathon for any patent, trademark or copyright infringements, including attorneys' fees and defense costs.

14. SECURITY AGREEMENT AND FINANCING STATEMENTS

To secure payment of the purchase price and of all monies which may be due hereunder, and performance of all of Buyer's obligations hereunder, Buyer hereby grants to Marathon a security interest in all equipment sold by Marathon, and agrees to execute such other Security Agreements and Financing Statements as Marathon may reasonably request.

15. INSURANCE

Until payment in full of the purchase price, Buyer shall maintain insurance covering all equipment sold by Marathon to Buyer in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, and shall, upon Marathon's request, furnish evidence of such insurance satisfactory to Marathon.

16. DRAWINGS; OTHER DESIGN DATA

All specifications, drawings, designs, data, information, ideas, methods, tools, gages, dies, fixtures, patterns and/or inventions made, conceived, developed or acquired by Marathon in connection with procuring and/or executing Buyer's order will vest in and inure to Marathon's sole benefit notwithstanding any changes therefor which may have been or may be imposed by Marathon.

Buyer shall not give, loan, exhibit, sell or transfer to any person not then employed by Buyer and authorized to receive such information, or to any organization or entity, any drawing, photograph or specification furnished by Marathon or reproduction thereof which may enable such person, organization or entity to furnish similar goods or parts therefor.

17. RETURN OF EQUIPMENT

No equipment or part shall be returned to Marathon without written authorization and shipping instructions first having been obtained from Marathon.

18. ASSIGNMENT AND SUBCONTRACTING

None of the Buyer's rights under any order shall be assigned by the Buyer to any other person, whether by operation of law or otherwise, without Marathon's prior written approval. Marathon may, without the necessity of obtaining Buyer's prior written consent, subcontract the production of all or any portion of the equipment.

19. CANCELLATION

No order submitted to Marathon may be cancelled by Buyer without the prior written consent of Marathon, which consent will at all times be conditioned on Buyer's agreement to pay Marathon's cancellation charge. For finished equipment which in Marathon's judgment is readily resalable to others, the cancellation charge shall be 15% of the invoice price of the equipment. For all other cancellations, the cancellation charge shall amount to all costs and expenses incurred by Marathon and arising out of or in connection with Buyer's order, net of recoverability, but in no event less than 10% of the invoice price of the equipment or more than the invoice price.

20. GENERAL

Governing Law - These Terms and Conditions, and the contract of sale between Marathon and Buyer, shall be governed by and construed in accordance with the laws of the State of Wisconsin. Marathon and Buyer hereby agree that any legal action deemed necessary by either party hereto shall be brought in the Circuit Court in and for Marathon County, Wisconsin and hereby consent to the personal jurisdiction of such court in any such action over the parties hereto. The rights and obligations of Marathon and Buyer shall not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

Attorneys' Fees - Buyer agrees to pay all of Marathon's costs and expenses of collection and related litigation, including but not limited to attorneys' fees and costs.

Salvatory Clause - The invalidity, in whole or in part, of any of the provisions of these Terms and Conditions, shall not affect the enforceability of any of the other provisions thereof.

Applicability - The Terms and Conditions as stated herein are applicable as of the date of this printing and until such time as changed by Marathon.

(Revised, January 2004)