

## TERMS AND CONDITIONS

**TERMS:** AMERICAN EAGLE FOOD MACHINERY, INC. (AEFM) OFFERS OPEN ACCOUNT STATUS FOR APPROVED ACCOUNTS ONLY. ALL NEW CUSTOMERS REQUESTING OPEN ACCOUNT STATUS MUST COMPLETE OUR CREDIT APPLICATION FORM WITH A MINIMUM OF FIVE TRADE REFERENCES, ONE BANK REFERENCE AND A CERTIFICATE OF RESALE AND/OR TAX I.D NUMBER, WHICH SHOULD BE INCLUDED WITH THE FIRST ORDER. NEW ACCOUNTS ARE ALWAYS WELCOME TO HAVE THEIR ORDERS SHIPPED CASH ON DELIVERY (C.O.D). AMERICAN EAGLE FOOD MACHINERY, INC. OFFERS A PREPAID DISCOUNT OF 2% OFF THE TOTAL COST OF EQUIPMENT ONLY, DELETING THE FREIGHT AND HANDLING CHARGES.

**ACCEPTANCE:** ALL ORDERS ARE CONSIDERED OFFERS TO PURCHASE AND DO NOT CONSTITUTE A CONTRACT UNTIL ACCEPTED BY AEFM, INC. ALL ORDERS ARE SUBJECT TO REVIEW AND ACCEPTANCE BY AEFM, INC. ORDERS ACCEPTED BY PHONE MUST ALWAYS BE FOLLOWED BY EITHER A MAILED OR FAXED COPY OF THE BUYER'S PURCHASE ORDER OR A COPY OF THE AEFM, INC. ORDER FORM FOR CONFIRMATION. MINIMUM ORDER REQUIREMENT IS USD VALUE OF \$300.00 NET. ORDERS OF LESSER VALUE WILL BE SUBJECT TO AN ADDITIONAL \$10.00 HANDLING CHARGE PER INVOICE.

**PRICE:** PRICES FOR THE GOODS LISTED IN THE CATALOG ARE ITEMIZED ON A SEPARATED NET PRICE LIST FOR DEALERS ONLY. PRICES ARE SUBJECT TO CHANGE DUE TO COST FLUCTUATION, WITHOUT NOTICE. ALL ORDERS ARE SUBJECT TO THE CURRENT PRICE AT THE TIME OF ORDERING AND SHOULD BE VERIFIED AT SUCH TIME.

**PAYMENT:** CASH, LETTER OF CREDIT, WIRE TRANSFER, AND/OR CHECKS ARE ACCEPTABLE AS PAYMENT. AEFM, INC. RESERVES THE RIGHT TO REQUEST PAYMENT IN ADVANCE AND/OR BY CERTIFIED CHECK. RETURNED CHECKS ARE SUBJECT TO A \$25.00 USD RE-DEPOSIT CHARGE. PAST DUE INVOICES ARE SUBJECT TO A 1.5% SERVICE CHARGE PER MONTH, 18% ANNUALLY.

**SHIPPING:** ORDERS ARE SHIPPED FOB: CHICAGO, IL.; UNLESS OTHERWISE SPECIFIED, REGULAR SHIPMENTS ARE MOVED VIA GROUND CARRIER (RPS, UPS, OR MOTOR FREIGHT CARRIER). AIR EXPRESS OR OVERNIGHT SHIPPING SERVICE WILL BE AVAILABLE AT THE BUYER'S EXPENSE. ORDERS REQUIRING FREIGHT CARRIER SERVICE WILL BE FORWARDED TO MOTOR FREIGHT CARRIER DETERMINED BY AEFM, INC. SHIPMENTS REQUIRING FREIGHT CARRIERS SERVICE AS SPECIFIED BY THE BUYER WILL THEN BECOME THE BUYER'S FINANCIAL RESPONSIBILITY.

**CLAIMS:** ON OCCASION WE EXPERIENCE FREIGHT DAMAGE AS DO ALL SHIPPING COMPANIES. LET IT BE UNDERSTOOD THAT THE FREIGHT DAMAGE IS NOT THE RESPONSIBILITY OF THE SELLER NOR DOES IT RELIEVE THE BUYER FROM OBLIGATION FOR PROMPT PAYMENT. ANY AND ALL CLAIMS FOR DAMAGED MERCHANDISE MUST BE PROCESSED BY THE BUYER (CONSIGNEE) THROUGH THE DELIVERING CARRIER. THESE CLAIMS MUST BE FILED UPON RECEIPT OF ORDERS AND ALL ORIGINAL PACKAGING MUST BE SAVED FOR INSPECTION. THIS PROCEDURE INCLUDES CASES OF "HIDDEN OR UNSEEN" DAMAGE. CLAIMS FOR SHORTAGES, INCORRECT GOODS, OR INVOICING ERRORS MUST BE MADE WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF ORDERS. PLEASE TAKE NOTE OF OUR SUGGESTION TAGGED ON EVERY PIECE OF EQUIPMENT THAT LEAVES OUR WAREHOUSE: "INSPECT THE SHIPMENT IMMEDIATELY."

**RETURNS:** ALL RETURNS MUST BE AUTHORIZED BY AEFM, INC. AND MUST HAVE A RETURN AUTHORIZATION (RA) NUMBER. THIS "RA" NUMBER WILL BE ISSUED BY THE CUSTOMER SERVICE DEPARTMENT OF AEFM, INC. ALONG WITH INSTRUCTIONS AS TO WHAT THE PROBLEM MIGHT BE. ALL RETURNS MUST BE RECEIVED BY AEFM, INC. WITHIN FORTY-FIVE (45) DAYS OF INVOICE DATE. ALL RETURNS MUST BE SHIPPED ON A PREPAID BASIS TO AEFM, INC. AND MUST BE SALEABLE AND IN AS-NEW CONDITION. UNAUTHORIZED RETURNS AND/OR RETURNS OLDER THAN FORTY-FIVE DAYS FROM INVOICE DATE WILL BE RETURNED TO BUYER AT BUYER'S EXPENSE. IN ADDITION, RETURNS OLDER THAN FORTY-FIVE DAYS WILL BE SUBJECT TO INSPECTION AND A 20% OF COST RESTOCKING CHARGE.

**SECURITY AGREEMENT/CREDIT AND COLLECTIONS:** TO SECURE PAYMENT OF ALL SUMS DUE SELLER HEREUNDER OR OTHERWISE, SELLER SHALL RETAIN A SECURITY INTEREST IN THE GOODS DELIVERED HEREUNDER AND THIS CONTRACT SHALL BE DEEMED A SECURITY AGREEMENT UNDER THE UNIFORM COMMERCIAL CODE. BUYER AUTHORIZES SELLER AS HIS ATTORNEY TO EXECUTE AND FILE ON BUYER'S BEHALF ALL DOCUMENTS SELLER DEEMS NECESSARY TO PERFECT SUCH SECURITY INTEREST. SELLER IS RELYING UPON BUYER'S REPRESENTATION OF SOLVENCY AND IF SELLER AT ANY TIME REASONABLY BELIEVES THAT BUYER IS INSOLVENT OR THAT BUYER'S CREDIT IS IMPAIRED, BUYER SHALL BE IN MATERIAL BREACH HEREOF AND SELLER MAY, WITHOUT LIABILITY TO BUYER, WITHHOLD PERFORMANCE HEREUNDER CHANGE THE PAYMENT TERMS AND/OR REPOSSESS GOODS THERE TO FOR DELIVERED. TITLE TO THE GOODS COVERED HEREBY SHALL REMAIN IN SELLER UNTIL FULL PAYMENT IS RECEIVED. SELLER MAY CHARGE BUYER FINANCE, SERVICE OR LATE CHARGES IN AN AMOUNT NOT GREATER THAN ALLOWED BY LAW, AND IF BUYER FAILS TO MAKE PAYMENT WHEN DUE, BUYER SHALL BE LIABLE TO SELLER FOR ALL COST OF COLLECTION INCLUDING ATTORNEY'S FEES.

**DELIVERY OR PERFORMANCE:** UNLESS OTHERWISE SPECIFIED, DELIVERIES ARE FOB POINT OF SHIPMENT. SHIPMENT MADE IN ACCORDANCE WITH SELLERS INSTRUCTIONS. UPON DELIVERY OF GOODS TO CARRIER, BUYER ASSUMES RISK OF ALL LOSS AND DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER. SHIPPING DELIVERY OR PERFORMANCE DATES ARE APPROXIMATE.

**FORCE MAJEURE:** SELLER SHALL NOT BE LIABLE FOR DELAY OR OTHER FAILURE OF PERFORMANCE DUE TO CAUSES BEYOND ITS REASONABLE CONTROL. CANCELLATION OF ANY PART OF THIS CONTRACT SHALL NOT AFFECT BUYER'S DUTY TO PAY FOR PERFORMANCE OF ANY OTHER PART HEREOF.

### **LIMITATION OF SELLER'S LIABILITY:**

ANY ACTION FOR ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE, WITH RESPECT TO THE GOODS OR SERVICES COVERED HEREUNDER, SHALL IN NO CASE EXCEED THE PRICE OF THE GOODS OR SERVICE OF PART THEREOF WHICH GIVES RISE TO THE CLAIM. **IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGE OR FOR DAMAGE IN THE NATURE OF PENALTIES.**

**LIMITATION OF ACTION:** ANY ACTION FOR ANY LOSS OR DAMAGE WITH RESPECT TO THE GOODS OR SERVICES COVERED HEREUNDER MUST BE COMMENCED BY BUYER WITHIN ONE YEAR AFTER BUYER'S CAUSE OF ACTION HAS ACCRUED.

**RUE ON SALE:** THE THAN BALANCE OF THE INDEBTNESS IS PAYABLE IN FULL UPON BUYER CEASING TO HAVE EITHER POSSESSION OR OWNERSHIP OF THE PROPERTY UNLESS SELLER GIVES WRITTER CONSENT TO SUCH.

**INDEMNIFICATION AND WAIVER:** BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY LOSS DAMAGE SUSTAINED DIRECTLY BY SELLER AND FROM AND AGAINST ALL CLAIMS ASSERTED AGAINST SELLER WITH RESPECT TO THE GOODS OR SERVICES COVERED HEREUNDER ARISING IN WHOLE OR IN PART OUT OF: (a) FAILURE OF BUYER, ITS AGENT, EMPLOYEES OR CUSTOMERS TO FOLLOW SPECIFICATIONS, INSTRUCTIONS, WARNING OR RECOMMENDATIONS FURNISHED BY SELLER, (b) FAILURE OF BUYER, ITS AGENTS, EMPLOYEES OR CUSTOMERS TO COMPLY WITH ALL APPLICABLE LEGAL REQUIREMENTS, INCLUDING THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970, (c) MISUSE OF THE GOODS BY BUYER, ITS AGENTS, EMPLOYEES OR CUSTOMERS, (d) MISREPRESENTATION BY BUYER ,ITS AGENTS, EMPLOYEES OR CUSTOMERS, AND (e) THE SOLE OR CONTRIBUTING NEGLIGENCE OF BUYER , ITS AGENTS, EMPLOYEES,OR CUSTOMERS. BUYER HEREBY WAIVES AND RELEASES SELLER FROM ALL RIGHT OF CONTRIBUTION OR INDEMNITY TO WHICH IT MAY OTHERWISE BE ENTITLED.

**MISCELLANEOUS:** THIS CONTRACT, INCLUDING THE WARRANTY INFORMATION FORM, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN BUYER AND SELLER RELATING TO THE GOODS OR SERVICES COVERED HEREUNDER. NO MODIFICATIONS SHALL BE BINDING UPON THE SELLER UNLESS IN WRITING AND SIGNED BY SELLER'S DULY AUTHORIZED REPRESENTATIVE. INACTION BY THE SELLER UPON DEFAULT OF THE BUYER DOES NOT REPRESENT A WAIVER OF SELLER'S RIGHT TO PURSUE LEGAL REMEDIES.