

CobraCo USA LLC
General Terms and Conditions of Sale

These General Terms and Conditions (“Terms”) are an integral part of the agreement (the “Agreement”) between the Parties; CobraCo USA LLC (the “Seller”) and you as buyer (the “Buyer”), into which they are incorporated with respect to the goods offered thereunder (the “Goods”).

1 Terms of Sale

1.1 The Terms herein, together with such other documents specifically made a part hereof (including order confirmations and invoice), shall constitute the complete and exclusive statement of the Agreement between the Parties, supersede all previous understandings between the Parties which may have existed relating to the Goods, and may hereafter be modified only in writing by authorized representatives of both Parties.

2 Quotations – Orders – Confirmation

2.1 The Seller’s issuing of a quotation is subject to the following:

- (a) Seller’s formal quotations are only issued by way of a Notice;
- (b) Seller shall not be bound by any quotation if an order is not placed within 14 days from the date of quotation;
- (c) Seller may, prior to receipt of any order from the Buyer, amend any quotation and by way of Notice, notify the Buyer accordingly without ramification; and,
- (d) Any quotation is on a supply-only basis. Seller shall only take responsibility for the assembly, installation and/or commissioning of the Goods if this has been explicitly agreed and set out in the quotation.

2.2 In placing an order in response to the Seller’s quotation, the Buyer agrees that:

- (a) Each order placed by the Buyer shall be, and be deemed to be, a representation by the Buyer made at the time that it is solvent and able to pay all of its debts as and when they fall due;
- (b) When placing any order, the Buyer shall inform the Seller of any facts which might reasonably affect acceptance and fulfillment of the order by the Seller; and,
- (c) Buyer may only seek to change an order already accepted and confirmed by the Seller with consent given by Seller by way of Notice.

2.3 The Seller’s order confirmation contains the final and comprehensive description of the scope to be provided by the Seller; it forms, in particular, the basis for the technical performance characteristics,

the technical and commercial details, the conditions for deployment, and the safety regulations.

3 Delivery – Shipping – Risk of Loss

3.1 Delivery dates specified in any order confirmation are approximate only, subject at all times to the actual delivery date to the Buyer being within a reasonable period of time of the delivery dates so specified. In determining compliance with the delivery dates, the actual delivery date shall be the date on which the Buyer acknowledges receipt of the Goods at the Buyer’s shipping address so designated on the order (the “Shipping Address”).

3.2 In the absence of any particular shipping specifications in the Agreement, Seller shall select the shipping method in its discretion. If the Buyer specifies a particular mode of shipping, shipping costs in excess of those otherwise allowed for by the Seller, including handling costs, shall be at the Buyer’s expense.

3.3 Risk of loss or damage and, unless otherwise specified, title to the Goods, shall pass from the Seller to the Buyer at the time the Buyer acknowledges receipt of the Goods at the Shipping Address. The Parties agree to be responsible for insuring the Goods for the full value of such Goods when the risk of loss or damage is the responsibility of such Party.

4 Inspection – Testing – Compliance of Goods

4.1 The Goods are designed, manufactured tested and certified to comply with the relevant standards for the purpose for which they were designed.

4.2 Where the Buyer wishes to ensure the Goods must comply with additional standards or pass any tests and/or certifications they so wish, the Buyer is responsible for ensuring these are reflected in the order. All tests and inspections required to comply with this clause 4.2 will be at the Buyer’s cost and shall be initiated by the Seller to be conducted by third parties it deems appropriate.

5 Returns

5.1 Goods may not be returned without the Seller first consenting to the return by way of Notice to the Buyer and, if given, the Seller will provide Buyer with complete shipping instructions.

5.2 Buyer’s failure or refusal to accept delivery of Goods, or return of Goods, without just cause is considered a default of the Buyer’s obligations under the Agreement:

- (a) If Buyer rejects conforming Goods considered “standard” or “stock” items, Buyer will remain liable for damages or

- loss suffered by Seller, including but not limited to storage, shipping and restocking costs, anticipated profits, and losses due to market fluctuations; and
- (b) If Buyer rejects conforming Goods that are specifically manufactured, designed or packaged in accordance with the Buyer's instruction, the Buyer shall remain liable for the full price of the Goods less any net salvage value recovered by Seller.
- 6 Seller's Right to Reclaim Goods**
- 6.1 The Seller has the right to reclaim the Goods from the Buyer, at the Seller's cost, whereupon the Buyer has confirmed in a Notice to the Seller that the Goods have reached the end of their useful life for the purpose of the Buyer.
- 6.2 Unless otherwise agreed, the Buyer shall not be entitled to compensation from the Seller for the reclaiming of the Goods, other than being entitled to the reimbursement of any costs they incur in assisting the Seller to do so.
- 7 Price – Payment**
- 7.1 The Price shown in the quotation and/or invoice is binding
- 7.2 The Price of the Goods are quoted DAP (Shipping Address) and shall include, but separately identify, any relevant sales or valued-added tax. "DAP" is Delivered At Place (per the International Chamber of Commerce's Incoterms 2010) and stipulates that the Seller bears the responsibility and cost for ensuring the delivery of the Goods to the Shipping Address, but expressly excludes the Seller paying for duties, tariffs and other import imposts, the payment of which shall be the Buyer's responsibility.
- 7.3 Subject to the Seller having fulfilled their obligations under the Agreement, and unless otherwise agreed, the Buyer will make payment in full, in United States dollars within 30 (thirty) days after invoice date.
- 8 Lien**
- 8.1 Buyer grants to Seller a lien and security interest in Buyer's rights, title and interest in the Goods and the proceeds thereof, including without limitation any accounts receivable from the sale of Goods until payment in full of all monies owing by the Buyer to the Seller.
- 9 Cancellation – Delay – Force Majeure**
- 9.1 A Party may not cancel any Agreement, in whole or in part, except with the consent of the other Party given by way of Notice, unless, in seeking to cancel
- any Agreement, that Party is not in breach of this clause 9.
- 9.2 Where a Force Majeure Event results in major difficulties which; either:
- (a) Lead to a delay in the Seller fulfilling their obligation to manufacture and/or deliver the Goods in a timely manner; or,
- (b) Means the Buyer is unable to receive and/or pay for the Goods; then,
- (c) The Party so affected shall promptly give Notice to the other Party of the Force Majeure Event and that it affects the Party's performance of its obligations under an Agreement.
- 9.3 The obligations and responsibilities of the Party giving Notice under clause 9.2, as well as the corresponding obligations and responsibilities of the other Party shall be relieved to the extent made necessary by, and during, the continuance of the Force Majeure Event.
- 9.4 Either Party shall be entitled to cancel the Agreement if the Force Majeure Event cannot be overcome or which to overcome would require the either Party incurring expenditure of unreasonable time, effort and cost compared with the value of the agreed scope set out in the Agreement. Where a Party seeks to cancel the Agreement, the Seller shall immediately reimburse any payments the Buyer may have already made with respect to the Seller's unfulfilled obligations under the Agreement.
- 9.5 A "Force Majeure Event" affecting a Party means anything outside of that Party's reasonable control, including without limitation, fire, storm, flood, earthquake, explosion, accident, enemy acts, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation, act or omission (including laws, regulations, disapprovals or failures to approve) of any third party (including but not limited to, subcontractors, governments or government agencies)
- 9.6 Unless consent is otherwise given by way of Notice, if a Party seeks to delay the delivery of the Goods for their convenience, the other Party shall be entitled to determine and claim compensation commensurate with the expense incurred by that Party as a direct result of that delay.
- 10 Warranty**
- 10.1 The Seller warrants only to the Buyer of the Goods from the Seller that the Goods will be free from defects in materials and workmanship under the normal use and service for which the Goods were

- designed for a period of time determined by the earlier of:
- (a) 12 (twelve) months from the date the Goods were installed for the purpose for which they were designed; or,
 - (b) 18 (eighteen) months from the date the Seller dispatched the Goods to Buyer.
- 10.2 The Buyer's exclusive remedy under this Warranty shall be the repair or replacement, at Seller's sole option, of the Goods, or any part of the Goods, determined by the Seller to be defective.
- 10.3 In order to exercise their Warranty rights during the Warranty period the Buyer must give the Seller Notice of the defects in the Goods without delay as soon as they have been determined in the proper course of ordinary business. The defective Goods shall be preserved intact and made available for inspection by Seller.
- 10.4 This Warranty does not apply to Goods that have been damaged as a result of:
- (a) The Buyer's failure to handle, store, install, maintain or repair the Goods in an appropriate manner after delivery;
 - (b) The Buyer's failure to use the Goods in the manner for which they were designed;
 - (c) Alterations to the Goods made without the prior written consent of Seller; and,
 - (d) Normal wear and tear, or any other reason or event not caused by a failure or defect in the design or manufacture of the Goods.
- 10.5 Seller hereby disclaims all other warranties, whether written or oral, express or implied by law or otherwise, including without limitation, any warranties of merchantability or fitness for any particular purpose. The Buyer's sole remedy for any defective Goods will be as stated above and in no event would the Seller be liable for incidental, consequential, special or indirect damages in connection with the Goods.
- 10.6 This Warranty gives the Buyer specific legal rights, but this Warranty does not void other rights the Buyer may have, which will vary from legal jurisdiction to legal jurisdiction.
- 11 Indemnification**
- 11.1 The Buyer indemnifies Seller against all loss, liability, cost (including legal costs on a full indemnity basis) and expense incurred by the Seller:
- (a) In connection with any act or omission of the Buyer including, but not limited to, negligence of the Buyer or any unauthorized representation made or
- warranty given by the Buyer in connection with the Goods; or,
- (b) As a result of any claim made or action brought in connection with the Goods or their use, other than a claim or action brought by the Buyer under these Terms, or a condition or warranty implied by law, which is not excluded by these Terms.
- 11.2 Buyer shall indemnify, defend and hold Seller, its parents, subsidiaries and affiliates and its and their directors, officers, agents and representatives harmless from and against any claim, lien, loss, cost, damage, expense or judgment (including attorneys' fees) arising from or caused by:
- (a) Designs or specifications provided by Buyer;
 - (b) Any installation, modification or refinement of the Goods by or for Buyer not made by the Seller;
 - (c) Any breach by Buyer of any of these Terms; or,
 - (d) Buyer's negligent, willful or intentional acts or omissions.
- 12 Intellectual Property Rights**
- 12.1 The Buyer agrees that all intellectual property in the creation of the Goods shall be and remain the property of the Seller notwithstanding any contribution by the Buyer.
- 12.2 The Seller hereby grants the Buyer a license to use such intellectual property as is necessary to install, use and/or dispose of the Goods. Such license is non-transferrable and may be terminated by the Seller by written notice to the Buyer.
- 12.3 The Seller warrants that all Goods are free of third-party intellectual property rights and that no patents, licences or other intellectual property rights or patent applications made available for public inspection are violated, in particular by the delivery and utilisation of the Goods.
- 12.4 The Seller indemnifies and holds harmless the Buyer and their customers from and against any and all third-party claims arising from the violation of intellectual property rights and will, bear any and all expenses incurred pursuant to such claims.
- 13 Non-Disclosure**
- 13.1 Each Party will ensure that no confidential or proprietary information, expertise and other business secrets of the other Party will be disclosed to third parties without the other Party giving permission in a Notice to do so.

14 Waivers – Remedy

14.1 No right of a Party under this Agreement shall be deemed waived unless evidenced in a Notice from that Party. An election by a Party not to exercise any rights on any breach of these Terms shall not constitute a waiver by that Party of any rights relating to any other breach.

14.2 In the case of a Buyer seeking to make a claim under an Agreement, no claim by the Buyer for any damages shall exceed the invoice value of the Goods with respect to which such damages are claimed.

15 Assignment – Severability – Survival

15.1 A Party must not assign part or all of its rights or obligations under these Terms without the other Party’s prior written consent, which that Party may give or refuse in its sole discretion, unless in doing so the Party is not in breach of these Terms.

15.2 Part or all of any clause of these Terms that is unenforceable or illegal will be severed from these Terms and will not affect the enforceability of the remaining clauses of the Terms.

15.3 All rights, duties and obligations of and upon the Parties under these Terms will remain in force beyond the completion of any Agreement.

16 Errors and Omissions

16.1 Any errors and/or omissions from Seller’s documents, including but not limited to price lists, catalogues, quotations, delivery dockets, invoices, statements and or credit notes shall be subject to correction by Seller without consequence and shall not entitle the Buyer to a variation in price, or to cancel or alter any order, or fail to comply with these Terms.

17 Notices

17.1 Any notice, or other communication in connection with these Terms or any Agreement (each, a “Notice”) shall be:

- (a) From a Party’s authorized representative; and,
- (b) In writing; and,
- (c) Delivered by e-mail, hand, fax or courier; and,
- (d) Valid only if made in accordance with this clause 17.

17.2 A Notice to a Party shall be sent to that Party’s authorized representative, or to such other person as that Party may notify to the other Party, from time-to-time.

18 Arbitration – Governing Law

18.1 These Terms and any Agreement and all obligations, rights and remedies of the Parties with

respect to these Terms and any Agreement and the Goods, and all issues, controversies or other matters arising between the Parties with respect to the Goods and the transactions contemplated by an Agreement shall be governed by and construed in accordance with the laws of the US State of New York.

18.2 Any dispute arising out of, or in connection with, these Terms and any Agreement, shall be settled by friendly negotiations between the Parties (“Friendly Negotiations”).

18.3 If Friendly Negotiations fail to achieve settlement within a period of ninety (90) days, then, upon Notice by either Party to the other, any unresolved controversy or claim shall be settled by arbitration administered by the International Centre for Dispute Resolution (“ICDR”) in accordance with the provisions of its International Arbitration Rules.

18.4 The number of arbitrators shall be one (1). The place of arbitration shall be Oklahoma City, Oklahoma, United States of America and the language of the arbitration shall be English.

18.5 The Parties shall be responsible for their own costs of entering into arbitration, unless otherwise directed by ICDR in their arbitration ruling.

19 Business Conduct

19.1 Seller expects its employees and associates to carry out Seller’s business with honesty and in compliance with laws and high ethical standards. This expectation extends to Seller’s interaction and dealings with suppliers and customers. If the Buyer experiences problems with, or has concerns surrounding, its dealings with the Seller, the Buyer is encouraged to contact Tony Gardner at tony@cobracolink.com.

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