

FCX PERFORMANCE, INC.

STANDARD TERMS AND CONDITIONS OF SALE OF GOODS

1. **DEFINITIONS USED HEREIN** - "Document" or "contract" means this document, including any attached pages and the terms and conditions contained herein. "Seller," "us" or "we" means FCX Performance, Inc. (sometimes doing business as Amsco Sales Corporation or Simco Controls), including any successor or predecessor companies. "Buyer" or "you" means the buyer identified in this Document. "Goods" means the goods, equipment, materials, parts, supplies and/or services supplied by us to you as described in this document.
2. **COMPLETE CONTRACT** - This document contains the complete and exclusive agreement between you and us regarding the terms of the sale of the Goods by us to you. This document supersedes and replaces all previous requests, quotations, orders or agreements concerning the Goods. Any additional or different terms will not become part of the contract or agreement for the sale of the Goods and are hereby objected to by us without further notice unless made in writing and signed by an authorized representative of each of seller and you.
3. **PRICES** - All prices quoted are estimates only and are subject to change without notice. Freight-in and -out are prepaid and added to invoice, unless otherwise agreed. Note: Buyer is responsible for freight-in on "freight collect" shipments. Total price for services will be calculated based on our standard service rates in effect at the time the services are performed. Any applicable taxes or other governmental impositions, which we may be required to pay or collect, will be added to the price and paid by you unless we receive a valid exemption certificate. All prices and/or discounts are based on receiving an order for the quantities specified. Any change in quantity may result in a change in price and/or discount.
4. **TITLE, DELIVERY AND RISK OF LOSS** - Unless otherwise specified, delivery points shall be the F.O.B. point specified by seller, but title to the Goods and liability for loss or damage in transit or thereafter shall pass to you upon our delivery of the Goods to a common carrier for shipment. Shipping dates are not guaranteed.
5. **SHORT, DAMAGED OR DEFECTIVE GOODS** - Claims for Goods delivered short, damaged or defective (not due to fault of carrier) shall be filed with seller within ten days after date of shipment. Buyer's claims for shortages shall detail shipment weights and method of counting the Goods. Claims for Goods delivered short, damaged or defective as a result of the fault of the carrier will be handled by seller directly with the carrier.
6. **PAYMENT** - Unless otherwise agreed by seller in writing, full cash payment is due within thirty days after the invoice date. Orders are subject to final approval by seller's credit department, which may require full or partial advance payment. If buyer delays order processing, partial payment based on the portion of the order completed shall then be paid. Pro rata payments shall be due as shipments are made. In the event buyer delays shipment, full payment shall be due thirty days from the date seller could have otherwise shipped the Goods. Storage shall be at buyer's risk and charges therefor shall be paid before shipment. If buyer does not pay on time, seller reserves the right to charge buyer 11/2% per month on the unpaid balance until paid. Seller reserves the right to process an electronic ACH debit to buyer's bank account in the event buyer presents seller with a check returned for non-sufficient funds.
7. **INTERPRETATION - RESPONSIBILITY** - When plans and specifications are involved, you are responsible to verify our interpretation of them. When we offer substitutes on any proposal, you are responsible for their acceptability. If we deliver to you any literature concerning the Goods, you are responsible for becoming familiar with it.
8. **EXCUSABLE DELAYS** - No liability shall result from delay in performance or non performance, directly or indirectly caused by circumstances beyond our control, which include, but are not limited to, Acts of God, fire, explosion, flood, war, terrorism, act of or authorized by any government, accident, labor trouble, or shortage or inability to obtain material, equipment or transportation. Quantities so affected may be eliminated from the agreement without liability, but the agreement shall remain otherwise unaffected.
9. **LIMITED WARRANTY AND WARRANTY DISCLAIMER** - Seller warrants only to you that it has good title to the Goods sold hereunder and/or used to perform services, and will use its reasonable commercial efforts to obtain from each manufacturer, in accordance with the manufacturer's warranty, the repair or replacement of Goods that may prove defective in material or workmanship. Except as stated in the previous sentence, seller makes no other warranties concerning the Goods whatsoever. **SELLER DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Notwithstanding the foregoing, to the extent we are permitted and able, we will pass on and make available to you any warranties made by the suppliers and manufacturers of such Goods. In addition, we warrant our labor and workmanship for a period of 90 days after substantial completion of the services. Our obligations under this warranty are conditioned upon you notifying us of any alleged defect in our labor and workmanship promptly after discovery and in any event not later than 90 days after substantial completion of the services, and our satisfaction upon inspection that the warranty has been breached. In the event of a breach of this warranty, we will correct the defective labor or workmanship at our expense or, at our discretion, give you a credit in a reasonable amount on account of the defect but in no event in an amount greater than the paid price of the services hereunder
10. **LIMITATIONS OF REMEDIES AND DAMAGES** - You agree that our obligation described in the preceding paragraph is your sole and exclusive remedy, and that our total liability to you, your customers or to any other person, relating to this document, its performance or non-performance, or from the use of Goods furnished, is limited to the price of the Goods and/or services giving rise to the claim. Except as to title, such obligation and liability shall terminate at the end of the manufacturer's warranty period for the applicable Goods. **SELLER AND ITS SUPPLIERS WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PENAL DAMAGES INCURRED IN CONNECTION WITH THE GOODS, WHETHER ANY CLAIM FOR RECOVERY IS BASED UPON OR ARISES OUT OF THEORIES OF CONTRACT, NEGLIGENCE, TORT (INCLUDING STRICT LIABILITY) OR OTHERWISE,** including, but not limited to back charges; labor costs; costs of removal, replacement, testing or installation; loss of efficiency; loss of profits or revenues; loss of use of the Goods or any associated products; damages to associated products; lateness or delays in delivery; unavailability of Goods; cost of capital; cost of substitute Goods, facilities or service; downtime; or claims from your customers or other parties to you or directly to us for such damages.
11. **HAZARDOUS BUSINESS** - You assume all risk and liability resulting from Goods delivered hereunder, whether used singly or in combination with other products. Unless otherwise agreed to by us in writing, Goods sold under this contract are not intended for use in connection with "safety-related" applications within any nuclear facility or any other hazardous activity such as aircraft, space exploration or other critical applications where failure of a single component could cause substantial harm to persons or property. We disclaim any and all liability if our standard commercial products are used in any such applications.
12. **GOVERNMENT CONTRACTS** - If you purchase Goods for sale to any U.S. government, state or local government agency, you are responsible to notify us of all government procurement conditions applicable to the sale when you request our quotation. We will review the conditions and advise you of our ability to comply. If any government action should place or continue limitations on the price provided for in this document such that it would be illegal or against public or government policy for us to charge, assess or receive the full amount or to increase such prices as determined by this document, then we shall have the option to (1) continue to perform under this document subject to such adjustments in prices that we may deem necessary to comply with such government action, (2) revise this document, subject to your approval, in order to most nearly accomplish the original intent of this document, or (3) terminate performance of the affected portions of this document without liability for any damages.
13. **EXPORTS** - If you export any of the Goods sold hereunder, it is your responsibility to comply with all United States export control rules and regulations. We cannot be named as shipper or exporter of record for such Goods.
14. **CANCELLATION** - Special orders may not be canceled. Other orders may be canceled upon written notice by Buyer within 7 days of the order; subject to a cancellation charge as determined by us that is based upon a percentage of the total amount due under the order.
15. **ASSIGNMENT** - You may not assign or transfer this document without our consent, which will not be unreasonably withheld. We may assign or transfer this contract and our rights and obligations hereunder
16. **RETURNED GOODS** - You must obtain a written return authorization (RA) from us before returning any items and pay any resulting restocking charges as determined by us. We reserve the right to refuse delivery on all items returned to us without a valid RA. Any RA will be valid for 30 days from the date of issuance. Returned material must be received within that 30-day period, or the RA is void. You must prepay all freight. We will issue credit for freight where incorrect shipments have been made by us. All returned items must be new and unused. Special orders cannot be canceled or returned. All returned items must either be stock or non-stock items that we can return to the manufacturer.
17. **APPLICABLE LAW** - This document and any subsequent contract referred to herein shall be governed by and construed in accordance with the laws of the State of Ohio, including the Ohio Uniform Commercial Code.
18. **SEVERABILITY** - Invalidity of any of the terms provided herein shall not affect the validity of any other term.
19. **WAIVER** - Waiver by us of your performance, or inaction with respect to your breach of any provision of this document, or failure of us to enforce any provision of this document, will not be deemed a waiver of future compliance herewith or a course of performance modifying such provision, and such provision will remain in full force and effect as written.