

# **Fountain Industries**

## **LIMITED WARRANTY AND LIMITATION OF REMEDIES AND DISCLAIMER.**

(1) Fountain Industries "Fountain" warrants the Equipment to be free from defects in material and manufacture and to conform to specifications for the Equipment at the time of shipment. This warranty is applicable only if the Equipment is installed, operated and maintained in accordance with factory recommendations and procedures. If any Equipment fails to conform to the specifications or samples or any defect in material or manufacture appears within twelve (12) months from the date of initial purchase by end user Fountain's entire liability, and Customer's exclusive remedy, shall be, to either repair or replace such defective Equipment, at Fountain's option, within a reasonable time after written notification thereof and return of the defective Equipment to Fountain.

(2) THIS WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY, THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY ARISING OUT OF COURSE OF DEALING OR OF PERFORMANCE, CUSTOM OR USAGE OF TRADE EXCEPT OF TITLE AND AGAINST PATENT INFRINGEMENT.

(3) LIMITATION OF LIABILITIES; TIME LIMIT FOR FILING ACTION. NEITHER PARTY SHALL UNDER ANY CIRCUMSTANCES BE LIABLE TO EACH OTHER FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUE OR BUSINESS) RESULTING FROM OR IN ANY WAY RELATED TO THE EQUIPMENT, ANY OF CUSTOMER'S PURCHASE ORDERS, THESE TERMS AND CONDITIONS OR THE TERMINATION OR NONRENEWAL THEREOF. FOUNTAIN'S LIABILITY ON ANY CLAIM OF ANY KIND (INCLUDING NEGLIGENCE) FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM THIS AGREEMENT, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE EQUIPMENT FURNISHED HEREUNDER SHALL IN NO CASE EXCEED THE PRICE OF THE SPECIFIC EQUIPMENT WHICH GIVES RISE TO THE CLAIM. ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD AS STATED HEREIN. This limitation applies regardless of whether such damages are sought based on breach of contract, negligence, strict liability in tort or any other legal theory.

(4) Any action for breach of warranty or any other obligation under these Terms and Conditions must be commenced within one year from the purported date of breach.

(5) Each limitation on liability or remedy set forth in these Terms and Conditions is independent of any other limitation or if they are otherwise held to be unenforceable, that shall not affect the validity of any other such limitation or remedy. Fountain assumes no liability for any claims for injury or damages to persons or property arising from any chemical manufactured by Customers or by third party vendors for use in Fountain's equipment. Terms or conditions contained in any Customer purchase order or similar document that in any manner purport to alter, modify, change, or suspend these terms shall be deemed excluded from such purchase order and waived by the Customer. This limited warranty does not cover or include consumable/wearable associated with such equipment. Fountain assumes no liability for any unauthorized modifications carried out to the equipment not strictly recommended by the factory procedures. This limited warranty is not transferable, and does not cover general equipment maintenance, demonstration, installation, routine servicing, calibration or customization of the equipment. No person is authorized to alter or extend this limited warranty unless made in writing and signed by an authorized officer of Fountain.

(6) PRODUCT IDENTIFICATION AND LABELING. In the event that Customer Products carry the Customer name (or other name designated by Customer), the Customer will not use the FI brand name or any other trademark, tradename or other symbol or designation of FI, except as mutually agreed to by the Parties.

(7) CONFIDENTIAL INFORMATION. (a) "Confidential Information" shall mean all such confidential and proprietary information of any kind, whether or not fixed in a tangible medium, including, without limitation, systems concepts, production processes, drawings, models, software embodiments, specifications, plans, designs, marketing plans, identity of customers, trade secrets and technical data, as either of the Parties (the Disclosing Party) may designate as confidential upon disclosure to the other (the Receiving Party). For the purposes of these T's and C's, appropriate words of designation include, without limitation, the words "Confidential" or "Proprietary." Any information disclosed orally by either Party shall not be considered "Confidential Information" unless clearly identified as confidential or proprietary at the time of such oral disclosure and summarized by the Disclosing Party in a writing which is clearly marked "confidential" or "proprietary" and sent to the Receiving Party within 30 days after the initial oral disclosure. (b) Confidential Information shall not include any information that the Receiving Party reasonably establishes: (i) was in the public domain at the time the Receiving Party learned of it, or later becomes publicly known through no wrongful act of the Receiving Party; (ii) was known to the Receiving Party prior to the date hereof, as shown by written records of the Receiving Party, and was not subject to prior confidentiality obligations with the Disclosing Party; (iii) was received by the Receiving Party from a third party who had a lawful right to disclose it to the Receiving Party and no obligation to maintain the confidentiality of such information; (iv) was independently developed by the Receiving Party without the use of or reference to the Confidential Information of the Disclosing Party. (c) All Confidential Information received under these T's and C's shall be treated by the Receiving Party with reasonable care to assure that the confidentiality of such Confidential Information is maintained, and that such Confidential Information is not distributed, disclosed or disseminated in any way to anyone except employees of the Receiving Party who are involved in the work related to the Purchase Order and who have a need to know such information. (d)

All rights the Disclosing Party may have in Confidential Information prior to disclosure, including, without limitation, rights of patent, copyright and trade secret, shall remain exclusively with the Disclosing Party, and nothing in these T's and C's shall be construed as granting any license, waiver or other right to the Receiving Party with respect to Confidential Information.

(8) INDEMNIFICATION. (a) FI will indemnify, defend and hold harmless Customer and its directors, officers, agents and employees from any loss, claim, liability and expense (including reasonable attorneys' fees and other expenses of litigation) with respect to: (i) workers' compensation benefits payable on account of sickness, injury or death of any FI employee, or to any employee of FI's subcontractors, agents or delegates, where the sickness, injury or death arises out of or is in any way related to the work performed or to be performed under the Purchase Order; and (ii) claims for bodily injury, personal injury, death, property damage or loss as asserted by Customer or by third- parties (including employees of FI or by FI's subcontractors, agents or delegates, or by any other person at FI's plant), where the claim is based in whole or in any part on, or is in any way related to, any act or omission attributable to FI, its agents, employees or subcontractors, or in any way related to the work performed or to be performed or the Equipment supplied under the Purchase Order, except to the extent that such claims are due to the negligence of Customer, its subcontractor and customers. (b) FI agrees that the indemnities stated in subsection (a) should be construed and applied in favor of indemnification. To the extent permitted by law, the stated indemnities apply (i) regardless of any strict liability or negligence attributable to Customer (excluding sole negligence) and (ii) regardless of the extent to which the underlying harm is attributable to the negligent or otherwise wrongful act or omission (including breach of contract) of FI, its subcontractors, agents or employees. FI also agrees that if applicable law limits or precludes any aspect of the stated indemnities, then the indemnities will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnities continue until all applicable statutes of limitations have run. These indemnities shall not apply if the claim for damages or injury arises out of alterations and modifications to the equipment made without the written consent of FI, or from claims arising from the use of materials supplied by Customer or by third-party vendors and used with or installed on the equipment after purchase of the equipment from FI. (c) FI will indemnify Customer for claims for alleged patent or trademark infringement except for infringement claims arising out of detailed designs furnished by Customer. (d) Customer acknowledges that FI assumes no liability for any claims for injury or damages to persons or property arising from any chemicals manufactured by Customer or by third party vendors for use in FI's equipment.

(9) TERM AND TERMINATION. (a) TERM. Save and except for provisions herein relating to indemnification, payment, warranties and confidential information, the term of the Purchase Order begins upon acceptance by FI of the Customer's Purchase Order and terminates upon acceptance of the Equipment by Customer. (b) EFFECT OF TERMINATION OR NONRENEWAL. The termination of the Purchase Order shall not release either Party from their obligations including the Obligation to pay any sum that may be owing (whether then or thereafter due) or operate to discharge any liability that had been incurred by either Party prior to any such termination. If the Purchase order is cancelled by Customer, FI will immediately cease work on the Order and cause its suppliers to cease work or supplying material. Customer shall be obligated to pay FI for all work performed prior to cancellation and for all materials, work and supplies that FI has purchased prior to cancellation and for which FI is obligated to pay.

(10) FORCE MAJEURE. No Party shall be liable for or be deemed to be in default on account of any failure to perform (except payment of FI's invoices) if due to any cause or condition beyond reasonable control of the nonperforming Party.

(11) RELATIONSHIP OF THE PARTIES. The relationship established between FI and Customer by these T's and C's is that of a vendor to its vendee. No Party is an agent of another Party and no Party has authority to bind another Party, transact any business in another Party's name or on its behalf in any manner or make any promises or representations on behalf of another Party.

(12) NO ASSIGNMENT. No Party shall assign its rights or delegate its duties under these T's and C's without written consent of the other Party. Any assignment, delegation or transfer of these T's and C's or any interest herein is void and cause for termination of any Purchase Order.

(13) WAIVER. Any failure or delay by any Party in exercising any right or remedy in one or many instances will not prohibit a Party from exercising it at a later time or from exercising any other right or remedy.

(14) MODIFICATION. No part of these T's and C's may be waived, modified or supplemented in any manner whatsoever (including a course of dealing or of performance or usage of trade) except by a written document signed by authorized officers of the Parties.

(15) GOVERNING LAW. These T's and C's and any questions, claims, disputes or litigation concerning or arising from this any Purchase Order shall be governed by the laws of Minnesota, United States of America without giving effect to the conflicts of law doctrines of any state.