



Terms and Conditions of Sale - U.S. and Canada

GENERAL: The following terms and conditions apply to all sales within the United States and Canada from Victor Technologies brands and business units (collectively, "Victor Technologies") unless specifically noted. No provision, printed or otherwise, contained in any order, acceptance, confirmation, acknowledgment, or other similar form that is inconsistent with, different from or in addition to these Terms and Conditions of Sale (these "Terms") is accepted by Victor Technologies unless specifically agreed to in writing by Victor Technologies. No changes to any of these Terms, to the scope of an order or to the price of any Victor Technologies products or goods ("Goods") shall be binding on Victor Technologies until accepted in writing by Victor Technologies. All inquiries should be directed to Customer Care.

PRICING & POLICIES: Victor Technologies is committed to providing Buyers (as hereafter defined) with advanced notice of price changes whenever possible. Victor Technologies reserves the right, however, to change prices and sales policies without notice. Victor Technologies further reserves the right to quote and sell direct to Government agencies, private brand customers and to OEM accounts that use Victor Technologies products as integral parts of their own products. All orders will be billed at the prices in effect at the time the order is received; surcharges, if applicable, will be applied at the time the order is received. Orders with specified shipping dates (deferred orders) will be invoiced at time of shipment. Unless otherwise stated in writing by Victor Technologies, the price offered by Victor Technologies does not include any cost of transportation, handling, containerization, crating, packing, duties, tariffs or any taxes. To the extent allowed by applicable law, the purchaser of the Goods (individually a "Buyer" and collectively "Buyers") shall be responsible for all taxes and the filing and payment thereof, including, but not limited to, transfer, VAT, provincial, sales, use and excise taxes, and shall indemnify and hold harmless Victor Technologies against any liability arising therefrom. **STOODY BRAND ONLY:** For products manufactured to customer specifications, Stoodly may deliver up to 10% above or below the purchase quantity to complete the order.

TRADE AND PAYMENT TERMS: Victor Technologies shall receive payment within 30 days after the invoice date, unless otherwise specified on the invoice. Buyer's failure to make payment when due shall be considered a material breach of the order and these terms and conditions. Penalties for delinquent accounts, may include, but not be limited to, loss of open account status, shipments being made only on a C.O.D. basis, or loss of Buyership. To the extent permitted by applicable laws, Buyer agrees to pay on demand, as a late charge, an amount equal to 1-1/2% per month of each payment that remains overdue, or the maximum rate allowed by applicable law. Buyer further agrees that Victor Technologies, at its sole option and without incurring any liability, may also suspend its performance until such time as the overdue payment is made or Victor Technologies receives assurances, adequate in Victor Technologies's opinion, to indicate that payment shall be promptly made. In the event of such suspension, the delivery schedule and order price shall be equitably extended and increased taking into account the delay and costs resulting from such suspension. Buyer shall promptly pay Victor Technologies for all costs and related overhead costs arising from such suspensions. Buyer shall further be responsible for all expenses relating to any efforts made by Victor Technologies to collect payment, including but not limited to Victor Technologies's attorneys' fees, regardless of whether litigation is commenced. Payments due hereunder shall in no event be subject to set-off for any reason, including, but not limited to, any warranty claims or any claims that concern another order or business arrangement between the parties. Waivers of lien by Victor Technologies shall be contingent upon Victor Technologies being in receipt of all payments as and when they become due. At the request of Victor Technologies, Buyer shall execute all documents required to have Victor Technologies retain a first priority security interest in the Goods until such time as Victor Technologies is in receipt of all payments owed.

STOODY BRAND ONLY - TEST CHARGES: Additional charges are necessary on military, nuclear or special certification requirements. Please contact Customer Care regarding said charges.

CERTIFICATION: AWS and MIL certification requests must be made at time order is placed. AWS and MIL compliance cannot be certified after shipment.

OBLIGATIONS OF BUYER: Buyer is solely responsible for identifying and defining all processes and mechanical considerations that may affect the performance, reliability, or operation of the Goods furnished by Victor Technologies. Victor Technologies's quotation and any sale is based upon the covenant by Buyer that all the information and data provided to Victor Technologies by or for Buyer is complete, accurate and does not contain information that is misleading.

MINIMUM ORDER: The minimum billing for each individual Victor Technologies order is \$150 (after any applicable discounts). Repair parts are exempt from minimum billing requirements.

TECHNICAL ASSISTANCE: It is expressly understood that any services or technical assistance furnished by Victor Technologies will be addressed in a separate written agreement between the parties. In no event will any such services or technical assistance provided by Victor Technologies constitute a waiver by Victor Technologies of any of these terms and conditions or affect or expand Victor Technologies's obligations under these terms and conditions, the order or any contractual arrangement.

CANCELLATION FEE: Unless otherwise agreed in writing by the parties, Buyer's may not cancel or terminate the order, except upon written notice and payment to Victor Technologies of an amount consisting of all costs incurred by Victor Technologies up to the time of cancellation or termination, along with those costs that arose out of or resulted from the cancellation or termination. Materials received, work in progress, Goods manufactured, and results and products of the work performed, in part of whole, prior to the time of cancellation, shall be retained by and shall be the property of Victor Technologies.

SPECIAL EDUCATIONAL INSTITUTION DISCOUNT: Victor Technologies extends a special discount to educational and vocational institutions on products to be used exclusively for training purposes by the institution. A discount of up to 35% off Buyer net price will be allowed on the initial sale and direct shipment of products to bona fide educational, vocational or technical institutions. The educational discount does not apply to automated cutting systems, or to parts or components of any product or system. To be considered for this special discount, a written request on the institution's letterhead must accompany (or precede) the institution's purchase order.

FREIGHT/SHIPPING POLICY: Victor Technologies will pay standard ground freight/shipping costs for all orders over U.S.\$750 net that are shipped to a single Buyer location within the continental U.S. or continental Canada, FOB Destination, regardless of whether the order is shipped in full or partial shipments. The parties agree and acknowledge that, for all orders, title and risk of loss will rest with Buyer when the Goods leave Victor Technologies docks. With respect to all orders with shipping arranged and/or paid by Victor Technologies, Buyer appoints Victor Technologies as agent and assignee in any claims against shipper. All other orders, including drop shipments, are shipped at Buyer's expense, FOB Origin, and will be subject to a freight handling fee of 30% of the freight cost. If Buyer has not issued shipping instructions by the time the Goods are ready for shipment, Victor Technologies may select any reasonable method of shipment, without liability by reason of selection.

THERMAL DYNAMICS ONLY: Buyer pays shipping costs of all Thermal Dynamics torch coolant, Super Coolant, and Coolant Concentrate.

CLAIMS: Claims of short shipments must be received in writing by the applicable Victor Technologies division within 30 days of the date of shipment.

CRITICAL PARTS/"TODAY SURE" SHIPMENTS: Victor Technologies agrees to use its best efforts to accommodate any special shipping request provided said request is received prior to 2:00 PM central time. Costs incurred for special shipping will be the responsibility of the Buyer.

LIMITED WARRANTY: All Victor Technologies products are covered by a limited warranty as detailed in the applicable pricing and product literatures. THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED HEREIN; VICTOR TECHNOLOGIES EXTENDS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. NO WARRANTY, EITHER EXPRESS OR IMPLIED, IS GIVEN AS TO THE CAPACITY, EFFICIENCY OR PERFORMANCE OF THE GOODS, EXCEPT AS MAY BE EXPRESSLY AGREED TO BY THE PARTIES IN WRITING. The parties agree and acknowledge that to the extent the Goods are covered by a limited warranty as provided in the pricing and product literatures, said warranty will be null and void if: (a) the Goods were not stored, installed, maintained or operated in accordance with best accepted U.S. industry practice and any specific instructions provided by Victor Technologies; (b) the Goods were subject to any accident, misapplication, environmental contaminant, corrosion, abrasion, abuse or misuse; (c) Buyer used, repaired, or modified the Goods after discovery of the defect without Victor Technologies's prior written consent to continue to use; or (d) Buyer fails to permit Victor Technologies to examine the Goods and operating data or fails to furnish routine operating data sufficient to determine the nature of the defect claimed.

U.S. Customer Care: Denton, TX - (800) 426-1888 Fax: (800) 535-0557
Canada Customer Care: Oakville, ON - (905) 827-4515 Fax: (800) 588-1714

VICTOR Tweco **THERMAL DYNAMICS** Arcair **STOODY** THERMAL ARC **CIGWELD** TurboTorch®



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WARRANTY RETURN: A Returned Goods Authorization (RGA) number must be obtained prior to returning merchandise for a warranty claim. Contact Customer Care for assistance.

LIMITATION OF LIABILITY: VICTOR TECHNOLOGIES'S LIABILITY IS LIMITED TO THE PRICE ALLOCABLE TO THE GOODS DETERMINED DEFECTIVE AND IN NO EVENT WILL VICTOR TECHNOLOGIES'S CUMULATIVE LIABILITY BE IN EXCESS OF THE TOTAL ORDER PRICE, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. THIS LIMITATION SHALL BE INCLUSIVE OF ALL INSURANCE, BOND AND LETTER OF CREDIT PROCEEDS, WHICH MAY BE PAID TO BUYER BY THE INSURERS, SURETIES OR BANKS OF VICTOR TECHNOLOGIES. THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS STATED ELSEWHERE. VICTOR TECHNOLOGIES WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST PROFIT OR BUSINESS INTERRUPTION, WHETHER ARISING UNDER WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BUYER'S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE DEFECTIVE GOODS AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE TOTAL ORDER PRICE TO IT BY VICTOR TECHNOLOGIES SHALL PREVENT THE REMEDIES FROM FAILING THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.

INVENTORY ADJUSTMENT: Buyer may return for credit items equal to a maximum of 2% of the previous year's NET purchases. The return can be made in a total of two (2) shipments per year. Only items purchased within the past twelve (12) months may be returned. Credit will be issued on returned Goods based on purchase price or current price, whichever is lower. Returned items must be new, in current packaging, and in saleable condition. Service parts and fittings, custom, private brand/label, and products identified as non-returnable at time of order are not eligible for return. Buyer is responsible for freight charges on returned merchandise. Returned merchandise is subject to a 20% restocking charge and must be accompanied by an equivalent replacement order with a NET value equal to or greater than the returned merchandise credit requested. Additional charges may be assessed if refurbishment or repackaging is necessary. Victor Technologies reserves the right to alter the Inventory Adjustment policy set forth above at its discretion.

RETURNED MERCHANDISE PROCEDURE: Buyer must contact Customer Care to request a Returned Goods Authorization (RGA). Buyer must also provide a written list of the products to be returned prior to returning any products. Victor Technologies will review the list of items for eligibility and issue a RGA number which should be noted on all returned Goods shipping and replacement order documentation. Upon receipt of the merchandise, Victor Technologies will inspect the items and issue credit less restocking and any other applicable charges. A replacement order must be received before credit can be issued. Material received without a RGA number will be returned, freight collect, to Buyer. If the product does not meet applicable specifications, Victor Technologies will pay the freight. All other instances will be the responsibility of the Buyer.

PATENTS: Victor Technologies will, at its expense, defend and indemnify Buyer from any suit or proceeding brought against Buyer based on a claim that Goods manufactured and furnished by Victor Technologies constitute an infringement of any United States patent, if Victor Technologies is notified promptly in writing and given authority, information and assistance for the defense of the suit or proceeding. Defense and settlement of any claim will be within Victor Technologies's sole discretion. Should it be held that that the Goods constitute infringement and the use of the Goods is enjoined, Victor Technologies will, at its own expense and discretion, either procure for Buyer the right to continue using the Goods, replace the Goods with non-infringing Goods, modify the Goods to become non-infringing, or remove the infringing Goods and refund the price paid for the respective Goods. Buyer will indemnify Victor Technologies from any suit or proceeding brought against Victor Technologies by any third party with respect to any Goods designed and manufactured in accordance with designs, furnished by Buyer.

PROPRIETARY INFORMATION: Buyer agrees that any data, such as Victor Technologies's specifications, drawings, and information (including, without limitation, designs, reports, documentation, manuals, models, process information, and the like),

revealed by Victor Technologies to Buyer and containing proprietary information marked or identified as proprietary, shall be kept in confidence by Buyer with at least the same care and safeguard as are applied to Buyer's own proprietary information. Such data shall not be duplicated, disclosed to others, or used without the written permission of Victor Technologies. These obligations shall not apply to any information (a) which is in or comes into the public domain without violation of these Terms; (b) is received lawfully by Buyer from a third party subsequent to this agreement; or (c) is developed by Buyer independently and without benefit of information received from Victor Technologies.

FORCE MAJEURE. Any failure of performance by either party shall not constitute a default or give rise to any claim for damages or otherwise if, and to the extent cause by, an event of Force Majeure, which shall include, but not be limited to, acts of God, war, earthquake, floods, government acts or any other events or conditions beyond the control of the affected party.

EXPORT SALES; COMPLIANCE WITH LAW: U.S. export control laws, regulations and orders, and the export/import control laws and regulations of other countries apply to Victor Technologies Goods. Buyer will not, directly or indirectly, export or divert any Goods, related technology and/or documentation to any third party or country where such export or transmission is restricted or prohibited by U.S. law or other applicable law. Buyer is solely responsible to obtain any license to export, re-export, or import as may be required. All drawbacks of the duties paid on items entering into the manufacture of the products delivered hereunder shall accrue to Victor Technologies, and the Buyer agrees to furnish Victor Technologies with all documents necessary to obtain payment of such drawbacks and to cooperate with Victor Technologies in obtaining such payment. Buyer shall comply fully with all economic sanctions and export control laws and regulations of the U.S., including without limitation those regulations maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"), the U.S. Commerce Department's Bureau of Industry and Security, and the U.S. State Department's Directorate of Defense Trade Controls. Buyer covenants that it shall not, directly or indirectly, sell, provide, export, re-export, transfer, divert, loan, lease, consign, or otherwise dispose of any goods or services manufactured or sold by Victor Technologies, to any person, entity, or destination, or for any activity or use prohibited by the laws or regulations of the U.S., including without limitation, regulations issued by OFAC, the U.S. Export Administration Regulations, and the U.S. International Traffic in Arms Regulations. Buyer shall not take any action prohibited or penalized under the laws of the U.S. or any applicable foreign jurisdiction, including without limitation the anti-boycott laws administered by the U.S. Commerce and Treasury Departments. Buyer warrants that neither it nor any person or entity acting on its behalf shall: (i) make or offer to make improper payments, bribes or gifts (in whatever form) to public officials in order to secure a business advantage or favor, and/or (ii) act in a manner as to cause Victor Technologies to be in violation of any applicable law, including, without limitation, anti-corruption and anti-money laundering laws in the U.S. or any foreign jurisdiction.

MISCELLANEOUS. Buyer shall not assign its obligations hereunder without the prior written consent of Victor Technologies. These Terms shall be binding upon and inure to the benefit of the parties hereto, who shall be deemed independent contractors, and to their successors and assigns. These Terms are severable and the invalidity or unenforceability, in whole or in part, of any provision shall not impair or affect the remainder of that provision or other provisions. The paragraph headings herein are for convenience only and shall not be deemed to affect in any way the language of the provision to which they refer. These Terms shall be construed and the legal relations of the parties shall be deemed in accordance with the laws of the State of Missouri, U.S.A. and the parties consent and will submit to the state jurisdictions of St. Louis County, Missouri, U.S.A. and federal jurisdiction of the Eastern District of Missouri.

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