

## TERMS & CONDITIONS

**1. CONTROLLING PROVISIONS.** No terms and conditions other than those contained herein shall be binding upon ProBatter unless accepted in a writing signed by ProBatter's CFO and the receipt by ProBatter of the Deposit recited herein. All other terms and conditions are hereby rejected and shall not be binding on ProBatter. The prices quoted herein are subject to change without notice prior to acceptance. Any change in quantities, delivery dates, handling or destination may incur a price adjustment. All prior proposals, negotiations and representations, if any, are merged herein. Buyer will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services. Upon acceptance of this quotation by Buyer, this document shall become a contract subject to these terms and conditions.

**2. CANCELLATION OF QUOTATION/ORDERS.** ProBatter may cancel this quotation at any time prior to acceptance by Buyer and the tendering by Buyer and acceptance by ProBatter of the Deposit. Accepted orders may be canceled by Buyer only with ProBatter's express written consent. If cancellation is allowed, Buyer agrees to pay to ProBatter all expenses incurred and damages sustained by ProBatter on account of such alteration, plus a reasonable profit. This shall include a forfeiture of any Deposit paid to ProBatter by Buyer.

**3. TERMS.** Buyer agrees to pay for the equipment according to ProBatter's payment terms. Unless otherwise provided herein, the terms of sale are cash due upon shipment of the equipment. Terms of any other form of payment are subject to the approval of ProBatter's credit department. The title and right to possession of the equipment quoted herein and any replacements or substitutions shall remain with ProBatter or its designee until all amounts due are fully paid. If financing is provided by or through ProBatter, a security interest is hereby granted until full remittance is made for all negotiated documents including specified late charges, interest, collection and attorney's fees, etc.

**4. FAILURE TO MAKE PAYMENTS.** Should Buyer fails to make any payment when due, Buyer's entire account(s) with ProBatter shall become immediately due and payable without notice or demand. All past due amounts are subject to service charges at the rate agreed upon by the parties, otherwise at the maximum contract rate permitted by law. Buyer hereby grants ProBatter a purchase money security interest in the equipment until such time as ProBatter is fully paid. Buyer will assist ProBatter in taking the necessary action to perfect and protect ProBatter's security interest. No products furnished by ProBatter shall become a fixture by reason of being attached to real estate. In the event of such a default, ProBatter shall have the right to repossess all such equipment in the possession of Buyer and Buyer shall fully cooperate with ProBatter in connection therewith. In the event that litigation is necessary to effect repossession of such equipment, in addition to any other monies owed ProBatter, Buyer shall also be liable for any attorneys fees and court costs incurred by ProBatter in connection with such action.

**5. REMEDIES OF PROBATTER.** Upon default by Buyer, Buyer agrees to reimburse ProBatter all attorneys' fees and expenses incurred by ProBatter in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable ProBatter, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by ProBatter; or (f) if ProBatter, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of ProBatter herein are in addition to, and shall not exclude, any rights or remedies that ProBatter may have by law. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

**6. DELIVERY.** ProBatter will make a good faith effort to complete delivery of the equipment as indicated by ProBatter in writing, but ProBatter assumes no responsibility or liability for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to ProBatter, including, but not limited to, liability for ProBatter's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of ProBatter. Under no circumstances shall ProBatter be liable for any special, consequential, incidental, or indirect damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

**7. WARRANTY.** The Warranty provided for this equipment shall be subject to a separate Warranty agreement which is attached. **UNLESS OTHERWISE INDICATED, PROBATTER HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL PROBATTER BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE OR ANY OTHER LOSS, DAMAGE, COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND. BUYER AGREES THAT UNDER NO CIRCUMSTANCES SHALL PROBATTER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE EQUIPMENT ALL EQUIPMENT AND/OR SERVICES PROVIDED BY PROBATTER AND ITS EMPLOYEES AND AGENTS ARE PROVIDED "AS IS," "WHERE IS," AND "WITH ALL FAULTS."** No employee of ProBatter is authorized to offer, amend or make any other warranty on behalf of ProBatter.

**8. THIRD PARTY WARRANTIES.** ProBatter will pass on to the Buyer, when possible, all benefits realized under any third party warranty that may cover components parts in the Equipment. Should a material defect be discovered in any component, Buyer shall comply with all requirements of any applicable manufacturer's warranty before proceeding with replacement or repairs

**9. INSTALLATION & USE:** The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the equipment. ProBatter makes no promise or representation that the equipment or services will conform to any federal, state or local laws ordinances, regulations, codes or standards. ProBatter shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the equipment. Buyer shall defend, indemnify and hold harmless ProBatter and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the equipment by Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, ProBatter, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

**10. INSPECTION AND ACCEPTANCE:** Claims for damage, shortage or errors in shipping must be reported within one (1) day following delivery to Buyer. Buyer shall have seven (7) days from the date Buyer receives any equipment to inspect such equipment and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify ProBatter, in writing, of any defects, nonconformance or rejection of such equipment. After such seven (7) day period, Buyer shall be deemed to have irrevocably accepted the equipment, if not previously accepted. After such acceptance, Buyer shall have no right to reject the equipment for any reason or to revoke acceptance. Buyer hereby agrees that such seven (7) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any equipment or service previously ordered by Buyer or its representatives or cancel any order without ProBatter's written consent and payment to ProBatter of all charges, expenses, commissions and reasonable profits owed to or incurred by ProBatter. Specially fabricated or ordered items may not be canceled or returned, and no refund will be made. The sole remedy for merchandise alleged to be defective will be the replacement of the merchandise subject to the manufacturer's inspection and warranty.

**11. SHIPMENTS.** All equipment is shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if ProBatter ships or delivers the equipment erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for equipment damaged or lost in transit should be made by Buyer to the carrier, as ProBatter's responsibility ceases upon tender of goods to Buyer, Buyer's representative or carrier.

**12. EXPIRATION OF QUOTATION.** Unless accepted, this quotation will expire on the 7th day following the date set forth herein and is subject to receipt by ProBatter of satisfactory credit information and credit approval.

**13. TAXES.** The amount of any sales, excise or other taxes, if any, applicable to the equipment shall be added to the purchase price and shall be paid by Buyer unless Buyer provides ProBatter with an exemption certificate acceptable to the taxing authorities. Any taxes which ProBatter may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the equipment, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to ProBatter upon demand. Buyer shall be responsible to provide the proper authorities with certificates or other proof, whenever a tax-exempt status is claimed.

**14. SEVERABILITY.** These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions shall remain in full force and effect and shall not be affected by such invalid or unenforceable provisions or by their severance herefrom.

**15. NON-WAIVER.** ProBatter's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of ProBatter's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by ProBatter's CFO.

**16. GOVERNING LAW.** This transaction shall be governed by the laws of Connecticut and all disputes arising hereunder shall be solely resolved by the courts of the state of Connecticut, regardless of the physical location of the Buyer or the Equipment. For jurisdictional purposes, this Agreement shall be deemed to be negotiated within the state of Connecticut and the Buyer hereby consents to the jurisdiction of the courts of such state and expressly waives any jurisdictional or venue defenses otherwise available to it. All actions, regardless of form, arising out of or related to this transaction or the equipment sold hereunder must be brought in the courts of such state within the applicable statutory period, but in no event more than ONE (1) YEAR after the date of acceptance.

**17. INSURANCE.** For any equipment that is financed or leased, Buyer agrees to insure such equipment in an amount at least equal to the purchase price against loss or damage from fire, wind, water, or other causes during the time between delivery and final payment. Loss or damage by fire, wind, water, or other causes within such period will not relieve Buyer from its obligations under any finance or lease agreement. The insurance policies shall include ProBatter as a named insured on the policy and any proceeds from such insurance shall be made payable to ProBatter and Buyer in accordance with their respective interests. For all equipment covered by this Agreement regardless of the payment terms, Buyer agrees that it shall at all times that the equipment is being used maintain liability insurance in the amount of at least \$1,000,000 from a carrier acceptable to ProBatter for the use of such equipment and shall name ProBatter as a named insured on such policy. Failure to take out and maintain such insurance shall entitle ProBatter to declare the entire purchase price to be immediately due and payable and shall also entitle ProBatter to recover possession of said equipment.

**18. TRADEMARKS.** Buyer shall not be permitted to use or display the trademark or service mark of any entity other than ProBatter on or in association with the equipment (including on the projection screen) without the prior written consent of ProBatter which permission may be withheld for any reason. Similarly, Buyer shall not be permitted to advertise or promote the equipment under any name or mark other than the ProBatter trademark.

**19. SPONSORSHIP AND ADVERTISING.** ProBatter expressly reserves all rights with respect to the use of the equipment to display any advertising or sponsor messages and all revenues generated as a result of the display of any such advertising or sponsor messages shall be the sole and exclusive property of ProBatter. Buyer shall not solicit or accept any advertising or sponsorship revenues without the prior express written permission of ProBatter, which permission may be withheld in the sole discretion of ProBatter.

**20. LEASES.** In the event that Buyer should enter into a lease for the Equipment with a third party lender, the lender's terms and conditions shall govern Buyer's obligations under any such lease.

**21. ENTIRE AGREEMENT.** This document constitutes the entire agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by ProBatter's CEO. All transactions shall be governed solely by the terms and conditions contained herein.