



**GOLDSCHMIDT**

Smart Rail Solutions



# **STANDARD TERMS AND CONDITIONS OF SALE FOR ORGO-THERMIT, INC.**

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The following are the terms and conditions under which products are sold by Orgo-Thermit Inc. (OTI). The terms and conditions herein supersede all prior proposals, negotiations and representations, if any.

## 2. Delivery

Unless otherwise agreed, products shall be delivered to Purchaser FOB trucks at OTI'S warehouse, and title and risk of loss shall pass to Purchaser upon receipt by the carrier. Shipping charges are to be paid by the Purchaser if not otherwise agreed. Purchaser shall provide shipping instructions when placing its order.

## 3. Payment

- A) Unless otherwise agreed in writing all invoiced amounts, including shipping charges, if any, shall be due and payable in U.S. dollars at the prices stipulated in full with Net 30 day terms. All prices are FOB truck at OTI's warehouse unless otherwise agreed. **INTEREST MAY BE CHARGED FOR LATE PAYMENTS AT ONE AND HALF PERCENT (1.5%) PER MONTH, THE MINIMUM CHARGE BEING \$5.00 or, IF LESS, THE MAXIMUM ALLOWABLE RATE UNDER APPLICABLE LAW.** In the case of deliveries in instalments or partial shipments, proportionate payments shall become due and payable with respect to each shipment. Payments shall be made to OTI's corporate office located at 3500 Colonial Drive North, Manchester, NJ, 08759 in U.S dollars.
- B) If before completion or performance of any delivery by Seller, Purchaser becomes bankrupt, insolvent or makes an assignment for the benefit of creditors, Seller may at its option terminate the delivery by giving to Purchaser a written notice of termination and Seller shall thereupon be relieved of any further obligations to Purchaser. In addition to payment for goods delivered, Purchaser shall reimburse Seller for its termination costs and a reasonable allowance for profit for the work terminated. In the event Seller is required to pursue legal action to collect any outstanding amounts owed, Seller shall be entitled to its full damages including reasonable attorneys' fees, costs of collection and interest, as well as for any bank fees, including for returned checks/insufficient funds, imposed on Seller.

## 4. Taxes

Prices do not include sales, use or other taxes. To the extent permitted by law, any tax imposed by any federal, state, foreign or local authority which OTI may be required to collect or pay in connection with the products or related services (except OTI'S income or franchise taxes) shall be paid by the Purchaser.

## 5. Limited Warranty

- A) OTI warrants that for a period of 6 (six) months from delivery to the carrier the products shall be free from defects in materials and workmanship, shall meet OTI's Published product standards, shall be adequately contained, packaged and labelled and shall conform to the affirmations of fact, if any, made on the container and label. OTI represents that the articles, materials or services furnished herewith were produced or rendered in accordance with the applicable provisions of the Fair Labor Standards Act of 1938, as amended. These warranties are made to Purchaser and not to any customer of Purchaser or any third party. These warranties shall not be effective if any damage or defect is the result of negligence or improper handling of the Products by Purchaser or any other party after delivery to carrier.
- B) OTI will repair or replace, at its warehouse, any Product delivered to Purchaser by OTI which fails to conform to the warranty extended in Paragraph A above, or at OTI's option, will repay the price paid for such Product. Any products replaced shall become the property of OTI. **PURCHASER'S REMEDY, AND OTI'S TOTAL LIABILITY, REGARDLESS OF THE FORM OF ACTION (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY, GUARANTY OR REPERESANTATION, NEGLIGENCE, OR STRICT LIABILITY), FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES RELATING TO ANY PRODUCT INVOLVED SHALL BE LIMITED TO THE PRICE ACTUALLY PAID BY PURCHASER FOR THE GOODS THAT ARE THE SUBJECT OF SELLER'S NONPERFORMANCE, OR AT OTI'S OPTION THE REPAIR OR REPLACEMENT OF PRODUCTS WHICH DO NOT CONFORM TO THE WARRANTY IN PARAGRAPH A ABOVE. IN NO EVENT SHALL OTI BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, PENALTIES OR LATE FEES EVEN IF OTI SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
- C) **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND OTI DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO OTHER REPRESENTATIONS OR WARRANTIES, EXPIRES OR IMPLIED, ARE MADE IN RESPECT OF THE PRODUCTS DELIVERED TO**

**PURCHASER BY OTI OR THEIR PRODUCTION.**

The above warranty is given by the Seller subject to the following conditions:

- i. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;
- ii. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions including storage instructions (whether oral or in writing) misuse or alteration of the Goods without the Seller's approval;
- iii. the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if a total price for the Goods has not been paid by the due date for payment;
- iv. the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller

## **6. Indemnification**

Purchaser will indemnify OTI and hold OTI harmless from any liability for losses, damages, costs or expenses (including reasonable attorneys' fees). Other than as expressly provided for herein, with respect to any claim, action or proceeding, by or on behalf of Purchaser or any third party, relating to any products delivered to Purchaser by OTI, including use in the manufacture or assembly of, or incorporation into, any other goods, except to the extent that such liability may be demonstrated to result from OTI'S willful misconduct or gross negligence.

## **7. Modification of Credit**

If purchaser fails to perform any term or condition hereof or if OTI at any time has reasonable doubt of Purchaser's financial responsibility OTI may decline to make further shipments except against cash payment in advance or provision of adequate assurances of Purchaser's due performance after a written demand therefore. Failure to pay any invoice when due may result in making all outstanding invoices immediately due and payable and OTI may withhold all subsequent deliveries until the account is settled in full.

## **8. Force Majeure**

OTI shall not be liable for delay or other non-performance to the extent such delay or non-performance is due to act of God or the public enemy, compliance with any applicable governmental regulation or order or court order, fire, earthquake, riot, labor dispute, vandalism, unusually severe weather, pandemic or any other cause beyond OTI'S reasonable control, any delays or non-performance for such reasons shall not constitute a breach of contract. If, due to any such contingency, OTI is unable to supply Products to all its customers, OTI shall have the right to allocate its available supply among its customers and its departments and divisions in such manner as it deems fair and equitable. In no event shall OTI be obligated to purchase goods from others in order to enable it to supply Products to Purchaser, although OTI may at its option, do so at any time.

## **9. Modifications**

No terms or conditions other than those stated herein and no agreement or understanding, oral or written, purporting to modify these terms and conditions shall be binding on the parties unless hereafter made in writing and signed by the authorized representative of each. If this document constitutes an acceptance by OTI, this acceptance is EXPRESSLY limited to the terms hereof. If this document constitutes an acceptance by OTI, this acceptance is EXPRESSLY conditioned on purchaser's assent to any additional or different terms not contained in Purchaser's offer. If these terms and conditions are not assented to, Purchaser must notify OTI at once. Acceptance of the products sold hereunder shall constitute assent to these conditions. OTI and Purchaser hereby object to and reject any and all additional or different terms proposed by the other party, whether contained in such party's purchasing/sales or shipping/receiving releases forms or elsewhere.

## **10. Governing Law**

This agreement shall be exclusively governed by and construed and interpreted in accordance with the laws of the State of New Jersey, without reference to its conflict of laws principles.

## **11. Notices**

All notices shall be in writing and shall be effective upon delivery.

## **12. Change of Design**

OTI reserves the right to make changes and improvements to any product without any obligation to give prior notice or to carry out such changes to products already sold.

### **13. Returns/non-returnable items and restocking fee**

Only undamaged, unused and unopened products in original packaging may be returned to Orgo-Thermit, Inc. (OTI) in accordance with the following terms.

- i. Purchaser wishing to return products to OTI. needs to get prior approval from OTI.
- ii. OTI will accept preapproved returns for a period of 30 days only. The 30 day period starts upon receipt by the purchaser.
- iii. The purchaser is responsible for freight for approved return shipments to OTI manufacturing facility at the following address.

3500 Colonial Drive North, Manchester, NJ 08759  
Attn: Shipping Manager (732) 657-5781

- vi. Unapproved returns will not be accepted by OTI
- vii. Upon receipt of the products and after inspection by OTI purchaser will be informed within 10 days on the findings by OTI. It remains in the sole discretion of OTI to determine the marketable value of returned products. Should OTI accept a return a restocking fee of twenty five percent (25%) of the sales price will apply and be deducted from any amounts the purchaser may be refunded.

Orgo-Thermit, Inc. will not accept returns under the following conditions.

- viii. Purchaser did not get prior approval to return products
- ix. The items have been in the purchaser's possession for more than 30 days.
- x. The items returned have not been stored properly according to OTI storage guidelines in the Operating Procedures
- xi. Non – returnable items: "Specialty" - nonstandard USA rail profile molds and associated tools and products that are imported by OTI from foreign country sister companies and/or subsidiaries, are deemed non-returnable items, once purchased.



#### **14. Credit card processing fee.**

A three percent (3%) credit card processing fee will be charged for all credit card payments.

#### **15. Intellectual Property**

All product designs, specifications, trademarks, copyrights and other Intellectual Property produced by OTI remains the Intellectual Property of OTI and is therefore owned by OTI.

The Purchaser specifically acknowledges that gains no rights to any intellectual property held by OTI and those rights that may arise as a result of the sale and purchase of the Goods, so far as not already vested in OTI, shall become the absolute property of OTI. The Purchaser is not authorized, licensed or permitted to alter any trademarks, trade dress or copyright contained on the purchased Goods either by it or through making agreements with third parties. When goods are produced according to the Purchaser's specifications, the Purchaser must ensure that no intellectual property rights or other rights of third parties are infringed. The Purchaser shall indemnify OTI and hold it harmless against any third party rights arising out of such infringements to the extent the Purchaser is answerable therefore.

The Purchaser and its agents may not use or reproduce any of OTI's Intellectual Property including but not limited to any trademarks or logos registered or unregistered for any reason without written permission from OTI. Any breach of this clause by the Purchaser or any other authorized user under the terms of the Agreement or where there is a default in payment, will entitle OTI to terminate the Agreement immediately and the Purchaser's rights to use the products produced in accordance with the Agreement will cease.

## **16. Confidential Information and Security**

All information, drawings, specifications, documents, agreements, design materials and all other data which the parties may have imparted to each other and may from time to time impart to each other relating to their business, clients, prices, services, requirements, including any technical specifications, is proprietary and confidential.

The Purchaser hereby agrees that it will use such confidential information and all other data solely for the purposes of this Agreement and that it will not, at any time during or any time after the completion, expiry or termination of this Agreement use or disclose the same whether directly or indirectly, to any third party without OTI's prior written consent.

## **17. No Partnership of Agency**

Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or to authorize either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## **18. Third Party Rights**

The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.

## 19. Notification of change

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<b>Revision</b>	<b>Date</b>	<b>Reason</b>	<b>Editor</b>
Rev. 01	July 30 2020	Branding Update & Sections 14-- 17	Madden
Rev. 02	January 25 2021	Remove old section 9, update sections 5, 13 & 14	Madden
Rev. 03	January 18 2023	Section 14 – all credit card payments will have 3% fee applied	Madden

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