

# THE WILL-BURT COMPANY

## TERMS AND CONDITIONS OF SALE



1. **Sale.** SALE AND DELIVERY OF MANUFACTURER'S GOODS ARE CONDITIONED ON THE BUYER'S ACCEPTANCE OF THE DESCRIPTION AND OTHER TERMS AND CONDITIONS OF SALE SET FORTH ON THE FACE OF THIS FORM AND THIS REVERSE SIDE. NO ADDITIONAL OR DIFFERENT TERMS OFFERED BY BUYER SHALL BE OR BECOME PART OF THIS ORDER AND ANY SUCH TERMS ARE HEREBY REJECTED. THE TERMS AND CONDITIONS AS STATED HEREIN SHALL NOT BE MODIFIED WITHOUT THE EXPRESS WRITTEN APPROVAL OF MANUFACTURER. FAILURE OF BUYER TO IMMEDIATELY OBJECT IN WRITING TO THESE TERMS AND CONDITIONS SHALL BE DEEMED ACCEPTANCE HEREOF AND SHALL CONSTITUTE A WAIVER OF ANY PRIOR OR SUBSEQUENT TERMS OR CONDITIONS REQUESTED BY BUYER.
2. **Prices.** All prices for products are subject to change or withdrawal without notice. Unless otherwise stated by Manufacturer, prices, terms of payment and pricing policies will be those set forth in Manufacturer's published price list or Manufacturer's pricing policies in effect at the time of shipment. Specially ordered goods are not subject to cancellation without the consent of the Manufacturer.
3. **Credit Approval.** All sales and shipments are subject at all times to credit approval by Manufacturer.
4. **Taxes.** Any taxes which Manufacturer may be required to pay or collect upon the sale, delivery, storage, processing, use or consumption of any of the products covered hereby shall be for the account of Buyer who shall promptly pay the amount thereof to Manufacturer upon demand.
5. **Freight.** Unless otherwise stated herein, all Products are F.O.B. Manufacturer's plant with all risk of loss or damage in transit after delivery being the responsibility of Buyer. All freight and shipping charges shall be paid by Buyer. Any charges to Manufacturer resulting in Buyer's request for prepaid freight will be invoiced to Buyer.
6. **New Product Warranty.** Will-Burt warrants its products to be free from defects in material and workmanship according to the following schedules from the date of shipment by Will-Burt.

Product – Commercial Use Only	Warranty Period
Will-Burt Brand Pneumatic Masts	5 years
Will-Burt Remote Locking System (RLS) Masts	2 years
Will-Burt PositionIt™	2 years
Static Positioners	3 years mechanical / 2 years electrical
Will-Burt Night Scan® and Inflexion™	2 years
Will-Burt Class 5 / Class 6 Storage	1 year
All Other Will-Burt Brand Products	2 years
GEROH Brand Products	1 year
ITS Brand Products	Per contract

<b>Product – Military Use</b>	<b>Warranty Period</b>
<b>Will-Burt Brand Products</b>	2 years
<b>Will-Burt QEAM HDTM</b>	1 year
<b>GEROH Brand Products</b>	1 year
<b>ITS Brand Products</b>	Per contract

<b>Service and Refurbished Product</b>	<b>Warranty Period</b>
<b>Service Work on Will-Burt Brand Products</b>	1 year
<b>Refurbished Will-Burt Brand Products</b>	1 year

Will-Burt shall not be responsible for any damage resulting to or caused by its products by reason of failure to properly install, maintain or store the product; use of the product in a manner inconsistent with its design; unauthorized service, alteration of products, neglect, abuse, accident, or acts of God. This warranty does not extend to any component parts not manufactured by Will-Burt; provided, however, Will-Burt's warranty herein shall not limit any warranties by manufacturers of component parts which extend to the buyer.

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, AND NO REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, A WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT ARE MADE BY WILL-BURT IN CONNECTION WITH THE MANUFACTURE OR SALE OF ITS PRODUCTS. NO EMPLOYEE, DISTRIBUTOR, OR REPRESENTATIVE IS AUTHORIZED TO CHANGE THIS WARRANTY IN ANY WAY OR GRANT ANY OTHER WARRANTY ON BEHALF OF WILL-BURT.

Claims for defects in material and workmanship shall be made in writing to Will-Burt within thirty (30) days of the discovery of defect. Failure to provide notice as required hereby shall be conclusive evidence that the product was in conformity with the warranty, and Will-Burt shall be released from any and all liability relating to the product. Will-Burt may either send a service representative or have the product returned to its factory at Buyer's expense for inspection. If judged by Will-Burt to be defective in material or workmanship, the product will be replaced or repaired at the option of Will-Burt, free from all charges except authorized transportation.

THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER REMEDIES. THE LIABILITY OF WILL-BURT WHETHER IN CONTRACT, TORT, UNDER ANY WARRANTY, OR OTHERWISE, SHALL NOT EXTEND BEYOND ITS OBLIGATION TO REPAIR OR REPLACE, AT ITS OPTION, ANY PRODUCT OR PART FOUND BY WILL-BURT TO BE DEFECTIVE IN MATERIAL OR WORKMANSHIP. WILL-BURT SHALL NOT BE LIABLE FOR COST OF INSTALLATION AND/OR REMOVAL, OR BE RESPONSIBLE FOR DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE.

- Performance.** Manufacturer shall not be held responsible for any delay in performance of any contract made on the basis of this document resulting in whole or in part from or made impossible or impracticable by any cause beyond the control of Manufacturer, including, but not limited to, fire, explosion, accident, breakdown,

strike, adverse weather conditions, failure or refusal of any carrier to transport materials, delay in transport thereof, failure of any source of supply to honor orders within time period, customarily or heretofore experienced by Manufacturer in the trade shortage or lack of material, fuel, power, transportation media, sale or transfer of manufacturing facilities, embargo or any act of God or action or request of any governmental authority, failure or refusal of any carrier or contractor, any contingency or delay or failure or cause beyond Manufacturer's control.

8. **Shipping.** Specified shipping dates are based upon Manufacturer's estimates, are approximations only and cannot be guaranteed. Manufacturer shall have no responsibility or liability for damages that may be incurred due to delay in shipment of Products.
9. **Inspection.** Buyer shall inspect the goods immediately upon receipt thereof. All claims for any alleged defect in Manufacturer's performance under this sales contract, capable of discovery upon reasonable inspection, must be fully set forth in writing and received by Seller within thirty days of Buyer's receipt of goods. Failure to make any claim within said thirty day period shall constitute a waiver of such claim and an irrevocable acceptance of the goods by Buyer.
10. **Quantities.** Any variation in quantities shipped over or under the quantities ordered (not to exceed 10 percent) shall constitute compliance with Buyer's order and the unit price will continue to apply.
11. **Patents.** The Buyer shall hold the Manufacturer harmless and indemnify it against any expense, or loss resulting from infringements of patents or trademarks arising from compliance with design, specification or instructions furnished by the Buyer.
12. **Service Charge.** A charge of 1½ percent per month (18 percent annually) will be charged on all past-due amounts where permitted by applicable state or federal law. In the event a charge of 1½ percent per month may not be charged under applicable state or federal law, then the maximum amount of service charge permitted under applicable state or federal law shall be charged.
13. **Cancellation of Order.** The buyer may cancel its order only with the written consent of the Manufacturer and only upon the payment of the Manufacturer's normal cancellation charges. If a purchase order is canceled or partially canceled after Manufacturer has started to manufacture, Buyer shall pay the total contract price less Manufacturer's cost of manufacturing the unmanufactured material called for by the purchase order. Distributors or their agent, Manufacturer's representatives, or salesmen are not authorized to accept returned goods or to grant allowances or adjustments with respect to Buyer's account.
14. **Insolvency.** If in the sole judgment of Manufacturer the credit of Buyer shall have or is likely to become impaired, or it appears to Manufacturer that it does not have a reasonable expectation of being paid at the time and in the amount specified in this agreement, without additional expense or delay, or both, then Manufacturer may at its option retain title to the goods manufactured or retain possession of Buyer's goods on which services have been performed until paid in cash or cancel the contract and receive such amount as provided in paragraph 13 above unless Manufacturer receives reasonable assurances of Buyer's ability to perform.
15. **Bankruptcy.** In the event of any voluntary or involuntary proceedings against the Buyer in bankruptcy or insolvency, or in the event of any proceedings for the appointment of a receiver, trustee or assignee for the benefit of creditors of the property of the Buyer, Manufacturer may immediately assert any of its legal rights with respect to this contract, or at Manufacturer's option, cancel the same unless Manufacturer receives reasonable assurances of Buyer's ability to perform.

16. **Shop Drawings.** Shop drawings prepared by Manufacturer and approved by Buyer shall be deemed the correct interpretation of the work to be performed even when not consistent with the plans and specifications. Manufacturer will not commence fabrication of any materials required hereunder until: a) All complete contracts, plans, drawings and specification have been delivered to Manufacturer; b) All detail drawings submitted by Manufacturer have been finally approved by all authorities whose approval is required; c) Manufacturer has received all necessary information from other trades which affect or are related to our work or products (i.e. complete hardware schedule, templates, etc.); d) Manufacturer shall have received after completion of a), b), and c), a reasonable notice to commence fabrication of such materials, and e) All credits or debits for changes in quality or design of material furnished shall have been accepted in writing by Buyer.
17. **Payment.** Terms of payment are as specified on the front side hereof. Legal costs and collection charges incurred by The Will-Burt Company will be assumed by the client.
18. **Recovery of Legal Fees and Costs.** In the event it becomes necessary for Manufacturer to file a lawsuit to enforce any of the terms and provisions hereof and Manufacturer is granted a judgment wholly or partly in its favor, Manufacturer shall be entitled to recover, in addition to all other remedies or damages, reasonable attorney's fees and court costs incurred in such suit.
19. **No Modification.** These terms and conditions as set forth herein shall constitute the sole agreement between Buyer and Manufacturer. Any changes which Buyer requests shall be authorized only in writing signed by Manufacturer. These terms and conditions shall be binding upon and inure to the benefit of the respective parties, their successors, representatives and assigns.
20. **Choice of Law.** This purchase order and contract based hereon and any questions with respect to the construction and interpretation to perform it shall be governed by and determined in accordance with the laws of the State of Ohio.
21. **Partial Inapplicability.** Should any term or condition above, or any portion thereof, be invalid or inapplicable, the balance of such terms and conditions shall govern.
22. **Non-Wavier.** Any waiver or failure of Manufacturer to require strict compliance with the provisions of this order in any respect shall not be deemed a waiver of Manufacturer's right to insist upon strict compliance in other respects or thereafter in the same respect.

CERTAIN CONSUMER PROPRIETARY PRODUCTS ARE COVERED BY SPECIFIC LIMITED WARRANTIES SUPPLIED WITH THE PRODUCT AND IN SUCH CASE SHALL CONTROL OVER THE WARRANTY SET FORTH ABOVE.