MODEL EQUIPMENT SALES CONTRACT
(January 2013)

Introductory Note
The purpose of the model contract is to provide PMMI members with a useful tool by identifying issues to consider for key contract terms, and provide guidance on useful contract wording to facilitate doing business. It is not to dictate what contract terms should be - that is a business decision for each company and subject to negotiation between the Buyer and Seller. This model is based on contracts between a U.S. based Buyer and U.S. based Seller.

This model agreement should not be used as a basis for a machine development contract.

There are other model agreements that can be used to develop a contract between Buyer and Seller. Any alternatives that you identify that are beneficial or clearer to you in their use, feel free to utilize. In all cases, PMMI recommends that the member consult their counsel for any questions the member company has on language in specific agreements.

This Agreement is made this _____ day of ___________, 20 __, by and between ___________________________________________ (“Seller”) and ________________________________________________ (“Buyer”).

For good and valuable consideration, the parties agree as follows:

A. PURCHASE
Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller the equipment described in the quotation and applicable revisions (attached or identified by both Buyer and Seller), subject to the terms and conditions set forth below.

B. PRICE/PAYMENT TERMS
Unless otherwise stated in the quotation and applicable revisions thereof which is attached hereto and is an integral part of this Agreement, all invoices are due and payable in cash U.S. funds within thirty (30) days from date of shipment or date of invoice, whichever is earlier. Partial shipments may be made and pro rata invoices rendered upon agreement of Buyer and Seller. If shipment, or any part thereof, is delayed by Buyer, directly or indirectly, the date of completion by Seller shall be regarded as the date of shipment and payment of the full value thereof shall be made by Buyer within thirty (30) days. The equipment so delayed shall be held at Buyer’s cost and risk, including the cost of storage and insurance of the machine(s) and all parts thereon. All payments made after thirty (30) days incur a late charge, in accordance with the maximum amount permitted by law.
C. TAXES
The price quoted is exclusive of any local, state or federal tax which may now be in effect or hereafter apply.

D. SHIPMENT
Shipment to the Buyer shall be in accordance with INCOTERMS® 2010 rules, the exact section of which will be mutually agreed between Buyer and Seller. Refer to www.iccwbo.org for the latest updates.

Shipment will be scheduled for calendar week ____________, year ________.

E. GRANT OF SECURITY INTEREST
Buyer hereby grants the Seller a security interest and lien in the Equipment to secure each and every payment of the purchase price of the Equipment. Additionally, if requested by Seller Buyer shall assist Seller in promptly executing and recording any document, notices, or security agreements which Seller reasonably deems necessary to perfect the security interest and to publicly record its security interest. Seller shall release its security interest upon receipt of all required payments. Seller shall cooperate with Buyer in promptly executing and recording any notices or documents, which Buyer reasonably deems necessary to publicly record such release.

F. INTELLECTUAL PROPERTY
“Trade Secret” shall mean any information, including but not limited to a formula, pattern, compilation, program, device, method, technique or process, regardless of whether it derives independent economic value, actual or potential, from not being generally known. “Seller Trade Secret” is a Trade Secret belonging to Seller. “Buyer Trade Secret” is a Trade Secret belonging to Buyer. Seller’s Trade Secrets and Buyer’s Trade Secrets may not be copyrighted, trademarked or patented by the other nor may the other copy confidential information except for backup and archival purposes.

The Design Data (including but not limited to specifications, drawings, estimates, quotations, illustrations, blueprints, bulletins, maintenance manuals, literature and other digital, electronic, or printed materials, papers, and documents) is not a work for hire and shall remain Seller’s property. Seller reserves all proprietary and authorship rights in the Design Data, which may not be copied, reproduced, transmitted or communicated to any third party without Seller’s written consent, except to Buyer’s employees who are required to use Design Data as part of their
duties. Seller may make discretionary changes in the Design Data and may modify the Equipment as long as such changes and/or modifications do not result in material changes in the Equipment specifications stated in the Agreement between the Buyer and Seller, and do not change the Purchase Price.

The Buyer agrees not to copy nor permit anyone else to copy the equipment or other intellectual property or parts thereof without written approval of the Seller and will not knowingly, directly or indirectly, violate or infringe on or contest the validity of any patent, or other intellectual property or license rights of the Seller pertaining to any of said equipment or their mode of operation or any of the parts thereof. Seller's name, trademark, trade names, patent numbers, and "patent pending" designations shall not be defaced or removed from the equipment, nor shall Buyer allow such matters to be defaced or removed.

**G. TECHNICAL ADVICE**
All technical advice, recommendations, and services of Seller are intended for use by persons having the required skill, and is used at their own risk. Seller assumes no responsibility, and Buyer hereby waives all claims against Seller, for results obtained or damages incurred from the use of Seller’s advice, recommendations, and services.

**H. CHANGES**
The Buyer may, at any time, and from time to time, by written Change Order, request changes within the general scope of the Agreement, including but not limited to, changes in the:
(a) specifications, including drawings and designs;
(b) method of shipping and packing;
(c) time and/or place of delivery.
These changes must be mutually agreed to in writing by Buyer and Seller.

**I. INSPECTION/TESTING**
The Buyer may perform, at Seller’s plant, such agreed upon tests as are necessary to determine that the contract has been completed in accordance with the drawings, samples, and/or specifications as provided by the Seller. After acceptance of such testing, the Buyer shall make payments as required per the quotation. Such testing and acceptance shall not be unreasonably withheld or delayed by the Buyer.

**J. FACTORY ACCEPTANCE TEST (FAT)**
Buyer and Seller should develop written details under the following FAT topics to identify what is expected of each party and the related time involvement. In cases
where a particular topic is not relevant to the project, place N/A (not applicable) next to the topic:

- Performance Criteria
- Site Requirements
- Test Calculations & Equipment Efficiency Formulas (use of Overall Equipment Efficiency (OEE))
- Product Specifications
- Logistics, including testing of external MES/ERP data
- Time Duration
- Resource Requirements and Manpower
- Supplies and Other Material/Equipment Needs
- Utility Requirements
- Retesting Protocol and Resolution Process
- Failure Penalties
- Fee Structure for extra labor including temporary labor for testing
- Regulatory Restrictions and Requirements – Samples and Product Disposal
- Applicable Codes and Standards (e.g. UL/NTRL/CSA)
- Training and Certification Requirements

Buyer should be present for the FAT at the Seller’s facility or accept video documentation of the FAT. In all projects, Buyer must sign in writing that an FAT was successfully conducted.

Buyer and Seller may determine that a Site Acceptance Test (SAT) should be part of the contract. If an SAT is included, Buyer and Seller should identify in writing details of the SAT which address similar topics to those addressed in the SAT.

K. INSTALLATION SUPERVISION
Buyer shall at its expense provide all necessary electrical wiring, refrigeration hook-up, plumbing, rigging, hoisting or alterations to building or contents to facilitate proper functionality of the Equipment. Installation charges whether of Seller or third parties are not included in the price of the equipment and shall be the sole responsibility of Buyer.

L. TRAINING
Training is a critical element in the successful operation and continued performance of the system. Please refer to attached templates to develop commitments by both Buyer and Seller:

- Training Partnership
- Needs Assessment
- Lesson Plans

These should be established for both Operator and Maintenance personnel.
M. LEGAL COMPLIANCE
Seller warrants that in the performance of this contract it shall endeavor to comply with all applicable Federal laws and rules and regulations including the Fair Labor Standards Act of 1938, as amended, and, with respect to manufacturing processes, the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder.

Further, Seller shall comply with applicable laws in effect at the time and location of manufacture.

N. WARRANTY
Seller warrants that each item of its own manufacture delivered hereunder shall, at the time of Site Acceptance Test (SAT) or delivery and for a period of ___________ ( ) months OR ___________ hours of operation, whichever occurs first, be free from defects in materials or workmanship. In all cases, WARRANTY expires twenty four (24) months from the date of shipment, regardless of whether the equipment is installed or operating.

If any such item shall, upon examination by Seller, prove to be defective in material or workmanship under normal intended usage and maintenance during the warranty period, then Seller shall repair or replace, at its sole option, such defective item at its own expense. The Buyer shall be required to ship such defective item, delivery (freight, forwarding, customs, etc.) prepaid, to the Seller’s plant in _________________________________. Buyer shall be responsible for the cost of labor related to such shipping and delivery.

The warranty on components not manufactured by Seller, but a part of the system, is limited to the warranty provided by the original manufacturer of said components to the extent, and only to the extent, that such original manufacturer actually honors such warranty.

ALL WARRANTIES HEREUNDER ARE EXPRESSLY LIMITED TO THE REPAIR OR REPLACEMENT OF DEFECTIVE ITEMS AS SET FORTH HEREIN, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BY REASON OF ANY BREACH OF WARRANTY OR DEFECT IN MATERIAL OR WORKMANSHIP. SELLER SHALL NOT BE RESPONSIBLE FOR REPAIR OR REPLACEMENT OF ITEMS WHICH HAVE BEEN SUBJECTED TO NEGLECT, ACCIDENT OR IMPROPER USE, OR WHICH HAVE BEEN ALTERED BY OTHER THAN AUTHORIZED SELLER PERSONNEL.
THIS WARRANTY IS IN LIEU OF OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXCLUDED.

O. INDEMNIFICATION

(a) Seller shall indemnify Buyer against damages, liabilities, and expenses (including attorneys’ fees) in connection with third-party litigation arising out of or resulting from any actual defect in the goods purchased hereunder or in connection with the delivery or installation of such goods by Seller, to the extent that such damages, liabilities, and expenses are directly caused by said defect or other acts or omission of the Seller.

(b) Likewise, the Buyer shall defend, indemnify, and hold the Seller harmless against all damages, liabilities and expenses (including attorneys’ fees) in connection with third-party litigation arising out of or resulting from the misuse or improper use or operation of the equipment by Buyer, its employees, agents or contractors, including but not limited to the disabling or modification of any safety devices or other acts or omission of the Buyer.

Buyer shall notify Seller in writing within ten (10) calendar days of any accident or injury involving the equipment.

P. LIMITATION OF LIABILITY

To the extent allowed for by law and excluding fraud, intentional misconduct or gross negligence, on all claims of any kind, whether based on contract, indemnity, warranty, tort, strict liability or otherwise, for all losses or damages arising out of, connected with, or resulting from this agreement, or the Terms and Conditions hereof, or from the performance or breach hereof, neither party will be liable to the other for a) direct damages in excess of _________% of the value of this agreement OR b) any indirect, incidental, special, exemplary or consequential damages, losses, costs or expenses of any kind, however caused, on any theory of liability and whether based in contract or tort, including lost profits or revenues, loss of goodwill, loss of data or use of the equipment or other property.
Q. INSURANCE
The Seller shall maintain $1 Million in General Liability insurance to cover personal and property injuries that may arise in connection with performance of this Agreement, and shall maintain the required workers' compensation insurance covering the Seller's employees.

R. NOTICES
All written notices and correspondence shall be sent by either party to the other, in all matter dealing with this Agreement, to the following addresses:

To the Seller: ______________________________________________________

To the Buyer: ______________________________________________________

or any other address provided prior written notice is given to the other party.

Any written notice under this Contract shall be effective when actually delivered in person or three (3) days after being deposited in the U.S. mail, registered or certified, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

Notices delivered by fax or email are also effective if confirmation is delivered in person or registered or certified U.S. Mail within three (3) days.

S. REMEDIES
In addition to any remedies set forth in these terms and conditions of Sale, Seller shall be entitled to any and all remedies otherwise available to it under applicable law and not precluded by the agreement between Buyer and Seller. Remedies available to Seller shall be considered cumulative. Notwithstanding any other provision in these terms and conditions of Sale or in any other written document, if payment in full is not made by Buyer for the goods sold by Seller to Buyer, then Seller may repossess such goods by any lawful means in the event of a breach of default by Buyer in any of its obligations hereunder.

T. SEVERABILITY
Should it be determined by any court of competent jurisdiction that any provision of this Agreement is invalid, void, or unenforceable for any reason, such provision will be severed from this Agreement and the remaining provisions shall continue in full
force and effect without being impaired or invalidated, all to the end that the manifest intention of the parties shall be effectuated.

**U. WAIVER**

No failure of Seller to insist upon strict compliance by Buyer with the terms and conditions of this acknowledgement or to exercise any right accruing from any default of Buyer shall impair Seller’s rights in case Buyer’s default continues or in case of any subsequent default by Buyer. Waiver by Seller of any breach of contract shall not be construed as a waiver of any other existing or future breach.

**V. FORCE MAJURE**

Neither Buyer nor Seller shall be liable for damages, including liquidated damages, if any, for delays in delivery or failure to perform, except for payment of the purchase price, due to causes beyond the control and without the fault or negligence of the party claiming Force Majeure. Such causes include but are not limited to, acts of God, acts of war or terrorism, acts of the federal or any State or local government, fires floods, epidemics, quarantine restrictions, strikes, disturbances, or embargoes.

**W. DISPUTE RESOLUTION**

This contract, including its validity and performance, shall be governed by the laws of the State of _______________, without regard to conflicts of laws. The parties understand and agree that the place of this agreement, including the place of its formation and its performance is the County of ________________, State of ________________, and shall be enforced according to the laws for the State of ________________. Any action in regard hereto or arising out of the terms and conditions hereof shall be instituted and litigated in the Courts of the County of ____________, State of ____________ and in no other. In accordance herewith, the parties hereto submit to the jurisdiction and venue of the Courts of the County of ________________, State of ________________.

The non-prevailing party must pay the court costs and reasonable attorneys’ fees of the prevailing party.

**X. ASSIGNMENT**

The Seller may subcontract or assign any or all of its obligations under this Agreement in its discretion. It is understood, however, that the Seller remains responsible for compliance with its obligations under this Agreement including conformance of the machinery to the requirements set forth herein.
Y. CANCELLATION
This order may be canceled by the Buyer for its convenience upon written notice to the Seller. Upon cancellation, the Buyer shall pay the Seller for costs incurred by the Seller in connection with this Agreement up to the date of cancellation. In such event, the Buyer shall pay an amount equal to the sum of all direct material costs (including restocking charges), all direct labor and related costs, along with a proportionate level of profit on all such costs associated with the machinery. The minimum cancellation fee due to the Seller shall be an amount equal to ____% of the total Contract price.

Z. FURTHER ASSURANCES
The parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Contract. All promises and covenants are mutual and dependent.

AA. ENTIRE AGREEMENT; AMENDMENT
This Agreement contains the entire understanding between the parties hereto and supersedes all other oral and written agreements or understandings between them relating to the subject matter hereof. The terms hereof supersede any preprinted or standard terms which may appear on any purchase order. No changes to the terms of this Agreement shall be effective unless initialed by the signatory for the Seller. No modification or addition hereto or waiver or cancellation of any provision hereof shall be valid except in writing signed by an authorized representative of each party.

The parties have acknowledged their agreement to the above terms and conditions by having their duly authorized representatives sign below.

SELLER
________________________________________
Signature

________________________________________
Title

________________________________________
Date

________________________________________
Signature

________________________________________
Title

________________________________________
Date
Reference Material

Training guidance documents available on www.pmmi.org:

- Training Partnership Agreement
- Needs Assessment
- Lesson Plan Outline

Optional Considerations

These sections can be added based on the requirements of each contract:

Risk Assessment
The ANSI/PMMI B155.1 standard was harmonized with the requirements of risk assessment of the EU machinery directive in 2006. The B155.1 standard requires the supplier to build the machine to an acceptable level of risk using the iterative risk assessment process.

Many machinery builders are being asked to supply a copy of the risk assessment as part of the purchase contract for machinery. The following is wording that can be used if the Buyer requests documentation:

    The Seller will provide the Buyer with a copy of (OR an opportunity to review) the risk assessment for the machine covered by this purchase order listing the hazards associated with the machine and the risk reduction measures implemented to reduce the risk to an acceptable level. Prior to delivery of the risk assessment document, the Buyer will execute a non-disclosure agreement covering the information contained in the risk assessment document.

Non-Disclosure/Confidential Disclosure Agreement
There are so many variations of a document of this type that a model is not shown here. In all cases, Buyer and Seller should be sure the agreement identifies what is covered, the length of time that the information be kept confidential, and how an injunction may be used to restrict the release of data.