



## LIMITED WARRANTY

Utilimaster's goods and services are warranted only pursuant to the warranties set forth below.

(a) Limited Warranty for Goods. Seller warrants to Buyer that the good or part provided by Seller directly to Buyer hereunder shall perform in accordance with applicable written specifications or documentation for a period of ninety (90) days after acceptance of such good or part by Buyer.

(b) Limited Warranty for Services. Seller warrants to Buyer that for a period of thirty (30) days after the applicable service has been performed, the services sold hereunder were performed in a workmanlike manner.

(c) THE WARRANTIES STATED IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF, AND SELLER HEREBY DISCLAIMS AND THERE SHALL EXCLUDED FROM, THE RELATIONSHIP BETWEEN BUYER AND SELLER, ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

NOTE: Some states do not allow (a) limitations on how long an implied warranty lasts, or (b) the exclusion or limitation of incidental or consequential damages, so the limitations or exclusions may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

**INDEMNIFICATION.** Buyer shall defend, indemnify and hold Utilimaster harmless from and against any and all claims, liabilities, loss, costs, damage or expense (including reasonable attorneys' fees) of any kind or nature whatsoever relating to the performance by Utilimaster hereunder, including, without limitation, claims made for property damage or personal injury (including death), whether such claims are premised on contract or on tort (including, without limitation, strict liability). This indemnity provision shall not apply where such damage or injury is attributable solely to the gross negligence of Utilimaster, its employees or agents.

**LIMITATION ON LIABILITY.** THE TOTAL LIABILITY OF SELLER AND THE EXCLUSIVE REMEDY OF BUYER FOR ANY ACTION ARISING HEREUNDER, OR FOR THE USE OR OPERATION OF ANY GOOD OR PART SOLD OR DELIVERED OR SERVICE PERFORMED BY SELLER TO BUYER, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, BREACH OF WARRANTY, OR OTHERWISE, SHALL NOT IN ANY CASE EXCEED THE PURCHASE PRICE FOR THE GOOD, PART OR SERVICE WHICH GIVES RISE TO THE CLAIM.

**LIMITATION ON CONSEQUENTIAL DAMAGES.** SELLER SHALL NOT BE LIABLE IN ANY EVENT FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF TIME OR USE OF PRODUCT, INCONVENIENCE, COMMERCIAL LOSS, OR INJURY OR DAMAGES TO PERSONS OR PROPERTY, OR FAILURE OF ANY GOOD OR PART THEREOF TO COMPLY WITH ANY LAW.

**INTELLECTUAL PROPERTY LIABILITY.** Where Utilimaster supplies goods to Buyer's specifications and/or manufactured or fabricated from Buyer's blueprint, sketch, specifications, or tooling, Buyer, at its own expense, shall defend any suit or proceeding of any kind whatsoever brought against Utilimaster in any capacity if such suit or proceeding involves a claim that any goods or any part thereof constitutes an infringement of any patent, copyright or trademark or other intellectual property right of a third party, and Buyer shall pay or indemnify any and all judgments, expenses and costs which may be awarded against or incurred by Utilimaster related to such legal action.

**FORCE MAJEURE.** Utilimaster will not be liable for any delay in the performance of its obligations or for any damages suffered by the Buyer by reason of such delay, when such delay is directly or indirectly caused by or in any manner arises from: fires; floods; accidents; riots; acts of God; governmental interference; embargoes; strikes; labor difficulties; shortages of labor, fuel, power, materials or supplies; transportation delays; any existing or future laws or acts of the federal or any state government (including specifically, but not exclusively, any orders, rules or regulations issued by any official or agency or any such government) affecting the conduct of Utilimaster's business; or any other cause or causes (whether or not similar in nature to any of those specified above) beyond Utilimaster's control.

**NO WAIVER; ASSIGNMENT.** The failure of Utilimaster upon knowledge of any default or violation by Buyer of any portion of these Terms and Conditions to enforce its rights or remedies shall not be construed as a waiver of such default or violation, or of any provision hereof, or of any of its rights or remedies. Buyer may not assign any Order or any obligation under these Terms and Conditions without the prior written consent of Seller.

**CANCELLATION FOR INSOLVENCY OR INSTITUTION OF PROCEEDINGS.** In the event of any suspension of payment or the institution of any proceedings by Buyer against Utilimaster, or the initiation of voluntary or involuntary proceedings in bankruptcy or insolvency proceedings naming Buyer as a debtor, or proceedings under any provisions of the United States Bankruptcy Code in which Buyer is a debtor, or for the appointment of a receiver or a trustee or an assignee for the benefit of creditors, Utilimaster shall be entitled to cancel any Order forthwith, without liability for loss of anticipated profits.

**LIMITATION OF LITIGATION/ATTORNEY FEES.** Any controversy or claim of Buyer arising out of or related to an Order must have accrued within the applicable warranty period, and then be commenced within one (1) year after the cause of action has accrued. Utilimaster shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys' fees and other litigation expenses from the Buyer relating to any lawsuit arising from this Agreement in which Utilimaster prevails. **THE PARTIES HEREBY WAIVE THEIR RIGHT TO TRIAL BY JURY ON ANY CLAIM ARISING HEREUNDER OR IN CONNECTION WITH ANY GOOD, PART OR SERVICE SOLD OR DELIVERED BY SELLER TO BUYER.**