



COMMERCIAL CHARGE AND OPEN ACCOUNT TERMS & CONDITIONS OF SALE

Within this Agreement, the words “we”, “us”, “Seller” and “our” shall refer individually to Volcano Industries Inc. d.b.a. Roman Fountains Corporation extending credit. The words “you” and “your” refer to each customer (“Applicant”) for which we have approved an application (“Application”) for a Commercial Charge Account (“Account”), any person who signed the Application on behalf of such customer, and each other person authorized to make purchases under the Account.

1. **ACCOUNT WITH SELLER.** All parties to this Agreement acknowledge that any credit account established for you or for your benefit will be with the Seller at which you charge purchases to your Account. The terms of this Agreement shall inure to the benefit of Seller. It is agreed that Seller or any of its successors or assigns may bring any action for recourse or remedy sought by Seller.
2. **ACCOUNT FOR BUSINESS PURPOSES ONLY.** Purchases under the account may be made **only** for commercial, industrial or other business purposes. They may **not** be made for personal, family, household, or other consumer purposes. Because the Account is for business purposes only, important legal duties and obligations that apply to consumer credit accounts are not applicable. We cannot determine the intended purpose of any given purchase you charge to the Account. You alone are responsible for assuring that the Account is used only for business purposes.
3. **AUTHORIZED PURCHASERS.** You agree that we may rely upon all reasonable representations of persons representing themselves to be you authorized agents with authority to make purchases against your Account unless you have provided to our Credit Manager a list of authorized purchasers in writing. Purchases and/or deliveries are authorized to be made without signature.
4. **PROMISE TO PAY.** In return for our extending credit under this Account, You jointly and severally agree to pay for all purchases charged by you to the Account regardless of whether your credit line is exceeded, and all other charges as described below, according to the terms of Agreement.
5. **BILLING TERMS.** You agree to pay all amounts charged to the Account on or before their due date. You accept our billing terms as they may be set for the in the sales invoices and/or statements for all purchases under the Account.
6. **PURCHASE ORDERS.** If you use purchase orders in connection with the Account we will try to reflect your purchase order numbers on our invoices. However, the presence or absence of a purchase order number on our invoices shall in no way affect your obligation to pay the invoices. Any purchase charged to this Account shall be governed solely by the terms and conditions set forth in this Agreement and in our invoices and/or statements, and any other terms and conditions in your purchase orders or other procurement documents shall not apply, even if submitted to and accepted by us in connection with a purchase under the Account.
7. **FINANCE CHARGE.** If we do not receive payment in full in a timely manner, your Account will be in default and past due. We shall assess a finance charge (“Finance Charge”) until all amounts due on the Account are paid in full. The Finance Charge will be the lesser of (a) the maximum amount permitted by applicable law and (b) 1.5% per month, or 18% per annum, of the total of the Balance Due and all other amounts past due on the Account, adjusted for any payments and credit.
8. **RETURNED CHECK CHARGE.** We may impose a charge up to a maximum allowed by law for each check received in payment on the Account which is returned to us as unpaid (“Returned Check Charge”).
9. **PAYMENT APPLICATION.** Customer agrees to furnish remittance detail with payment. Each payment on the Account will be applied first to any Finance Charge, Returned Check Charge, or other charge excluding purchases and then to all unpaid purchases on the Account in the order which they were made, oldest first. In the event the customer fails to furnish remittance detail with a payment, we may apply the payment to unpaid balances at our sole discretion.

10. **SECURITY INTERESTS/LIENS.** We possess the following security interests and liens (collectively "Security Interests"): (a) purchase money security interests in all goods purchased on the Account until they are paid in full, and (b) materialman's and mechanic's liens against real property improved, or to be improved, by goods and services charged to the Account until they are paid in full. You agree to execute such documents and take such other actions as we may request in connection with the perfection, priority and/or enforcement of our Security Interests. You agree not to execute a no lien or lien waiver agreement affecting our materialman's or mechanic's lien rights without our prior written authorization, and any such agreement shall be null and void.
11. **DEFAULT.** You are in default on the Account if you: (a) fail to pay the Balance Due by the due date, (b) breach any other term or condition of this Agreement, (c) exceed the Credit Limit on your Account, (d) have made a material misrepresentation or misstatement in the Application, guaranty, financial statement or other document submitted to us in connection with the Application, (d) become the subject of a bankruptcy, receivership or other insolvency proceeding, or (f) have a writ or order of attachment, levy or garnishment issued against you or your property. If you default on the Account, we may (i) declare all amounts owed on the Account to be immediately due and payable, (ii) terminate the Account in which event the terms of this Agreement shall continue to govern until the Account is paid in full, (iii) commence a collection action for all amounts owed on the Account, (iv) repossess all goods purchased on the Account and otherwise foreclose and enforce our Security Interests in accordance with applicable law, (v) reduce your credit limit, and (vi) exercise any and all other rights and remedies accorded to us by law. You agree to pay our costs of collection, including reasonable attorney's fees and expenses. In jurisdictions where a stated rate is required, reasonable attorney's fees will be 25%.
12. **CANCELLATION.** You and we each have the right, at any time, to cancel the Account. In the event of cancellation, the terms and conditions of the Agreement shall continue in effect until all amounts owed on the Account are paid in full.
13. **WARRANTY DISCLAIMER. WE DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE AND ALL OTHER INVOICES. WE SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, NOR FOR ANY DAMAGES OR DELAYS CAUSED BY CIRCUMSTANCES BEYOND OUR CONTROL, INCLUDING, WITHOUT LIMITATION, LABOR DISPUTES, SHORTAGE OF GOODS OR RAW MATERIALS, FIRE, FLOOD, WEATHER OR OTHER ACTS OF GOD.** We make no representations and bear no responsibility as to the installation, use or other disposition of the merchandise sold hereby and accordingly, you agree to indemnify and hold us harmless from any liability for injury or damages arising out of, or in any way connected with, or pertaining to the sale, installation, use or other disposition of the merchandise sold herein.
14. **RETURN POLICY.** All orders placed for non-stock goods are final unless we authorize their return in writing. All orders for stock goods are final unless we, in our sole discretion, authorize and accept their return in writing. You will pay us a handling fee and reimburse us for any cost we incur in connection with our return of goods. If we authorize you to return stock goods and they are in a good and saleable condition, we will issue a credit memo on your Account. The foregoing is our current return policy ("Return Policy"), and you agree that we may, at any time, without advance notice or notification, change or revoke the Return Policy in our sole discretion.
15. **CREDIT INFORMATION.** Unless and until the Account is canceled and paid in full, you agree to provide us with periodic financial statements, and you authorize us to investigate and obtain credit information about you, each principal (i.e., owner, officer or partner) of the customer with the Account, and each Personal Guarantor of the Account, including information from commercial credit reporting companies, consumer credit reporting companies, the bank, construction lender and trade credit referenced identified on your Application for the Account, and such other sources of credit information about this Account to credit reporting companies and others which we believe may lawfully receive such information.
16. **CREDIT APPROVAL.** This Agreement shall not be effective and binding on us and the Account shall not be activated until such time as we have advised you in writing that your Application has been approved.
17. **GOVERNING LAW.** This Agreement and the Account are governed by and construed in accordance with the laws of the state of New Mexico, U.S.A.
18. **ASSIGNMENT.** We may sell, assign, transfer any or all of your Account or any balances due thereunder without prior notice to you. You may not sell, assign, or transfer your Account or any of your obligations under this Agreement.
19. **TERMS.** These terms and conditions are an integral and inseparable part of our credit application and acceptance of your order. You agree to these terms and conditions when you complete and sign our credit application.

20. **ENTIRE AGREEMENT.** The Application and this Agreement constitute the entire agreement between you and us regarding the Account and supersede all of our prior written and oral agreements and understandings relating to the subject. We may at any time, and subject to applicable law, change or add to the terms and conditions stated herein governing the Account. Unless prohibited by applicable law, we may apply any changed or additional term to the outstanding balance on your Account on the effective date of such term and to any future balances thereafter. When required by applicable law, we will provide you with notice of any such changed or additional term.