

# FRABA

## STANDARD TERMS AND CONDITIONS OF SALE

### FRABA, Inc.

These Standard Terms and Conditions of Sale (these “Terms”) govern the sale of all products (the “Products”) by FRABA, Inc. (“FRABA”) and are incorporated into any offer by FRABA to sell such Products. By accepting FRABA’s offer, the buyer of such Products (“BUYER” or “you”) shall be deemed to have consented to all of these Terms.

1. Orders. Orders for POSITAL Products should be placed on our online webshop found at [www.posital.com](http://www.posital.com). If not signed up or webshop is unavailable, please contact us via email. Orders for VITECTOR Products, should be placed via email.

Email: [orders@fraba.com](mailto:orders@fraba.com)

FRABA will confirm your order in writing via email, along with an expected delivery date for the order. If any information contained in the order is incorrect or incomplete, i.e., pricing, terms, ship to or bill to address, etc., then prior to confirming the order, FRABA’s customer service will contact you and request the necessary information or corrections. FRABA will confirm and process your order only after a corrected purchase order has been received.

2. Changes to Orders. FRABA will not make any changes in the scope of work of an already confirmed order unless FRABA and BUYER agree in writing to the change and any resulting changes in price, schedule, or otherwise. Any change in law, rule, regulation, order, code, standard or requirement which requires FRABA to make a change to an order shall entitle FRABA to an equitable adjustment in the prices and any time of performance.

3. Pricing. The prices shall be as stated in FRABA’s written offer or if none are stated, then the prices shall be the standard prices in FRABA’s online price tool in effect at the time of order confirmation. All prices are Ex Works (EXW, Incoterms 2010) FRABA’s facility. All prices in FRABA’s price book or other printed material as well [as any verbal pricing information](#) are subject to change without further notice. FRABA’s written quotations are valid for 60 days. Orders for Products which FRABA has already confirmed are not subject to price increase or decrease except as described in Section 2 above. Unless otherwise stated in a written agreement signed by FRABA and BUYER, all prices listed provide for standard packing for domestic (U.S.) shipping in accordance with FRABA’s standard specifications. If special packing is required for domestic shipment or for export shipment, BUYER should contact FRABA for price additions. Except to the extent expressly stated in these Terms, FRABA’s prices do not include any freight, storage, insurance, taxes, excises, fees, duties or other government charges related to the Product, and BUYER shall pay such amounts or reimburse FRABA for any amounts FRABA pays. If BUYER claims a tax or other exemption or direct payment permit, it shall provide FRABA with a valid exemption certificate or permit and indemnify, defend and hold FRABA harmless from any taxes, costs and penalties arising out of same.

4. Payment. Unless otherwise stated in a written agreement signed by FRABA and BUYER, all payments other than first time orders shall be net 30 days from the invoice date and are payable in U.S. Dollars. First time orders must be paid for in advance, unless otherwise agreed in writing by FRABA. Orders may be subject to credit approval by FRABA. Acceptable payment methods are ACH and wire transfer (ACH and wire instructions are available upon request), and Master Card or VISA. FRABA reserves the right to issue a service fee for the processing of Master Card or Visa payments. These payment methods may be changed by FRABA at any time for any reason without prior notice. If your account is beyond 30 days past due or if the credit limit is exceeded, FRABA reserves the right to withhold

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manufacture of Products, suspend future deliveries of Products, or require additional security satisfactory to FRABA until the account is brought current, or take such other remedies as are available to FRABA by law. BUYER agrees to pay late charges at the interest rate of 9.21% annually (0.7676% monthly) and a dunning letter charge of \$5.00 per reminder that FRABA assesses on all past due accounts. If BUYER disputes all or any part of an invoice, it shall notify FRABA in writing of the amount in dispute and the reason for its disagreement within 14 days of receipt of the invoice. BUYER must pay any undisputed portion when due. Any unpaid amount in dispute that is determined to be payable to FRABA shall include a late charge at the above rate accruing from the payment due date until the date that payment is finally made to FRABA.

5. Cancellation. BUYER may not cancel or defer any order once an order has been confirmed by FRABA. BUYER may not return any order other than for warranty returns of defective Products in accordance with these Terms. Once FRABA has confirmed an order, BUYER shall be responsible for 100% payment for the order unless otherwise agreed in writing by FRABA.

6. Delivery; Shipment; Risk of Loss. Unless otherwise stated in a written agreement signed by FRABA and BUYER, all Products are sold FCA or CPT, FRABA, Inc., Hamilton, New Jersey, USA. Delivery dates are based upon production schedules at time of quotation or at time of order. Shipping and delivery dates are approximate only. FRABA shall not be liable for any loss, expense or damages (consequential or otherwise) incurred by BUYER or BUYER's customers for any delayed delivery or failure to meet the specified delivery schedule. Title to the Products and risk of loss shall pass to BUYER when the Products leave FRABA's facility.

7. Penalty Clauses. No penalty clause for FRABA's failure to meet shipment or delivery deadlines shall be included in any contract, quotation, request for proposal or other document or shall otherwise be binding upon FRABA unless such clause is specifically approved in advance in writing by an executive officer of FRABA.

8. Installment Shipping. If your order requires separate or installment shipments, each shipment shall be considered a separate transaction. BUYER shall pay for each shipment in accordance with these Terms. If BUYER believes a shipment or portion of a shipment fails to comply with the specifications of its written purchase order or these Terms, BUYER may refuse to accept only such shipment or portion thereof (and no other shipment) that BUYER reasonably believes to be noncompliant. If BUYER defaults under these Terms in any manner, FRABA may decline to make future shipments, and if FRABA chooses to continue to make shipments, FRABA shall not be deemed to have waived such default.

9. Limited Warranty. FRABA warrants to BUYER that the Products shall be free from defects in material and workmanship for the following period of time from the date of shipment: (a) the POSITAL (Position Sensors) brand of products, for a period of thirty six (36) months and (b) the VITECTOR (Protection Sensors), for a period of twelve (12) months. The limited warranty described in this Section 9 will extend to any subsequent owner or end-user of the Products during the applicable warranty period.

A. During the applicable warranty period, following the return of the Products or applicable parts to FRABA in the manner described below, FRABA will repair, or at its option replace, any Product or part that FRABA finds to be defective in material or workmanship, without charge to BUYER for parts, service labor or associated customary shipping charges. Replacement or repaired Products or parts will be warranted for only the unexpired portion of the original warranty period. All Products or parts replaced under this limited warranty will become the property of FRABA.

B. If you (or any subsequent owner or end-user of the Products) experience any technical problems with the Products during the applicable warranty period, please contact your local distributor, or contact FRABA directly by completing the RMA (Return Merchandise Authorization) form at the applicable web address below and submitting it as per the instructions on the website.

For the POSITAL (Position Sensors) brand of Products: <https://www.posital.com/en/contact/support/support.php>

For the VITECTOR (Protection Sensors) brand of Products: <http://www.vitector.com/en/contact/support/support.php>

C. Following your submission of the applicable RMA form, FRABA will process the RMA request and send a return authorization form and delivery note to include in the shipment with the Products to return and begin the repair or replacement process. Upon your request (or the request of the subsequent owner or end-user making the warranty claim), FRABA will ship an immediate replacement before its receipt and analysis of the Products. FRABA will analyze the returned Products upon receipt. If FRABA determines the returned Product was not defective, you (or the party who returned the Product) will be charged for the wrongly shipped replacement (or if applicable, cost of repair) and related shipping costs.

D. The limited warranty described in this Section 9 is conditioned upon BUYER's storing, installing, operating and maintaining the Products in accordance with FRABA's instructions. This warranty does not apply to damage caused by accident, misuses, fire, flood, acts of God or from failure to properly install, operate or maintain a Product. FRABA will invoice BUYER (or a subsequent owner or end-user) for the cost and expenses of the repair or replacement (including the costs of assessing and reporting the damage) if FRABA reasonably determines that BUYER (or such subsequent owner or end-user) is at fault.

E. The limited warranty described in this Section 9 is in lieu of any other warranties, expressed or implied, including merchantability or fitness for a particular purpose, which are expressly excluded.

F. This warranty does not cover any product that is described as being experimental or developmental or as a test, prototype or model; any such product is provided to BUYER "as is" and FRABA disclaims all warranties, expressed or implied, with respect to such product.

G. THE LIMITED WARRANTY SET FORTH IN THIS SECTION IS THE SOLE AND EXCLUSIVE WARRANTY THAT FRABA IS MAKING WITH RESPECT TO THE PRODUCTS AND IS SUBJECT TO THE LIMITS OF LIABILITY SET FORTH IN SECTION 10 BELOW. FRABA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES RELATED TO COURSE OF DEALING, CUSTOM AND/OR USAGE OF TRADE.

10. LIMITATION OF LIABILITY. NEITHER FRABA NOR ITS SUPPLIERS SHALL BE LIABLE, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE, SAVINGS OR PROFITS, OR FOR COSTS OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INDIRECT, SPECIAL, LIQUIDATED, PUNITIVE, EXEMPLARY, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR CLAIMS BY BUYER FOR DAMAGES OF BUYER'S CUSTOMERS. FRABA'S MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL BE THE ACTUAL PURCHASE PRICE RECEIVED BY FRABA FOR THE PRODUCT AT ISSUE OR ONE MILLION DOLLARS, WHICHEVER IS LESS. BUYER AGREES THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION 10 ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH BUYER MAY

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HAVE HEREUNDER AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THESE LIMITATIONS OF LIABILITY ARE EFFECTIVE EVEN IF FRABA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Patent and Copyright Infringement. FRABA will, at its own expense, defend and protect (or at its option, settle) any suit or proceeding brought against BUYER based on an allegation that a Product infringes any United States patent or copyright rights, if FRABA is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. FRABA will pay the damages and costs awarded in any suit or proceeding so defended. FRABA will not be responsible for such damages or the costs if any settlement of such suit or proceeding is made without its prior written consent. FRABA will have no duty or obligation to BUYER under this Section 11 or otherwise: (a) based on alleged infringement arising out of compliance with BUYER-furnished specifications, design or instructions or use of BUYER-furnished components, (b) to the extent a Product is modified by BUYER or its contractors after delivery, or (c) to the extent a Product is combined by BUYER or its contractors with devices, methods, systems or processes not furnished by FRABA and by reason of said design, instruction, modification, or combination a suit is brought against BUYER. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against FRABA, BUYER shall defend and protect FRABA in the same manner and to the same extent that FRABA has agreed to defend and protect BUYER under the above provisions of this Section 11. THIS SECTION 11 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS.

12. Intellectual Property. Unless otherwise stated in a written agreement signed by FRABA and BUYER, FRABA shall retain all right, title and interest in and to the intellectual property related to the Products.

13. Indemnification by BUYER. BUYER shall indemnify, defend and hold harmless FRABA, and its respective directors, officers, employees and agents (each a "FRABA Indemnified Party") from and against any and all losses, damages and costs (including attorneys' fees) incurred by a FRABA Indemnified Party to the extent arising out of or in connection with any claims made or suits brought by any third party against a FRABA Indemnified Party relating to (a) BUYER's products, (b) the use of the Products in BUYER's products, (c) a recall of BUYER's products, and (d) FRABA's compliance with BUYER-furnished specifications, design or instructions or use of BUYER-furnished components. Any claim by BUYER or any third party relating to the Products shall be subject to the limited warranty described in Section 9 and limitation on liability described in Section 10.

14. Legal Compliance. BUYER agrees to comply with all applicable laws and regulations relating to the purchase, resale, export, transfer, disposal or use of the Products.

15. Force Majeure. If FRABA's performance is delayed due to a cause beyond its reasonable control, including without limitation acts of God (including without limitation weather events such as tornados, hurricanes, floods or earthquakes), strikes, labor shortage or disturbances, fire, explosion, accident, war or civil disturbance, carrier delay, failure of normal sources of supply, or actions or inactions of governmental authorities, the time of FRABA's performance shall be extended by a period of time equal to the period of such delay. FRABA will notify BUYER within a reasonable time after FRABA becomes aware of any such delay.

16. Product Changes. FRABA continually makes changes in design and improvements in its manufacturing processes. FRABA reserves the right, at any time and without notice, to add, improve, modify, and make changes (whether in design, material, improvements or otherwise) to any Products and Product Information, and to discontinue the manufacture of any Products. FRABA also reserves the right not to include any changes in design or improvements in manufacturing in the Products which are the subject of BUYER's order, and no obligation to incorporate these changes will be assumed.

17. Entire Agreement. These Terms, together with any written purchase order or acknowledgement issued or signed by FRABA constitute the full, entire and integrated agreement between FRABA and BUYER (together, the "Agreement") and supersede all prior negotiations, correspondence, understandings and agreements between FRABA and BUYER. These Terms supersede any additional, conflicting or different terms contained in BUYER's purchase order, request for proposal, document or other written communication from BUYER, which terms shall not be binding on FRABA (despite any failure to object to such additional, conflicting or different terms) unless FRABA expressly consents to such terms in writing.

18. Waiver. The failure or delay of FRABA or BUYER in exercising any right, power or privilege under these Terms shall not operate as a waiver nor preclude any other or further exercise of such right, power or privilege. No waiver of any provision of these Terms shall be valid unless in writing and signed by the party granting such waiver, and no such waiver shall be deemed a waiver of any subsequent breach of the same or similar nature.

19. Headings. The headings contained in these Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of these Terms.

20. Severability. If any provision of the Agreement is held by a court of competent jurisdiction or found by an arbitrator to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, and the Agreement shall be construed by limiting or invalidating such provision to the minimum extent necessary to make such provision valid, legal and enforceable.

21. Governing Law. The Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of New Jersey without regard to its principles of conflicts of laws.

22. Dispute Resolution. All disputes or claims relating to, arising out of or in connection with the Agreement shall be resolved by arbitration located in Hamilton, New Jersey, by a single arbitrator, under the Commercial Arbitration Rules of the American Arbitration Association then in effect. The official language of the arbitration shall be English. BUYER irrevocably and unconditionally (a) waives any objection to the laying of venue of any such arbitration, (b) irrevocably submits to the jurisdiction of any such arbitration, and (c) agrees to be bound by the award of such arbitration. BUYER EXPRESSLY WAIVES ANY RIGHTS THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION RELATING TO OR ARISING IN ANY WAY FROM THE AGREEMENT. Each party agrees that an award in any arbitration proceeding brought hereunder shall be binding and may be entered in any court having jurisdiction or enforced in any other manner provided by law or at equity. If a party is required to enforce the arbitration award in court, the prevailing party in such court proceeding shall be entitled to recover its reasonable expenses, attorneys' fees and costs incurred in such enforcement.