

Orison Corporation

Home of the 

FLEXQUAD® EXPERIMENTAL VEHICLE TERMS AND CONDITIONS OF SALE

THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.

BY PLACING AN ORDER FOR GOODS, INCLUDING A FLEXQUAD® EXPERIMENTAL VEHICLE (“FLEXQUAD®”), FROM ORISON CORPORATION, YOU ACCEPT AND ARE BOUND BY THESE TERMS AND CONDITIONS OF SALE.

WARNING! ASSEMBLY, USE, AND/OR OPERATION OF THE FLEXQUAD® INVOLVES CERTAIN INHERENT RISKS THAT CANNOT BE ELIMINATED REGARDLESS OF THE CARE TAKEN TO AVOID INJURIES. THE SPECIFIC RISKS VARY, BUT THE RISKS RANGE FROM MINOR INJURIES TO MAJOR INJURIES, SUCH AS PARALYSIS AND DISMEMBERMENT, AND DEATH. RISKS MAY ARISE IN CONNECTION WITH ASSEMBLY, USE, AND/OR OPERATION OF THE FLEXQUAD®, INCLUDING CRASHES, FAILURE TO FOLLOW APPLICABLE TRAFFIC AND/OR OTHER LAWS AND RULES, FAILURE TO OPERATE IN A SAFE MANNER, FAILURE TO WEAR APPROPRIATE SAFETY GEAR, DRIVING AT EXCESSIVE SPEEDS, MISUSE, FAILURE TO PAY ATTENTION AND USE ORDINARY PRUDENCE WHILE OPERATING, AND THE LIKE. THESE RISKS INCREASE WHEN THE FLEXQUAD® IS USED ON DIFFICULT TERRAIN, PUBLIC ROADS, OR PAVED SURFACES. THERE MAY BE ADDITIONAL RISKS, INCLUDING SOCIAL AND ECONOMIC LOSS, EITHER KNOWN OR UNKNOWN TO BUYER, NOT READILY FORESEEABLE.

BUYER ACKNOWLEDGES THAT THESE RISKS EXIST AND ARE ASSOCIATED WITH ASSEMBLY, OPERATION, AND/OR USE OF THE FLEXQUAD®. BUYER HEREBY KNOWINGLY AND VOLUNTARILY ASSUME SUCH RISKS, WHETHER KNOWN OR UNKNOWN, REGARDLESS OF ANY INSTRUCTION PROVIDED BY SELLER OR ITS REPRESENTATIVES.

BUYER MUST INSPECT ALL GOODS BEFORE USING THEM AND TO TAKE FULL RESPONSIBILITY FOR ASSURING THAT THE GOODS ARE IN PROPER WORKING ORDER AND SAFE TO USE. SELLER MAKES NO REPRESENTATIONS THAT THE GOODS ARE LEGAL FOR OPERATION IN BUYER’S CITY AND STATE. BUYER IS RESPONSIBLE FOR CONTACTING BUYER’S LOCAL OR STATE DEPARTMENT OF TRANSPORTATION OR DEPARTMENT OF MOTOR VEHICLES TO VERIFY IF THE GOODS ARE LEGAL FOR OPERATION ON AND/OR OFF ROAD IN BUYER’S LOCALE.

1. Agreement. The accompanying Order Confirmation and/or Invoice (the “**Sales Confirmation**”), all documents referenced herein, including the user manual associated with the Goods (the “**User Manual**”), and these terms and conditions of sale (these “**Terms**”) comprise the entire agreement (collectively, this “**Agreement**”) between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The Agreement constitutes the only terms which govern the sale of the FlexQuad® and associated goods (“**Goods**” or “**FlexQuad®**”) by Orison Corporation, an Ohio corporation (“**Seller**”), to the buyer named on the applicable Order Confirmation or Invoice (“**Buyer**”).

2. User Manual.

a. The Goods may require assembly. **ASSEMBLY OF THE FLEXQUAD® OR OTHER GOODS SHALL BE AT BUYER’S SOLE RISK.** Buyer shall assemble the Goods, or cause the Goods to be assembled, in accordance with Seller’s instructions contained in the User Manual for the Goods. Buyer shall also maintain the Goods, or cause the Goods to be maintained, in accordance with Seller’s instructions contained in the User Manual. Buyer also agrees to follow all of Seller’s supplemental instructions related to the Goods. It is further expected that all instructions and warnings supplied by Seller will be passed on to all persons who use the Goods.

b. Buyer shall: (i) use the Goods in their recommended applications; (ii) adhere to all instructions in the User Manual or appearing on warning labels; (iii) comply with all laws applicable to the Goods or Buyer’s use of the Goods; (iv) conduct regular checks of the Goods and maintain the Goods in good working condition; (v) ensure the Goods are not operated for any purpose other than for which they are designed; and (vi) implement appropriate safety measures, including wearing protective clothing and head protection.

3. Product Support.

- a. Seller will provide a maximum of seven hours of phone support to Buyer during the build process at no cost.
- b. Buyer promptly will notify Seller of any product failure that may result in a safety issue. Seller promptly will notify Buyer in the event any product safety issues are identified that are not previously communicated.
- c. Buyer will apply all appropriate or required labels applicable to safety, vehicle model, and serial number, as well as all other patent and trademark notices specified by Seller. All labels must be applied in the locations specified in the User Manual. This includes the “*EXPERIMENTAL*” label the top of one of the front limbs of the FlexQuad®. In the event any of these labels becomes illegible, Buyer promptly will purchase replacement labels from Seller at Seller’s standard list price and apply as set forth in the User Manual. Buyer promptly will apply any updated product marking provided by Seller.
- d. Buyer will notify Seller with any change in Buyer’s contact information as long as Buyer’s FlexQuad® is in use.

4. Price. The price of the Goods shall be as set forth in the applicable Sales Confirmation. All Prices are exclusive of all taxes. Unless otherwise specified by Seller in the Sales Confirmation, Buyer must pay the price of the Goods within thirty (30) days after receipt of Seller’s invoice. Seller has the right, among other remedies, either to terminate this Agreement and/or any order with Buyer or to suspend further performance under this Agreement in the event Seller fails to receive any payment when due. Buyer shall be liable for all expenses, including attorneys’ fees and other litigation costs, relating to the collection of any past due or dishonored amount. In the event Buyer fails to make any payment to Seller when due, Buyer’s entire account(s) with Seller shall become immediately due and payable without notice or demand by Seller. Any payment owed to Seller that is not paid when due shall bear interest at a rate equal to the lesser of 1.5% per month or the maximum rate permitted by law, accruing on the date on which the payment is due until the date on which the payment is paid.

5. Shipment and Delivery. Buyer acknowledges that the Goods may be comprised of multiple separate deliverables. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. While Seller will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller shall not be liable for any delays, loss, or damage in transit. Seller shall deliver the Goods to the delivery point specified in the Sales Confirmation (the “**Delivery Point**”) using Seller’s standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods immediately upon delivery to the Delivery Point. Buyer shall be responsible for all loading costs and shall provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ohio Uniform Commercial Code. The purchase of the Goods from Seller confers no license, express or implied, under any patent, copyright, know-how, or technology.

7. Inspection and Rejection of Nonconforming Goods. Buyer shall inspect the Goods upon receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. “**Nonconforming Goods**” means only the following: (a) product shipped is different than identified in Buyer’s purchase order; or (b) product’s label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (a) replace such Nonconforming Goods with conforming Goods, or (b) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility per Seller’s instructions. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods to the Delivery Point. Buyer acknowledges and agrees that the remedies set forth in this Section 4 are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section 4, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

8. Third-Party Products. Seller may recommend certain products of third-parties (“**Third-Party Products**”) for use with the Goods. Buyer’s use of such Third-Party Products is at Buyer’s sole risk. In addition, Third-Party Products may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third-Party Products are not covered by Seller’s Warranty. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY THIRD-PARTY PRODUCT.**

9. LIMITED WARRANTY. Seller warrants that the Goods will be free from defects in workmanship and material for a period of one (1) year from the date of shipment (“**Warranty Period**”). Seller shall not be liable under this warranty unless: (a) Buyer gives written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to

have discovered the defect; (b) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller); and (c) Seller reasonably verifies Buyer's claim that the Goods are defective. Seller shall not be liable under this warranty if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, assembly, fabrication, commissioning, use, or maintenance of the Goods, including any provision of the User Manual; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller or otherwise not in accordance with the User Manual. Subject to this Section 9, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (x) repair or replace such Goods (or the defective part) or (y) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller. **THE REMEDIES SET FORTH IN THE WARRANTY SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF WARRANTY. SELLER MAKES NO OTHER WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (iii) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

10. **LIMITATION OF LIABILITY. BUYER ACKNOWLEDGES THE RISKS ASSOCIATED WITH THE GOODS AND THE USE OF THE GOODS AS DESCRIBED IN THE USER MANUAL. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, OR OTHERWISE), AND IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS BUYER(S) EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS OR PORTION OF THE GOODS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, AND BUYER SHALL INDEMNIFY SELLER FOR ANY DAMAGES IN EXCESS THEREOF. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER EXTEND TO INCLUDE INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, ALL OF WHICH ARE WAIVED BY BUYER AND AS TO WHICH BUYER SHALL INDEMNIFY SELLER. FURTHER, BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY LIABILITY TO BUYER, BUYER'S EMPLOYEES, WORKERS, CONTRACTORS OR ANY OTHER PERSONS ARISING OUT OF BUYER'S, OR ANY OTHER PERSON'S, USE OF THE GOODS OR THE THIRD-PARTY PRODUCTS.** The term "consequential damages" as used in these Terms includes, but is not limited to, all fines, penalties, loss of actual or anticipated profits, business interruption, loss of use of revenue, loss of business, loss of savings, cost of capital, loss or damage to property or equipment, loss of reputation, or illness.

11. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to User Manual contents, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

12. **Contingencies.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

13. **Cancellation.** Buyer may cancel any order only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges that include, among other things, all costs and expenses incurred to cover commitments made by Seller and a reasonable profit. Seller's determination of the reasonableness of advance written notice and of such termination charges shall be conclusive.

14. **Assumption of Risks. BUYER ACKNOWLEDGES THAT BUYER IS QUALIFIED TO ASSEMBLE, OPERATE, AND USE THE FLEXQUAD® AND IS IN PROPER PHYSICAL CONDITION TO PARTICIPATE IN SUCH ACTIVITY. BUYER FULLY ACCEPTS AND ASSUMES RESPONSIBILITY FOR ALL SUCH RISKS, LOSSES, COSTS, AND DAMAGES INCURRED AS A RESULT OF BUYER'S PURCHASE, ASSEMBLY, OPERATION, AND/OR USE OF THE FLEXQUAD®. BUYER AGREES TO ASSUME ALL RISKS WHEN ALLOWING OTHERS TO OPERATE BUYER'S FLEXQUAD®. BUYER, FOR BUYER AND ON BEHALF OF BUYER'S SPOUSE, IMMEDIATE FAMILY, CHILDREN, TRUSTEES, BENEFICIARIES, HEIRS, DESCENDENTS, ADMINISTRATORS, PERSONAL REPRESENTATIVES,**

AGENTS, EXECUTORS AND ASSIGNS, PAST AND PRESENT (COLLECTIVELY, THE “RELEASING PARTIES”), DOES HEREBY RELEASE, WAIVE, AND DISCHARGE SELLER AND SELLER’S REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY, THE “RELEASED PARTIES”), FROM ALL CLAIMS, DAMAGES, AND LIABILITIES ARISING OUT OF, RELATING TO, OR IN ANY WAY ASSOCIATED WITH PERSONAL INJURY, DEATH, ACCIDENTS, ILLNESS, OR PROPERTY LOSS SUFFERED BY ANY OF THEM DURING AND/OR RELATED TO OPERATION AND/OR USE OF THE GOODS (THE “RELEASED CLAIMS”). THIS RELEASE AND WAIVER INCLUDES WITHOUT LIMITATION ANY CLAIM RELATING TO ANY NEGLIGENCE OF ANY RELEASED PARTY IN MANUFACTURING, CONSTRUCTING, ASSEMBLING, OR MAINTAINING THE GOODS.

15. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Ohio, without regard to its conflict of law principles. Buyer and Seller agree that the proper venue for all actions arising in connection with these Terms shall be deemed exclusively proper only in state court in Miami County, Ohio, or in the federal court for the Southern District of Ohio, and the parties agree to submit to such jurisdiction. Any action, regardless of form, arising out of any transaction relating to these Terms or any other theory of recovery, shall be brought within the applicable statutory period, but in no event later than one (1) year of the date of tender of delivery of the applicable Goods.

16. Miscellaneous. If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect. No waiver by Seller with respect to any breach or default of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default of any other right or remedy, unless such waiver be expressed in writing and signed by Seller. Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, is void. All rights and remedies of Seller in these Terms are in addition to, and not lieu of, any rights or remedies that Seller may have at law or in equity. These Terms supersede all other prior communications, negotiations and statements, oral or written, regarding the subject matter of these Terms. No change, modification, rescission, discharge, abandonment, or waiver of these Terms shall be binding upon Seller unless made in writing and signed on its behalf by its duly authorized representative. No condition, usage or trade, course of dealing or performance, understanding, or agreement purporting to modify, vary, explain, or supplement these Terms shall be binding unless hereafter made in writing and signed by Seller. No modification shall be affected by Seller’s receipt or acceptance of any purchase order, shipping instruction form, or other documentation of Buyer containing any term at variance with or in addition to these Terms, all of which are objected to by Seller. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. These Terms shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and any uncertainty or ambiguity shall not be interpreted against any one party.

Copyright © 2019 Orison Corporation. All rights reserved.