

TERMS AND CONDITIONS

Sale of any products and/or services ordered by Buyer is expressly conditional on Buyer's assent to the additional or different terms contained herein (including those in Seller's quotation and/or invoice). Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Seller unless specifically assented to in writing by Seller. Any order for, payment of, or any statement of intent to purchase, products and/or services, shall constitute assent to Seller's terms and conditions.

1. DELIVERY, TITLE AND RISK OF LOSS: The scope of work includes delivery of products and/or performance of services. Schedule dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise specified by Seller, delivery will be made Ex Works Seller's facility (Incoterms 2000), shipping and insurance prepaid by Buyer. Risk of loss or damage of products pass to Buyer on delivery, and title passes to Buyer upon Seller's receipt of all payments for products and services.

2. EXCUSABLE DELAYS: Seller shall not have any liability or be considered to be in breach or default of its obligations under the Contract to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to: (a) causes beyond its reasonable control; (b) acts of God, acts (or failures to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riot, terrorist acts, delays in transportation, car shortages or similar causes; (c) acts (or omissions) of Buyer; or (d) inability to obtain necessary labor, materials, components or services through Seller's usual and regular sources at usual and regular prices. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay.

3. PAYMENT: Except to the extent otherwise specified by Seller in its quotation or invoice, payment for all products and services shall be either (i) received in Seller's account, or (ii) secured by a letter of credit in Seller's possession, before Seller has any obligation to begin work on any products or services. If a letter of credit is utilized, payment(s) shall be made upon presentation of an invoice (signed by Seller certifying that the products are manufactured and packaged) against a confirmed irrevocable letter of credit issued and confirmed by and payable at Seller's designated bank. The letter of credit shall (i) be established by Buyer, at Buyer's expense (including confirmation and maintenance charges), and (ii) remain in effect for a period of five months after the Contract is signed by both parties. The letter of credit shall provide for partial payments pro rata on partial deliveries and for the payment of all services, price adjustments, cancellation or termination, and all other payments due from Buyer under the Contract against Seller's invoice and certification of the charges and grounds for such payment, and will otherwise be acceptable to Seller. Buyer will increase the amount(s) or extend the validity period(s) and make appropriate modifications to any letter of credit within ten (10) days of Seller's notification that such is necessary to provide for payments to become due.

If Buyer fails to fulfill any condition of its payment obligations, Seller may suspend performance and delivery. All charges incurred by Seller in accordance with such suspension shall be payable by Buyer upon submission of Seller's invoices. Performance of Seller's obligations shall be extended for a period equaling the period of Buyer's non-fulfillment of any portion of the payment terms, whether or not Seller suspends performance and such additional time as may be necessary. If Buyer does not correct such failure in the manner and time satisfactory to Seller, then Seller may terminate the Contract in respect to the portion of the products not delivered and services not yet performed. In the event of termination, Buyer shall pay (i) Seller's reasonable termination charges as described in Section 12, in addition to suspension charges and amounts owed up to the date of termination, and (ii) a late payment charge at the rate of 1% per month plus all costs of collection, including attorneys' fees; and Seller shall be entitled to keep all payments received. Seller's rights under this Article 3 are in addition to all rights available to it at law and equity.

4. WARRANTIES: Seller warrants to Buyer that products and any services furnished hereunder will be free from defects in material, workmanship and title and will be of the kind and quality specified in Seller's written quotation. The foregoing shall apply only to failures to meet said warranties (excluding any defects in title) which appear within ninety (90) days from the date of delivery of a product or performance of a service (the "warranty period"). These warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR NON-INFRINGEMENT SHALL APPLY. Products not manufactured by Seller are warranted only to the extent the manufacturer's warranty applies to Buyer and which Seller is reasonably able to enforce. Seller does not warrant any products or services to the extent designed or designated by Buyer.

If any product or service fails to meet the foregoing warranties (except title), Seller shall correct any such failure at its option, (i) by repairing any defective or damaged part or parts of the products either at Buyer's facility, or Seller's facility with shipping at Seller's expense, at Seller's option, or (ii) by making available, any necessary repaired or replacement parts, Ex Works Seller's facility (Incoterms 2000) with shipping to Buyer's facility paid by Seller. Where a failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price. Buyer is responsible for all work, expenses and risks of accessing the equipment, disassembly, and reassembly associated with the corrective action.

The preceding paragraph sets forth the exclusive remedies for claims based on defect in or failure of products or services, whether the claim is in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise and however instituted. Upon the expiration of the warranty period, all such liability shall terminate and Buyer shall have a reasonable time, within ten (10) days after the warranty period, to give written notice of any defects that appear during the warranty period.

The conditions of any tests by Buyer shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that may be made. Seller's obligations under this Contract shall not apply to any product, or part thereof, which (i) is defective due to normal wear and tear including that due to environment or operation, including but not limited to excessive operation at peak capability, current or voltage variations, mechanical stresses, erosion, corrosion, material deposits, exposure to fluids, water or other substances, (ii) is not properly stored, installed, used or maintained other than pursuant to Seller's written instructions or approval, or (iii) has been subjected to any other kind of misuse or detrimental exposure, has been involved in an accident, or has been damaged through no fault of Seller. In addition, this warranty is void and Seller has no liability whatsoever under this Contract, for the warranty or otherwise, if (i) Buyer has repaired, changed or modified the product or any portion thereof or its mechanical, electrical, or electronic interconnections, or (ii) Seller is not promptly notified of any failure in writing or has not been given prompt access to the defective or failed product.

5. LIMITATIONS OF LIABILITY: The total liability of Seller, on all claims of any kind, whether in contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise, arising out of or related to the Contract, its performance or breach, or from any products or services, shall not exceed the price allocable to the part of the particular product or service giving rise to the claim. All liability shall terminate upon the expiration of the warranty period specified in Article 4, "Warranties".

In no event, whether as a result of breach of contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise, shall Seller or its subcontractors or suppliers be liable for loss of profit or revenues, loss of use of the products or any associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect or exemplary damages, lost profits or penalties of any description.

In no event shall Seller be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of products or caused by the use of products by Buyer against the advice or safety notices of Seller. If Seller furnishes Buyer with advice or assistance concerning any products, systems or services which is not required pursuant to the Contract or any mutually agreed written specification, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

Buyer waives rights of recovery against Seller, whether Buyer's claim is brought under breach of contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for loss or damage to Buyer's property whether or not such claim is covered by Buyer's insurance.

For the purposes of this Article 5 the term "Seller" shall mean Seller, its principal, its affiliates, officers, directors, subcontractors and suppliers of any tier, and their respective agents and employees, whether individually or collectively.

The provisions of this Article 5 shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the agreement between Buyer and Seller, except to the extent that such provisions further restrict Seller's liability.

6. TAXES AND DUTIES: In addition to any price specified herein, Buyer shall pay the gross amount of all present or future taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), applicable to the price or imposed by any governmental authority of any country on Seller or its employees or subcontractors due to the execution of any contract, sale or delivery of any products, or the performance of any services furnished hereunder, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing or customs authorities.

7. INDEMNITY: Notwithstanding any other provision of the Contract, in no event, whether as a result of breach of contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, shall Seller have any liability to Buyer or its insurers for any loss, damage, fines, penalties, or injury arising out of, connected with, or resulting from the Contract, or from its performance or breach, or from the use or consumption of the products or services by Buyer or any subsequent user of the products or services. Buyer expressly agrees that as a condition of its purchase of the products or services, Buyer shall indemnify and hold Seller harmless of, and from any and all liability which may be asserted against or incurred or suffered by Seller by virtue of any suit or claim of any kind arising out of, connected with, or resulting from the Contract, or from its performance or breach, or from the use or consumption of the products or services by Buyer or any subsequent user of the products or services, including claims or suits for breach of contract, indemnity, warranty, tort (including negligence), strict liability, or otherwise. Buyer shall pay any and all judgments rendered against Seller as a result of the foregoing and shall pay all costs and expenses incurred by Seller in defending any action brought against Seller as a result thereof, including Seller's reasonable attorney's fees and expenses, expert witness fees and expenses and court costs. If requested by Seller, Buyer shall, at its own cost and expense, defend any and all such actions on Seller's behalf, and agrees not to take a position contrary to Seller's interests.

8. COMPLIANCE WITH LAWS: Buyer agrees to take such measures as may be necessary to ensure that the disclosure of technical data complies with all export control laws and regulations which may govern the disclosure. Buyer represents and warrants that no technical data it receives from Seller which is subject to the export control laws of the United States shall be exported from the United States or re-exported to any other country without first complying with all U.S. export control laws and regulations, including the requirement for obtaining an export license, if applicable. Buyer shall be responsible for obtaining the appropriate U.S. export license to export or re-export any such technical data. Buyer shall indemnify and hold Seller harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from Buyer's failure to comply with this Section 8 and applicable export control laws and regulations.

Buyer certifies that the products, materials, services, technical data, software or other information or assistance furnished by Seller under the Contract will not be (a) used by any individual or entity listed as a prohibited party on any list of the U.S. Government of prohibited or denied parties, (b) sent to any party in a country listed as a prohibited country by the U.S. Government, or (c) used in the design, development, production, stockpiling or use of chemical, biological, or nuclear weapons either by Buyer or by any entity acting on Buyer's behalf. In the event that Buyer uses any product for a hazardous application, or permits others to use any product for any such application, Buyer accepts all responsibility, Seller shall have no liability for any damages or injuries, and Buyer shall indemnify, defend and hold Seller harmless from all claims, losses, damages and expenses, including reasonable attorneys' fees, arising from any such use or hazardous application of any product. A hazardous application is one in which any use, failure, malfunction or inaccuracy of a product carries a risk of death or serious bodily injury.

9. DISCLOSURE OF INFORMATION: All information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a nondisclosure agreement (NDA) signed by both parties.

10. PATENTS: Seller makes no warranty that Buyer will hold the products free of claims of third parties, including claims of alleged patent, trademark, copyright, trade secret or other intellectual property infringement. Seller specifically disclaims any patent, trademark, copyright, trade secret or other intellectual property indemnity or warranty that may be expressed or implied by any statute of any country, including the Uniform Commercial Code.

11. SOFTWARE: Unless otherwise agreed in writing by Seller, there are no rights to software granted to Buyer under this Contract. In the event that Buyer desires to license any software used by Seller, Buyer must contact the owner of such software to

negotiate a software license agreement with such owner in order to use such software. Seller makes no representation that it is the owner or licensee of any software, or that it has any right to sell, or grant any license to Buyer to use, any software.

12. MISCELLANEOUS: The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void. Any representation, promise, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Seller. These Terms and Conditions, including Seller's quotation, collectively referred to herein as the "Contract", contain the entire and only agreement between Buyer and Seller respecting the terms and conditions and supersedes and cancels all previous negotiations, agreements, commitments, representations and writings in respect thereto. No modification, amendment, rescission, waiver or other change shall be binding on Seller unless assented to in writing by Seller. The validity, performance, and all matters relating to the interpretation and effect of this Contract and any amendment hereof shall be exclusively governed by the law of the State of New York, USA, without giving effect to any conflicts of laws or choice of law rules that would apply the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The invalidity, in whole or part, of any of the articles or paragraphs in these Terms and Conditions will not affect the remainder of such article or paragraph or any other article or paragraph. Nothing in this Contract shall be construed to impose any overall "system responsibility" on Seller or responsibility for any goods in which Seller's product is only a part or component.

Buyer shall not modify, disassemble, decompile, reverse engineer (or in any other manner attempt to decipher or analyze) or develop any goods or component using or involving the product or using Seller's information (including but not limited to such information imbedded within a product or component of a product sold by Seller), except pursuant to a written agreement with Seller to do so. Buyer shall not use any products or components of Seller to produce, market, or support its own goods, except after purchasing such products or components from Seller or pursuant to a written agreement with Seller to do so.

Any and all information related to, or arising out of, Seller's Intellectual Property or Improvements is deemed to be the information of Seller. "Intellectual Property" means any patent, patent application, industrial design, invention, design, trade secret, idea, work, technology, innovation, creation, concept, development drawing, research, analysis, know-how, experiment, copyright, data, formula, method, procedure, process, system or technique and any right to apply for any of the foregoing. "Improvement" means any modification, amendment, alteration, improvement, change, update, upgrade, enhancement, deletion to, or derivative work of, the Intellectual Property of Seller. Buyer agrees that it will not use any information of Seller or any Improvement made by either party as a basis for the design or creation of any item, application or software. All right, title and interest in and to the Intellectual Property of Seller and all Improvements shall remain with, and vest exclusively in Seller. If any such right, title or interest becomes vested in Buyer by operation of law or otherwise, Buyer will do everything necessary, to vest all such right, title and interest in Seller. Buyer will execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the obligations contained in this paragraph, provided however, neither party is obligated to enter into a further business relationship with the other party.

Changes to the schedule or scope of work can only be made by mutual written agreement of the parties. Seller is not obligated to proceed with any change or additional work until an equitable adjustment of the contract price and schedule are agreed to in writing.

The Contract cannot be canceled or terminated by Buyer in whole or in part except with Seller's consent in writing and then only upon terms and conditions then to be agreed upon which shall include reasonable termination charges. "Reasonable termination charges" means the pro-rata share of the Contract price for the scope of work performed, plus expenses resulting from cancellation or termination.

As used in the Contract and invoice, "including" means "including but not limited to" the specifically enumerated things, states, or actions that follow the term; "or" means "one or the other or all" of the specifically enumerated things, states, or actions that follow the term; and "shall" or "will" means the listed duties or actions are mandatory.

Articles 4 through 12, and any remaining payment obligations of Buyer, shall survive termination of the Contract.