

Standard Terms & Conditions of Sale

- 1. Exclusive Warranty - Goods manufactured by Seller** – Seller warrants to the original Buyer that its new goods are free from defects in materials and workmanship. Seller warrants rated performance of its new goods provided that such goods are used and maintained in accordance with the conditions set forth in the contract documents, including, but not limited to, the operating and maintenance manuals, and installation and use criteria set forth in specifications which are a part of this Agreement, or if there are none, under good operating, maintenance and use conditions. Seller's obligation under this warranty is limited to the repair, or, at Seller's option, the replacement of new equipment within twelve (12) months of delivery to the original Buyer, or the replacement of spare parts within ninety (90) days of delivery to the original Buyer, returned FOB to Seller's plant of manufacture, and which, after examination, appear to Seller's satisfaction to be defective under this warranty. All costs of shipping, insurance, and risk of loss arising in connection with performance of this warranty shall be borne by Buyer. **Components purchased by Seller** – Seller shall attempt to obtain, in its subcontracts with each supplier of components not made by Seller, a provision that the subcontractor's standard warranty, if any, shall survive Seller's inspection, acceptance, and payment, and shall run to Seller, its successors, assigns, and customers. **Designs** – Seller warrants to the original Buyer of its designs that such designs satisfy criteria and specifications set forth in the contract documents. Seller's obligation under this warranty is limited to redesign if, within twelve (12) months after delivery of new equipment, or ninety (90) days for spare parts, to the original Buyer, Buyer demonstrates to Seller's satisfaction that said design criteria and specification were not satisfied by Seller's design. If Seller manufactures the goods in accordance with Buyer's specifications, Seller shall have no liability whatsoever for defects in design or failure of performance of the goods. **Technical Assistance** – Seller warrants that services shall be provided in a professional manner. Seller's obligation hereunder is limited to the providing of services by its employees or agents at the time and place, and to the extent specified in this Agreement. THERE SHALL BE NO EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY BEYOND THE EXPRESS TERMS OF THIS AGREEMENT UNLESS EXPRESSLY AGREED TO IN A WRITING SIGNED BY AN OFFICER OF SELLER. SELLER DOES NOT WARRANT ITS GOODS AS TO THEIR FITNESS FOR ANY SPECIAL USE OR FUNCTION OR AS TO THEIR LIFE AFTER SALE TO BUYER AND/OR TO SUBSEQUENT BUYERS OR USERS OF THE GOODS. There are no warranties, express or implied, arising from course of dealing, course of performance, or usage of trade which extend beyond the face of this Agreement. Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its goods. Seller has no responsibility whatsoever for reimbursing Buyer, its customers or users of the goods, nor shall Seller be liable in damages for repair or replacement costs incurred by Buyer, its customers or users of the goods in connection with the goods or parts thereof, without Seller first having given its written authorization for such charges and without Seller having an opportunity to perform its warranty obligations as hereinabove set forth. Seller's warranties as hereinabove set forth shall not be enlarged or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical assistance or service in connection with the goods furnished hereunder. The limitations set forth herein shall not be affected by the failure of the repair and replacement remedy provided hereinabove. In no event shall Buyer, its successors, assigns, customers or users of the goods commence any action against Seller arising out of the sale, delivery or use of the goods and regardless of the form of the action (whether in contract or tort) later than one (1) year after the cause of action has accrued. Buyer's assertion of any rights under this warranty provision shall be in writing and shall specify with particularity the alleged defects in the goods.
- 2. Damages** – Seller shall not be liable for any exemplary, indirect or consequential damages (including loss of goodwill, revenues or profits) suffered by Buyer, any customer of Buyer or any user of the goods resulting from the nondelivery, use or inability to use the goods, integration of the goods with equipment not provided by Seller and/or from any other cause whatsoever, even if Seller has been advised of the possibility of such damage. Seller's maximum total liability under this Agreement for actual, exemplary, incidental, proximate and/or consequential damages or expenses arising from any breach or breaches of warranty or failure to deliver the goods in conformance with this Agreement (regardless of the form of action, whether in contract or in tort) shall not exceed the lesser of: (i) the amount Buyer has paid to Seller for the goods, or (ii) the amount of Buyer's actual damages, or (iii) in the case of property damage or personal injury, the amount of such damages covered by Seller's liability insurance, and the period of such liability shall not extend beyond the warranty period under this Agreement. Buyer's remedies and measure of damages as set forth in this Agreement shall be exclusive.
- 3. Price** – Unless otherwise specified, price includes domestic packaging and crating charges, and transportation to the specified FOB point. Buyer will pay any additional transportation charges. Prices do not include any federal, state, or local taxes, assessments, or import duties applicable to the sales, ownership, production, transportation or use of goods sold. Any such tax or duties shall be separately itemized on Seller's invoice and paid by Buyer, or, in lieu thereof, Buyer shall furnish Seller with a valid tax exemption certification in the event Seller is required to pay such tax or assessments. Buyer shall reimburse Seller upon demand, plus interest on such amount at the rate of ten percent (10%) per annum from the date paid by Seller. Seller shall be under no obligation to contest the validity of any such tax or assessments or to prosecute any claims for refunds or returns. Any personal property taxes or similar taxes or assessments against the goods or on account of materials segregated for the Buyer and being held by the Seller at Buyer's request shall be paid by Buyer.
- 4. Shipments and Packaging** – Unless otherwise agreed in writing, all shipments shall be EX WORKS Seller's plant or plants, and title passed to Buyer upon delivery to carrier at such point, and packaging will be accomplished in accordance with Seller's standard commercial practice for domestic shipments. Seller may ship goods to the Buyer's place of business by such means as Seller shall select if adequate shipping instructions are not received from Buyer at least thirty (30) days before the shipment date. Buyer accepts all risk of loss or damage thereto, upon delivery of goods by Seller to a carrier, shipper, forwarding agent, transporter, or Government mailbox or post office, whether selected by Buyer or Seller. In no event shall Seller be responsible for any goods after delivery to such shipping means.
- 5. Payments** – Terms of payment, on open accounts only, are net thirty (30) days from receipt of invoice, unless otherwise agreed to in writing. Buyer agrees to pay Seller's finance charges (10% per annum) for late payments, and any expenses incurred in collecting such unpaid balance and finance charges, or in recovering possession of the goods.
- 6. Cancellation** – This Agreement is subject to cancellation only upon Seller's accepting such cancellation in writing, and the effective date of such cancellation shall be the date of such acceptance. Upon acceptance of cancellation, Seller shall commence efforts to terminate the purchase, rental, service, and employment commitments relating to the order, and Buyer shall be liable for the costs of terminating such commitments, as well for the payment for completed work, work in process at the time of cancellation, and lost profits. Buyer shall make payment of cancellation charges upon receipt of statement of same. Cancellation charges shall not exceed the purchase price of the cancelled portion of the Agreement.
- 7. Acceptance** – Buyer shall inspect all goods immediately upon their delivery to the destination stated in the Agreement and shall within ten (10) days provide written notice to Seller at its principal place of business of any claim that the goods do not conform to the terms of the Agreement. Any such notice shall specify with particularity each alleged defect or nonconformity. If Buyer shall fail to give such timely notice, the goods shall be conclusively deemed to conform to the terms and specifications of this Agreement and shall constitute an irrevocable acceptance of the goods. Any use by Buyer of the goods other than solely for test purposes, or any alteration of the goods by Buyer without Seller's prior written consent, shall be conclusive and binding evidence that the goods conform to the terms and specifications of this Agreement. If Buyer accepts or is deemed to have accepted the goods as hereinabove provided, Buyer shall not be entitled to revoke acceptance thereof at a subsequent time. In the event Buyer timely rejects the goods in accordance with the terms of this Agreement, Buyer shall hold the goods without charge to Seller for a reasonable time until Seller shall give instructions to Buyer with respect to the goods. Should Buyer sell or dispose of the goods, such sale or disposition shall constitute an unequivocal acceptance of the goods, notwithstanding any prior rejection of the goods.
- 8. Excusable Delays** – Seller shall not be in default for failure to deliver or delay in delivery arising out of causes beyond its control and without its negligence, including, but not limited to: Acts of God or the public enemy; Acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of materials or suppliers, labor disputes, freight embargoes, delays in transit, and unusually severe weather. If the delay or failure to deliver is caused by a delay or failure of a subcontractor supplier of Seller, and if such delay or failure arises out of causes beyond the control of Seller, Seller shall not be liable in damages nor shall Seller be in default hereunder, unless the material or services to be furnished by the subcontractor or supplier were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule using reasonable effort. Any of the above excusable delays shall not terminate this Agreement, and Seller shall deliver the goods as promptly as practical thereafter. The time of the delivery set forth in the Agreement shall be extended, in the event of any change order or request for modification required by Buyer, for such period as is reasonably necessary for Seller to comply with any such change order or request for modification. In the event of a failure to deliver the goods in a timely manner, Buyer shall not have any right to procure goods from any other source except at Buyer's sole expense, provided, however, that after payment to Seller of the contract price for any completed goods and work in process, according to the terms of this Agreement, Buyer may procure such goods or portions thereof with Seller's written approval, and at Buyer's expense, the price of which shall not exceed the amount still owing under this Agreement after required payments for such completed goods and work in process that have been subcontracted therefrom. Buyer's acceptance of late delivery goods shall constitute complete and satisfactory performance by Seller.
- 9. Patent Indemnity** – If the goods furnished hereunder are specified in the Agreement as being "standard commercial supplies" of Seller, Seller agrees to indemnify Buyer, its successors, assigns, agents, and users of its products against loss, damage, or liability, including cost and expenses, such as may be incurred on account of any suit, claim, judgment or demand involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any goods supplied hereunder, provided Buyer shall promptly notify Seller of any suit instituted against it and, to the full extent of its ability to do so, shall permit Seller to defend the same or make settlement in respect thereto. In the event the goods furnished hereunder are produced under special specifications of Buyer, no liability under this paragraph shall arise against Seller. In like manner, Buyer agrees to save Seller harmless from patent infringements resulting from Seller's compliance with designs and/or specifications not originating with Seller now or hereafter forming a part of this Agreement or with specific written instructions given by Buyer for the purpose of directing the manner in which Seller shall perform this Agreement.
- 10. Use of Products** – Seller grants no license or right, expressly or by implication, estoppel, or otherwise, beyond the right of Buyer to use the specified goods in the form delivered by Seller. Further, Seller's products are offered for sale and are sold subject in every case to the condition that such sale does not convey any license, expressly or by implication, estoppel, or otherwise, under any patent claim with respect to which Seller could grant licenses covering any other product, or any completed equipment, or any assembly, piping spool, circuit, combination, method or process in which, or in the manufacturing or testing of which, any such Seller products are used (notwithstanding that such Seller products may have been designed only for use in, or may only be useful in, such other patented products or such patented equipment, assembly, piping spool, circuit, combination, method or process, or in the manufacturing or testing thereof, and that Seller products may have been purchased and sold for such use). Seller expressly reserves all its rights under such patent claims.
- 11. Proprietary Rights** – The prints, drawings or specifications of Seller attached hereto or hereafter furnished by Seller to Buyer in connection with the obtaining or the performance of this Agreement are the property of Seller and represent a proprietary article with respect to which Seller retains all United States or foreign letters patent, trademarks or copyrights, including exclusive rights of use, manufacture and sale. Possession by Buyer of such prints, drawings or specifications does not convey any permission to manufacture, use or sell any goods shown thereon, and such information is disclosed to Buyer on a confidential basis. Buyer shall not, directly or indirectly, disclose, copy or otherwise transfer such information to any third party at any time without the prior written consent of Seller. Buyer, Buyer's customers and users of the goods shall not modify or reverse engineer any of the goods or parts thereof.
- 12. Termination** – If Buyer fails to comply with any of the provisions hereof, or becomes the subject of a proceeding under state or federal law for relief of debtors, or makes an assignment for the benefit of creditors, Seller shall have the right to hold Buyer in default and, in addition to any other rights it may have, may cancel this Agreement in whole or in part.
- 13. Effect of Invalidity** – The invalidity in whole or in part of any provision hereto shall not affect the validity of any other provision.
- 14. Credit** – Seller reserves the right at any time to alter or suspend credit, or to change credit terms provided herein, when in its sole opinion the financial condition of the Buyer so warrants. In such case, in addition to any other remedies herein or by law provided, cash payment or satisfactory security from Buyer may be required by Seller before shipment, or Seller may, at its option, defer further shipments to Buyer until Buyer reestablishes satisfactory credit, cancel the unshipped portions of the order without any liability for failure to ship, or make shipments to Buyer on a prepayment or COD basis. Payments made by trade acceptances, notes, securities, postdated checks, etc., are unacceptable unless first approved in writing by Seller.
- 15. Remedies** – The rights and remedies provided Seller herein shall be cumulative, and in addition to any other rights and remedies provided by law or equity. Seller's failure to insist upon strict performance of any provision of this Agreement shall not be deemed to be a waiver of Seller's rights or remedies, nor a waiver by Seller of any subsequent default by the Buyer in performance of compliance with any of the terms of this Agreement.
- 16. Disputes** – Any controversy or claim arising out of or relating to this Agreement or a breach thereof shall be settled by arbitration in Los Angeles, California, in accordance with the Rules of the Judicial Arbitration Mediation Service ("JAMS"). Any award or decision obtained from any such arbitration proceeding shall be final and binding on the parties, and judgment on any award thus obtained may be entered in any court having jurisdiction thereof. The arbitrator(s) shall have the right to award any form of relief, provided, however, that the arbitrator(s) shall not have authority to award punitive damages. The cost of the arbitration shall be borne equally by the parties and each party shall be responsible for payment of its own attorneys' fees, expert witness fees and other expenses incurred in connection with the arbitration. In the event JAMS is not available to conduct the arbitration, the arbitration shall be conducted by the American Arbitration Association in accordance with its Rules for Commercial Arbitration then in effect.
- 17. Assignment** – Buyer may not assign this Agreement, or any portion thereof without the express prior written consent of Seller. Subject always to the foregoing, this Agreement insures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto. In no event shall assignment relieve Buyer of liability for performance of the obligations imposed by this Agreement.
- 18. Conformance with Law** – Buyer assumes all responsibility for conformance of the goods with laws, rules, regulations and ordinances of any governmental or quasi-governmental agency applicable to the use or operation of the goods.
- 19. Entire Agreement** – This Agreement shall constitute the entire understanding of the parties with reference to the subject matter hereof, and it is agreed that there are no understandings, promises, representations or agreements, whether oral or written, heretofore entered into between Seller and Buyer which have any force or effect. Only a writing signed by the parties may amend this Agreement. No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, promise, representation or warranty concerning the goods, and any such affirmation, promise, representation or warranty shall be of no force or effect unless set forth in this Agreement. The laws of the State of California shall govern the formation, performance, and construction of this Agreement.