



1. Applicable Terms. These terms govern the purchase and sale of the equipment and related services, if any (collectively, "Equipment"), referred to in Seller's quotation, proposal or acknowledgment, as the case may be ("Seller's Documentation"). These terms together with Seller's Documentation comprise the complete and exclusive agreement between the parties (the "Agreement"). The Agreement may only be modified by a written instrument signed by authorized representatives of both parties. Any additional, different or conflicting terms contained in Buyer's request for proposal, specifications, purchase order or in any other written or oral communication from Buyer are hereby rejected by Seller and shall not be binding in any way on Seller.
2. Price and Payment. Buyer shall pay Seller the full purchase price as set forth in Seller's Documentation. Unless Seller's Documentation provides otherwise, freight, storage, insurance and all taxes, duties or other governmental charges relating to the Equipment shall be paid by Buyer. If Seller is required to pay any such charges, the amount so paid shall become immediately due and payable to Seller by Buyer. Unless otherwise stated in Seller's Documentation, all payments are due within 30 days after receipt of invoice. Buyer shall be charged 1½% interest per month on all amounts not received by the due date and shall pay all of Seller's costs (including attorneys' fees) of collecting amounts due but unpaid. If Buyer fails to make any payment when due, Seller may, without advance notice, terminate this order without liability; or condition such order on such modifications to the terms of payment as Seller, in its discretion, deems appropriate. In such case, Seller may also, in its discretion, withhold further manufacture or shipment; require immediate cash payments for past and future shipments; or require other security satisfactory to Seller before further manufacture or shipment is made.
3. Delivery. Delivery of the Equipment shall be in material compliance with the schedule in Seller's Documentation. Unless Seller's Documentation provides otherwise, delivery terms are F.O.B. Seller's facility. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. Claims for damage, shortage or errors in shipping must be reported within two business days following delivery to Buyer. Buyer shall have one business day from the date Seller completes start-up of the Equipment to inspect such Equipment for defects and nonconformance which are not due to damage, shortage or errors in shipping, and notify Seller, in writing, of any defects, nonconformance or rejection of such Equipment. After such one business day period, Buyer shall be deemed to have irrevocably accepted the Equipment, if not previously accepted. After such acceptance, Buyer shall have no right to reject the Equipment for any reason or to revoke acceptance.
4. Ownership of Materials. All devices, designs (including drawings, plans and specifications), estimates, prices, notes, electronic data and other documents or information prepared or disclosed by Seller, and all related intellectual property rights, shall remain Seller's property. Seller grants Buyer a non-exclusive, non-transferable license to use any such material solely in connection with Buyer's use of the Equipment. Buyer shall not disclose any such material to third parties without Seller's prior written consent.
5. Changes. Seller shall not implement any changes in the scope of work described in Seller's Documentation unless Buyer and Seller agree in writing to the details of the change and any resulting price, schedule or other contractual modifications. This includes any changes necessitated by a change in applicable law occurring after the effective date of the Agreement.
6. Warranty. Seller warrants to Buyer that during the period that ends 18 months from delivery or one year from acceptance, whichever occurs first (the "Warranty Period"), the Equipment shall materially conform to the specifications set forth in Seller's Documentation and shall be free from defects in material and workmanship. If Buyer gives Seller prompt written notice of breach of this warranty within the Warranty Period, Seller shall, at its sole option and as Buyer's sole and exclusive remedy, repair or replace the Equipment or any non-conforming parts thereof. If Seller determines that any claimed breach is not, in fact, covered by this warranty, Buyer shall pay Seller's then customary charges for any repair or replacement made by Seller. The warranty on repaired or replaced Equipment or parts is limited to the remainder of the Warranty Period. The foregoing warranty shall not apply to any Equipment or part thereof (x) that is (a) not operated and maintained in accordance with Seller's instructions, (b) damaged as a result of any unauthorized repairs or alterations, (c) damaged by chemical action or abrasive material, misuse, (d) damaged by improper installation (unless installed by Seller), and (e) specified or otherwise demanded by Buyer and is not manufactured or selected by Seller, as to which Seller hereby assigns to Buyer, to the extent assignable, any warranties made to Seller; and (y) if Buyer is in default of any payment obligation to Seller under this Agreement. Seller's warranty does not cover any adsorbing media or other consumables used in the Equipment, regardless of whether such media or consumables were supplied by Seller. THE WARRANTIES SET FORTH IN THIS SECTION ARE SELLER'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO SECTION 9 BELOW. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. The warranty set forth herein, subject to any limitations set forth elsewhere in Seller's Documentation, shall be transferable during the Warranty Period to the initial end-user of the Product.
7. Force Majeure. Neither Seller nor Buyer shall have any liability for any breach (except for breach of payment obligations) caused by extreme weather or other act of God, strike or other labor shortage or disturbance, fire, accident, war or civil disturbance, delay of carriers, failure of normal sources of supply, act of government or any other cause beyond such party's reasonable control.
8. Cancellation. If Buyer cancels or suspends its order for any reason other than Seller's breach, Buyer shall promptly pay Seller for work performed prior to cancellation or suspension and any other direct costs incurred by Seller as a result of such cancellation or suspension.
9. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND SELLER'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE EQUIPMENT OR PARTS SHALL NOT EXCEED THE PURCHASE PRICE PAID UNDER THIS AGREEMENT. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR ANY OTHER THEORY. THE REMEDIES SET FORTH IN THIS AGREEMENT ARE INTENDED TO CONSTITUTE A COMPLETE ALLOCATION OF THE RISKS BETWEEN THE PARTIES AND LIMITS THE REMEDIES THAT MIGHT OTHERWISE BE AVAILABLE. BECAUSE THIS AGREEMENT AND THE PRICE PAID REFLECT SUCH ALLOCATION, THE REMEDIES PROVIDED TO BUYER HEREUNDER WILL NOT HAVE FAILED OF THEIR ESSENTIAL PURPOSE EVEN IF THEY OPERATE TO BAR RECOVERY FOR CERTAIN DAMAGES THAT BUYER MAY INCUR.
10. Set-off and Backcharges. Buyer will not be entitled to set-off any amounts due Buyer against any amount due Seller from Buyer. Seller will not be responsible for any backcharges unless approved in writing in advance by an authorized representative of Seller. Any request for backcharges must be submitted by Buyer to Seller at least three business days prior to the date on which Buyer desires to assess such backcharge to enable Seller to conduct a site visit or to conduct such other investigation as it deems reasonably appropriate.
11. Export Compliance. Buyer acknowledges that Seller is required to comply with applicable export laws and regulations relating to the sale, exportation, transfer, assignment, disposal and usage of the Equipment provided under this Agreement, including any export license requirements. Buyer agrees that such Equipment shall not at any time directly or indirectly be used, exported, sold, transferred, assigned or otherwise disposed of in a manner which will result in non-compliance with such applicable export laws and regulations.
12. Miscellaneous. If these terms are issued in connection with a government contract, they shall be deemed to include those federal acquisition regulations that are required by law to be included. If any provision of the Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions thereof will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law. Buyer may not assign or permit any other transfer of the Agreement without Seller's prior written consent. The Agreement shall be governed by the laws of the State of California without regard to its conflict of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and excluded.