



CONTRACT OF SALES AND SERVICES

TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS ARE INTENDED AS THE FINAL EXPRESSION OF THE PARTIES' AGREEMENT AND ARE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS THEREOF. NO STATEMENTS OR INSTRUCTIONS, ORAL OR WRITTEN, SHALL VARY OR MODIFY THESE WRITTEN TERMS; AND NEITHER PARTY SHALL CLAIM ANY AMENDMENT, MODIFICATION OR RELEASE FROM ANY PROVISION HEREOF BY REASON OF (A) A COURSE OF ACTION OR MUTUAL AGREEMENT UNLESS SUCH AGREEMENT IS IN WRITING SIGNED BY THE OTHER PARTY AND SPECIFICALLY STATING IT IS AN AMENDMENT TO THIS CONTRACT, (B) COURSE OF PERFORMANCE OR (C) USAGE OF TRADE. NO MODIFICATION OR ADDITION TO ANY CONTRACT OR SALES AGREEMENT SHALL BE EFFECTED EXCEPT BY THE PRIOR WRITTEN ACKNOWLEDGEMENT AND ACCEPTANCE BY **SELLER**. BUYER'S ACCEPTANCE OR USE OF ANY SERVICES DELIVERED CONSTITUTES THE BUYER'S FULL ACCEPTANCE OF THESE TERMS AND CONDITIONS.

1. ENTIRE CONTRACT

Hereby incorporated into this contract are the following document(s) in priority order:

- i. Seller's Order Acknowledgement
- ii. Seller's Quotation/Proposal
- iii. Buyer's Purchase Order

Included on the Purchase Order and provided by Buyer shall be the following information: 1) Contact Person and Title including, telephone number, fax number and email address; 2) Shipping Address; 3) Emergency 24 hour Phone Number; 4) Receiving Hours (specific days of the week and time schedules); 5) Preferred Shipping Company and Account Number if applicable.

2. PRICE/DELIVERY

Seller's quotation is based on the receipt of an order for the items/services in the quantities and delivery schedule quoted, unless otherwise indicated by **Seller's** Quotation/proposal, and is subject to adjustment in the event that different items/services/quantities or delivery schedules are requested. These prices do not include Sales or Use Taxes, which may be applicable to the goods and/or services hereunder. Delivery dates are our best estimates regarding the availability of items/services ordered.

3. TAXES AND FEES

Buyer shall reimburse **Seller** for any federal, state or local excise or other tax, assessment, license fee or other charge, or increases thereof, which **Seller** may be required to pay upon the sale, production, transportation, delivery or use of the product. Taxes will be billed separately on each invoice unless **Seller** is provided with a properly authorized Sales Tax Exemption Certificate or other appropriate documentation as may be required.

4. PAYMENT TERMS

All prices /rates are in U.S. dollars, unless otherwise indicated on **Seller's** Order Acknowledgement, and payment is due within thirty (30) days of invoice date unless otherwise indicated on **Seller's** order acknowledgement. Payment terms are subject to credit review or changes at any time. All late payments are subject to an interest charge of 2% per month, which will be billed separately.

5. CONFIDENTIALITY

The Parties acknowledge and agree that all ordering information will be treated confidentially.

6. EFFECTIVE DATE

Buyer's Purchase Order shall take effect only upon the issuance of Order Acknowledgement by **Seller**, and after receipt by **Seller** of a fully executed Purchase order, and after receipt by **Seller** of all relevant licenses and permits, and shall have a period of performance as stated on **Seller's** Order Acknowledgement from this effective date, unless extended in writing by mutual agreement.

7. INSPECTION AND ACCEPTANCE

The **Buyer** shall inspect the products/services promptly after receipt thereof and shall notify **Seller** in writing, within ten (10) days of receipt of the items, of any failure of the supplies/services to meet the requirements of the contract. If no such notice is given by the **Buyer** to **Seller**, it will be deemed conclusively that there are no deficiencies and that the supplies/services conform to the requirements of the order and the Buyer will be liable for payment therefore in accordance with the terms of the order.

8. CLAIMS

The weights, fares and tests fixed by **Seller's** invoice shall govern unless proved to be inaccurate. Claims relating to quantity, quality, weight, condition and loss of or damage to any of the product sold hereunder shall be waived by Buyer unless made within fifteen (15) days after receipt of product by Buyer.

9. WARRANTY

- a. **Seller** warrants to the **Buyer** that the services provided by **Seller** shall be performed by qualified technical personnel with a reasonable level of skill and training which is commensurate with Industry Standards.
- b. Products provided by Seller to the **Buyer** shall conform to the specifications as stated herein on **Seller's** order Acknowledgement.
- c. EXCEPT FOR THE EXPRESS WARRANTY STATE HEREIN, SELLER DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SUITABILITY FOR A PARTICULAR USE. THERE SHALL BE NO LIABILITIES ON THE PART OF SELLER FOR DAMAGES INCLUDING BUT NOT LIMITED TO SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE, OR LOSS OF REVENUES, OR PROFITS ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE MATERIALS DELIVERED UNDER THE TERMS OF THIS AGREEMENT, OR ARISING OUT OF THE BREACH OF ANY WARRANTY. SELLER SHALL NOT BE RESPONSIBLE FOR ANY PERSONAL INJURY OR INJURIES RELATED TO OR ARISING OUT OF THE ITEMS OR SERVICES RELATED TO THIS AGREEMENT, AND HEREBY FURTHER DISCLAIMS ANY LIABILITY THEREFOR.

10. LIMITATION OF LIABILITY

Buyer's exclusive remedy and Seller's exclusive liability under a contract or sales agreement (including negligence) shall be for, at **Seller's** opinion, either replacement of nonconforming goods at the FOB point stated in this contract or damages which shall in no event exceed so much of the purchase price as is applicable to that portion of the particular shipment with respect to which damages are claimed. In no event shall **Seller** be liable to **Buyer** for any incidental or consequential damages arising in connection with the contract or sales agreement or the product sold. **Buyer** assumes all risks and liability, and **Seller** assumes no liability, with respect to unloading and discharge of the product (including failure of discharge or unloading implements or materials use by **Buyer**, whether or not supplied by **Seller**), storage, handling, sale and use of the product (including its use alone or in combination with other substances or in operation of any process), and the compliance or non-compliance with all federal, state and local laws and regulations applicable to the product.

11. SEVERABILITY

If any provisions of this document shall be prohibited or invalid, that provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of that provision and the remaining provisions of the contract.

12. INDEMNIFICATION

Buyer shall assume full responsibility for the use of the products or deliverables after purchase and will indemnify and hold **Seller** harmless from and against any and all liability resulting from such use.

13. INTELLECTUAL PROPERTY

All drawings, technical manuals, software, and other technical data which may be provided to the **Buyer** pursuant to this contract are the property of **Seller** and shall not be released outside the **Buyer's** organization or resold without the written approval of **Seller**.

14. ASSIGNMENT

This contract is not assignable without the prior written consent of **Seller**. Neither a contract or sales agreement nor any right or obligation under same is assignable or transferable by either party in whole or in part without the prior written consent of the other party and any such purported assignment without such consent shall be void, except that **Seller** shall have the right to assign any contract or sales agreement and its rights and obligations, without obtaining the prior written consent of Buyer, to any entity with which **Seller** (a) merges, (b) sells a substantial part of its assets or businesses, or (c) sells a substantial part of its assets or business relating to the manufacture / and/or sale of the product.

15. APPLICABLE LAW

This contract shall be governed by and construed in accordance with the laws of the State of New York.

16. TITLE/RISK OF LOSS

Title and risk of loss to all items hereunder shall pass to the **Buyer** at the shipment destination upon delivery to Common Carrier indicated by the FOB point applicable to this order.

17. EXPORT

Regardless of any disclosure by the **Buyer** to **Seller** of the ultimate destination of the Products, **Buyer** will not export, directly or indirectly, any **Seller's** product without first obtaining the appropriate export approvals or licenses from the Department of Commerce or other agency of the United States Government, as may be required. **Buyer** is required to certify the end item use for this material on the order. If material is in support of a U.S. government contract, please include the contract number.

18. FORCE MAJEURE

Neither party shall be liable for its failure to perform if due to any contingency beyond the reasonable control of the party affected, including but not limited to acts of God, war, fire, bad weather, flood, accident, labor trouble or shortage, civil disturbance, plant shutdown, equipment failure, issues involving national security, or voluntary or involuntary compliance with any applicable governmental act, regulation or order **Seller** shall not be liable for its failure to perform if such failure is due to any shortage or inability to obtain (on terms deemed economically practicable by **Seller**) any raw material (including energy), equipment or transportation. Any quantities not delivered or accepted because of an such contingency shall be eliminated from any contract or sales agreement **Seller** shall not be obligated to deliver the product from other than the production or shipping points designated and there shall be no obligation to rebuild or repair any damage or destruction to such production or shipping points in order to fulfill the contract or sales agreement. During any period when **Seller** is unable to supply the contract quantity of the product, whether caused by the circumstances above or otherwise, **Seller** may allocate any available product among its customers, including its own subsidiaries, divisions and departments, on such basis as Seller deems fair and reasonable.

