



## **TERMS AND CONDITIONS**

**ENTIRE AGREEMENT:** Every sale of goods or performance of services by Seller is subject to these terms and conditions. No purchase order shall be binding until acknowledged in writing by Seller incorporating these terms as though stated therein. The acknowledgement or other order document containing these Terms and Conditions ("Agreement") contains the entire agreement between the parties and supersedes all prior statements of any kind by or between the parties. If the Agreement is construed to be an offer, the offer expressly limits acceptance by Buyer to these terms and notice of objection to any different or additional terms is hereby given. If the Agreement is construed to be an acceptance of an offer, this acceptance is expressly conditioned upon Buyer's assent to any different or additional terms contained herein. If the Agreement is construed as a confirmation of an existing contract, the parties agree that this confirmation states the exclusive terms of any contract between the parties. Seller takes exception to and hereby objects to all hold harmless and indemnity provisions, either express or implied, set forth in Buyer's order, including, but not limited to, those that attempt to make Seller responsible for Buyer's negligence. Seller also objects specifically to any provisions in Buyer's order that (a) attempt to impose warranties other than as set out herein, (b) attempt to prohibit disclaimers of warranties, (c) attempt to preclude limitations on Buyer's remedies, or (d) attempt to impose damages resulting from performance failures. Acceptance of goods or services shall constitute conclusive acceptance of these terms and conditions.

**MODIFICATION:** None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered, including by course of dealing, except by a written instrument specifically referencing the affected provision signed by an authorized representative of Seller and an authorized representative of Buyer. The failure or delay of either party in the enforcement of the rights detailed herein shall not constitute a waiver of the rights nor shall it be considered as a basis for estoppel either at equity or at law. Either such party may exercise its rights hereunder despite any delay or failure to enforce those rights at the time the cause of action or right or obligation arose.

**ASSIGNMENT:** Buyer may not assign or transfer the Agreement, or all or any part of its rights hereunder, by operation of law or otherwise, without the prior written consent of Seller which may be withheld in Seller's absolute and sole discretion. Any unauthorized assignment or transfer of Buyer's rights or obligations hereunder shall be null and void. Seller may assign the Agreement, or all or any part of its rights hereunder, in its sole discretion and without notice to or consent from Buyer.

**TERMS OF PAYMENT:** Unless otherwise agreed by Seller in writing, terms will normally be net 30 days from shipment of product or provision of services. Payments made by credit or debit card will be subject to convenience or other fees in accordance with applicable law. Orders are subject to final approval by Seller, which may require

full or partial advancement. If Buyer delays order processing, partial payment based on the portion of the order completed shall then be paid. Pro rata payments shall be due as shipments are made. In the event Buyer delays shipment, full payment shall be due thirty days from the date Seller could have otherwise shipped the goods. Storage shall be at Buyer's risk and charges therefor shall be paid before shipment. If Buyer does not pay on time, Seller reserves the right to charge Buyer interest on the unpaid balance until paid at the higher of 1.5% per month or the highest rate allowed by law. Seller reserves the right to process an electronic ACH debit to Buyer's bank account in the event Buyer presents Seller with a check returned for non-sufficient funds.

**CANCELLATION/CHANGE:** Orders may only be cancelled with Seller's written consent, which may be withheld in Seller's sole and absolute discretion. If Seller consents to cancel an order, Buyer shall pay for every loss, cost, or damage which Seller may suffer as a result and an appropriate cancellation charge, including, but not limited to, labor and service costs, shipping costs, and restocking fees determined by Seller. Additional costs associated with changes requested by Buyer, after acceptance of order, may be charged to Buyer. Verbal changes are not accepted by Seller.

**QUOTATIONS AND PRICES:** All prices quoted are estimates only and are subject to change without notice. All quotations are based on cash or check payment. Payment by credit or debit card will result in additional charges in accordance with applicable law. All quotations are subject to modification for any changes in tariffs, regulatory or other governmental charges, or pricing changes outside of the exclusive control of Seller. Unless otherwise rescinded, altered, revoked, or otherwise modified earlier, all quotations expire at noon central time on the 30<sup>th</sup> calendar day after date of quotation. Seller reserves the right to correct any clerical or other errors and shall not be bound by such errors. Shipping charges, including freight-in and -out and our standard handling charge in effect at the time, are prepaid and added to invoices, unless otherwise agreed to in writing. Note: Buyer is responsible for freight-in on "freight collect" shipments. Total price for services will be calculated based on our standard service rates in effect at the time the services are performed. All prices and/or discounts are based on receiving an order for the quantities specified. Any change in quantity may result in a change in price and/or discount.

**DELIVERY AND SCHEDULING:** Shipping and scheduling dates are not guaranteed. Reasonable efforts will be made to meet schedules for shipment of goods or completion of services stated herein, but Seller shall not be responsible for any delay or failure to do so nor will Seller be responsible for any costs or damages of Buyer as a result of any such failure. In addition, Seller shall not be responsible for failures due to causes beyond its control, including, but not limited to, accidents, casualty, strikes or other labor disputes, acts of God, delays in transportation, failures of Seller's vendors or suppliers, government regulations, and/or shortages.

**RETURNS:** No credit will be given for returns except by prior approval of Seller, which Seller may withhold in its absolute



discretion. Buyer must obtain a Return Goods Authorization (RGA) number from Seller before any product can be returned. The RGA number must be identified on the outside of all packaging. Special materials or equipment may not be returned. Seller requires that its provided MSDS/Decontamination form be filled out completely and signed prior to return. If approved for return, returned equipment shall be in new, re-sellable, never installed conditioned. A minimum 25% restocking charge will be applied to all returns and deducted from any credit to be issued upon inspection of product with actual charges to be determined by Seller in its sole discretion upon receipt of the returned goods.

**TITLE AND RISK OF LOSS:** Unless otherwise specified in writing by Seller, delivery points shall be Ex-Works Seller's loading dock and the title to the goods and risk of loss passes to Buyer at that point. Buyer must state method of shipment preferred or Seller will determine method. Buyer assumes the risk of damage or loss in transit. If Buyer gives a clean receipt for damaged goods or for shipment upon which there are shortages, Seller is not responsible for any shortages. Claims for goods delivered short, damaged or defective (not due to fault of carrier) shall be filed with Seller within ten days from date of invoice or shall be waived. Buyer's claims for shortages shall detail shipment weights and method of counting the goods. Claims for goods delivered short, damaged or defective as a result of the fault of the carrier will be handled by Seller directly with the carrier.

**EXPORT SALES:** It is Buyer's sole responsibility to comply with all United States export control rules and regulations. Seller cannot be named as shipper or exporter of record for such goods.

**GOVERNMENT CONTRACTS:** If Buyer purchases goods for sale to any U.S. government, state or local government agency, Buyer is responsible to notify Seller of all government procurement conditions applicable to the sale when Buyer requests Seller's quotation. Seller will review the conditions and advise Buyer of Seller's ability to comply. If any government action should place or contain a limitation on the price provided for in the Agreement such that it would be illegal or against public or government policy for Seller to charge, assess or receive the full amount or to increase such prices as determined by the Agreement, then Seller shall have the option to (1) continue to perform under the Agreement subject to such adjustments in prices that Seller may deem necessary to comply with such government action, (2) revise the Agreement, subject to Buyer's approval which shall not be unreasonably withheld, in order to most nearly accomplish the original intent of the Agreement, or (3) terminate performance of the affected portions of the Agreement without liability for any damages.

**TAXES:** Buyer shall pay any present or future federal, state, local or other applicable tax. If not taxable, current exemption certificate must be submitted with purchase order.

**LIMITED WARRANTY/DISCLAIMER:** Subject to the limitations contained herein, Seller warrants that for a period of twelve (12) months from the date of shipment of goods manufactured by Seller

or completion of services provided by Seller that (i) the provision of services by Seller was performed in a competent and workmanlike manner and (ii) that the goods manufactured by Seller are free from defects in materials and workmanship that materially affect performance and functionality under normal use and care. In the event of a claim of nonconformance, the sole and exclusive remedy, to be determined in Seller's sole discretion, will either be to (i) re-perform the services or replace the goods, (ii) repair or replace the parts that were serviced or that are nonconforming (replacement parts may be either new or rebuilt at Seller's sole discretion), or (iii) if neither re-performing, repair or replacement is commercially reasonable, Seller may refund a prorata portion of the cost of the goods or services provided to Buyer for any non-conforming goods or services for which Buyer invoked this warranty by providing written notice to Seller within the warranty period. Warranty repairs shall be performed at Seller's designated service center unless otherwise determined by Seller. Buyer is responsible for all costs of delivering goods to be repaired or replaced to Seller and all costs of returning goods to Buyer. Warranty work for services performed by Seller shall be performed where the service was originally performed unless otherwise agreed to in writing by Seller in advance. Buyer shall be responsible for any and all costs incurred in making the potentially warranted work accessible. For the avoidance of all doubt, and without limiting the foregoing in any way, this exclusion from coverage encompasses any and all costs, necessary or otherwise, (1) to make the allegedly defective item accessible for repair or replacement or (2) for any costs for repair or replacement of any connected or related items, even if repair or replacement is necessary as a result of the defect in the warranted item. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel and representatives for site travel and diagnosis under this Limited Warranty shall be borne solely by Buyer. Any work performed or items repaired or replaced under this limited warranty shall be warranted for the remainder of the original warranty period subject to these same terms and conditions. The remedies set forth in this section shall be Seller's sole liability and Buyer's sole and exclusive remedies for any breach of this Limited Warranty.

With respect to goods manufactured by third parties, Seller hereby assigns the original manufacturers' warranties and remedies, to the extent assignable.

All claims under this Limited Warranty must be initiated, in a writing delivered to Seller, prior to expiration of the applicable warranty period.

Any and all warranties from Seller are void as to all allegedly nonconforming goods or services that fail, malfunction, or are damaged (1) as a result of: (a) improper or inadequate handling, installation, modification, maintenance, storage, removal, modification, or repair; (b) normal wear and usage; (c) use of unauthorized replacement parts; or (d) any other causes that are not the fault of Seller; or (2) that are accidentally damaged, subjected to abuse or improper use, unsuitable power sources or



environmental conditions, or are otherwise not used in accordance with their intended purpose; or (3) are altered such that Seller is unable to verify the non-conformance with its (or the original manufacturer's) normal test equipment.

THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF AND SUPERCEDE (i) ALL OTHER WARRANTIES AND REMEDIES WHETHER EXPRESS OR IMPLIED, ORAL OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE OR NON-INFRINGEMENT AND (ii) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN CONTRACT OR TORT, INCLUDING, WITHOUT LIMITATION, PRODUCT LIABILITY BASED UPON STRICT LIABILITY AND NEGLIGENCE. ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

**LIMITATION OF LIABILITIES:** SELLER WILL NOT BE LIABLE TO BUYER FOR INDIRECT, INCIDENTAL, SPECIAL, COVER, CONSEQUENTIAL, OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, OR BUSINESS) RESULTING FROM OR IN ANY WAY RELATED TO THE GOODS OR SERVICES PURCHASED/SOLD HEREUNDER, THE AGREEMENT, OR TERMINATION OF THE AGREEMENT. This limitation applies regardless of whether the damages or other relief sought are based in contract or tort, including breach of contract, warranty, negligence, strict liability in tort, or any other legal or equitable theory. FURTHER, NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT TO THE CONTRARY, SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER SHALL BE LIMITED TO THE PURCHASE PRICE OF THE GOODS OR SERVICES GIVING RISE TO THE CLAIM. THE FOREGOING DISCLAIMERS AND LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ANY ESSENTIAL PURPOSE THEREOF, AND EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE, OR STRICT LIABILITY OF THE PARTY WHOSE LIABILITY IS DISCLAIMED OR LIMITED.

**WARNINGS:** The improper installation or application of goods; their use with improper wiring, piping or ventilation; improper system design or engineering; inadequate inspection or testing; the lack of regular careful maintenance of both goods and any equipment in connection with which goods are used; the employment of insufficient or unqualified personnel; the lack of careful supervision, proper warnings, operating instructions, and safety precautions; the exposure of goods to excessive heat, moisture, dust, dirt, corrosion, or any other deleterious condition, each constitutes a hazard which can result in loss of life, serious personal injury, heavy property or business damage, and Buyer shall itself take and require others to take all reasonable measures to avoid each such hazard. Buyer agrees to notify its customers or users of good(s), as the case may be, of these warnings, and to deliver to its customers or users of good(s) all written warnings provided with each good by Seller. Buyer assumes all risk and liability resulting from goods delivered hereunder, whether used singly or in combination with other products. Unless otherwise agreed to by Seller in writing, goods sold in connection with the services provided hereunder are not intended for use in connection with "safety-

related" applications within any nuclear facility or any other hazardous activity such as aircraft, space exploration or other critical applications where failure of a single component could cause substantial harm to persons or property. Seller disclaims any and all liability if standard commercial products are used in any such applications.

**INDEMNITY:** In the event that any person, firm or corporation asserts any claim against Seller arising out of any act or omission of Buyer, or arising due to Buyer's failure to notify of warnings or deliver warnings as set forth above, and provided that any such claim does not arise out of Sellers' gross negligence or any actionable defect in Seller's product(s), then in either of such events Buyer agrees to indemnify and save Seller harmless from and against all liability, loss, cost and expense arising out of such claim.

In the event of any loss, injury or damage, Buyer shall not itself, nor permit others to, dismantle, test, or examine any of the goods without giving Seller sufficient advance notice to be present and Buyer shall allow such presence.

**SEVERABILITY:** If any one or more of the provisions of the Agreement shall for any reason be invalid, illegal, or unenforceable, such circumstance shall not affect any other provision of the Agreement and the Agreement shall continue in full force and effect and be construed as if such provision, to the extent that it is invalid, illegal, or unenforceable, had never been contained herein or therein.

**CONTROLLING LAW:** The Agreement and all disputes thereunder, will be governed by the laws of the State of Minnesota, United States of America, without regard to Minnesota's choice of law principles. The exclusive forum and venue for any legal action arising out of or related to the Agreement shall be the United States District Court for the District of Minnesota, and Buyer submits to the personal jurisdiction of that court. If subject matter jurisdiction (including diversity jurisdiction) does not exist in the United States District Court for the District of Minnesota, then the exclusive forum and venue for any such action shall be the courts of the State of Minnesota located in Hennepin County, and Buyer submits to the personal jurisdiction of those courts.