



## GENERAL TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT.** The terms and conditions contained herein supersede all prior purchase orders, agreements, discussions, negotiations, proposals, or communications between the parties and constitute the entire final contract between the parties which may not be varied except by express written modification signed by Seller's duly authorized representative. Seller's acceptance of Buyer's order is expressly conditioned upon Buyer's agreement to and acceptance of the terms and conditions contained herein together with any special terms set forth on the face hereof by Seller. Seller shall not be bound by any terms and conditions contained in Buyer's forms which in any way alter the terms and conditions imposed in Seller's forms. The receipt of these terms and conditions by Buyer is notice to Buyer of objection by Seller to all other terms, warranties or conditions contained in Buyer's forms. Neither the failure by Seller to object to the purchase order or any other communication from Buyer, nor the deliver of goods and/or the performance of services by Seller shall be deemed a waiver of the provisions hereof or an approval of any terms, warranties or conditions which are additional to, different from, or conflicting with the terms, warranties and conditions contained in these terms and conditions. Seller's terms and conditions included herein or stated on any of Seller's forms or packages shall govern and control, regardless of whether Buyer's purchase order or any other forms precede or succeed this document and regardless of whether the Buyer's forms indicate that the terms and conditions therein contained are controlling and cannot be varied.
2. **CREDIT APPROVAL, INFORMATION AND ACCEPTANCE.** All orders are subject to approval of Buyer's credit and acceptance by Seller. As a condition of sale, Buyer grants Seller the right to investigate Buyer's credit, to exchange credit information with others and to report to others about Buyer's account and relationship with Seller and Seller is released from any liability arising therefrom.
3. **TERMS OF PAYMENT.** All invoices are due upon presentment and shall be paid without deductions or setoff in lawful money of the United States of America. Terms of payment are net payment due in 30 days of date of invoice. Buyer shall not deduct credits without a credit memo first being issued by Seller.
4. **EARLY TERMINATION FEE.** In the event of a termination of this agreement prior to the expiration of the term, Buyer shall pay Seller a termination fee in the amount of ONE THOUSAND DOLLARS (\$1,000), which shall be in addition to, and not in lieu of, any other amounts due pursuant to these terms and conditions.
5. **TAXES AND ADDITIONAL COSTS.** In addition to the purchase price for the equipment and services, Buyer shall be obligated to pay all sales, excise, use, privilege, ad valorem, customs and any other taxes, assessments, tariffs or similar charges imposed, levied or increased by authority of any local, county, state, federal, international or any other county's law, rule, ordinance or regulation concerning the equipment and/or services sold to Buyer. In the event Seller shall be required to pay such taxes, assessments, duties tariffs or similar charges or incurs such additional costs, Buyer upon demand shall immediately reimburse Seller for such amounts. Buyer shall furnish to Seller upon demand any appropriate tax exemption certificates.
6. **FREIGHT AND RISK OF LOSS.** All shipments are F.O.B. Seller's location in New Jersey. Buyer assumes all risk of loss, shortage, delay or damage in transit once the equipment is delivered to the carrier. Buyer shall be responsible for all freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges and any charges for or increments thereof not set forth in the Quotation, Order Confirmation or initial invoice to Buyer, shall be billed by Seller and immediately paid by Buyer.
7. **SERVICE CHARGES, EXPENSES AND FEES OF COLLECTION.** A service charge of 1½% per month (18% per annum) will be charged on all invoices not paid within 30 days of date of invoice. In any jurisdiction where a service charge of 18% per annum is deemed usurious then the amount of the service charge shall be deemed decreased to the maximum allowable rate in such jurisdiction. In the event Seller is obliged to refer Buyer's account for collection or to retain counsel to enforce its right against Buyer, then whether or not suit is instituted, Buyer agrees to pay to Seller in addition to moneys due on invoices, service and cancellation charges, and all of Seller's costs and expenses, including, but not by way of limitation, court costs and attorney's fees.
8. **EQUIPMENT OWNERSHIP.** All equipment, except (a) any equipment previously owned, purchased or otherwise acquired by Buyer and listed on Exhibit A to the [Order Confirmation], or (b) any equipment purchased by Buyer from Seller, as set forth on Exhibit A to the [Order Confirmation], is and shall remain the exclusive property of Seller. At no time shall Buyer grant a lien, security interest or other encumbrance on Seller's equipment, and Seller shall have the right to file, record and maintain a UCC-1 financing statement to evidence Seller's ownership of said equipment. Equipment may be affixed with labels or plaques confirming Seller's ownership; Buyer shall not obscure, remove or damage in any way such label, plaque or other indicia of Seller's ownership.
9. **EQUIPMENT AND MATERIALS REPAIRS, LOSS OR DAMAGE.** If any equipment belonging to Seller is stolen, lost or damaged due to Buyer's or its employees' agents' or invitees' acts, omissions, neglect or misuse, Buyer shall pay to Seller the full replacement value, as determined by Seller and/or the equipment manufacturer or supplier, including any installation expenses made necessary thereby.
10. **RETURN OF EQUIPMENT.** Upon the expiration or termination of this agreement for any reason, at Seller's direction, Buyer shall either (a) immediately return to Seller, freight pre-paid, all Seller equipment, or (b) allow Seller to enter upon Buyer's premises to retrieve all Seller equipment. If Buyer fails to return the equipment to Seller in accordance with (a) above within ten (10) days after the expiration or termination of this agreement, at Seller's election, Seller may either enter upon Buyer's premises to recover same and/or recover from Buyer the full replacement value for such equipment which is not returned or otherwise made available to Seller.
11. **EXPRESS WARRANTY.**
  - 11.1 Seller warrants its services to be free from defects in material and/or workmanship under normal use and service for a period of [one (1) year] from the date of purchase, subject to the terms and conditions set forth below (the "Express Warranty"). Seller does not warrant its services against any defect except as set forth above. Seller is not responsible for, and it does not warrant against, any defect or damage caused by transportation, storage, improper installation, maintenance, internal or external hostile environment, misuse, abuse, negligence, accident, modification, tampering, the attachment of any unauthorized accessory, alteration to the goods, or any other conditions whatsoever that do not constitute a defect in material and/or workmanship.
  - 11.2 SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, OR WITH RESPECT TO ANY OTHER EQUIPMENT OWNED, OR USED, BY BUYER. With respect to equipment provided by or purchased from Seller, Seller shall assign to, or exercise for the benefit of Buyer all manufacturer warranties with respect to such equipment. If Buyer takes any actions with respect to the equipment that is contrary to the manufacturer's warranties, or fails to maintain the equipment as required by the manufacturer or as otherwise recommended by Seller, Buyer may cause such warranties to be voided. If the actions, neglect or omissions of Buyer or those of its agents or invitees cause a manufacturer's warranty to be voided on equipment that remains the property of Seller during the term of this agreement, then Buyer shall be liable to Seller for the full replacement cost of such equipment.
  - 11.3 EXCEPT FOR THE EXPRESS WARRANTY DESCRIBED HEREIN, SELLER SPECIFICALLY DISCLAIMS AND EXCLUDES ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE, AND FITNESS A PARTICULAR PURPOSE; ALL IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING, COURSE OF PERFORMANCE OR ANY OTHER IMPLIED WARRANTIES; AND THE EXPRESS WARRANTY STATED HEREIN IS IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER FOR DAMAGES, INCLUDING BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE GOODS OR SERVICES PURCHASED BY BUYER.
  - 11.4 NEITHER SELLER NOR ITS AFFILIATED COMPANIES SHALL BE LIABLE TO BUYER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE) FOR DAMAGE TO OR LOSS OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS, REVENUE OR GOOD WILL, LOSS OF USE OF EQUIPMENT, FACILITY OR DATA, EXPENSES INVOLVING COSTS OF CAPITAL, COST OF PURCHASED OR REPLACEMENT POWER OR TEMPORARY EQUIPMENT (INCLUDING ADDITIONAL EXPENSES INCURRED IN USING EXISTING FACILITIES), CLAIMS OF CUSTOMERS, EMPLOYEES OR ANY OTHER PERSONS AFFILIATED, ASSOCIATED OR IN PRIVITY WITH BUYER, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES BY REASON OF BREACH OF THE EXPRESS WARRANTY STATED HEREIN.
  - 11.5 THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE WITH RESPECT TO BREACH OF THE EXPRESS WARRANTY STATED HEREIN, AND THE TOTAL LIABILITY OF SELLER FOR BREACH OF SAID EXPRESS WARRANTY FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION OR TECHNICAL DIRECTION OF INSTALLATION, REPAIR OR USE OF ANY GOODS OR SERVICES FURNISHED TO BUYER, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), SHALL NOT EXCEED [THE PURCHASE PRICE OF THE GOODS OR SERVICES DETERMINED BY SELLER TO BE DEFECTIVE IN MATERIAL AND/OR WORKMANSHIP/ THE AMOUNT OF THE FEES PAID HEREUNDER FOR THE [TWELVE (12)] MONTH PERIOD PRECEDING THE SUBJECT CLAIM].
  - 11.6 All Express Warranty claims must be made to Seller or one of its authorized agents, failure to do so shall void the Express Warranty.
12. **CONFIDENTIALITY.** Buyer shall maintain in confidence all proprietary or non-public information of Seller that may come into Buyer's possession in connection with or as a result of this agreement. Upon the expiration or termination of this agreement, Buyer shall return all such confidential information to Seller, retaining no copies, summaries or excerpts thereof or therefrom.
13. **BUYER'S DEFAULT.**
  - 13.1 It shall be an event of default under this agreement, if Buyer: (i) fails to make payment hereunder within thirty (30) days of the date of invoice; or (ii) fails to perform any covenant herein and such failure is not rectified within fifteen (15) days after written notification from Seller.
  - 13.2 Upon the occurrence of an event of default, Seller, at its own election, may (i) terminate this agreement, upon written notice to Buyer; (ii) declare all sums which are then due and unpaid, immediately payable; (iii) demand the return of any equipment; and/or (iv) enter upon Buyer's premises where such equipment is located and take possession and remove such equipment from the premises without liability to Buyer or its agents for such entry. Buyer shall be liable for any and all legal fees, costs and expenses resulting from the foregoing.
14. **INDEMNIFICATION.** Buyer shall defend, indemnify, and hold Seller, its parent, subsidiaries, affiliates, officers, directors, shareholders, managers, members, employees and agents harmless from and against all claims, damages, including damage to property or injury to persons, losses and expenses, including but not limited to reasonable attorneys' fees, arising from, connected with, or incidental to the equipment and/or services to be provided pursuant to this agreement, except to the extent such claims are caused by the gross negligence or willful misconduct of Seller.
15. **TRANSFER OF DATA.** Upon the expiration or termination of this agreement, Buyer may request from Seller a copy of any Buyer related data created by Seller in connection with the performance of services by Seller under this agreement. [The fee for the generation of each set of data files shall be \$\_\_\_\_\_ per copy]. Seller keep such data files for a period of not less than ninety (90) days after termination or expiration of this agreement (the "Data Retention Period"). If Buyer fails to request data files during the Data Retention Period, Seller may delete such data files.
16. **WAIVER.** No waiver will be valid unless in writing, signed by an authorized representative of Seller and no waiver granted will release Buyer from subsequent strict compliance herewith.
17. **ASSIGNMENT; BINDING EFFECT.** Seller may assign its rights and obligations by giving Buyer written notice thereof but without being obligated to obtain Buyer's consent prior thereto. Buyer may not assign its rights nor delegate its obligations under this order without Seller's written consent, which consent shall not be unreasonably withheld. Any such assignment or delegation without such consent shall be void. This agreement, and the rights, powers and duties set forth herein, shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.
18. **FORCE MAJEURE.** Seller shall not be liable for any loss, delay or failure to perform if Seller is limited in or is unable to perform hereunder because of any casualty, interruption of business, event or circumstance beyond Seller's control, including, without limitation, riots, bombings, terrorist acts, insurrections, civil commotions or wars; labor disputes, strikes, lockouts, boycotts, picketing or other industrial disturbances; acts of God or other force majeure events.
19. **GOVERNING LAW AND JURISDICTION.** The agreement between the parties shall be deemed to be made in New Jersey and shall be governed by the laws of New Jersey. By accepting this document, Buyer hereby submits to the jurisdiction of the Courts of New Jersey for any purposes dealing with this document or any subsequent agreement between Buyer and Seller or of the breach of or the enforcement thereof or for any purposes of Seller enforcing any of its rights against the Buyer. Whenever a term defined by said Code is used in this instrument, the definitions in the Code shall control its meanings. The parties submit to the jurisdiction of the courts of New Jersey which shall be on the only forum for litigating any disputes arising under this agreement. In the event that any provision of this agreement shall be invalid under the laws of any jurisdiction, such invalidity shall not affect the other provisions of this agreement which shall remain in full force and effect.
20. **INDEPENDENT CONTRACTORS.** Each party to this agreement is an independent contractor and this agreement does not create a joint venture or partnership, employer/employee or any other relationship other than contractual of any kind, nor shall this agreement give rise to any fiduciary duty on the part of any party to any other party. Neither party shall have the authority to bind the other party hereto.
21. **SEVERABILITY.** In the event that any one or more of the provisions of this agreement shall be determined to be void or unenforceable by a court of competent jurisdiction or by law, such determination shall not render this agreement invalid or unenforceable. Instead, the unenforceable provisions shall be stricken and the remaining provisions hereof shall remain in full force and effect.
22. **CAPTIONS.** The captions to the clauses contained herein are for identification only and shall not be construed as being a substantive part of the agreement nor as having any independent meaning.