

## **SPARE PARTS TERMS AND CONDITIONS**

**1. PURCHASE AND SALE:** These Terms and Conditions govern the purchase and sale of the Spare Parts identified on the Seller's Quotation. These terms and conditions are hereby incorporated into the Quotation. The Quotation issued by Seller does not anticipate the issuance of a Purchase Order by the Buyer. If the Buyer is required to issue a Purchase Order, these terms and conditions shall apply and not be modified or changed without the express written consent of Seller. Any terms and conditions provided by the Buyer in their Purchase Order are hereby expressly denied.

**2. PRICE AND PRODUCT PAYMENT TERMS:** The total price is set forth on the Quotation. Such price shall be final and shall include all costs of procurement only. No shipping or insurance for shipping are to be provided by Seller. All payments shall be made net 30 days from the receipt of the Invoice.

**3. FEDERAL, STATE AND LOCAL TAXES:** Buyer assumes responsibility of the payment of all state, local and federal sales, use, excise or similar taxes, licenses, duties, assessments and levies (including fines or penalties thereon) and importation costs and taxes or customs bonds that may arise, or for which either party may be liable. If Buyer is exempt from the payment of any such taxes, a copy of the Exemption Certificate shall be provided to the Seller at the time the Buyer executes the Seller's Quotation or at the time the Buyer's Purchase Order is executed by the Seller.

**4. SITE CONDITIONS:** Seller will not be performing any site services and will be supplying Spare Parts only.

**5. SITE REQUIREMENTS:** Seller will not be performing any site services and will be supplying Spare Parts only.

**6. DELIVERY, PACKING AND SHIPMENT:** The Seller will package the goods for shipment. Buyer shall be responsible for the required delivery and shipping arrangements and costs, including insurance and any bill of lading/shipping instructions. Buyer may request that Seller deliver and ship the goods, but Seller shall not be obligated to do so unless a specific provision is added to the Quotation/Purchase Order specifying those details and additional costs.

**7. TITLE AND RISK OF LOSS:** Title to the goods shall pass upon receipt of payment by the Seller. Risk of loss shall pass from the Seller to the Buyer when the goods are presented for shipment to the carrier.

**8. INSPECTION AND ACCEPTANCE:** Buyer has the right to inspect the goods for a period of five (5) days after they are delivered. After five (5) days the goods shall be deemed accepted. During the five (5) day inspection, the Buyer may reject any goods or services that contain defective materials/ workmanship. Should the Buyer's inspection reveal any defects, the Seller shall be

immediately notified, in writing, of the specific nature of the defect(s). Further, the Buyer shall provide such additional information as is necessary for the Seller to evaluate the Buyer's claim. The repair or replacement of rejected goods at the time of inspection shall be at the Seller's sole option. Seller's obligations in this case shall not include any costs beyond those necessary to repair or replace the goods themselves and as specified in Section 9 herein.

**9. WARRANTY:** Subject to the receipt of full payment by the Seller and the terms contained herein, the Seller warrants title to all goods hereunder and that its transfer is rightful and free from any security interest of third parties or other lien or encumbrances. For a period of one (1) year from the date of delivery, Seller warrants to Buyer that all goods and materials provided by Seller shall be: (i) new unless the Buyer gives prior written approval otherwise; (ii) in conformity with the requirements of the Quotation or Purchase Order; and (iii) free from defects in materials and workmanship. The warranty period for replaced or repaired goods or re-performed services shall be one (1) year following the date the replacement or repair. Seller's warranty shall be a "repair or replace" warranty only and shall not include any other obligation or commitment for costs incidental to or arising from any warranty work, including labor to remove or replace the defective goods, any testing, reinstallation of the goods and any equipment needed at the site to remove and replace the goods. Seller shall pay the additional transportation charges incurred as the result of a breach of warrant. Should Seller fail or be unable to affect the necessary repairs, replacements and tests as specified in Section 16 herein, Buyer may procure the goods from another source and the Seller shall pay the costs of the replacement goods or repairs only.

**10. RECIPROCAL GENERAL INDEMNITY:** Seller shall indemnify and hold harmless Buyer, Buyer's agent, and their employees, officers, directors, shareholders, agents, and other contractors (collectively, "Buyer Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, costs, and expenses, including attorney's fees and expert witness fees (collectively, "Claims") to the extent caused by the negligent acts or omissions of Seller, Seller's subcontractors or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Likewise, Buyer shall indemnify and hold harmless Seller and its employees, officers, directors, shareholders, agents, and subcontractors (collectively, "Seller Indemnitees") from and against any and all Claims, to the extent caused by Buyer's negligent acts or omissions.

**11. INSURANCE:** Seller shall maintain its current insurance coverages to cover any claims that may occur at its facilities. Such coverages are subject to and conditioned upon the terms and conditions of the

respective policies in place at the time of the sale. Seller will provide proof of insurance if requested by the Buyer.

**12. RECIPROCAL PATENT PROTECTION:** Seller shall indemnify Buyer, Buyer's agent, and their successors, assigns, customers and the users of goods supplied under the Quotation/ Purchase Order from and against all loss, damages, liability, claims, demands and suits at law or in equity, for actual or alleged infringement of all letters patent, trademarks, copyright or corresponding rights unless such goods are produced in accordance with designs or specifications furnished by Buyer. In this latter case, the Buyer shall indemnify, defend and hold harmless the Seller, including attorney's fees and court costs.

**13. CHANGES:** By written notice the parties may make changes in the services or goods. Should any such change increase or decrease the cost of, or the time required for performance, the Seller shall notify Buyer in writing prior to proceeding with such change. Buyer and Seller shall negotiate in good faith an equitable adjustment in the price or schedule before additional work shall proceed.

**14. TERMINATION FOR CONVENIENCE AND SUSPENSION BY THE BUYER:** The Buyer may, subject to seven (7) days written notice to the Seller terminate this Purchase Order for its convenience. Should such a termination for convenience occur, then Buyer shall reimburse Seller for the costs incurred to the date of termination, including reasonable overhead and profit associated with those costs and the costs to wind-up the project based upon an hourly T&M rate. Any restocking or other similar fees shall also be paid by the Buyer. Seller shall have no claim against Buyer for damage or loss, including lost revenue or profits beyond the date of termination. Any claims for payment by Seller must be made within ten (10) days of Buyer's written notice of or termination for convenience. By written notice, the Buyer may also suspend the work for a period not to exceed thirty (30) days. In the event of any suspension the Buyer shall pay all reasonable costs and expenses associated with the suspension.

**15. BREACH:** If Seller fails to deliver or perform as required in a timely manner or breaches any of the terms hereof, including any Seller warranties, and fails to cure such breach within thirty (30) days after notice of default or to provide a plan of correction for goods that cannot be procured within the thirty (30) day period. The Seller's obligation in the event of default is limited to the cost of the replacement goods or any repairs to the goods themselves as outlined in Section 9 herein for warranty work. Notwithstanding, the Seller shall not be obligated in an aggregate amount in excess of the price paid by the Buyer to the Seller for its goods. If the Seller becomes insolvent, files a voluntary petition in bankruptcy, executes an assignment for the benefit of its creditors, has an involuntary petition in bankruptcy filed against it or has a receiver or trustee appointed for it, Seller is in breach.

**16. REMEDIES:** In the event the Seller does not correct a breach as provided above Buyer has the right at its election to do any or all of the following: (i) reject the goods, and return them to Seller at Seller's expense; (ii) cover the breach through purchase of replacement goods or services from a third party, subject to the limitations outlined in Section 9 herein; and (iii) terminate, in whole or in part, the Purchase Order.

**17. SELLER'S RIGHT TO RECEIVE PAYMENT:** In the event that the Buyer fails to pay the Seller net 30 days the Seller may, subject to the issuance of a written three (3) day notice to the Buyer, terminate their performance until the funds due are received.

**18. GOVERNING LAW, JURISDICTION AND BUYER'S RIGHTS:** Seller and Buyer agree that this Quotation/Purchase Order is made and executed in the state where the Seller's is located and shall be interpreted under the laws of that state. Buyer and Seller hereby submit to the jurisdiction of the courts of such state, expressly waiving the jurisdiction of any other court. The prevailing Party in any claim before the court shall be entitled to have the costs of the court and attorney fees paid by the other Party.

**19. WAIVER:** Seller's or Buyer's failure to enforce at any time any of the provisions of this Purchase Order or to exercise any option herein provided or to require at any time performance by other of any of its provisions shall not be construed to be a waiver of such provisions, nor to affect the validity of this Purchase Order or any part thereof or each parties right thereafter to enforce each and every such provision.

**20. COMPLETE AGREEMENT:** This Purchase Order constitutes the complete agreement between the Parties concerning the terms and conditions of the purchase and sale. Any prior negotiations or course of dealing between the Parties may not be used to vary the terms hereof. Any amendment to this Purchase Order must be in writing and signed by the person duly authorized by Buyer.

**21. LIEN RELEASES:** Subject to timely payments being received by the Seller from the Buyer, including final payment, the Seller shall keep Buyer's premises free of all mechanics and suppliers liens. In the event that a Seller employee or subcontractor files a lien or claim against Buyer, Buyer may withhold payment to Seller of any invoice in an amount equal to the lien or claim until such as time as the lien or claim is released or withdrawn. Partial or final payments shall not become due and payable to Seller until Seller delivers to Buyer partial or final lien releases, both effective upon the receipt of payment by the Seller. Final payment to Seller shall not relieve Seller of its obligation to discharge any lien filed before or after Seller is paid for its services by depositing with a court such security as may be required to release the lien.

**22. INDEPENDENT CONTRACTOR:** Seller shall provide services only as an independent contractor. No labor relationship between Buyer and Seller's workers or employees shall result from Seller's performance. Seller shall be liable for any payment or other obligations imposed by law upon Seller as the employer of its employees and those hired by Seller to perform services.

**23. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES:** Neither party shall be liable (whether in contract, tort, negligence, strict liability, statutory liability or otherwise) to the other for incidental, consequential or indirect damages including lost profits, lost revenue(s) or lost goodwill, whether or not the possibility of such damages has been disclosed or could have been reasonably foreseen.