

TERMS AND CONDITIONS

1. **Acceptance.** Seller is pleased to offer for sale the equipment listed on the reverse side hereof ("Goods"), on the express condition that Buyer agrees to accept and be bound by all the terms and conditions set forth herein. Shipment by Seller and acceptance by Buyer of all or any part of the Goods listed on the reverse side hereof shall constitute acceptance by Buyer of all the terms and conditions hereof. Invoice is at prevailing prices at the time of shipment.
2. **Full Agreement.** The agreement between Seller and Buyer (the "Sales Contract") with respect to the Goods listed on the reverse side hereof shall consist of the terms and conditions contained herein (and on the reverse side hereof), together with any additions to or revisions of such terms mutually agreed to in writing by Seller and Buyer. Seller shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller, and Seller hereby rejects any such additional or different terms of Buyer, unless specifically agreed to by Seller in writing. **PRIOR COURSES OF DEALING, USAGES, AND VERBAL AGREEMENTS NOT REDUCED TO WRITING AND SIGNED BY SELLER, SHALL NOT BE BINDING OR ENFORCEABLE ON SELLER.**
3. **Modifications.** Except as provided herein, the terms of the Sales Contract may not be modified, terminated or repudiated in whole or in part except by a writing signed by Seller and Buyer. Seller may, at its option, treat any attempted modification, termination or repudiation to which it does not assent as a breach of the entire Sales Contract and may claim all proper damages.
4. **Changes in Design and Specifications.** Seller reserves the right in its sole discretion to make changes in design and specifications and to deliver Goods which differ from those described in Seller's sales literature, for legitimate business reasons, including in order to enable Buyer to take advantage of new or improved technology.
5. **Time of Delivery.** Shipment schedules are approximate and are based on conditions at the time of acceptance by Buyer. Seller shall in good faith attempt to effect delivery by the date specified, but shall not be responsible or liable for delays in or failure to make deliveries due to its ceasing to manufacture any Goods or to causes beyond its control. Buyer agrees that, in the event of such delays, Seller may terminate the Sales Contract, reschedule delivery within a reasonable time or allocate its available supply of Goods among any or all purchases, as well as departments and divisions of Seller, on such basis as Seller may deem fair and practical, in its sole discretion.
6. **Shipment.** All shipments are F.O.B. Seller's facility in Norfolk, Virginia, or other shipment point designated by Seller. Buyer shall pay all shipping costs and bears the risk of loss after Seller completes delivery to the carrier. A charge will be made for any special packing required for overseas shipment or specified by Buyer. Shipments will be made in any reasonable manner in the discretion of Seller, unless other shipping instructions by Buyer are agreed to in writing by Seller.
7. **Sales or Use Taxes.** The price(s) shown on the reverse hereof do(es) not include taxes or other governmental charges upon the production, sale, shipment or use of the Goods. Any such tax or charge shall be paid by Buyer to Seller unless Buyer furnishes Seller with exemption certificates acceptable to the appropriate taxing authority.
8. **Terms of Payment.** Unless provided otherwise on the reverse hereof, Buyer shall pay the purchase price of the Goods in full within 10 days from date of invoice. A 1½% service charge on the average daily unpaid balance will be assessed on balances past due over 30 days. Should Seller institute court or other proceedings against Buyer for breach of this Sales Contract, Buyer shall pay all costs in connection therewith, including but not limited to, court costs and reasonable attorney's fees and expert fees for negotiations, trial, appellate, or other proceedings. Title to Goods does not pass to Buyer until Seller is paid for the Goods in full, including any carrying charges. To secure the payment, satisfaction and discharge of the obligation arising from the Buyer's receipt of Goods sold herein, as defined on reverse, Buyer hereby assigns, transfers, pledges and grants the Seller a security interest in the Goods shipped or otherwise delivered to the Buyer pursuant to this Sales Contract and Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code of Virginia.

An express mechanic's lien is hereby acknowledged on Repaired/Service Goods to secure the amounts of repairs thereto.

9. **Warranty.** Seller warrants new Goods delivered under the Sales Contract against defective material and workmanship under normal use and application for a period of one year from the date of delivery to the original purchaser only. Seller warrants used Goods and/or repairs delivered under the Sales Contract against defective material and workmanship under normal use and application for a period of 30 days, unless stated otherwise, from the date of delivery to the original purchaser only. Under this warranty, Seller's sole obligation is to repair or replace, at the Seller's discretion, the defective Goods or defective part thereof.

This warranty applies only to new Goods and does not apply to Goods which have been tampered with or altered in any way or which has been misused or damaged by accident or negligence or which has the serial number removed, altered or effaced, nor shall this warranty extend to Goods installed or operated in a manner not in accordance with the applicable Instruction Manual, nor to Goods which have been serviced or repaired other than by Seller or by the manufacturer of the Goods.

Lamps, bulbs, charts and other expendable items are not covered by this warranty.

All claims under this warranty must be in writing directed to Seller.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES IMPLIED OR EXPRESSED. ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. NO REPRESENTATIVE OR OTHER PERSON IS AUTHORIZED OR ALLOWED TO MAKE ANY OTHER OBLIGATION FOR SELLER.

SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FROM ANY NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY OR ANY OTHER THEORY ARISING OUT OF, RESULTING FROM OR RELATING TO THE DESIGN, MANUFACTURE, SALE, USE OR HANDLING OF THE GOODS.

10. **Buyer's Exclusive Remedies.** Except for warranty claims, Buyer agrees that, in the event of default by Seller in any of its obligations with respect to Goods delivered to Buyer from Seller, Buyer's exclusive remedies shall be return of the Goods and repayment of the purchase price, repair of the Goods or replacement of the Goods delivered, the choice being at the sole discretion of Seller. **UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY, WHETHER BASED ON CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR ANY OTHER THEORY, EXCEED THE PRICE OF THE GOODS WHOSE DEFECT OR DAMAGE IS THE BASIS OF THE CLAIM. SELLER SHALL NOT BE RESPONSIBLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, OR LOSS OF USE OF FACILITIES OR EQUIPMENT.** All non-warranty claims shall be forever barred unless the Buyer notifies the Seller in writing of such an alleged default within 90 days of the delivery of the Goods hereunder. Any suit must be filed within one (1) year of the claim arising, or the suit will be barred by the parties' agreement herein to a one year statute of limitations.
11. **Returns.** Buyer agrees that no Goods may be returned to Seller without written approval from Seller, and Buyer agrees to pay Seller a restocking charge of up to 20% of the cost of the returned Goods (\$25 minimum). In addition, Buyer agrees to pay shipping and handling on Goods returned by Buyer within 30 days not due to a defect or warranty claim.
12. **Seller's Technical Assistance.** Upon request and at its discretion, Seller will furnish such technical advice and assistance as is available in reference to the use of the Goods by Buyer. Buyer agrees, however, that Seller assumes no obligation or liability with respect to the advice or assistance given or results obtained therefrom.
13. **Infringement.** Buyer will indemnify and hold Seller harmless against all damages, costs, expenses, and attorney's fees and expert fees arising from claims of infringement of patents, designs, copyrights or trademark with respect to Goods manufactured or assembled either in whole or in part according to Buyer's specifications. Seller further reserves the right to cancel the Sales Contract with respect to Goods the manufacture, sale and/or use of which, in the opinion of the Seller, would infringe upon any third party's patent, design, copyright or trademark.

Seller warrants that the use of the Goods delivered hereunder will not infringe the claims of any United States patent covering the Goods themselves; but does not warrant against infringement by reason of the use of the Goods in combination with any other products or in the operation of any process.
14. **Applicable Law.** This Sales Contract shall not be binding on the Seller until Seller accepts and approves same at Seller's home office in Norfolk, VA. This Sales Contract shall be deemed to have been entered into at Norfolk, VA and shall be governed by the internal laws of the Commonwealth of Virginia, without regard to its choice of law rules. Jurisdiction and venue of any lawsuit, court action, claim or other legal or equitable proceeding relating to this Sales Contract shall be vested exclusively in the Circuit Court for the City of Norfolk, Virginia or the United States District Court for the Eastern District of Virginia, Norfolk Division. Seller and Buyer hereby consent to the exclusive jurisdiction of such courts, and acknowledge that such courts have personal jurisdiction over them and agree that venue is proper in those courts. Seller and Buyer hereby waive the right to a jury trial in any such suit or action.