

**TERMS AND CONDITIONS OF SALE**  
**CONDITIONS FOR SALE, REPAIR, INSPECTION, MAINTENANCE OR MODIFICATION SERVICE**

ALL ORDERS ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS. NO SALESMAN OR OTHER PARTY IS AUTHORIZED TO BIND SELLER BY ANY AGREEMENT, WARRANTY, STATEMENT, PROMISE, OR UNDERSTANDING NOT HEREIN EXPRESSED, AND NO MODIFICATIONS SHALL BE BINDING ON SELLER UNLESS THE SAME ARE IN WRITING AND SIGNED BY AN EXECUTIVE OFFICER OF SELLER OR HIS DULY AUTHORIZED REPRESENTATIVE.

**1. APPROVAL** This order shall not be binding on Seller until approved at Seller's home office.

**2. WARRANTY** The Seller warrants the quality of service performed and the title to and quality of material furnished hereunder. If any portion of the service performed or material furnished by the Seller proves to be defective within one year from the date of completion of the work, the Seller, if promptly notified thereof in writing, will correct such defect at its own expense, by, at its option, repair or installation or replacement of the defective part or parts. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE EXCLUDED, NOR SHALL THE SELLER BE LIABLE FOR ANY LOSS OR DAMAGE WHATSOEVER FROM ITS FAILURE TO DISCOVER OR REPAIR LATENT DEFECTS OR DEFECTS INHERENT IN THE DESIGN OF THE EQUIPMENT. The Seller's liability under this warranty shall, in no case, exceed the total contract price including the supplying of any necessary replacement parts, and shall in no event include special, indirect, incidental, or consequential damages. Upon the expiration of said one year all such liability shall terminate.

The foregoing shall constitute the sole remedy of the Customer and the sole liability of the Seller. Claims for defective material or workmanship must be verified by an authorized representative of the Seller.

**3. PATENTS** The Seller may, in the performance under this contract, furnish or install, apparatus, components, materials and supplies which may be (a) standard commercial products of the Seller, (b) purchased from other sources, (c) manufactured by the Seller to meet the specific circumstances arising under this contract, and (d) manufactured by the Seller to the requirement of the Customer's instructions, designs, or specifications.

Items in categories (b), (c) and (d) are furnished by the Seller in accord with the exigencies and needs of the particular contract and under circumstances which do not ordinarily admit of investigation of possible risks arising under patents. The Seller, therefore, assumes no obligation to the Customer with respect to such risks.

As to items in category (a), the Seller shall defend any suit or proceeding brought against the Customer so far as based on a claim that any such items in category (a) furnished under the contract constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at the Seller's expense) for the defense of same; and the Seller shall pay all damages and costs awarded therein against the Customer. In case said item is, in such suit, held to constitute infringement, and by reason thereof the use of said item, or the apparatus containing said item, is enjoined the Seller shall, at its own expense and at its option either procure for the Customer the right to continue using said apparatus or item, or replace the item with a non-infringing item, or modify the item to become non-infringing. The foregoing states the entire liability of the Seller for patent infringement by apparatus, components, materials, and supplies furnished or installed under this contract.

**4. DELIVERY** Estimates of delivery or completion dates are approximate and are based upon prompt receipt of all necessary information and ready access to equipment upon which work is to be performed. Unless otherwise stated herein, delivery of goods to common carrier or licensed trucker shall constitute delivery to Buyer, and all risk of loss or damage in transit shall be borne by Buyer. Seller shall not be responsible for delays in delivery or any failure to deliver due to causes beyond Seller's control including but not limited to acts of God, war, mobilization, civil commotion, riots, embargoes, domestic or foreign governmental regulations or orders, acts of the Buyer, its agents or employees, fires, floods, strikes, lockouts and other labor difficulties, or shortages of or inability to obtain shipping space or transportation, or inability to secure fuel, supplies or power at current prices or on account of shortages thereof. In the event of such delay, the date of completion shall be extended for a period equal to the time lost by reason of delay.

**5. RETURNS** Prior to returning any materials, shipping instruction must be obtained from the Seller. The Seller is not responsible for damage to material due to improper installation or to attempts to operate the parts beyond their rated capacity. Under no circumstances shall the Seller be obligated to allow claims for consequential or other damages or for any expenses incurred by reason of the use or sale of material supplied by the Seller.

**6. PAYMENTS** Pro-rate payments shall become due as shipments are made from the Seller's facility or as work is completed at the Customer's premises. If shipments are delayed by the Customer, payments shall become due on the date when the Seller is prepared to make shipment. If the work to be performed hereunder is delayed by the Customer, payments shall be made based on the purchase price and the percentage of completion. Equipment held for the Customer shall be at the risk and expense of the Customer.

If the financial condition of the Customer at any time does not, in the judgment of the Seller, justify continuance of the work to be performed by the Seller hereunder on the terms of payment as agreed upon, the Seller may require full or partial payment in advance, or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges. In the event of bankruptcy or insolvency of the Customer or in the event any proceeding is brought against the Customer, voluntarily or involuntarily, under the bankruptcy of any insolvency laws, the Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges.

Terms of payment are net cash upon receipt of invoice. If any service or material furnished hereunder is not paid for within sixty days following completion of the work and invoicing the Customer, the Seller may, upon not less than seven days written notice mailed to Customer at the Customer's last know address, sell the equipment repaired serviced, maintained or modified hereunder at public or private sale and apply the proceeds to the Seller's charges and to the expenses of the sale.

**7. TITLE** All scrap resulting from the work shall be the property of the Seller. The title and right of possession of the equipment repaired or modified hereunder shall remain with the Customer, subject to any applicable lien rights of the Seller and to its right of sale in the event of non-payment as provided in the proceeding.

**8. TOOLING** Charge for dies, tools, and/or gauges do not convey ownership or the right to remove from Seller's factory. Tool charges shown on the invoice constitute only a part of the actual tool cost. The Seller assumes the remainder of the original costs and the cost of maintenance: The Buyer, however, may purchase such dies and/or gauges upon request at the discretion of the Seller.

**9. SALES & SIMILAR TAXES** The Seller's charges do not include sales, use, excise or similar taxes. Consequently, in addition to the charges specified herein the amount of any present or future sales, use, excise, or other similar tax applicable to the sale, repair, inspection, maintenance, modification or use of the equipment hereunder shall be paid by the Customer, or in lieu thereof the Customer shall provide the Seller with a tax exemption certificate acceptable to the taxing authorities.

**10. LIMITATION OF LIABILITY** The Seller's liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from this contract, or from the performance or breach thereof, or from the repair, maintenance modification or use of any equipment covered by or furnished under this contract shall in no case exceed the total amount of the contract price except as provided in the paragraph entitled "Patents". In no event shall the Seller be liable for special, indirect, or consequential damages.

**11. GENERAL** This contract constitutes the entire agreement between the parties, all prior representations and understandings having been merged herein. It may not be modified or terminated except by a writing signed by a duty authorized representative of Seller. This contract shall be governed by and construed according to the laws of the State of Colorado. It is not intended that the equipment covered by, repaired, inspected, modified or furnished under this contract be used in or with any atomic installation or activity. If it is so used, Seller disclaims all responsibility of every kind, including negligence, and the Customer indemnifies and holds the Seller harmless for any liability or damage whatsoever arising out of the use of the equipment in such a manner. The employees of the Seller assigned to work on the Customer's premises shall remain under the supervision and control of the Seller and shall not constitute employees of the Customer. The Seller shall have the right to subcontract any or all of the work covered by the contract. The Seller will comply with all applicable Federal, State and Local laws and specifically represents that any work to be undertaken hereunder will be in compliance with the requirements of the Fair Labor Standards Act of 1938 as amended. Any assignment of this order or any rights hereunder, by the Customer without written consent of the Seller shall be void. Waiver by the Seller of a breach of any of these terms and conditions shall not be construed as a waiver of any other breach. Stenographic and clerical errors are subject to correction.

## **TERMS AND CONDITIONS OF SALE**

- A.** Seller warrants the services to be performed as being done in a good and workmanlike manner consistent with acceptable industry standards for a period of 30 days after the date of completion of the work. Seller's obligation under this paragraph of warranty is limited, however, to repairing or furnishing without charge replacement parts necessary to correct any condition of the equipment resulting directly from defects in material and workmanship, provided such defect appears within 30 days after the date of completion of the work, and provided further the Purchaser gives the Seller immediate written notice upon the discovery of such defect. Seller's liability shall not exceed the cost of correcting any condition resulting directly from such defect in performing the work or of repairing or replacing any such defective machinery parts in the manner herein provided, and upon the expiration of said 30 days, all such liability shall terminate.
- B.** Seller warrants any machinery parts of its own manufacture to be delivered hereunder against defects in material and workmanship, under normal use and service, for a period of one year after date of shipment when used and maintained in accordance with instructions supplied by Seller. This is the sole and exclusive warranty. Seller's obligation under this warranty is limited to repairing or furnishing, without charge, FOB point of manufacture, a similar part to replace any part which within one year after date of shipment as proven to have been defective at the time it was shipped, provided the Purchaser has given Seller immediate written notice. Seller shall have the option of requiring the return of the defective part, transportation prepaid to establish the claim.
- C.** Seller shall not be held liable for damage for delay caused by defects. The provisions in the specifications hereto attached are descriptive, unless expressly stated as warranties.
- D.** SELLER MAKES NO OTHER WARRANTY OTHER THAN THAT SPECIFIED ABOVE OF ANY KIND WHATSOEVER, EXPRESSED OR IMPLIED, AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THESE TERMS OF SALE. Seller shall not in any event be held liable for special, indirect, incidental or consequential damages. No allowance will be made for repairs or alterations without its written consent or approval. Seller's liability on any claim of any kind including negligence, or any loss or damage arising out of, connected with, or resulting from this contract, or the performance or breach thereof, or the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, operation or use of any equipment covered by or furnished under this contract shall in no case exceed the price paid by the Purchaser for the services to be performed under this contract. Seller also disclaims all liability, whether in contract, tort, warranty, or otherwise, to any party other than the Purchaser.
- E.** Seller, its officers, agent or employees, shall not be liable for any loss or injury to persons or property (including the machinery which is the object of the work) caused in whole or in part by (1) the acts of the Purchaser, its contractors, agents or employees; (2) failure to observe Seller's instructions; (3) failure or malfunctioning of any tools, equipment, facilities or devices not furnished by Seller; (4) manufacturing, design or other defects, whether apparent or latent, in the machinery serviced or to be serviced by Seller; (5) any unauthorized alterations, adjustments or modifications by Purchaser to the machinery serviced by Seller, or (6) Purchaser's express or implied assumption of risk for the services performed hereunder, as for example and without limitation, when Purchaser starts up, reinstalls, or reassembles machinery serviced by Seller without direct on-site supervision by Seller. Purchaser agrees to save Seller, its officers, agents or employees harmless from any and all such liability.
- F.** Seller shall not be liable for loss or damage due to delays in furnishing the services or in the work resulting from any cause beyond Seller's reasonable control, including, but not limited to, compliance with any governmental regulations, orders or instructions, inability to obtain materials, acts of God, acts of omissions of the Purchaser, acts of civil or military authority, fires, war, riot, or delays in transportation. In no event shall Seller be liable for special, indirect, incidental or consequential damages on account of delay due to any cause.
- G.** The Purchaser shall pay to Seller in addition to the purchase price, the amount of all sales, use, privilege, occupation, excise or other taxes, Federal State, Local, or Foreign which Seller may be required to pay in connection with the furnishing of goods or services to the Purchaser.
- H.** Pro-rate payments shall become due as shipments are made from the Seller's facility or as work is completed at the Purchaser's premises. If shipments are delayed by the Purchaser, payments shall become due on the date when the Seller is prepared to make shipment. If the work to be performed hereunder is delayed by the Purchaser, payments shall be made based on the purchase price and the percentage of completion. Equipment held for the Purchaser shall be at the risk and expense of the Purchaser. If the financial condition of the Purchaser at any time does not, in the judgment of the Seller, justify continuance of the work to be performed by the Seller hereunder on the terms of payment as agreed upon, the Seller may require full or partial payment, in advance, or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable and proper cancellation charges. In the event of bankruptcy or insolvency of the Purchaser, voluntarily or involuntarily, under the bankruptcy laws, the Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges.
- Terms of payment are net cash upon receipt of invoice. If any service or material furnished hereunder is not paid for within sixty (60) days following completion of the work and invoicing the Purchaser, the Seller may, upon not less than seven (7) days written notice, mailed to the Purchaser at the Purchaser's last known address, sell the equipment repaired, serviced, maintained or modified hereunder, at public or private sale and apply the proceeds to the Seller's charges and to the expenses of the sale. All prices are subject to adjustment by Seller to reflect price in effect as of date of shipment.
- I.** In the event payment is not received for the parts and/or services performed and the same is turned over for collection, Purchaser shall be responsible to pay all reasonable costs of collection, including costs and reasonable counsel fees, and local legal rate of interest.
- J.** All parts, units and equipment when shipped to Purchaser are shipped FOB point of shipment and risk of loss or damage shall be the

responsibility of the Purchaser. Possession shall pass to Purchaser upon receipt of merchandise by carrier.

**GENERAL PROVISIONS:**

The provisions of any contract resulting from quotation or acceptance shall be construed and applied in accordance with the Uniform Commercial Code, shall be deemed to be between merchants, and are for the benefit of the parties thereto and not for any other person.

It is not intended that the equipment covered by, repaired, inspected, maintained, modified or furnished under this contract be used in or with any atomic installation or activity. If it is so used, the Seller disclaims all responsibility of every kind, including negligence, and the Purchaser indemnifies and holds the Seller harmless for any liability or damage whatsoever arising out of the use of the equipment in such a manner. The employees of the Seller assigned to work on the Purchaser's premises shall remain under the supervision and control of the Seller and shall not constitute employees of the Purchaser.

The Seller shall have the right to subcontract any or all of the work covered by the contract.

The Seller will comply with all applicable Federal, State and Local laws and specifically represents that any work to be undertaken hereunder will be in compliance with the requirements of the Fair Labor Standards Act of 1938 as amended.

Any assignment of this order or any rights hereunder by the Purchaser, without written consent of the Seller, shall be void.

No waiver, alteration or modification of any of the provisions hereof shall be binding unless in writing and signed by a duly authorized representative of the Seller.