

## **I. STANDARD TERMS AND CONDITIONS OF SALE**

The following standard terms and conditions of sale are applicable to proposals and contracts for Company's equipment and services. Any order for or statement of intent to purchase any such equipment, or any direction to proceed with work shall constitute assent to these terms and conditions.

### **A. WARRANTIES**

Company would provide the following warranties to Customer, as applicable, in accordance with this proposal:

#### **1. EQUIPMENT WARRANTY – COMPANY EQUIPMENT**

To the extent that Company provides equipment manufactured by Company to Customer in accordance with this proposal, and such equipment is properly installed in a good and workmanlike manner in accordance with industry practices and free of material defects in workmanship (if not installed by Company) and properly maintained and operated in accordance with all manufacturer's operating instructions and recommendations and in accordance with generally approved practices, Company warrants to Customer for a period the earlier of twelve (12) months from substantial completion of installation or eighteen (18) months from delivery, that the equipment is free of material defects of workmanship and material, and that Company has good and marketable title to such equipment.

#### **2. EQUIPMENT WARRANTY – OTHER EQUIPMENT**

To the extent that Company provides equipment not manufactured by Company to Customer in accordance with this proposal, Company warrants to Customer for a period the earlier of twelve (12) months from substantial completion of installation or eighteen (18) months from delivery, that Company has good and marketable title to the equipment.

Company shall assign all warranties for such equipment to Customer (to the extent that such warranties can be assigned), and those warranties, in addition to the foregoing warranty of Company to Customer, shall be the exclusive warranties to Customer for such equipment.

#### **3. INSTALLATION SERVICES WARRANTY**

To the extent that Company provides installation services to Customer in accordance with this proposal, and such equipment is properly maintained and operated in accordance with all manufacturer's operating instructions and recommendations and in accordance with generally approved practices, Company warrants to Customer that effective with the completion of the services hereunder, for a period of (1) year from substantial completion of installation, that such services were performed in a good and workmanlike manner, free of material defects, and in accordance with common industry practices.

#### 4. OTHER SERVICES WARRANTY

To the extent that Company provides services (other than installation services) to Customer in accordance with this proposal, Company warrants to Customer that effective with the completion of the services hereunder, for a period of twelve (12) months from the date the services were performed, such services were performed in a good and workmanlike manner and in accordance with common industry practices.

#### 5. LIMITATIONS OF WARRANTY

For each of the foregoing warranties, Company does not warrant any product, material or services of others which Customer has designated. Unless expressly set forth in this proposal, Company does not warrant the fitness or suitability of: any equipment or the services being performed; any modification thereof for any specific application; or performance result or use.

The foregoing warranties only apply to any failure which appears and Customer has provided Company with written notice prior to the expiration of any applicable warranty. Company shall not be liable for any loss or damage from its failure to discover or repair latent defects or for defects inherent in the design of any used equipment sold to Customer or equipment reconditioned for Customer by Company.

The foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. **NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.**

#### 6. REMEDIES

Provided that Customer has provided Company with written notice within the applicable warranty period, Company shall correct, within a reasonable time by repair or replacement, at Company's discretion, any defect. **CUSTOMER AGREES THAT SUCH REPAIR OR REPLACEMENT, AT COMPANY'S DISCRETION, SHALL BE CUSTOMER'S EXCLUSIVE REMEDY AND COMPANY'S SOLE RESPONSIBILITY FOR ANY DEFECT IN SERVICES PROVIDED BY COMPANY THAT FAILS TO CONFORM TO A GOOD AND WORKMANLIKE MANNER.**

Any associated shipping charges with respect to Company's warranty will be Customer's responsibility. Title and risk of loss to any equipment being repaired or replaced shall remain with the Customer regardless of where the corrective work takes place.

### **B. WAIVER OF CONSEQUENTIAL DAMAGES**

COMPANY AND CUSTOMER EXPRESSLY AGREE TO WAIVE ALL CLAIMS AGAINST EACH OTHER (AND AGAINST ANY PARENT, SUBSIDIARY OR AFFILIATE, TOGETHER WITH THE DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS OF EACH OF THE FOREGOING) FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF ACTUAL OR ANTICIPATED PROFITS, REVENUES OR PRODUCT; LOSS BY

REASON OF SHUTDOWN OR NON-OPERATION; INCREASED EXPENSE OF OPERATION, BORROWING OR FINANCING; LOSS OF USE OR PRODUCTIVITY; OR INCREASED COST OF CAPITAL), AND REGARDLESS OF WHETHER ANY SUCH CLAIM ARISES OUT OF BREACH OF CONTRACT OR WARRANTY, TORT, PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. THIS WAIVER INCLUDES NOT ONLY POSITIVE CLAIMS FOR DAMAGES, BUT ALSO APPLIES TO THE RIGHT TO ASSERT SUCH DAMAGE AMOUNTS DEFENSIVELY, SUCH AS BY WAY OF AFFIRMATIVE DEFENSES, SETOFF, RECOUPMENT, OR OTHERWISE IN OPPOSITION TO CLAIMS ASSERTED BY THE OTHER PARTY.

#### **C. LIMITATION OF LIABILITY; COMMENCEMENT OF ACTIONS**

CUSTOMER AND COMPANY EXPRESSLY AGREE THAT THE LIABILITY OF COMPANY ON ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE, SHALL IN NO CASE EXCEED TWENTY-FIVE PERCENT (25%) OF THE PRICE ACTUALLY PAID BY CUSTOMER TO COMPANY UNDER THIS PROPOSAL; *PROVIDED, HOWEVER*, THAT THIS LIMITATION SHALL NOT APPLY TO ANY CLAIM BY CUSTOMER AGAINST COMPANY FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, PERSONAL INJURY AND/OR DEATH.

Company and Customer expressly agree that, to the fullest extent available by law, any action by Customer, whether based on contract, tort (including negligence and strict liability) or any other theories, must be commenced within one (1) year after the cause of action occurs, or it shall be barred.

#### **D. INDEMNIFICATION**

Customer agrees to defend, hold harmless and indemnify Company (and any parent, subsidiary or affiliate, together with the directors, officers, employees and agents of each of the foregoing) against any and all losses, claims, actions or suits, for personal injury or death, property damages or destruction to property of Customer or third parties, arising out of the acts or omissions of Customer, its employees, agents, representatives or subcontractors; *provided, however*, that such loss, damage or destruction shall not be caused by Company's gross negligence or willful misconduct.

#### **E. DELAY IN PERFORMANCE**

The time for completion given herein is approximate and is estimated from the date of receipt of order with completed manufacturing information and approval of drawings as may be necessary. Company shall not be liable for any loss or damage for delay or non-delivery due to acts of civil or military authority, acts of Customer, suspension of work because Customer fails to make payments when due, or by reason of "Force Majeure", which shall be deemed to be all causes whatsoever not reasonably within the control of Company including but not limited to acts of God, war, riot or insurrection, blockages, embargoes, sabotage, epidemics, fires, strikes or work stoppages, lockouts or other industrial disturbances, delays of carriers, or by vendors and inability to secure materials, labor or manufacturing facilities.

## **F. PAYMENTS**

The prices specified in the payments schedule are in U.S. currency, payable free of all expense to Company for collection charges. Pro rata payment shall be made for partial shipment. If delivery is prevented or postponed at Customer's request, or by reason of cause set forth in the section titled "DELAY CAUSED BY CUSTOMER", then all dates of payment related to delivery shall relate instead to the date of completion of manufacture. Storage of such equipment will be at the Customer's expense and risk. When, in the opinion of the Company the financial condition of the Customer renders it necessary, or when a payment is not made when due, the Company may require cash payment or satisfactory security before shipment, or may suspend work if a payment is not made when due. All past due balances shall bear interest at the lesser of the rate of twelve percent (12%) per annum or the highest rate allowable by law.

## **G. RETENTION OF TITLE; SECURITY AGREEMENT**

Company shall retain title to the equipment as security until the purchase price for the equipment is paid in full. Customer agrees that this proposal constitutes a security agreement between Company and Customer, and Customer hereby authorizes Company to file one or more UCC-1 financing statements for recording showing the interest of Company in the equipment in order to perfect or protect Company's security interest in the equipment being provided by Company to Customer under this proposal.

## **H. RISK OF LOSS, INSURANCE**

The risk of loss or damage to the equipment shall pass to the Customer when the equipment is duly delivered to the specified F.O.B. point. Customer shall secure and maintain builder's all risk insurance on the equipment, with Company as a named insured, in an amount equal to the contract price, and shall insure the equipment against the perils of fire, extended coverage, vandalism and malicious mischief. Upon request, Customer shall provide Company with proof of insurance, or a letter certifying that the Customer is self-insured and is bearing this risk directly. Regardless of whether the Customer secures this coverage by insurance policy or self-insurance, the Customer agrees to indemnify Company as if builder's all risk insurance was in force.

The Customer and Company waive all rights against each other for damages caused by a loss, except to the extent covered by a builder's all risk insurance policy obtained for the equipment or Customer's self-insurance.

## **I. INSTRUCTION AND TRAINING**

Company will provide its standard operating manual and instructions to the Customer and will provide reasonable training to the personnel for operation of the equipment as provided in the specifications. If the Customer believes it requires additional instruction or training to operate the system properly, it shall notify Company to request additional instruction and training

at Company's standard rates and schedule of charges in effect at that time.

#### **J. DELAY CAUSED BY CUSTOMER**

In the event that Customer causes suspension or delay of the work of Company, Company shall be entitled to any additional costs caused by such delay or suspension. Within a reasonable time after work is commenced, Company shall advise the Customer of the amount of increased cost and that amount shall be added on to the contract price.

#### **K. TAXES**

Customer shall pay to Company, in addition to the purchase price, the amount of all sales, use, privilege, occupation, excise, or other taxes, federal, state, local or foreign, which Company may be required to pay in connection with furnishing goods or services to the Customer.

#### **L. GOVERNMENT IMPOSED DUTIES OR TARIFFS**

In the event of a significant change in duties or tariffs that materially affects Company's costs under this proposal, Company may request a renegotiation of proposal terms. Both parties agree to enter into good faith negotiations to address such changes, including any price adjustments or adjustments to delivery timelines.

#### **M. INTEGRATION**

This proposal and all its attachments constitute the entire agreement between the parties, and all of the understandings and agreements between parties are incorporated in this agreement. No promises, agreements or understanding relative to the subject matter other than those set forth in this proposal shall be binding upon Company in any event. In the event of a conflict between the terms of this proposal and any other agreement between Customer and Company (including any prior or subsequent purchase order issued by Customer), Customer and Company explicitly agree that the terms and conditions of this proposal shall govern and control.

#### **N. MISCELLANEOUS**

This proposal shall be for the sole benefit of the parties, and there are no third-party beneficiaries of this proposal. This proposal may be modified or waived only by a separate writing signed by the parties. The validity, interpretation, enforceability and performance of this proposal shall be governed by and construed in accordance with the laws of the State of Oregon, exclusive of choice of law provisions. The parties expressly agree that the federal courts for the State of Oregon shall have exclusive jurisdiction over any dispute arising out of this proposal. If any provision of this proposal is determined to be invalid or unenforceable, the validity or enforceability of the other provisions shall not be affected.