



**TERMS AND CONDITIONS OF SALE**  
**Version 2010-A**

**1. GOVERNING TERMS AND CONDITIONS**

Unless another document related to terms and conditions is issued by the seller, these standard terms and conditions of sale shall apply to all orders for product (hereinafter "Product" or "Products") between the purchaser (hereinafter "Buyer") and the seller of the Products (hereinafter "Seller"). These TERMS AND CONDITIONS OF SALE (hereinafter "Terms & Conditions") shall not apply to the offering of non-Product services. Such non-Product services shall be governed by the TERMS AND CONDITIONS OF SALE contained in Seller's proposal or quotation for such non-Product services. In the event that Seller issues a formal proposal or quotation to Buyer for the sale of Products then any order resulting from said proposal or quotation shall be governed by the terms and conditions referenced in the proposal or quotation. Buyer shall be deemed to have accepted these Terms & Conditions through (i) delivering a purchase order or a purchase order number to Seller or (ii) receipt and acceptance of Products or (iii) payment of Seller's invoice for the Products or (iv) by failing to provide Seller with written notice of rejection of the Terms & Conditions within three (3) business days from the date of receipt of the Products or (v) any other written indication by Buyer of its acceptance of the Terms & Conditions. Any terms and conditions contained in any purchase order, correspondence or accompanying payment for delivery of the Products, which are different from or in addition to these Terms & Conditions, shall not be binding on Seller, whether or not they would materially alter the order, and Seller hereby objects thereto. The scope of work under any Products order does not include installation or any on-site services.

**2. CONFIDENTIALITY**

All information, including quotations, specifications, drawings, prints, schematics, and any other engineering, technical or pricing data or information submitted by Seller to Buyer related to any order for Products are the confidential and proprietary information of Seller; and Buyer and its employees, agents or other parties for whom Buyer is responsible may not disclose Seller's confidential and proprietary information to any third parties, or use Seller's confidential and proprietary information for its own account or that of any third party, except in the performance of the order.

**3. PRICE; PAYMENT TERMS**

The price and payment terms for the Products shall be set forth by Seller at the time of a quotation to Buyer by Seller, placement of an order from Buyer to Seller, through an invoice to Buyer by Seller and/or in Seller's acknowledgement of order to Buyer. All payment terms are subject to Seller's credit approval as of the later of the time of the order and/or prior to shipment. Unless otherwise set forth in the order, payments are due to Seller from Buyer no later than immediately upon Buyer's receipt of an invoice from Seller. Time is of the essence with respect to all payments. Payments that are outstanding more than ten (10) days from their respective due date shall bear an interest rate of one and one-half percent (1½%) per month (eighteen percent [18%] annually) until fully paid, including any interest payments thereon. If the rate of interest stated in the preceding sentence exceeds the maximum rate of interest that the applicable state law allows, then the rate of interest that will be assessed is the state maximum. In the event Buyer does not pay within the terms of the order, all collection costs incurred by Seller, including attorneys' fees will be paid by Buyer.

Payment for the sale of Products shall not be subject to offset, deduction or back charges by Buyer, unless such offset, deduction or back charge is expressly accepted in writing by an authorized representative of Seller. Any sums that have been deducted by Buyer in violation of this paragraph shall be considered overdue and are subject to the above interest charge. The price set forth in the order and all payments due to Seller from Buyer shall be in the lawful currency of the United States of America.

Notwithstanding the foregoing or any term in the quote, order or acknowledgement to the contrary, to the extent that anytime prior to shipment Buyer does not meet Seller's credit approval, Seller may either (i) cancel the order, subject to Section 5 below or (ii) request payment in full from Buyer prior to shipment of the Product.

**4. CHANGES**

Changes to the design, specifications, scope of supply, delivery schedule, product demonstration site, shipping instructions of the equipment or any material term of the Contract, may only be made upon execution by Buyer and Seller in writing ("Change Order"). Such Change Order shall state the parties' agreement on (i) change in the specifications, designs, scope of work, delivery schedule or shipping instructions for the equipment, (ii) an adjustment to the purchase price, and (iii) an adjustment in the date of shipment of the equipment and/or the period of performance. Both parties agree and acknowledge that unless a Change Order is agreed upon in writing by both parties, the Contract shall not be modified in any manner. In addition, Seller has the right to suspend performance during the period while the change is being evaluated and negotiated.

In the event Buyer has communicated proposed changes to Seller, Seller, at its sole discretion, shall either (a) accept the Change Order; (b) reject the Change Order and continue performance under the existing Contract; or (c) cancel the Contract. In the event that Seller elects (b) above Buyer shall either (i) agree to continue performance (of Seller) pursuant to the Contract or (ii) cancel the Contract.

**5. DEFAULT; CANCELLATION**

If Buyer fails to perform any of its obligations hereunder, including without limitation, failure to make payments as provided in Section 3 or otherwise, or if Buyer fails to promptly give reasonable assurances of future performance when requested by Seller, then Seller may, upon five (5) days' written notice to Buyer, declare Buyer to be in default and Seller may suspend performance of its obligations hereunder without liability and retain all rights and remedies Seller may possess at law, in equity and/or as provided in these Terms & Conditions.

In addition to the remedies above, to the extent that (i) Seller declares a default under this Section 5 or (ii) if the order is cancelled for any reason, other than (a) default by Seller or (b) Force Majeure, Buyer will make payment to Seller of reasonable cancellation charges which shall include all incurred costs (direct material, labor, burden, and application engineering) on the completed work plus twenty-five percent (25%) of the order price.

**6. TAXES, PERMITS, FEES, LAWS**

Unless expressly stated in Seller's invoice, the purchase price for the Products furnished by Seller excludes all governmental or brokerage taxes, duties, fees, charges or assessments. Seller may elect to add any such taxes, duties, fees, charges or assessments to the invoice amount payable to Seller by Buyer. Buyer must provide Seller with documentation acceptable to Seller of any exemptions claimed from taxes, duties, permits, fees, charges or assessments in advance. Except to the extent expressly assumed by Seller, Buyer shall secure and pay for all permits and fees necessary for the delivery and installation of the Products and/or the equipment into which the Products are installed. It is Buyer's duty to ascertain that the Products proposed by Seller and their subsequent installation and use is in accordance with applicable local laws, statutes, ordinances and building codes ("laws"). Seller shall not be responsible for compliance of the Products or the equipment into which the Products are installed to such laws, but shall to the extent reasonably possible, promptly notify Buyer of any discrepancies that come to Seller's attention.

**7. SHIP DATES; DELIVERY TERMS; TITLE; RISK OF LOSS**

The scheduled dates for shipment of the Products are estimates based on production loading and/or third-party manufacturer's estimates at the time of order. Seller is not responsible for any actual, incidental or consequential damages arising by reason of any delay in delivery or shipment. Upon notification from Seller that Product is ready for shipment, Buyer must meet all obligations hereunder, including but not limited to payment, providing for delivery of the Product to the designated location, site preparation and all other obligations noted herein or in the acknowledgment. The term of delivery for all Products shall be "Ex Works Seller's Factory" (Incoterms), (hereinafter "Delivery"), with freight routing at the discretion of the Buyer unless otherwise agreed. The term "Deliver", "Delivery" and/or "Delivered" shall refer to the transfer of Products to the Buyer as described in the Delivery terms. Partial shipments shall be allowed; however, Buyer understands and agrees that the quoted price is based upon Seller shipping all Products when completed by Seller. If multiple or partial shipments are required by Buyer, Buyer must notify Seller in advance of such requirement. If multiple or partial shipments are requested or are necessary because of acts or omissions on the Product of Buyer, then Seller reserves the right to adjust the price to reflect any additional costs that Seller may incur as a result of such multiple or partial shipments. Title and risk of loss to the equipment for all purposes shall pass to Buyer upon Delivery as defined above.

**8. DELAYS, FORCE MAJEURE; SUSPENSIONS**

If Seller is delayed at any time by the acts or omissions of Buyer, its agents, subcontractors or material suppliers, Change Orders, or by any Force Majeure defined below then the period of performance shall automatically be extended to accommodate Seller's revised engineering and production schedules, material purchases and/or labor remobilization. "Force Majeure" means circumstances beyond the respective parties reasonable control, including without limitation, acts of God, acts of public enemies, wars, other hostilities, blockades, insurrections, riots, epidemics, quarantine restrictions, floods, unavailability of components or supplies, lightning, fire, storms, earthquakes, washouts, arrests, restraints of rulers and people, civil disturbances, acts of any governmental or local authority, and any other acts and causes, not within the control of the party claiming excuse from performance, which by the exercise of due diligence and reasonable commercial effort, that party shall not have been able to foresee, avoid or overcome.



## 9. SOURCE OF PRODUCTS

Seller reserves the right to obtain and/or manufacture the Products from or at any one or more of its world-wide facilities or from any third-party manufacturer and the price of the equipment shall not be affected by the source of the equipment. Buyer shall notify Seller upon placement of order whether the source of the equipment may conflict with Buyer's requirements for country of origin labeling, content restrictions, or duty or freight, and Buyer and Seller shall consult with each other on the possible impact of such requirements on the price or availability. Buyer's failure to notify Seller shall create an irrefutable presumption that the source of the goods as selected by Seller are acceptable to Buyer and that Buyer will bear the costs and consequences thereof.

## 10. INSTALLATION

Buyer is responsible for the installation of the Products including, without limitation, all civil engineering work and foundations, unloading, unpacking and proper positioning of Products in Buyer's equipment and the costs of the foregoing. Seller's service department can make a service representative available for consultation on site to assist with the Buyer's responsibilities above if so desired. This service will be priced at Seller's usual and customary daily service rates as announced from time to time plus reasonable expenses and will be subject to separate terms and conditions.

## 11. LAWS/SAFETY STANDARDS

The Buyer and end user are the parties responsible under the terms of all applicable Federal, state, local and regional laws applicable to the sale of Products including the Occupational Health and Safety Act of 1970, or the industrial safety laws applicable to the facility where the Products are installed, to ensure the Products and the equipment into which the Products are installed meet such requirements, and Seller hereby disclaims any liability for any violations of the Act or other applicable or regulation law that may be imposed respecting the Products furnished under any sale. Buyer shall train, require and cause its employees to (i) comply with directions set forth in maintenance, safety and operation instructions, manuals, drawings, safety notices and warnings and other instructions that might be furnished by Seller; (ii) use, reasonable care and all safety equipment and applicable safety guards and safety systems in the set-up, adjustment, operation and maintenance and repair of the Products and the equipment into which the Products are installed; (iii) not remove, or permit anyone to remove any safety equipment, safety feature or warning signs from the Products and the equipment into which the Products are installed nor permanently remove or disable any guards or safety features; and (iv) assure that the Products and the equipment into which the Products are installed are used in accordance with all applicable laws, regulations, customs, permits and standards in force.

## 12. ACCEPTANCE

Buyer's receipt of the Products Delivered hereunder shall be an unqualified acceptance of and shall also constitute a waiver of any defect which reasonable inspection would have revealed unless Buyer gives Seller notice of rejection of the Products within thirty (30) days after such receipt. In the event that Buyer gives such notice of rejection, Buyer shall afford Seller (i) reasonable opportunities to inspect any alleged non-conforming Products and (ii) a reasonable opportunity to provide substitute conforming Products. Buyer shall not return any Products without Seller's prior written consent.

## 13. FORUM/GOVERNING LAW

Any hearing, trial, proceeding or other meeting with respect to all claims, disputes or controversies (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) arising out of or relating to these Terms and Conditions of Sale or the order will be held in Hampden County Massachusetts United States of America, and the proceedings shall be conducted and all submissions of the Parties shall be in the English language. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL. This provision shall survive the termination of any order governed by these terms and conditions of sale. The governing law shall be the laws of the Commonwealth of Massachusetts. With respect to international transactions, the UN Convention On The International Sale Of Goods is hereby excluded from application.

## 14. WARRANTY

Seller warrants to the original Buyer only that the Products manufactured by Seller shall be free from defects in material or workmanship for a period of ninety (90) days measured from the date of shipment. The foregoing warranty will become void, and Seller will have no obligation whatsoever under this warranty, with respect to any of the following: (i) Products that are not used or maintained in a normal and proper manner, in accordance with any manuals and instructions that might be provided by Seller; (ii) Products that are modified, altered or repaired without the prior written approval of Seller; (iii) Buyer fails to make any payments when due under Section 3 or otherwise in the order or (iv) Products that are assigned, sold or transferred to an entity other than the Buyer. Seller will repair or replace at its option Products which upon Seller's inspection it finds to be defective, based on claims made in writing to Seller by Buyer within a reasonable time after discovery and within the warranty period. Products alleged to be defective must be returned to Seller for repair or replacement, freight prepaid, within thirty (30) days of Buyer's receipt of the return authorization number, obtained from Seller, which must be clearly marked on the outside of the return container. Replacement components shall be shipped from Seller upon Buyer request and receipt of a valid purchase order number so the validity of the Warranty can be determined. Unless otherwise specified, replacement Products shall be Delivered to Buyer "Ex Works Seller's factory" (Incoterms 2000). Any labor or equipment rental costs incurred in the dismantling and reassembly of the equipment into which the Products are installed shall be at Buyer's sole expense. This warranty excludes Products furnished by the Seller but manufactured by another party. Such Products shall bear no warranties other than the warranties extended by and enforceable against the manufacturer thereof at the time of Delivery to Buyer (which warranties Seller will furnish on Buyer's written request), for the period stated in that warranty.

Notwithstanding the foregoing, to the extent that a Product or a component within a Product is deemed by Seller or, in the case of a component, the manufacturer of the component, to be obsolete, such Product or component shall bear no warranty.

THE WARRANTY STATED HEREIN IS PERSONAL TO BUYER AND SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE PRODUCTS FURNISHED HEREUNDER AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ABOVE WARRANTY SHALL CONSTITUTE BUYER'S EXCLUSIVE REMEDY WITH RESPECT TO THE PRODUCTS FURNISHED HEREUNDER.

If Buyer removes or permits anyone to remove any safety equipment or warning signs or fails to observe any condition in this Section 14, or if any injury or damage is caused, in whole or in part, by the end-user's failure to comply with applicable federal, state or local safety requirements or Seller's instructions as provided in Section 11 above, Seller shall have no obligation to Buyer, and Buyer shall indemnify and hold Seller harmless against any claims, loss or expense for injury or damage arising from the improper use of the Products or the equipment into which the Products are installed. Seller specifically disclaims any and all liability arising out of the operating of the equipment other than the warranty liabilities to the original Buyer.

## 15. LIMITATION OF LIABILITY

BUYER UNDERSTANDS AND ACKNOWLEDGES THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY KIND, OR LABOR, EXPENSES, LOST PROFITS LOST OPPORTUNITIES, OR SIMILAR DAMAGES OF ANY KIND; AND REGARDLESS OF THE LEGAL THEORY OR CAUSES OF ACTION BY WHICH CLAIMS FOR ANY SUCH DAMAGES AS SET FORTH IN THE ENTIRETY OF THE ABOVE SECTION ARE ADVANCED, WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.

For international transactions:

IN ADDITION TO THE FOREGOING, SELLER MANUFACTURES AND/OR SELLS ITS PRODUCTS IN ACCORDANCE WITH AND NOT INFRINGING ON THE CUSTOMS, SPECIFICATIONS, PATENTS AND STANDARDS OF TRADE IN FORCE AND IN USE AND KNOWN TO SELLER IN THE UNITED STATES OF AMERICA. IT IS THE RESPONSIBILITY OF THE BUYER TO ASSURE THAT THE PRODUCTS AND THE EQUIPMENT INTO WHICH THE PRODUCTS ARE INSTALLED ARE USED IN ACCORDANCE WITH AND NOT INFRINGING UPON THE CUSTOMS, SPECIFICATIONS, PATENTS AND STANDARDS OF TRADE IN FORCE AND IN USE IN THE COUNTRY OF INSTALLATION.

## 16. INDEMNITY

Buyer agrees to indemnify and hold harmless Seller and its vendors from any and all claims or liabilities asserted against Seller or its vendors in connection with the manufacture, sale, delivery, re-sale, or repair or use of any Product furnished under these governing Terms & Conditions arising in whole or in part out of or by reason of the failure of Buyer, its agents, servants, employees or customers to follow directions, instructions, warnings or recommendations furnished by Seller or its vendors in connection with such equipment, or by reason of the failure of Buyer, its agents, servants, employees or customers to comply with all federal, state or local laws and regulations applicable to such equipment, including the Occupational Safety and Health Act of 1970, or by reason of the negligence of Buyer, its agents, servants, employees or customers.



**17. PURCHASE MONEY SECURITY INTEREST**

Notwithstanding any passage of title, Seller reserves a Purchase Money Security Interest under the Uniform Commercial Code in the equipment and in the proceeds derived from such equipment. Buyer shall execute such documents as Seller may require, including, but not limited to, a Security Agreement, one or more Financing Statements, and provide to the Seller signed waivers and consents from landowner(s) and mortgagee(s). The Buyer agrees and hereby does appoint the Seller as attorney in fact to do, at the option of Seller, all acts and things the Seller may deem desirable to perfect and continue to perfect the Purchase Money Security Interest, including Seller's authority to file financing statements naming Buyer as debtor and Seller as secured party without Buyer's signature in those states where such filings are permitted. At the Seller's option, there shall be no Delivery of any of the equipment purchased hereunder until all documents necessary to perfect the Security Interest have been executed to the Seller's satisfaction. All costs and expenses of Seller, including attorneys' fees for the preparation and recordation of documents deemed necessary and appropriate to establish and perfect the Security Interest, shall be the responsibility of the Buyer and shall be immediately payable by the Buyer upon receipt of Seller's invoice for same. These interests shall be satisfied by payment in full of the price.

**18. MISCELLANEOUS**

These Terms & Conditions supersede and replace any and all prior or contemporaneous agreements, understandings, arrangements or representations, whether oral or written heretofore made between the parties and relating to the subject matter hereof, and constitutes the entire understanding of the parties with respect to the sale of Products by Seller to Buyer. If either party, at its option, agrees to a waiver of any of the terms and conditions recited herein, such waiver shall not for any purpose be construed as a waiver of any succeeding breach of the same or any other terms and conditions; nor shall such a waiver be deemed as a course of conduct. If any provision or clause, or portion thereof, of these Terms & Conditions, or application thereof to any person or circumstances is held invalid or unconscionable, such invalidity or unconscionability shall not affect other provisions, or portions thereof, or applications of these Terms & Conditions which can be given effect without the invalid or unconscionable provision, or portion thereof, or application, and to this end the provisions of these terms and conditions are declared to be severable. Captions and heading in these Terms & Conditions are strictly for the purpose of convenience and general reference only, and shall not affect the meaning or interpretation of any of the provisions herein. Except as required to obtain necessary licenses or governmental approvals, each party shall obtain the written approval (which approval shall not be unreasonably withheld) of the other in advance of the disclosure of any news releases, articles, brochures, advertisements, prepared speeches and other information releases, relating to the subject matter hereof or the work performed or to be performed hereunder.