

## **FORMTEK TERMS AND CONDITIONS OF SALE**

**VERSION #010707C**

### **1. FORMATION OF CONTRACT; ACCEPTANCE OF ORDER; EFFECTIVE DATE**

These standard terms and conditions of sale together with the sales covenants, the general specifications, the technical specifications, acknowledgement of Seller and any addendum thereto comprise the "Proposal" or "Quotation" (collectively the "Quotation"), which upon acceptance by Buyer become the "Contract". Buyer may accept the Quotation through (i) delivering a purchase order that incorporates the Quotation by reference and payment of the initial deposit or (ii) other written indication by Buyer of its acceptance of the Quotation along with payment of the initial deposit. The effective date of the Contract shall be the date of acceptance by Seller (the "Effective Date") which Seller shall communicate to Buyer by acknowledgement or other writing. Seller's obligations under a Quotation or the Contract shall not commence until the Effective Date.

Any terms and conditions contained in any purchase order, correspondence or accompanying payment for delivery of the equipment specified herein, which are different from or in addition to the terms of the Contract shall not be binding on Seller, whether or not they would materially alter the Contract, and Seller hereby objects thereto. Any Quotation made by Seller either directly or by a sales representative of Seller shall expire in thirty (30) days, and after that will no longer be valid. The scope of work does not include installation unless specifically set forth in the Quotation.

### **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 in a Quotation or the Contract 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 party, or use Seller's confidential and proprietary information for its own account or that of any third party, except in the performance of the Contract.

### **3. DRAWINGS AND DESIGNS; PERMISSIVE VARIATIONS**

Selection, application and design of machines, roller dies, tooling, accessories, options and auxiliary equipment shall be based upon information furnished by Buyer. Buyer shall make available to Seller in a timely manner all information reasonably necessary for Seller to complete the work specified in the Contract, including drawings, diagrams, specifications of all electrical, mechanical and structural interfaces, and shall promptly answer in writing all inquires for information that Seller deems necessary from time to time to perform Seller's obligations under the Contract. Buyer understands that Seller is relying upon this information.

All drawings submitted by Seller, if any, with the Quotation are submitted only to indicate the general style and outline, suggested arrangement, and approximate overall dimensions of the equipment quoted. Except as otherwise provided in the Quotation for the approval of Buyer, no detailed shop or engineering drawings of any part of the equipment will be furnished to Buyer; provided however, Seller shall provide manuals for the safe operation and maintenance of the equipment sold to Buyer under the Contract.

If the goods are to be procured, designed and/or manufactured in accordance with Buyer's specifications, Buyer represents that the drawings, prints and parts, if any, submitted in connection with its order reflect Buyer's latest revisions of such specifications. Any subsequent modification to Buyer's specifications may result in a change to the Contract and Seller reserves its rights set forth in Section 5 below. With respect to tolerance, capacity, accuracy, production rates and the like, the terms of this Quotation shall supersede Buyer's specifications.

Unless otherwise agreed to by Buyer and Seller in this Contract, the equipment shall be manufactured in accordance with Seller's standard practices as they exist from time to time. Equipment and machinery ordered herein are of the stated capacity and range, designed and built for operation with good commercial accuracy for the forming of sheet metal. Capacity of the equipment is contained in the Quotation with gauge references per the Standard Gauge for Sheet and Plate Iron and Steel, 15 U.S.C. §206. All product that is produced by Buyer using the equipment sold under this Contract, including that produced to

meet any specification of Buyer, shall be subject to dimensions, tolerances and variations consistent with usages of the trade for "sheet metal" and regular industry practice.

No governmental or other specification other than the Seller's shall be incorporated by reference herein unless a copy of said specification is agreed by Seller and attached to the Quotation. Any deviation in usage from the conditions as provided or as set forth in this Contract shall be at Buyer's risk.

#### **4. PRICE; PAYMENT TERMS**

The price and payment terms for the equipment are set forth in the sales covenants of the Quotation. In the event that the payment terms are not set forth in the Quotation or certain terms are not specified, the payment terms set forth in these terms and conditions shall apply. In addition, in the event that a specific schedule of payments is not set forth in the Quotation, Seller shall specify the required schedule of payments in its acknowledgement of order to Buyer.

All payment terms are subject to Seller's credit approval at the time of acknowledgment. Payments are due upon Buyer's receipt of an invoice or in the event that the payment terms are set forth in the Contract, as of the specific date listed on the applicable payment schedule of the Contract. If shipment or commissioning of the equipment is delayed by Buyer beyond the scheduled date, and the equipment is ready for delivery or the scheduled commissioning, final payment shall be due 10 days after such scheduled date.

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 (1 ½%) 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 this Contract, all collection costs incurred by Seller, including attorneys' fees will be paid by Buyer.

Payment for the sale of equipment furnished under this Contract 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 Quotation and all payments due to Seller from Buyer shall be in the lawful currency of the United States of America unless otherwise specified in the Quotation.

Unless otherwise set forth in the Quotation the terms of Payment for international transactions shall be as follows:

A deposit in an amount specified by Seller shall be paid via wire-transfer upon placement of order ("Initial Deposit") and the balance of the total purchase price shall be paid upon Seller's notification to Buyer that the equipment is being readied for international shipment.

If a Letter of Credit is to be used to cover any payments, Buyer shall open, in favor of Seller, an irrevocable, documentary Letter of Credit in the amount equal to those payments in the specific form and format described in Seller's letter of credit instructions available for review at [www.formtekinc.com](http://www.formtekinc.com). The minimum requirements for any such letter of credit are that it must be payable "at sight" at the counters of Seller's bank in the USA, it must allow for confirmation by Seller's bank, it must allow partial shipments and partial draws from any point of origin and must allow trans-shipment and must specify that bank charges in addition to those charge by Seller's bank shall be payable by the Buyer. The letter of credit shall specify the latest date of shipment for the Product to be at least sixty (60) days after the estimated Standard delivery time indicated in the Quotation and shall remain valid for at least thirty (30) days beyond the latest date of shipment. The letter of credit shall not require any documentation for collection other than those specified and agreed upon by the Seller. The Buyer agrees to have its issuing bank forward a draft version of the letter of credit to Seller for its review and approve prior to issuance of the final version.

## **5. CANCELLATION; CHANGES**

If Buyer cancels the contract under for any reason, including any of the options below, Buyer will make payment 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 contract price (ten percent (10%) of the Contract price if no engineering work has commenced).

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.

## **6. DEFAULT**

If Buyer fails to perform any of its obligations hereunder, including without limitation, failure to make payments as provided in Sections 4 and 5, if applicable, 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 this Contract.

## **7. TAXES, PERMITS, FEES, LAWS**

Unless expressly stated in Seller's invoice or the Quotation, the purchase price for the equipment furnished hereunder 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 equipment.

It is Buyer's duty to ascertain that the equipment proposed by Seller and its subsequent installation and use is in accordance with applicable local laws, statues, ordinances and building codes ("laws"). Seller shall not be responsible for compliance of the equipment to such laws, but shall to the extent reasonably possible, promptly notify Buyer of any discrepancies that come to Seller's attention.

## **8. SELLER'S PERFORMANCE DATES; DELIVERY TERMS; TITLE; RISK OF LOSS**

The scheduled dates for demonstration, testing, shipment and/or commissioning of the equipment are estimates based on production loading at the time of Quotation and may be quoted as a range of weeks after receipt of order, initial deposit and timely supply by Buyer of necessary information, required for the manufacturer of the equipment. Seller is not responsible for any actual, incidental or consequential damages arising by reason of any delay in delivery.

The terms of delivery for all equipment covered by this Contract shall be either "F.O.B. Seller's factory" (UCC), for *domestic shipments*, or "Ex Works Seller's factory" (Incoterms), for *international shipments*, (each to be labeled "Delivery"), with freight routing at the discretion of the shipper unless otherwise specified by Buyer or otherwise set forth in this Contract. The term "Deliver", "Delivery" and/or "Delivered" shall refer to the transfer of equipment to the Buyer as described in the Delivery terms. Partial shipments shall be allowed however Buyer understands and agrees that the Contract price is based upon Seller shipping all equipment when it is 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 part 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.

For domestic transactions, 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. At any time upon request of Seller, Buyer shall execute such documents as Seller may require, including, but not limited to, a Security Agreement, one or more Financing Statements, provide to the Seller signed waivers and consents from landowner(s) and mortgagee(s) and provide to Seller evidence of other actions necessary to perfect any such Purchase Money Security Interest.

## **9. 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.

- (a) "Force Majeure" means circumstances beyond the respective party's 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.
- (b) During the period of any Force Majeure condition, the parties shall cooperate to perform under this Contract to the best of the parties' abilities.
- (c) If either party in good faith is rendered wholly or partially unable by Force Majeure conditions to carry out its obligations under this Contract, or if Seller's supplier is unable to provide equipment or materials, and if that party gives prompt written notice and full particulars of such Force Majeure condition to the other party, that party shall be excused from performance of its obligations during the continuance of any such inability, but for no longer period. Such cause shall be remedied as far as possible with all reasonable speed, and with all reasonable commercial efforts, and notice shall be given when the cause is remedied.
- (d) Notwithstanding the provisions of sub-part (c), if performance by a party is precluded or restrained by Force Majeure for more than one hundred-eighty (180) days, either party may terminate this Contract upon written notice to the other. In the event that Buyer terminates the Contract, Seller shall be entitled to recover from Buyer all incurred costs (direct material, labor, burden, and application engineering) on the completed work and work-in-process. In the event that Seller is delayed by the failure of Buyer to provide access to the site or furnished equipment, information or services in accordance with the schedule and requirements set forth in this Contract, Seller shall receive an equitable adjustment to the delivery schedule, and Contract price.

Seller reserves the right to suspend, without any liability to or recourse from Buyer, all or part of the services to be performed hereunder (including the commissioning and shipment of equipment) during any period when, in the reasonable judgment of Seller, the health and/or safety of Seller and/or its subcontractors' personnel performing any such service could be jeopardized.

## **10. SOURCE OF EQUIPMENT**

Seller reserves the right to manufacture the equipment at any one or more of its world-wide facilities and the price of the equipment shall not be affected by the source of the equipment. The Seller's factory at which the product demonstration will be conducted under Section 13 below will be communicated to Buyer in the Quotation or with Seller's acknowledgment. Any request by Buyer for a change to that location of the product demonstration or other testing will require the issuance of a Change Order, including a change in Contract price, in accordance with Section 5, above. Buyer shall notify Seller as soon as pos-

sible, but not later than 14 days of the acknowledgement 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 Contract price. Buyer's failure to notify Seller within the 14 day notice period shall create an irrefutable presumption that the source of the goods are acceptable to Buyer and that Buyer will bear the costs and consequences thereof.

## **11. INSTALLATION**

Buyer is responsible for the installation of the equipment including, without limitation, all civil engineering work and foundations, unloading, unpacking and proper positioning of equipment, pre-aligning and anchoring of equipment, disposal of packing materials, filling of all fluid reservoirs and provision of and connecting all electrical wiring, electronic connections and utility services required for the equipment and the costs of the foregoing.

The equipment covered by this Contract may require special footings, foundations or floor surfaces depending upon the depth and condition of the existing concrete slab, foundation, or floor surface and other physical conditions all of which are the responsibility of Buyer. Upon written request, Seller will furnish a layout or foundation drawing to assist Buyer in the installation, which drawing shall be approved in writing by Buyer. Such layout or foundation drawings are approximate and are submitted only to assist Buyer with respect to installation.

Specifically, Buyer has the following responsibilities upon and/or before receipt of the equipment at Buyer's facility:

- All site preparation, foundations, pits and government permits are the responsibility of the Buyer (Unless otherwise set forth in the quotation, the equipment covered by this quotation is designed for installation on normal plant or warehouse floors without additional foundations; however, special footings and foundations may be required for some machines depending upon the depth and condition of the existing concrete slab. In addition, some special lines require site preparation, concrete work or pits for proper installation, all of which is the responsibility of the Buyer to provide at Buyer's sole risk and expense. If required, this site preparation information is outlined on the approval drawing which must be signed by the Buyer before Seller begins design and engineering of the line.)
- Buyer is to remove the machinery from the containers and place it in approximate position for operation
- Buyer is to remove all packing materials and clean the machine
- Buyer is to provide any lifting equipment as required by the Seller's service representative
- Buyer is to provide and install all foundation anchors according to instructions provided by Seller
- Buyer is responsible for the filling of gear boxes and hydraulic reservoirs with required contents.
- Buyer to provide hydraulic oil for the machinery
- Buyer is to provide sufficient quantities of material for installation and testing of the machine
- Buyer to provide one maintenance person full time to work under the direction of the Seller's service representative during the installation and training
- Buyer to provide air lines to the machines per the APPROVED LAYOUT DRAWING
- Buyer to connect 3 phase power to the machine control console
- Buyer is to provide an isolation transformer for the power supplied to the machine
- Buyer is responsible for maintenance and safe set up and operation of the machine
- Buyer is responsible for hotel meals and travel cost of Seller's service representative

Seller's service department can make a service representative available for consultation on site to assist with the Buyer's responsibilities listed above. This service will be priced at Seller's usual and customary daily service rates as announced from time to time plus reasonable expenses.

In addition to the foregoing, start up and commissioning of the equipment in Buyer's plant, including operator training, for a fixed number (depending upon the type of machinery) of eight (8) hour business days is included in the price, unless otherwise expressly stated in the Quotation, or acknowledgement. Nonetheless, the Buyer is responsible for economy or equivalent class air travel, hotel and meals for service-man's visit to commission the machine. Any additional installation or training time over the included fixed number of business days set forth in the Quotation or acknowledgement is available at Seller's usual and customary daily service rates as announced from time to time plus reasonable expenses.

## **12. LAWS/SAFETY STANDARDS**

The equipment furnished hereunder conforms to the applicable ANSI B11 standards. However, the end user is the party responsible under the terms of all applicable Federal, state, local and regional laws applicable to such equipment including the Occupational Health and Safety Act of 1970, or the industrial safety laws applicable to the facility where the equipment is installed, to ensure the equipment meets 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 equipment furnished under this Contract.

Buyer shall train, require and cause its employees to (i) comply with directions set forth in documented inspections of the equipment and in maintenance, safety and operation instructions, manuals, drawings, safety notices and warnings and other instructions 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 equipment; (iii) not remove, or permit anyone to remove any safety equipment, safety feature or warning signs from the equipment nor permanently remove or disable any guards or safety features; and (iv) assure that the equipment is used in accordance with all applicable laws, regulations, customs, permits and standards in force.

## **13. PRODUCT DEMONSTRATION AND ACCEPTANCE**

For certain equipment lines, systems and/or product applications, the Seller may determine that factory testing in the presence of Buyer ("Demonstration") is required. If Seller does not require a Demonstration, Buyer may request a Demonstration however Buyer understands that unless Seller included a Demonstration in its Quotation, then request for the addition of a Demonstration shall be consider as a request for a change to the Contract (reference Section 5). Buyer may also witness the standard final quality testing that Seller routinely performs prior to shipment from its factory at no additional charge. In the case of Demonstration, Seller will demonstrate the equipment at its facility only to the extent that the equipment purchased under this Contract can be appropriately demonstrated at such location. If material is to be part of the testing process, Buyer is responsible to furnish, freight prepaid, the required amount of material necessary for this purpose. Such material must be of acceptable quality and conform to the material properties as specified in the Quotation.

The successful Demonstration of the equipment shall constitute acceptance by Buyer of the equipment and Buyer agrees to execute a certificate generated by Seller, in Seller's presence and prior to shipment of the equipment so stating. Such certificate shall also constitute permission to ship the equipment after completion of any checklist, tear down and packaging.

In the absence of any Demonstration at Seller's facility, Buyer's receipt of the equipment 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 equipment within thirty (30) days after such receipt. In the event that Buyer gives such notice of rejection, Buyer shall afford Seller (1) reasonable opportunities to inspect any alleged non-conforming equipment and (2) a reasonable opportunity to make the equipment conforming, or provide substitute conforming equipment. Buyer shall not return any equipment without Seller's prior written consent.

## **14. DISPUTE RESOLUTION/GOVERNING LAW**

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: (a) these Terms and Conditions of Sale; (b) any advertisement, promotion, or proposal relating to these Terms and Conditions of Sale, or (c) the relationship which results from these Terms and Conditions of Sale (including relationships with third parties who are not party to these Terms and Conditions of Sale) (collectively "Claims") will be resolved, first, by a formal mediation conducted by an experienced mediator mutually agreed upon by Buyer and Seller, and, if mediation should fail to resolve the claim or dispute, secondly, by reference to and determination by binding arbitration governed by the Federal Arbitration Act and administered by the American Arbitration Association under its rules for the resolution of disputes, or under other mutually agreed procedures. Any such proceedings under mediation or arbitration shall be conducted in Hartford, Connecticut in the United States of America, and the proceedings shall be conducted and all submissions of the parties and rulings of the arbitrator(s) shall be in the English language. Notwithstanding the rules of the arbitral body, the parties agree that (a) any arbitration proceeding shall be presided over by a neutral arbitrator selected by the parties who shall be admitted to the practice of law and be in good standing or in retirement status in the jurisdiction where the proceeding is held, (b) guidelines for "discovery" of facts

through document production and deposition of witnesses by the parties shall be delineated by the arbitrator in writing, conducted in an orderly manner, conducted over a fixed period not to exceed 90 days -- and failures to reasonably comply shall be subject to summary process in a court of law in the jurisdiction where the arbitration is being conducted, (c) the decision of the arbitrator shall be based on the relevant and credible facts as presented into evidence and (d) the arbitrator shall prepare a written memorandum of decision setting forth the findings of fact and conclusion of law. Because this method of dispute resolution is personal, individual and provides the exclusive method for resolving such disputes, Buyer further agrees, to the extent permitted by applicable laws, to waive any right to commence or participate in any class action or class-wide litigation or arbitration against Seller related to any Claim. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL.

Buyer agrees that in the event of any breach of this Contract by Buyer that may cause irreparable harm to Seller for which an award of money damages is insufficient relief, Seller may, in addition to any remedies which Seller may have available to it, pursue injunctive or other equitable relief in a court of competent jurisdiction to prevent or curtail any breach by Buyer of its obligations to be performed under this Contract. All remedies provided to Seller under this Contract are cumulative, and may be exercised by Seller singularly or in conjunction with other available remedies, from time to time and at any time.

This provision shall survive the termination of the Contract 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 to the contract.

#### **15. WARRANTY**

Seller warrants to the original purchaser that the equipment provided under this Contract shall be free from defects in material or workmanship for a period of one (1) year, 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: equipment that is (i) equipment that is not used or maintained in a normal and proper manner, in accordance with all manuals and instructions; (ii) equipment that is modified, altered or repaired without the prior written approval of Seller; (iii) Buyer fails to make any payments when due under Section 4 or otherwise in this Contract or (iv) equipment that is that is assigned, sold or transferred to an entity other than the Buyer. Seller will repair or replace at its option components which upon inspection it finds to be defective, based on claims made in writing to Seller within a reasonable time after discovery and within the warranty period. Components 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 may be shipped from Seller upon customer request and receipt of a valid purchase order number so the validity of the Warranty can be determined. Unless otherwise specified, replacement components shall be Delivered to Buyer "FOB Seller's Factory" (UCC) for domestic shipments and "EX Works Seller's factory" (Incoterms) for international shipments. Any labor or equipment rental costs incurred in the dismantling and reassembly of the equipment shall be at Buyer's sole expense. This warranty excludes equipment, materials and components furnished by the Seller but manufactured by another party, which may be incorporated in the equipment, line or system sold under this Contract. Such components and equipment 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.

THE WARRANTY STATED HEREIN IS PERSONAL TO BUYER AND SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE EQUIPMENT 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 EQUIPMENT 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 15, 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 12 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 equipment. Seller specifically disclaims any and all liability arising out of the operating of the equipment other than the warranty liabilities to the original Buyer.

#### **16. 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 SELLS ITS EQUIPMENT IN ACCORDANCE WITH AND NOT INFRINGING ON THE CUSTOMS, SPECIFICATIONS, PATENTS AND STANDARDS OF TRADE IN FORCE AND IN USE AND KNOWN TO US IN THE UNITED STATES OF AMERICA. IT IS THE RESPONSIBILITY OF THE BUYER TO ASSURE THAT THE EQUIPMENT IS 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.

#### **17. 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 equipment covered by or furnished under this Contract 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.

#### **18. PATENT INDEMNITY**

In the event that the Buyer provides methods, directions, specifications or designs for equipment or tooling, Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, actions, lawsuits, proceedings, liabilities, losses, costs, expenses (including without limitation attorneys' fees) arising from or related to any actual or alleged infringement of any United States patents of any third party resulting from the methods, directions, specifications or design of the equipment or tooling supplied or required by Buyer for the equipment or the production of any parts or the processing of any material on the equipment. If a permanent injunction shall prohibit the use, sale or distribution of the equipment or any part thereof by reason of any patent infringement covered by this indemnity, Buyer shall, at its own expense, either (a) procure for Seller a license for the right to continue using the equipment or the part thereof found to be infringing; (b) replace or modify the equipment or any part thereof found to be infringing so that the same becomes non-infringing, without any increase in the price of the equipment, or (c) reimburse Seller for the purchase price of the equipment. The provisions of this section shall survive the performance or termination of this Contract.

#### **19. SOFTWARE**

If any software programs are deliverable, Buyer shall have a temporary license only, until full payment has been made whereupon Buyer shall receive a full license in accordance with its terms and conditions. Such temporary license can be suspended or terminated by Seller at any time by written notice to Buyer sent after the period for payment by Buyer has ended.

Upon SELLER'S receipt of full payment and subject to BUYER'S compliance with all material obligations under this Contract, SELLER hereby grants to BUYER a nonexclusive, perpetual, nontransferable right

and license to use copies of software programs embedded in, or used in connection with, equipment which BUYER has purchased hereunder, in Object Code only, for use by the Buyer only, in conjunction with the equipment, line and system. No modification, download, transfer, or preparation of derivative works of such software whatsoever is permitted. Seller will not supply any Source Code under this Contract.

## **20. MISCELLANEOUS**

This Contract supersedes and replaces 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 subject matter of this Contract.

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 this Contract, 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 this Contract 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 this Contract are strictly for the purpose of convenience and general reference only, and shall not affect the meaning or interpretation of any of the provisions of this Contract.

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, concerning this Contract or the work performed or to be performed hereunder.