



General Terms and Conditions

Ordering Procedure

Buyer will order Products from time to time from Seller by issuing written, or if subsequently agreed by the Parties, electronic, purchase orders (the "Purchase Orders") for Products from time to time. Each such Purchase Order shall be in a form approved by Seller and shall specify the (i) description and quantity of the Products being ordered, (ii) requested location for delivery of the Products (the "Delivery Location") and the requested delivery date (the "Requested Delivery Date"), (iii) other appropriate information as may be required by Seller to fill the Purchase Order, (iv) location to which the applicable invoice shall be rendered for payment, and (v) other terms included in Seller's standard Purchase Order, as may be amended by Seller from time to time.

Inconsistent Terms; No Purchase Order

In the event of any conflict between the terms of a Purchase Order and this Purchase Agreement or in the event no written or formal purchase order is issued by Buyer, the terms set forth in this Purchase Agreement shall govern unless otherwise expressly agreed to in writing by Seller and Buyer. Buyer's acceptance of Products from Seller shall be deemed Buyer's assent to all of the terms of this Purchase Agreement even if no written or formal purchase order is issued by Buyer, or even if Buyer does not sign this Purchase Agreement.

Receipt and Acceptance of Purchase Order by Seller

Seller's corporate office in San Diego, California will have the final authority with respect to the acceptance of any Purchase Order. If a Purchase Order is accepted, Seller shall confirm its acceptance of such Purchase Order to Buyer in writing. No Purchase Order shall be deemed accepted by Seller until Seller has accepted such Purchase Order in writing.

No Cancellation or Orders; Cancellation Charges

Once accepted by Seller, Purchase Orders may not be canceled, reduced, changed or suspended by Buyer without Seller's written consent and payment of reasonable and proper cancellation charges determined by Seller. In the event of cancellation by Buyer, Buyer shall pay Cancellation Charges in an amount equal to (i) Seller's costs (the "Costs" for all engineering, purchasing, material, and fabrication costs incurred prior to cancellation), (ii) any cancellation charges by any of Seller's suppliers, plus (in) either (A) twenty-five percent (25%) of the Costs, or (B) ten percent (10%) of the Purchase Price, whichever is higher, to compensate Seller for its overhead and lost profit.

Shipment; Passage of Title

Seller's shipping dates are approximate and based its on receipt from Buyer of a Purchase Order which provides complete information and authorizes Seller to proceed with manufacture and/or delivery of the ordered Products. The Products will be shipped by Seller to a common carrier (the "Carrier") located near Seller's factory using a shipping method and route determined solely by Seller based on product size, quantity, destination, and other considerations. All costs of shipping will be borne by Buyer including any charges for any special services or special shipping arrangements such as cartage, air freight, express, parcel post and multiple deliveries on one order. Buyer will install the Products or engage a subcontractor to install the Products at the Delivery Location. Seller shall have no obligation for the installation of the Products

unless otherwise agreed in writing by Seller. Title to the Products purchased under this Purchase Agreement shall pass from Seller to Buyer upon delivery of the Products to the Carrier. Any loss or damage discovered after delivery to the Carrier shall be the sole responsibility of Buyer.

Packaging

Seller shall provide packaging for all Products shipped in accordance with recognized industry practice. Packing materials will be selected which are intended to be effective under normal shipping conditions. The cost of any special packaging requirements of Buyer shall be charged to Buyer.

Return of Products

Products may not be returned by Buyer without Seller's prior written permission. Stock items, when returned, will be credited at lowest prevailing price, and subject to a minimum charge of 15% for handling and restocking. Return transportation charges must be prepaid by Buyer. Nonstandard, special, or custom Products or product parts may not be returned by Buyer without Seller's prior written consent and upon terms which indemnify Seller fully against loss. In all situations, only merchandise in resalable condition will be accepted for return.

Payment Terms

Buyer shall pay the Purchase Price for the Products as shown on Seller's invoices according to the payment schedule shown on the Purchase Order. Interest at the rate of one and one-half percent (1-1/2%) per month or the maximum rate allowed by applicable law, whichever is lower, will be charged on past due accounts commencing after the last day of the first calendar month following the date of such invoice. Seller may suspend credit, refuse shipment, or cancel any unfilled Purchase Orders without liability to Buyer in the event Seller believes Buyer's credit is impaired.

Warranty

Seller warrants that on the date of shipment of the Products and for a period of one (1) year from the date of shipment of the Products that the Products shall be free from defects in materials and workmanship. Seller will repair or replace without charge F.O.B. Seller's factory, any Product or product part which fails to comply with the foregoing warranty and is returned to Seller's factory within the warranty period.

THE FOREGOING WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF SUITABILITY FOR A PARTICULAR PURPOSE. IT IS EXPRESSLY STATED THAT SELLER ASSUMES NO LIABILITY FOR CONSEQUENTIAL OR LIQUIDATED DAMAGES ARISING OUT OF THE SALE OF THE PRODUCTS OR A BREACH OF THE WARRANTY CONTAINED HEREIN, AND BUYER'S REMEDY SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS OR PRODUCT PARTS AS DESCRIBED ABOVE. FURTHER, SELLER DOES NOT WARRANT AND BUYER IS RESPONSIBLE TO ENSURE THAT THE PRODUCT PURCHASED COMPLIES WITH APPLICABLE LOCAL, MUNICIPAL, STATE AND FEDERAL LAWS, ORDINANCES, REGULATIONS AND CODES, IF ANY.

The foregoing warranty shall not apply to any Products or product parts which have been (a) repaired or altered by any party other than Seller unless such repair or alteration has been specifically approved in writing by Seller, (b) subjected to misuse, negligence or accident, or (c) used in a manner or in an application

other than that recommended by Seller. Seller will not be responsible for any damage to any Product or product part that occurs during or after shipment or during or after instillation.

Limitation of Liability; Commencement of Actions

In no event shall Seller or its subcontractors be liable for any loss, damage, cost of repairs, incidental, indirect, punitive or consequential damages of any kind, including, but not limited to loss of use of facilities and equipment or loss of profit, for any reason, whether based upon any warranty, or arising in contract, tort, negligence or strict liability or otherwise arising in connection with the design, manufacture, sale, use or repair of the Products sold hereunder. Nor shall Seller or its subcontractors be liable to Indemnify owner and/or contractor for claims for such consequential, incidental, indirect, or punitive damages. Further, in no event will Seller be liable to Buyer for more than the purchase price of the Products sold hereunder. Any action, regardless of form, arising out of this contract must be commenced by Buyer within one (1) year after the cause of action has accrued, or two (2) years from the date of shipment, whichever first expires.

Default; Remedies; Termination

It shall be an event of default (a "Default") if any Party (i) shall fail or refuse to pay when due any monies payable under the terms of this Purchase Agreement, and shall continue such failure or refusal for ten (10) days after such due date; or (ii) shall fail or refuse to comply with any other term, provision or covenant contained in this Purchase Agreement and such failure shall not be cured within thirty (30) days after written notice is provided by the non-defaulting Party (to the extent such failure or refusal shall be curable); or (iii) shall (A) make an assignment for the benefit of creditors, (B) file a petition under any applicable law or statute relating to the bankruptcy or insolvency or be adjudged as bankrupt or insolvent in proceedings filed against it under any such law, (C) suffer the appointment of a receiver or trustee for all or substantially all of its assets, except an involuntary appointment removed within sixty (60) days after appointment. Upon the occurrence of a Default, the non-defaulting Party shall have, in addition to any other rights or remedies available pursuant to the terms of this Purchase Agreement, the right to terminate this Agreement by giving written notice of such termination, effective immediately to the defaulting Party. Upon expiration or termination of this Agreement for any reason, the Parties shall abide by and uphold any rights or obligations accrued, or existing on the date of such expiration or termination. The Parties agree to continue to cooperate with each other to carry out an orderly conclusion of their relationship.

Force Majeure

In the event either party is prevented by Force Majeure from performing any of its obligations under this Purchase Agreement, other than its obligations to make payment of money due hereunder, such party may give notice in writing with full particulars of such Force Majeure as soon as possible after the occurrence of the cause. Then the obligations for timely delivery, so far as they are affected by such Force Majeure, shall be suspended during the period of such Force Majeure and shall be remedied as far as possible with all reasonable dispatch by the party giving such notice. The term "Force Majeure" as used herein will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, insurrections, riots, earthquakes, fires, storms, floods, inability with reasonable diligence to obtain materials, delay in transportation by common carrier, and any other causes not within the control of the party claiming a suspension which by the exercise of due diligence such party shall not have been able to avoid or overcome. Seller shall not be responsible for any loss, delay or damage caused by a Force Majeure event.

Proprietary Rights

All design and detail drawings, material lists and other information made available by Seller with its proposal or as part of this Purchase Agreement are the property of Seller. The Purchaser agrees to treat all information provided by Seller as confidential and shall not make use of the information for purposes other than that contemplated by this Purchase Agreement, and shall not make the information available to third parties other than as required to carry out the installation and use of Seller's Product.

Entirety or Purchase Agreement; Amendment

This Purchase Agreement, including page one and these General Terms and Conditions, the recitals and the exhibits hereto, if applicable, embody the entire agreement between the Parties as of the Effective Date regarding the subject matter hereof and it supersedes any and all agreements and arrangements regarding the subject matter hereof. Except as otherwise provided in this Purchase Agreement, neither this Purchase Agreement nor any term, provision, covenant or condition of this Purchase Agreement may be amended, extended or supplemented in any manner whatever except by the express prior written agreement executed by duly authorized corporate officers of both Parties.

Notices

Any notice, agreement, or other communication required to be given under this Purchase Agreement shall be in writing and either personally delivered, delivered by certified U.S. mail (return receipt requested), postage prepaid, or delivered by overnight delivery by a nationally recognized courier, addressed to the Parties at their addresses noted on page one of this Purchase Agreement or to such other addresses as maybe furnished in writing by either Party to the other. Each notice or communication shall be deemed to have been received three (3) business days after the same was deposited in certified mail, or, if delivered in person via an internationally recognized overnight delivery carrier, as of the date so delivered. Notwithstanding the foregoing, Purchase Orders and other ordinary course of business communications may be sent by facsimile transmission to the facsimile numbers identified by the Parties from time to time, or by first class mail, postage prepaid.

Severability

In the event any one or more of the provisions of this Purchase Agreement shall be invalid, illegal or unenforceable, such provisions shall be interpreted as modified so as to be enforceable to the maximum extent permitted by law, and all other provisions hereof shall be given effect separately therefrom and shall not be affected thereby.

Waiver

No waiver of any provision of this Purchase Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

Authority

Each Party represents and warrants that it is duly organized, validly existing and In good standing under the laws of the state of its organization, and has full power and authority to enter into and perform this Purchase Agreement, agrees to be bound by it, and that the person executing this Purchase Agreement on behalf of each of the Parties has been properly authorized and empowered to enter into this Purchase Agreement.

Headings Not Controlling

The headings used in this Purchase Agreement are for reference purposes only and shall not be deemed part of this Purchase Agreement.

Successors and Assigns

This Purchase Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. This Purchase Agreement is not assignable by either Party without the prior written consent of the other Party hereto, which shall not be unreasonably withheld, except that Seller may assign this Purchase Agreement to any person or entity (i) that is a parent, subsidiary or other affiliate of Seller, (ii) that acquires a controlling interest in the stock of Seller, (iii) with which Seller merges or consolidates, or (iv) to which Seller transfers all or substantially all of its assets.

Attorney Consultation

Each Party represents that it has had an opportunity to consult with independent legal counsel prior to signing this Purchase Agreement.

Counterparts; Facsimile Signatures

This Purchase Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Facsimile signature pages shall be deemed as sufficient evidence of a party's consent and agreement to the terms of this Purchase Agreement.

Choice of Law; Arbitration

This Purchase Agreement shall be governed by the laws of the state of California. Buyer agrees that all disputes and/or causes of action under this Purchase Agreement shall be resolved by binding arbitration by a single arbitrator from the San Diego office of the American Arbitration Association ("AAA") in accordance with the AAA's rules of Arbitration.