



## TERMS AND CONDITIONS OF SALE

### **1. GENERAL**

- 1.1 These terms and conditions of sale (the "Terms") are the only terms which govern the sale of goods and services (hereinafter collectively referred to as "Supplies") by Cloos North America (the "Company") to the buyer of any Company Supplies (the "Customer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Supplies covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- 1.2 The accompanying quote and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
- 1.3 Issuance of a purchase order by Customer will constitute Customer's assent to these Terms. Acceptance of orders and issuance of a confirmation of sale by Company hereunder is based on the express condition that Customer agrees to all of the Terms. Acceptance of delivery by Customer will constitute Customer's confirmation of these Terms. This Agreement represents the complete agreement of the parties, and no terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein shall be binding upon the Company unless made in writing or in an electronic record and signed by an officer of the Company. No modification of any of these Terms will be effected by the Company's shipment of goods following receipt of Customer's purchase order, shipping request or similar forms containing terms and conditions conflicting or inconsistent with these Terms.

### **2. DELIVERY**

- 2.1 Unless otherwise agreed in a writing or electronic record signed by an officer of the Company, all delivery dates are estimates and, in no case, shall the Company be liable for any expense, loss or damage whatsoever suffered by Customer as a result of the Company's failure to deliver the Supplies by the specified date. Times set for delivery of Supplies can only be observed if all documents to be supplied by Customer, necessary permits and releases are received in time and if agreed terms of payment and other obligations of Customer are fulfilled. Unless such conditions are fulfilled in time, times set shall be extended at the discretion of the Company.
- 2.2 A delivery schedule will be agreed with customer at the time of payment of deposit. Payment terms as detailed in Section 6.1 will be linked to such delivery schedule. The Supplies will not be dispatched if Customer is in default of previously agreed payment terms.
- 2.3 If the Supplies do not include assembly or installation, delivery of the Supplies to a carrier shall be deemed to constitute delivery to Customer, and thereupon risk of loss or damage to such Supplies shall be transferred to Customer.
- 2.4 If the Supplies include assembly or installation, the time at which the Supplies are fully assembled or installed or, if so agreed, after a fault-free trial run, shall be deemed to constitute delivery to Customer, and thereupon risk of loss or damage to such Supplies shall be transferred to Customer.
- 2.5 Title to the Supplies, including any Welding Systems, shall transfer to Customer upon payment in full of the purchase price thereof, including all payments as set forth in Section 6.1 or Section 6.2 below, as applicable.
- 2.6 Without limiting the generality of Section 2.1 above, the Company shall not be responsible for the following delays:
- (a) Modifications by Customer to the specifications or quantities required may result in delay in delivery and additional costs to be borne by Customer.
  - (b) Delivery is subject to the Company receiving correct and timely supply. The Company shall inform Customer if the item to be delivered is not available and shall, in case of cancellation, refund Customer's deposit, if any.
  - (c) If dispatch or shipment is delayed at Customer's request by more than one month after notice that the goods are ready for shipment (the "Notice") was given, the Company may charge



## TERMS AND CONDITIONS OF SALE

Customer, for every month from the date of the Notice, storage costs of 0.5% of the price of the Supplies, but in no case more than a total of five percent (5%) of such Supplies.

- 2.7 If Customer refuses or fails to take delivery of the goods or fails to make payment against any installment or delivery or defaults in any of the terms of this Agreement, the Company shall have the option of either canceling the same or reselling the goods on Customer's account. Customer shall be liable for any losses and costs incurred thereby.
- 2.8 Without prejudice the provisions of Sections 2.3 and 2.4 above, the Company may deliver the Supplies in accordance with any revised instruction of Customer if compliance with such instruction is deemed by the Company to be reasonably practical. Customer shall, however, be liable for any extra costs incurred by the Company in complying with such revised instructions.
- 2.9 Unless otherwise expressly agreed in writing, any packaging supplied by the Company is intended only to be sufficient to protect the goods for normal conditions of transit to the Customer's premises and only for the normal period of transit to such premises. The Company shall have no responsibility for packing the goods in a manner suitable for protection during transportation from the Customer's premises to any other destination.

### **3. EXPORT**

- 3.1 If the Supplies are to be exported, this order is subject to the Company's ability to obtain export licenses and other necessary papers within a reasonable period. Customer will furnish all Consular and Customs declarations and will accept and bear all responsibility for penalties resulting from errors or omissions thereon. Customer shall not re-export the Supplies or any goods or items which incorporate the Supplies if the re-export would violate United States export laws.

### **4. SECURITY INTEREST**

- 4.1 Without derogating from the Company's rights as owner of the Supplies prior to transfer of title in accordance with the terms hereof, Customer hereby grants the Company a security interest in all Supplies and all Supplies heretofore and hereafter sold to Customer by the Company, and all proceeds thereof, until the purchase price and all other liabilities due the Company in respect of such Supplies have been paid in full. Customer shall execute and deliver to the Company any instruments or documents the Company deems appropriate to perfect said security interest including without limitation a Uniform Commercial Code Financing Statement. Customer authorizes, and ratifies and confirms, any filing heretofore or hereafter made by the Company of any financing statements which identify Customer as debtor, the Company as secured party, and any goods heretofore or hereafter supplied by the Company to Customer and the proceeds thereof as collateral. The Company may file a copy of this Agreement at any time as a financing statement for the purpose of perfecting such security interest. Customer agrees to give the Company prior notice of any change in Customer's name or corporate structure.
- 4.2 The Company shall have all rights and remedies of a secured party under the Uniform Commercial Code, which rights shall be cumulative and not exclusive. The Company reserves the right to require payment for any shipment hereunder in advance, or satisfactory security in addition to that granted herein, if the financial performance or credit worthiness of Customer is unsatisfactory to the Company.
- 4.3 If Customer fails to make payment in accordance with the terms of this Agreement or otherwise fails to comply with any provision hereof, the Company may, at its option (and in addition to other remedies), cancel any unshipped portion of this order; in such event, Customer will remain liable for all unpaid accounts.

### **5. PRICES**

- 5.1 All prices are net of transportation costs, customs and other import duties, each of which shall be borne by Customer, unless otherwise specified in writing or in an electronic record signed by an officer of the Company, and are subject to adjustment, without notice, to Company's price in effect at the time of shipment. Any increase in transportation rates or any changes in routing resulting in an increase in transportation costs, customs or other import duties shall each be paid and borne by Customer.



## **TERMS AND CONDITIONS OF SALE**

- 5.2 In addition to the specified purchase price and other provisions relating to the purchase price set forth herein the Customer will pay all taxes, excises, license fees, duties, imports and other charges (other than income taxes or taxes in the nature of income tax) levied, assessed or imposed upon the Company in the United States of America by reason of or applicable to the manufacture, sale, purchase and delivery of the Supplies furnished hereunder, or any parts thereof. Customer shall make such payment to the Company at or before the time at which the Company is required to pay it.
- 5.3 If the Company is also required to assemble or install any Supplies, Customer shall pay the agreed remuneration and any incidental costs required, including without limitation travel costs, costs for the transportation of tools and equipment, personal luggage and travel allowances.
- 5.4 Unless otherwise stated, quoted prices are valid for a period of ninety (90) days from Customer's receipt of Company's quotation. Notwithstanding anything contained herein, Company may terminate a quote at any time upon written notice to Customer.

## **6 TERMS OF PAYMENT**

- 6.1 Payment schedule for Customized Welding Systems will be as follows:  
30% down payment with the purchase order  
30% upon system layout approval  
30% upon shipment from the Company  
10% balance after system re-commissioning at customer site (Not to exceed 45 days after delivery)
- 6.2 Payment schedule for Pre-Engineered Welding Systems will be as follows:  
50% down payment with the purchase order  
50% upon shipment from the Company
- 6.3 Payment schedule for individual welding machines, spare parts and consumables shall be due within 30 days of shipment from the Company.
- 6.4 In the case of Supplies for which no preliminary total can be determined at the time of ordering, the Company reserves the right, depending on the circumstances and in its discretion, to charge a deposit of up to 50% of the estimated total at the time of ordering and partial payments during the time of performance according to the costs incurred.
- 6.5 Deposits and partial payments shall earn no interest.
- 6.6 Unless otherwise agreed all payments shall be made in US Dollars by check or by wire transfer of immediately available funds. All invoices must be paid as and when due without offset
- 6.7 If Customer fails to make payments as set forth in Section 6.1 and/or Section 6.2 above:
- 6.7.1 A default shall be deemed to occur without any further notice from the Company. Without prejudice to any other rights of the Company contained herein, a service charge, consisting of collection fees and legal fees, equal to an additional thirty-three percent (33%) of the total price shall be added to all past due amounts.
- 6.7.2 The Company shall be entitled to enforce its security interest under Section 4.1 above.
- 6.7.3 The Company can (i) defer further shipments under this order and/or any other order from Customer which has been accepted by the Company until such payment is received or (ii) cancel this order and/or any other orders from Customer which have been accepted by the Company and recover damages.
- 6.8 The Company shall be entitled to set off all claims due from Customer to (a) the Company and (b) any other Company affiliates or companies under common control with the Company, against any claims Customer may have against the Company and/or one or more of the aforementioned companies. The Company shall forward a list of such companies to Customer upon request.

## **7 ASSEMBLY AND INSTALLATION**

- 7.1 Unless otherwise agreed in writing, assembly/installation shall be subject to the following provisions, Customer shall provide at its own expense:



## TERMS AND CONDITIONS OF SALE

- 7.1.1 all earth and construction work and other ancillary work outside the scope of the work agreed to be performed by the Company, including the necessary skilled and unskilled labor, construction materials and tools;
- 7.1.2 the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices as well as fuels and lubricants;
- 7.1.3 energy, water and other utilities at the point of use including connections, heating and lighting;
- 7.1.4 suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working and recreation rooms for the assembly and installation personnel, including sanitary facilities as are appropriate in the specific circumstances;
- 7.1.5 all measures reasonably appropriate for the protection of Customer's own possessions and to protect the possessions of the Company and of the assembly and installation personnel at the site; and
- 7.1.6 protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
- 7.2 Before the assembly/installation starts, Customer shall make available of its own accord architectural drawings and plans, as well as any other information or makings required concerning the location of concealed electric power, gas and water lines or of similar installations as well as the necessary structural data.
- 7.3 Prior to assembly or installation, the materials and equipment necessary for the work to start must be available on the site of assembly/installation and any preparatory work must have advanced to such a degree that assembly/installation can be started as agreed and carried out without interruption. Access roads and the assembly/installation site itself must be level and clear.
- 7.4 The Company shall make its own employees available to provide on-site installation assistance. Notwithstanding the foregoing, the Company shall not be responsible for the means, methods, techniques or procedures of installation selected by Customer or any failure of installation personnel to perform the assembly or installation in accordance with the applicable assembly instructions or Customer's instructions. Except to the extent that the Company's employees actually perform the assembly or installation, the Company is in no manner a guarantor or warrantor of performance or workmanship of the installation personnel with regard to the assembly or installation or any work thereon; provided that if the Company's employees actually perform the assembly or installation, such assembly or installation shall be performed in a good and workmanlike manner.
- 7.5 If assembly, installation or commissioning is delayed due to circumstances for which the Company is not responsible, Customer shall bear the reasonable costs incurred for idle times and any additional traveling of the Company's or installation personnel.
- 7.6 Customer shall attest to the hours worked by assembly and installation personnel at weekly intervals and Customer shall confirm in writing if assembly, installation or commissioning has been completed.

## **8 SPECIFICATIONS**

- 8.1 The Company will endeavor to manufacture the Supplies in accordance with the specifications in effect at the time of its acceptance and confirmation of the order. The Company reserves the right notwithstanding the above to vary such specifications without notice in light of changes in technical knowledge, production techniques, government or other regulations, consideration for safety or other reasonable cause. Notwithstanding the foregoing, the delivery of goods conforming to the Company's prevailing design and specifications at the time of delivery, including those variations permitted by this Section 8, shall be good and sufficient performance of this contract by the Company. If any model or sample is shown to Customer, Customer acknowledges that such sample or model was used merely to illustrate the general type and quality of Supplies and not to represent that the Supplies would necessarily conform to the sample or model.

## TERMS AND CONDITIONS OF SALE

- 8.2 If the Supplies involve testing, the criteria for all testing shall be the Company's applicable specifications utilizing factory specified calibration and test procedures and instruments. Test procedures are available upon request.
- 8.3 Any specifications, drawings, plans, notes, instructions, engineering notices, or technical data of the Company furnished to Customer shall be deemed to be incorporated herein by reference the same as if fully set forth. The Company shall at all times retain title to all such documents, and Customer shall not disclose such to any party other than the Company or a party duly authorized by the Company.
- 8.4 Customer agrees that any specifications, drawings or plans developed by Customer and furnished to the Company to be incorporated into the Supplies shall belong to the Company and Customer shall have no right, title or interest in any such specifications, drawings or plans.

## **9 WARRANTY**

- 9.1 The Company warrants that the Supplies to be sold hereunder will be free of any and all liens and encumbrances at the time they are delivered to Customer.
- 9.2 Customer shall promptly inspect all Supplies upon delivery. No claims for shortages will be allowed unless shortages are reported to the Company, in writing, within ten (10) days after delivery. Subject to the other provisions of this Section 9, the Company warrants that for twelve (12) months commencing on the date of delivery of the Supplies (unless the Supplies require assembly or installation by the Company, in which case, commencing on the date the initial assembly or installation is complete), the Supplies shall be free from material defects in material and workmanship under normal use and service and shall conform, in all material respects, to the specifications in the Company confirmation of sale. EXCEPT FOR THE WARRANTIES SET FOR IN SECTIONS 9.1 AND 9.2, NO OTHER WARRANTY, EXPRESS OR IMPLIED, WHETHER ARISING UNDER ANY STATUTE, COMMON LAW, COMMERCIAL USAGE OR OTHERWISE INCLUDING ANY WARRANTIES OF MERCHANTABILITY, INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR FITNESS FOR A PARTICULAR PURPOSE, SHALL EXIST IN CONNECTION WITH THE SALE, INSTALLATION OR USE OF ANY GOOD, SERVICES OR SUPPLIES SOLD HEREUNDER. This warranty extends only to the first purchaser of the Supplies. Any warranty claims by Customer with reference to the Supplies sold hereunder for any cause shall be deemed waived by Customer (a) if Customer makes any further use of the Supplies, and (b) if Customer fails to submit a detailed notice of such defect to the Company in writing within thirty (30) days from the date Customer discovered, or should have discovered, any claimed breach. Any warranty claims must be made in writing and delivered to the Company the twelve (12) month warranty period described above. Company shall not be liable for a breach of the warranty set forth herein if: (i) the defect arises because of Customer or a third-party failed to follow the Company's instructions as to the storage, installation, commissioning, use or maintenance of the Supplies; or (ii) Customer, or a third party, alters or repairs such Supplies without the prior written consent of Company.
- 9.3 Any claims not in accordance with the terms of this Section shall be barred. Upon receipt of a proper claim, the Company shall either inspect the Supplies in the Customer's possession or request that the Customer deliver the Supplies, at the Customer's expense, to the Company at its factory or such other site as designated by the Company for inspection by the Company.
- 9.4 Notwithstanding anything contained herein, warranties described in Sections 9.1 and 9.2 shall not apply to, and the Company shall not be responsible for, nor replace or repair, Supplies of a consumable nature, including, but not limited to, oil, grease, welding guns, cable assemblies, outer cable, cable connections, welding tips and gas nozzles.
- 9.5 The Company shall, at its option, repair or replace, free of charge, any Supplies which it reasonably determines to be in breach of its warranty, and the Company shall ship the repaired or replaced Supplies to the Customer F.O.B. point of shipment. If repair and replacement are impractical, in the Company's sole discretion, the Company may issue a credit or otherwise refund the purchase price of the Supplies. It is expressly agreed that repair, replacement or refund of purchase price of the Supplies shall be the exclusive and sole remedy for breach of warranty or any other claim with respect to the Supplies or their installation, including, without limitation, those based upon contract, warranty, tort or strict liability. THE COMPANY SHALL NOT BE LIABLE FOR REMOVAL OR INSTALLATION COST, DOWNTIME, DAMAGE TO OTHER PROPERTY, REDUCED PRODUCTION, CANCELLED ORDERS, BREACH OF CONTRACT BETWEEN CUSTOMER AND ANY THIRD PARTY, LOSS OF BUSINESS OR PROFITS, OR ANY SIMILAR OR DISSIMILAR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES FOR ANY REASON.

## TERMS AND CONDITIONS OF SALE

- 9.6 Any installation, operation, use, maintenance, or application of the Supplies other than according to the capacities, conditions and instruction published in the Company's instruction manual or otherwise approved in writing by the Company, or any defacement (including repairs made or attempted by others), modification or alteration to the Supplies, not approved in writing by the Company, or negligence of any person when using the Supplies shall void this warranty.
- 9.7 Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Supplies. Third Party Products are not covered by the warranties described in Sections 9.1 and 9.2. For the avoidance of doubt, THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. To the extent permitted without resulting in any adverse effect to the Company, the Company hereby assigns and transfers to Customer any and all rights transferable by the terms and conditions of any Third Party Product warranty.

## **10 LIMITATION OF LIABILITY**

- 10.1 IN NO EVENT SHALL THE COMPANY BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE (INCLUDING THE SALE, DELIVERY, NON-DELIVERY, SERVICING, ASSEMBLY, USE, LOSS OF USE OR FAILURE OF THE SUPPLIES OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT THE COMPANY'S PRIOR WRITTEN CONSENT), REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, WHETHER THE COMPANY WAS NEGLIGENT AND WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED 50% OF THE TOTAL OF THE AMOUNTS PAID TO THE COMPANY FOR THE SUPPLIES AND ANY OTHER GOODS SOLD OR SERVICES PROVIDED UNDER THE AGREEMENT.

## **11 CUSTOMER INDEMNITY**

- 11.1 Customer shall indemnify, defend and hold harmless the Company, the Company's subsidiaries, affiliates, successors or assigns and their directors, officers, shareholders, employees, suppliers and customers (the "Indemnified Parties") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees ("Losses"), resulting from or arising out of any third-party claim (including any claim by a government entity or other authority) alleging: (a) Customer's breach or non-fulfillment of any covenant under this Agreement; (b) Customer's negligent or more culpable act or omission (including any reckless or willful misconduct); (c) any bodily injury, death of any person, or damage to personal property caused by the negligent or more culpable acts or omissions of Customer; (d) any failure by Customer to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligations under this Agreement.
- 11.2 Where any Supplies are manufactured pursuant to patterns, plans, drawings, or specifications furnished by Customer, Customer shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses resulting from or arising out of any suit or claim that the Supplies, including the use or sale thereof, infringe or misappropriate the patent, copyright, trade secret or other intellectual property right of any third party. The indemnity obligations included in this Section 11.2 shall apply regardless of the the Company's manufacture of such Supplies.

## **12 INSOLVENCY**

- 12.1 If Customer shall become bankrupt or insolvent or make an assignment for the benefit of creditors, or in the event of a resolution being passed or proceedings commenced for the liquidation of Customer, or if a Receiver is appointed of all or any part of Customer's assets, the Company shall be entitled to cancel and terminate this Agreement in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to Company.

## TERMS AND CONDITIONS OF SALE

### **13 FORCE MAJEURE; COVID-19**

- 13.1 The Company shall not be under any liability, shall not be responsible to Customer, nor shall the Company be deemed to have defaulted or breached this Agreement, for any failure, delay, loss or damage caused or resulting wholly or in part by act of God, flood, fire, earthquake, explosion, war, invasion, terrorist threats, riot, epidemic, governmental restriction, condition or control, any change in laws, rules and regulations, non-arrival of imported goods, inability to obtain supplies, transport or loading facilities, trade dispute, labor dispute (whether such dispute involves its employees or not), or by reason of any other act, omission, matter or thing beyond the Company's reasonable control, including failure by the Customer hereto to carry out the provisions of this contract.
- 13.2 Due to the ongoing situation regarding Covid-19, the parties acknowledge that there is a possibility that the supply chain may be affected in the future. The parties acknowledge that there are signs of a critical development in the raw materials markets and, as a result, foresee a shortage of machine components, steel, plastics and other components, especially - but not exclusively - electronic chips. Due to this situation, the parties agree to the following terms with respect to the delivery and performance dates specified in the Agreement:
- 13.2.1 Should the Company not be able to meet the agreed delivery dates because suppliers do not deliver to the Company as scheduled or a supplies are not available for delivery, the agreed delivery and service obligations shall be extended accordingly, without breach or default occurring hereunder. In no event shall the Company be liable for any penalties, damages or otherwise that may result, relate to or may otherwise be claimed by, the Customer as a result of, or related to, such delay or unavailability.
- 13.2.2 The Company must inform the customer promptly after becoming aware of such a delay or unavailability, including its expected duration, if possible.
- 13.2.3 Should the delay in delivery exceed a period of 6 months, the Customer may cancel such order by providing written notice thereof to the Company, without such cancellation resulting in breach hereunder, liability or penalty as a result of such cancellation. Any advance payments for such order received prior to the Company's receipt of its notice under this Section 13.2.3 will be refunded by the Company.
- 13.2.4 In the event of any conflict or inconsistency between this Section 13.2 and any other terms in this Agreement or any other agreement between the parties, the terms of this Section 13.2 shall prevail.

### **14 TARIFF AND DUTY ADJUSTMENTS**

- 14.1 In the event that tariffs, duties, or other import/export fees are imposed or increased by government authorities, Cloos North America reserves the right to adjust prices, delivery timelines, or related terms as necessary to reflect these changes. Such adjustments will be communicated promptly and applied as required to fulfill ongoing and future orders.

### **15 GOVERNING LAW - ARBITRATION**

- 15.1 This document and the sale of all Supplies shall be governed by and construed in accordance with the laws of the State of Illinois. Whenever there is a conflict of laws, the internal laws of the State of Illinois shall prevail (without regard to principles of conflicts of laws). The parties agree that any dispute arising hereunder or from the Supplies shall be arbitrated in Cook County, Illinois in accordance with the commercial arbitration rules of the American Arbitration Association. The parties hereby agree that the sole proper jurisdiction and venue for any disputes not subject to arbitration hereunder shall be either a state or federal court located in Cook County, Illinois. For such purpose, Customer, if not located in the State of Illinois, irrevocably appoints the Secretary of State of Illinois as its agent for receipt of service of process or notices.

### **16 EQUAL OPPORTUNITY CLAUSE**

- 16.1 This clause applies only in the event that the Supplies are to be used in whole or in part for the performance of government contracts and where the dollar value of said Supplies exceeds, or may in any one year exceed, \$10,000:
- 16.1.1 In connection with the performance of work under this contract, the Company agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.



## TERMS AND CONDITIONS OF SALE

The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Company agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- 16.2 The provisions of the Equal Opportunity Clause, as promulgated by Executive Order 11246 dated September 24, 1965, as amended, are incorporated herein by reference.
- 16.2.1 The following provisions regarding equal opportunity, and all applicable laws, rules, regulations, and executive orders specifically related thereto, including applicable provisions from the Federal Acquisition Regulations, and supplements thereto, are applicable hereto, to the extent that the minimum monetary amounts under such regulations have been satisfied: 41 CFR 60-1.4, Equal opportunity clause; 41 CFR 60-1.7, Reports and other required information; 41 CFR 60-1.8, Segregated facilities; 41 CFR 60-250.4, Affirmative action clause (Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era); 41 CFR 60-741.4, Affirmative action clause (Affirmative Action for Handicapped Workers).

### **17 LEGAL FEES**

- 17.1 In the event of any dispute arising herefrom, including without limitation any collection fees in connection any amounts due hereunder, the Company shall be entitled to recover from Customer all reasonable attorneys' fees, costs and expenses incurred by the Company in enforcing any of the Company's other rights hereunder.

### **18 CANCELLATION**

- 18.1 Orders placed pursuant of this quotation can be canceled only with the Company's written consent which may be granted or withheld by the Company in its sole discretion. In the event of such consent, Customer shall pay to the Company promptly upon receipt of invoice from it:
  - 18.1.1 The contract price for all Supplies that shall have been completed prior to receipt of notice of cancellation;
  - 18.1.2 All actual costs made or incurred by the Company in connection with the uncompleted portion of the order plus normal profit of the total contract price as partial liquidated damages; and
  - 18.1.3 Cancellation charges, if any, incurred by the Company on account of its purchasing commitments made under the order.
  - 18.1.4 All work in process paid for by Customer hereunder shall be delivered to Customer on an "as is" basis, as of the date of such cancellation at the sole cost and expense of Customer. For the avoidance of doubt, THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY SUCH WORK-IN-PROCESS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

### **19 CUSTOMER'S USE**

- 19.1 Customer hereby agrees that Customer shall use and require all persons operating the Supplies to use any and all proper, safe operating procedures set forth in operator's manuals, American National Safety Standards, OSHA Regulations, and instruction sheets relating to the goods, and any and all available feasible, and practical point of operation safety devices consistent with Customer's use of the goods, and Customer shall not remove or modify any device, warning sign, operator's manual or work handling tools installed thereon or attached thereto.
- 19.2 Customer shall notify the Company promptly, in writing, and in all events within ten (10) days after it's occurrence, of any accident or malfunction involving the Supplies which results in injury to or death of any person, including, but not limited to, Customer's agents and employees, or damage to property, including Customer's property, or the loss of use thereof; and Customer shall cooperate fully with the Company in investigating and determining the cause of any such accident or malfunction. In the case of an accident or malfunction, Customer agrees that is shall not operate or use such Supplies until the cause(s) of such accident or malfunction are identified and corrected. Customer agrees to indemnify, protect, defend and hold harmless the Indemnified Parties from and against any and all Losses resulting from or arising out of Customer's breach of this Section 18.



## TERMS AND CONDITIONS OF SALE

### 20 **MISCELLANEOUS**

- 20.1 Customer shall not assign or delegate any of its rights or obligations under this Agreement without the prior written consent of the Company.
- 20.2 All non-public, confidential or proprietary information of Company, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Company to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Company in writing. Upon Company's request, Customer shall promptly return all documents and other materials received from Company. Company shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.
- 20.3 No waiver by Company of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Company. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 20.4 The headings of the Articles and Sections used herein are for the convenience of reference only and shall not affect the meaning of any provision. If any of these Terms are deemed unenforceable, all other provisions shall be unaffected.
- 20.5 In the event that any one or more of these terms or conditions is held invalid, illegal or unenforceable, such provision or provisions shall be severed and the remaining terms and conditions shall remain binding and effective.
- 20.6 The provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 4, 9, 10, 11, 14, 16, 18 and 19.
- 20.7 These Terms may only be amended or modified in writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.
- 20.8 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.