



Chicago Pneumatic Tool Company LLC
1800 Overview Drive, Rock Hill, South Carolina 29730 USA



Standard T&Cs of Sale; rev. August 26, 2014

TERMS AND CONDITIONS OF SALE (Products and/or Services)

1. General. As used herein, "Seller" means Chicago Pneumatic Tool Company LLC. "Products" as used herein includes any and all wrenches, screwdrivers, drills, grinders, riveters, polishers, scalers, specialty tools, cutting tools, other tools, accessories, equipment, and parts offered or sold by Seller to Buyer. "Services" as used herein includes any and all repairs, installations, start up, preventive maintenance, performance verification, calibration, training and/or other service performed offered or performed by Seller for Buyer. "Buyer" means the entity to which Seller's offer is made, or the entity purchasing Products or Services from Seller. Seller and Buyer are sometimes referred to herein individually as a "Party" and jointly as the "Parties". This Terms and Conditions of Sale document is hereinafter referred to as "these Terms". All bids, quotations, acknowledgements, offers, and sales by Seller are subject to and expressly conditioned upon these Terms. **SELLER'S SALE OF ANY PRODUCTS AND/OR SERVICE IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THE TERMS. ANY ACCEPTANCE OF SELLER'S OFFER IS EXPRESSLY LIMITED TO ACCEPTANCE OF THESE TERMS. ANY TERMS OR CONDITIONS (PREVIOUSLY, CONTEMPORANEOUSLY, OR HEREAFTER) PROVIDED BY BUYER WHICH ADD TO, VARY FROM, OR CONFLICT WITH THESE TERMS ARE HEREBY EXPRESSLY OBJECTED TO.** Any order from Buyer to Seller shall constitute Buyer's assent to the Terms. In the event a separate written agreement covering terms and conditions has been negotiated and mutually signed by authorized representatives of Buyer and Seller, and such agreement is applicable, it shall take precedence (to the extent of conflicts) and the terms and conditions set forth in these Terms will be supplemental to those of such agreement. All orders submitted to Seller are received subject to approval or rejection by Seller at its headquarters in Rock Hill, South Carolina.

2. Prices. Unless specifically agreed otherwise by Seller and Buyer in writing, all prices are stated in United States dollars, and all invoices issued by Seller and payments made by Buyer shall be in United States dollars.

3. Taxes. The price does not include any tax or any other governmental charges, unless the price indicated by Seller specifically lists such tax or governmental charge as a line item. Buyer is responsible for any and all applicable local, state and federal taxes and governmental charges which may now or hereafter be applicable to the Product, its sale, its value, its use, and/or any services performed by Seller (except any taxes on Seller's income). If sales tax, use tax, or similar taxes or governmental charges in addition to any listed specifically as part of the stated purchase price are imposed upon Seller, Buyer agrees to pay the same or reimburse Seller upon demand. Seller will accept a valid exemption certificate from Buyer, if applicable. If an exemption certificate previously accepted by Seller is not recognized by the governmental taxing authority involved, Buyer agrees to promptly reimburse Seller for any taxes covered by such exemption certificate which Seller is required to pay.

4. Approval Drawings (if applicable). If Seller in connection with a proposal provides approval drawings to Buyer, unless specifically agreed otherwise by Seller and Buyer in writing prior to Seller sending the drawing to Buyer, Buyer must within 3 business days of Buyer's receipt of the drawings approve the drawings as is or indicate requested changes, and sign and return the drawings to Seller. Buyer's failure to so return the drawings will be deemed an approval by Buyer of the drawings (unless specifically agreed otherwise by Seller and Buyer in writing prior to Seller sending the drawing to Buyer). Any additions, changes, or variations to the drawings, specifications, or process may result in a later delivery date and/or a change to the proposal (including but not limited to price). Buyer acknowledges that any and all additions, changes and variations requested by Buyer related to any approval drawings and/or Product to be delivered are subject to Seller's approval. If Seller approves, the change or addition will be indicated by Seller in a Seller-issued Order Change Request form signed by authorized representatives of both Seller and Buyer. If any change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the order, an equitable adjustment shall be made to the price and/or delivery schedule. Unless agreed otherwise by the parties in writing, pricing for work arising from such changes shall be at Seller's then-current applicable time and material rates/price.

5. Delivery. All lead-times and all shipping/delivery dates (whether indicated as a range of weeks or otherwise) are estimates only, and are dependent in part upon prompt receipt by Seller of all necessary information and approvals from Buyer. In no event will the indicated shipping/delivery period begin to run prior to Seller's receipt of all necessary information, approvals and completion of all details deemed necessary by Seller for execution of the order. Seller reserves the rights to make delivery in installments. Unless specifically agreed otherwise by Seller and Buyer in writing, Products manufactured, assembled, or warehoused in the continental United States are delivered FOB (Seller's facility in Rock Hill, South Carolina or Seller's warehouse in Charlotte, North Carolina), and Products shipped from outside the continental United States are delivered FOB point of entry, and the risk of loss shifts to Buyer at such FOB point (Seller's facility in Rock Hill, South Carolina or Seller's warehouse in Charlotte, North Carolina, or point of U.S. entry). Unless specifically agreed otherwise by Seller and Buyer in writing, Products for which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller for Buyer's account and at Buyer's cost and risk.

6. Payment. Unless specifically agreed otherwise by Seller and Buyer in writing, the payment terms are Net 30 Days after the date of Seller's invoice. Invoices shall be paid in full and Buyer shall not be entitled to deduct, set-off or to withhold payment. If Buyer fails to pay any invoice when due, Seller may defer deliveries under this or any other contract with Buyer or require receipt of satisfactory security for or cash in payment of any such invoice. Buyer's failure to pay invoices when due shall (at the option of Seller) constitute a default, and Seller shall have all remedies Seller may have under these Terms and/or applicable law. If, in the judgment of Seller, the financial condition of Buyer at any time prior to delivery does not justify the terms of payment specified, Seller may require payment in advance or cancel any outstanding order, whereupon Seller shall be entitled to receive reasonable cancellation charges. If delivery is delayed by Buyer, payment shall become due on the date Seller is prepared to make delivery. All installment deliveries shall be separately invoiced and paid for without regard to subsequent deliveries. Seller reserves the right to charge late fees on overdue amounts at a monthly rate of 1.5% (one and a half percent) or the rate permitted by law, whichever is lower. In the event it becomes necessary for Seller to incur any expense for collection of any overdue amounts owed by Buyer, Seller reserves the right to add reasonable collection charges (including reasonable attorneys' fees) to the balance due and Buyer shall pay all such charges.

7. Security Interest. Seller reserves and retains a security interest in the Product and the proceeds thereof until Buyer has paid Seller the full price. Seller shall have the rights and remedies of a secured party under the Uniform Commercial Code. Buyer authorizes Seller to file financing statements and to do any other act or thing necessary or useful in perfecting Seller's security interest in the Product, and agrees to execute any and all documents required to be executed on its part to perfect said security interest.

8. Force Majeure. If Seller is not able to perform or is delayed due to any cause beyond its reasonable control (including but not limited to acts of God, strike or other concerted action of workmen, act or omission of any governmental authority, act of war or terrorism, act of the public enemy, embargo, delays of carriers, or delays by Seller's usual suppliers), the time of performance will be extended by the amount of time reasonably sufficient to make up for the delay.

9. Cancellation. Buyer shall have no right to cancel a Product order (or a part of the order) unless Seller, at its sole discretion, agrees in writing that the order (or the part of the order) may be cancelled and Buyer pays cancellation charges in accordance with this Section 9. Unless different cancellation charges are specifically agreed to in a Seller-signed cancellation authorization document for the specific Product being cancelled, the cancellation charges shall be as follows:

- a. Standard Products - 30% of the order value
 - b. Customized Products - Cost plus 20% of the Cost
- ("Cost" means any and all costs incurred by Seller prior to the cancellation request, including with respect to cost of labor, engineering, material, components, sales commissions, etc. Seller's determination of the cost will be conclusive. In no event shall the cancellation charge for a Product exceed the purchase price contained in Seller's final written quotation to Buyer for the Product.)

10. Returns. Buyer shall have no right to return any Product unless Seller, at its sole discretion, agrees in writing that the specific Product may be returned. If Seller agrees that Buyer may return the Product, Seller will issue a Return Material Authorization number to Buyer, and Buyer must include such Return Material Authorization number with the return. All such returns must be in accordance with Seller's instructions (including but not limited with respect to condition of the Product, shipping, and re-stocking fees, if applicable).

11. Warranty. Seller warrants to Buyer that Products manufactured by Seller (or an affiliate of Seller) and delivered hereunder shall be delivered to Buyer free from defects in material and workmanship; this warranty shall expire 12 months from the original installation of the Product or 18 months from the original shipment of the Product from Seller, whichever expires first. All Products claimed to be nonconforming to this warranty shall promptly within the above-noted warranty period be returned (transportation prepaid) to Seller along with adequate proof of defect. If a Product does not conform to the above-stated warranty, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. As Buyer's exclusive remedy Seller will at Seller's option (i) repair the nonconforming Product; (ii) replace the nonconforming Product; or (iii) take back the nonconforming Product and refund or credit monies paid by Buyer to Seller for such nonconforming Product less a reasonable allowance for use. Replaced Products/parts become the property of Seller. Seller reserves the right to inspect any alleged nonconforming Product/part at Buyer's facility before return of any Product. The warranty on repaired or replaced parts of the Product shall be limited to the remainder of the Product's original warranty period. Warranty repair or replacement shall not extend or renew the applicable warranty period. The warranty does not apply to Products not manufactured by Seller or affiliates; as to such Products, Buyer shall be entitled to proceed only upon the terms of that particular manufacturer's warranty (if any). If Seller provides repair or replacement parts that are not covered by this warranty (for example if a defect is caused by improper use, improper maintenance, or unauthorized modification of the Product), Buyer shall pay Seller at Seller's then current time and materials rates.

Seller warrants to Buyer that Seller has the right to convey good title to the Products sold by Seller to Buyer hereunder and, upon Buyer's payment in full to Seller, Buyer shall have good title in and to such Products.

Seller warrants to Buyer that any and all Services performed by Seller for Buyer are performed in a workmanlike manner; this warranty shall expire 60 days after the particular Service is performed. If the Service consists of repair of a Product and the repair includes replacement of parts, Seller warrants that such replacement parts are free of defects in material and workmanship; this warranty shall expire 60 days from the date of such replacement by Seller. If a Service does not conform to any above-stated service warranty, Buyer shall promptly notify Seller in writing prior to expiration of the service warranty period. As Buyer's exclusive remedy Seller will at Seller's option (i) re-perform the nonconforming portion of the Service; or (ii) refund or credit monies paid by Buyer to Seller for the nonconforming portion of the Service.

Without limiting the generality of the foregoing, the Product warranty above does not cover and no warranty is made with respect to (a) defects caused by improper storage, improper installation, improper operation, improper use, or improper maintenance; (b) defects caused by accident or abuse of the Products, including but not limited to dropping and mishandling; (c) defects resulting from acts of God; (d) defects resulting from unauthorized modification of the Products, (e) defects resulting from unauthorized service of the Products, (f) defects resulting from operation outside the Product manufacturer's published specifications and instructions; or (g) normal wear and tear.

Buyer shall have no right under any warranty if Buyer is not in compliance with Buyer's payment obligations to Seller with respect to the Products and/or Services sold by Seller to Buyer.

THE ABOVE-STATED WARRANTIES IN SECTION 11 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER ORAL, EXPRESS, IMPLIED OR OTHERWISE. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY EXPRESSLY DISCLAIMED.

UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY CONSEQUENTIAL DAMAGES RESULTING FROM ANY NONCONFORMING PRODUCT/SERVICE. Correction of nonconformities (i.e. warranty repair or replacement or refund or credit, at Seller's option, of Products that

do not conform to the Product warranty above, and re-performance or refund or credit, at Seller's option, of Service that does not conform to the service warranty above) as set forth above provides the exclusive remedies with respect to any nonconforming Product/Service.

In the event Seller and Buyer agree that Seller will sell a used Product to Buyer, such used Product will be sold to Buyer **AS-IS** and with no warranty of any kind (express, implied or otherwise), except for implied warranty of title, and **SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**. In addition, any and all Products provided by Seller for demonstration, evaluation, or prototype purposes are provided AS-IS and with no warranty of any kind (express, implied, or otherwise) and **SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**.

12. Installation, other Service. Unless specifically agreed upon by Seller and Buyer in writing, Seller will not perform installation, startup, preventative maintenance, performance verification, calibration, training or any other Service. Unless otherwise specified in Seller's written quotation, Seller's normal service invoicing practices apply and rates and expenses shall be in accordance with Seller's then current applicable rate sheet. Replacement parts and other materials provided by Seller in connection with the Service are not included in the price unless otherwise specified in Seller's written quotation. All Service to be performed by Seller is subject to availability and shall be scheduled and confirmed with Seller's service department. Seller's performance of Service is subject to Seller's normal working hours (8:30 am to 5:00 pm, Monday through Friday excluding public holidays), unless expressly agreed otherwise. If any forklift, crane, and/or other lifting or rigging equipment or lighting equipment is necessary (as reasonably determined by Seller's service technician) for Seller to perform Service on Buyer's premises, Buyer shall supply such equipment at its own expense together with sufficiently skilled and qualified labor in connection therewith, unless expressly agreed otherwise. If Buyer requests Seller to comply with Buyer's site safety programs/procedures, Seller shall comply with such safety programs/procedures that have been provided in advance to Seller in writing with reasonable opportunity to review/implement, to the extent they are applicable to the scope of Seller's activities at the premises.

13. Insurance. If Seller's personnel or representatives will be physically present on Buyer's premises (assuming the parties have agreed to such physical presence), Seller shall at all such times maintain insurance as follows:

- a) Commercial General Liability insurance in an amount of \$3,000,000 each occurrence for bodily injury and physical damage to tangible property, subject to an annual aggregate not to exceed \$5,000,000;
- b) Automobile Liability insurance in an amount of \$2,000,000 combined single limit each occurrence;
- c) Worker's Compensation insurance in accordance with applicable statutory law; and
- d) Employer's Liability insurance in an amount of \$1,000,000 for bodily injury each accident or disease.

At Buyer's reasonable request, Seller shall provide an ACORD form of certificate confirming the above-stated insurance coverage. Seller shall have no other insurance-related requirement, unless specifically agreed to in writing by an authorized manager of Seller at Seller's headquarters in Rock Hill, South Carolina.

14. Software. In the event the Product and/or Service contains or otherwise includes software, the software shall remain the proprietary property of Seller (and/or its affiliates or other third parties who are Seller's licensors, if applicable), and in no event shall title thereto be sold or transferred to Buyer. In the event a Product and/or Service supplied hereunder contains or otherwise includes software, the following shall apply: (i) subject to Buyer complying with these Terms, Buyer is granted a non-exclusive, non-transferable license to properly use the software in machine readable object code form only; (ii) any license so granted is limited to the proper use of the Product/Service containing the software only in the manner authorized by Seller; and (iii) Buyer shall not sublicense the software to any other entity nor assign its license rights. Notwithstanding the above, in the event Buyer transfers (in compliance with any and all applicable laws and regulations) title to any Product containing the software, the license granted hereby shall transfer to Buyer's transferee. Any license granted hereunder shall continue: (i) until terminated in accordance with this agreement, or, (ii) for the useful life of the Product/Service in which the software is embedded or is otherwise an integral part, or, (iii) for the useful life of the software, whichever is shorter. Any modification, alteration, or removal or unauthorized use of any software contained in any Product/Service constitute a breach of this agreement and shall automatically terminate any license granted hereby. Buyer shall not (and shall not permit any third party to) create derivative works based on the software, or reverse engineer, or disassemble or decompile the software, or transfer, copy, or modify, the software. In the event a separate written applicable Seller-provided Software License is provided with the Product/Service, specified in Seller's quotation, and/or otherwise communicated to Buyer, then the software shall be governed, in order of precedence, by the terms of the separate Software License and then by any non-conflicting terms hereof.

15. Intellectual Property. All existing and all hereafter arising intellectual property (including but not limited to patents, trademarks, and copyrights), and all existing and all hereafter discovered, invented or developed technology, know-how, works of authorship, drawings, designs, processes, ideas, methods, and improvements, related to any Product (or Service) or the way it is designed or manufactured are and shall be the property exclusively of Seller (and/or Seller's affiliate/licensor, if applicable). Without limiting the generality of the foregoing, Seller retains all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Seller or its employees, including but not limited to those developed, discovered, and/or conceived in connection with the manufacture of the ordered Products hereunder and/or or in connection with Service. Buyer acknowledges that no drawings, designs, or anything else provided by Seller shall be deemed to be "work made for hire." Without limiting the generality of the foregoing, all intellectual property rights (including but not limited to copyright) in and to any and all drawings and designs provided by Seller in response to a Buyer requirement or request are and shall remain owned by Seller (and/or Seller's affiliate/licensor, if applicable) exclusively, and Buyer shall not copy, distribute, publish or communicate to any third party any such drawings or designs without prior written authorization of an authorized representative of Seller. Buyer agrees to (at Seller's reasonable request and at Seller's expense) execute any additional documents as Seller reasonably may deem necessary or desirable to confirm or effectuate fully the provisions of this Section 15.

16. Patent and Copyright Indemnity. Seller shall at its own expense defend any suit or proceeding brought by third parties against Buyer insofar as it is based on an allegation that a Product furnished hereunder constitutes an infringement of any United States patent or copyright, provided that such Product is manufactured by Seller (or an affiliate of Seller), is not supplied according to Buyer's design or instructions, is used as sold by Seller, Buyer shall have made all purchase price payments then due hereunder, and Seller is notified promptly in writing and given information, assistance, and exclusive authority over the defense and settlement of said suit or proceeding. Seller shall pay all damages and costs awarded in any suit or proceeding so defended, provided that this indemnity shall not extend to any infringement based upon the combination of the Product or any portion thereof with other Products or things not furnished hereunder by Seller. Seller shall not be responsible

for any settlement of such suit or proceeding made without its written consent. If in any suit or proceeding defended hereunder any Product is held to constitute infringement, or Buyer's use of the Product is enjoined, Seller shall, at its option and at its own expense, either (i) procure for Buyer the right to continue using the Product; (ii) replace the Product with non-infringing Product; (iii) modify the Product so that it becomes non-infringing; or (iv) remove the Product and refund the purchase price of the Product less a reasonable allowance for use. THIS SECTION 16 STATES THE ENTIRE LIABILITY OF SELLER AND ITS AFFILIATES WITH RESPECT TO INFRINGEMENT OF ANY THIRD PARTY'S PATENTS AND/OR COPYRIGHT. To the extent that any Products or any portion thereof are supplied according to Buyer's design or instructions, or modified by Buyer, or combined by Buyer with equipment or things not furnished hereunder, or are used to perform a process, or produce a product, and by reason of said design, instructions, modification, combination, performance or production, a suit or proceeding is brought against Seller, Buyer agrees to indemnify Seller (and its affiliates) in the manner and to the extent Seller indemnities Buyer in this Section 16 insofar as the terms hereof are appropriate.

17. Confidentiality. In connection with the order/contract and/or performance hereunder, each Party (as to information disclosed, the "Disclosing Party") may each disclose Confidential Information to the other Party hereto (the "Receiving Party"). "Confidential Information" shall mean all information related to the business, products, or services of the Disclosing Party (including but not limited to Seller's Products/Services) that is not generally known to the public, and all pricing and terms of the contract, provided that the obligations of this paragraph shall not apply as to any portion of the Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates, or (ii) has been or is subsequently independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information, or (iii) is required to be disclosed by law or valid legal process provided that the Receiving Party who intends to make such disclosure shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information. The Receiving Party agrees, except as otherwise required by law: (i) to use the Confidential Information only as the Disclosing Party intended it to be used by the Receiving Party in connection with providing or receiving the Product/Service, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except disclosure to its employees to the extent necessary to facilitate providing or receiving Products/Services. Upon the Disclosing Party's request, the Receiving Party shall destroy or return to Disclosing Party all copies of Confidential Information. If either party or any of their respective affiliates or representatives is required or requested by subpoena, interrogatories, or similar legal process to disclose any Confidential Information, such party agrees to provide the Disclosing Party with prompt written notice of such request, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions herein. It is understood and agreed that this Section 17 survives any expiration/termination of the contract.

18. Tooling. Any and all tooling, fixtures, dies, molds, patterns and other materials used by Seller (or, if applicable, an affiliate of Seller who manufactures the Product) to produce the Products are and shall remain the property of Seller (or of Seller's affiliate, if applicable). Seller is not and will not be selling any such tooling, fixtures, dies, molds, patterns, etc to Buyer. Buyer is not and will not be providing Seller any such tooling, fixtures, dies, molds, patterns, etc., unless specifically agreed by the parties in writing (in which case Buyer will retain any ownership rights Buyer has in the items provided to Seller).

19. Export Control, and Foreign Corrupt Practices Act. Products, Services, technical data, technology, software, and any other items or information provided by Seller to Buyer shall at all times be subject to any and all applicable export control laws and regulations, including but not limited to applicable U.S. Export Administration Regulations, United Nations resolutions and European Union directives relating to trade embargoes and restrictions. Buyer agrees that no Product, Services, technical data, technology, software or other items or information or assistance or other item received from Seller shall be exported (or re-exported) by Buyer or its authorized transferees (if any), directly or indirectly, in violation of any law or regulation. Buyer further agrees that Buyer shall not violate or cause Seller to violate the U.S. Foreign Corrupt Practices Act of 1977 (as amended), in connection with any sale or distribution of the Products and/or Services. Buyer agrees to indemnify Seller from any and all costs, liabilities, penalties, sanctions, and fines arising from Buyer's non-compliance with this Section 19.

20. Limitation of Liability. NOTWITHSTANDING ANYTHING ELSE, SELLER'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF, OR IN RELATION TO OR RESULTING FROM THE ORDER OR CONTRACT OR THE PERFORMANCE OR BREACH THEREOF, OR THE DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, INSTALLATION, TECHNICAL DIRECTION OF INSTALLATION, INSPECTION, SERVICE, OPERATION OR USE OF ANY PRODUCT OR SERVICE SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE AMOUNT PAID BY BUYER TO SELLER FOR THE SPECIFIC PRODUCT/SERVICE GIVING RISE TO THE CLAIM, WHETHER A CLAIM IS BASED ON WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE.

21. No Consequential Damages. NOTWITHSTANDING ANYTHING ELSE, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF TOTAL OR PARTIAL USE OF THE PRODUCTS OR SERVICES, DOWNTIME COSTS, AND DELAY COST) HOWSOEVER ARISING, WHETHER A CLAIM IS BASED ON WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE, REGARDLESS OF WHETHER SELLER WAS ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

22. U.S. Government Contracts. If the Products and/or Service are to be used in the performance of a U.S. Government contract or subcontract, Buyer expressly agrees to notify Seller in writing in connection with Buyer's order. Further, if the Products and/or Service are to be used in the performance of a U.S. Government contract or subcontract, only those clauses of the applicable U.S. Government procurement regulations which are mandatorily required by federal statute to be included in this contract shall be incorporated herein by reference.

23. Equal Employment Opportunity Requirements. If applicable to this agreement, Seller and Buyer shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

24. Miscellaneous.

24.1. Typographical and/or clerical errors in Seller's quotations are subject to Seller's correction.

24.2. Buyer's issuance of a purchase order or Buyer's receipt of any Product from Seller shall (without prejudice to any other manner in which acceptance of these Terms may be evidenced) constitute Buyer's assent to these Terms.

24.3. THESE TERMS CONTAIN THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER WITH RESPECT TO TERMS AND CONDITIONS AND SUPERSEDE ALL PREVIOUS OR CONTEMPORANEOUS STATEMENTS, AGREEMENTS, AND REPRESENTATIONS WITH RESPECT TO TERMS AND CONDITIONS. This agreement cannot be superseded, amended, or modified except by an applicable negotiated agreement signed in handwriting by a company officer of Seller and an authorized representative of Buyer which agreement is substantially similar to these Terms. Any purchase order issued by Buyer to Seller is for Buyer's internal purposes and no term or condition stated in such document shall modify these Terms. Seller's execution of any document issued by Buyer shall constitute only an acknowledgment of receipt thereof, and shall not be construed as an acceptance of any of the terms or conditions therein that differ from, conflict with, or add to these Terms.

23.4. Neither Party shall assign or transfer the contract without the prior written consent of the other Party (which consent shall not be unreasonably withheld); any purported assignment in violation of this sentence shall be void. Irrespective of the foregoing, Seller may without consent assign the contract (or any of rights or obligations hereunder) to any of its affiliates and/or use sub-contractors.

23.5. The provisions of these Terms are severable and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision. In addition, if any provision of these Terms (or portion thereof) is determined by a court to be unenforceable as drafted by virtue of the duration, scope, extent, or character of any obligation contained herein or otherwise, the parties acknowledge that it is their intention that such provision (or portion thereof) shall be construed in a manner designed to effectuate the purposes of such provision to the maximum extent enforceable under applicable law.

23.6. Neither Party's failure to enforce, or its waiver of a breach of, any provision contained in these Terms shall constitute a waiver of any other breach or of such provision.

23.7. All headings, captions and numbering in this document are for convenience of reference only and shall not be used to interpret any meaning of any terms or condition.

23.8. The validity, performance, and all other matters arising out of or relating to the interpretation and effect of these Terms and/or the contract shall be governed by and construed in accordance with the internal laws of the State of South Carolina without giving effect to any choice or conflict of law provision or rule (whether of South Carolina or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of South Carolina. Any legal suit, action or proceeding and all other matters arising out of or relating to the interpretation and effect of these Terms and/or the contract shall be instituted in a court (federal court or state court) sitting in South Carolina, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such action, suit, or proceeding. Notwithstanding the foregoing, Seller shall have the right at any time (at its option and where legally available) to immediately commence a legal suit, action, or proceeding in any court of competent jurisdiction (in any State or country) in order to seek an injunction or similar order to enforce the confidentiality provisions set forth in Section 17 above (entitled "Confidentiality"), and/or to enforce or protect intellectual property rights or trade secrets, and/or to enforce the provisions of Section 6 above (entitled "Payment").

23.9. Seller and Buyer expressly agree that the United Nations Convention on International Sale of Goods shall not apply.

23.10. The parties are independent contractors under this agreement and no other relationship is intended including, without limitation, any partnership, franchise, joint venture, agency, employer/employee, fiduciary, master/servant relationship, or any other special relationship.

23.11. All rights and obligations contained in these Terms, which by their nature or effect are required or intended to be kept, observed, or performed after the termination or expiration of the order/contract will survive and remain binding upon and for the benefit of the parties, their successors, and permitted assigns.