



## GENERAL TERMS AND CONDITIONS FOR SALES CONTRACTS

**1. GENERAL:** This Contract of Sales ("Contract") consists of this document and any documents attached hereto and/or referred to therein. In the event of any ambiguity or conflict among the terms and conditions of this Contract, the priority thereof shall be in accordance with the following sequence: (a) the face of this document; (b) the documents attached hereto and/or referred to therein; and (c) these General Terms and Conditions for Sales Contracts. Any proposal or document provided by Buyer for additional or different terms or attempt by Buyer to vary any of the terms of this Contract shall not apply or become part of this Contract. To the extent that these terms and conditions are different than those in a purchase order provided by Buyer, these terms and conditions shall be deemed a counter-offer, and Buyer will be deemed to have accepted the counter-offer unless they cancel the order within seven (7) days of receipt. Any effective modification to these General Terms and Conditions for Sales Contracts shall be applicable to and valid for this Contract only.

**2. PAYMENT AND TAXES:** If, following the date of this Contract, the creditworthiness or financial responsibility of Buyer becomes or appears, in Seller's sole judgment, to have become impaired or unsatisfactory to Seller, Buyer shall, upon demand by Seller, provide Seller with adequate assurance of Buyer's due payment of the full Contract price in form and substance satisfactory to Seller. If Buyer fails to comply with such demand of Seller, such failure may be considered to constitute a repudiation of this Contract by Buyer with respect to Buyer's performance not yet due, and Seller shall be entitled to the remedies set forth in Article 11 hereof, in addition to any other remedies available to Seller at law, by statute, in equity or otherwise. Unless otherwise expressly stated on the face of this Contract, the prices quoted herein do not include any sales, use, excise, ad valorem, receipts or like taxes, import duties, or any other duties or charges whatsoever currently or hereafter imposed by any governmental authority, and all such taxes, duties and other charges shall be borne by Buyer. Buyer shall pay the price specified on the face of this Contract without set-off, counterclaim, recoupment or other similar rights which Buyer may have against Seller, which rights shall be exercised in separate proceedings between Buyer and Seller. Any new, additional or increased freight rates, surcharges (bunker, currency, congestion or other surcharges), taxes, customs duties, export or import surcharges or other governmental charges, or insurance premiums, which may be incurred by Seller with respect to the Goods or Services after the conclusion of this Contract shall be for the account of Buyer and shall be reimbursed to Seller by Buyer on demand. If payment for the Goods or Services shall be made by a letter of credit, Buyer shall establish in favor of Seller an irrevocable letter of credit through a prime bank of good international repute immediately after the date of this Contract in a form and upon terms satisfactory to Seller. If Buyer fails to make payment, to establish a letter of credit or otherwise to perform its obligations hereunder, Seller may demand Buyer to provide, within a reasonable time stipulated by Seller, adequate assurance satisfactory to Seller of the due performance of this Contract. If Buyer fails to pay for the Goods or Services in accordance with this Contract, Buyer shall pay to Seller as liquidated damages and not as a penalty overdue interest at the rate of the lower of eighteen percent (18%) per annum or the maximum interest rate permitted by the applicable laws, calculated from the due date for such payment until the actual date of payment calculated on the 360 days a year basis for the actual number of days elapsed.

**3. DELIVERY AND TITLE:** Unless otherwise expressly provided for on the face of this Contract, Seller's delivery of Goods to a carrier shall constitute due delivery of such Goods to Buyer. Upon such delivery, title to and risk of loss of the Goods shall pass to Buyer, subject to Seller's right of stoppage in transit or otherwise. In the event Buyer fails to nominate its carrier, as applicable, Seller may, at its sole discretion and for Buyer's risk and account, arrange for the transportation of the Goods to the Buyer's place of business, without prejudice and in addition to any other rights and remedies Seller may have under this Contract or at law, in equity, by statute or otherwise.

**4. INSPECTION AND ACCEPTANCE:** Upon arrival of any Goods at the place to which such Goods shall have been shipped hereunder or upon performance of any Services by Seller at the place mutually agreed upon between the parties, Buyer shall immediately inspect such Goods or Services at its own cost, and if Buyer finds that such Goods or Services do not conform to their description in this Contract or any other terms and conditions hereof, Buyer shall, within fifteen (15) days after the arrival of Goods or completion of Services, give Seller a written notice specifying the details of the nonconformity. A failure of Buyer to give such notice to Seller within such period shall constitute an irrevocable acceptance of Goods or Services by Buyer. Seller shall have the right, following any rightful rejection, either to substitute conforming Goods or Services, or repair the same within a reasonable period of time after Seller's receipt of the aforesaid notice from Buyer.

**5. WARRANTY:** (a) Seller warrants that the Goods or Services will conform to the description appearing on the face of this Contract. THERE IS NO WARRANTY, CONDITION OR REPRESENTATION, STATUTORY OR OTHERWISE, THAT GOODS OR SERVICES SHALL BE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE NOR IS THERE ANY OTHER WARRANTY, CONDITION OR REPRESENTATION, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, EXCEPT SUCH AS IS EXPRESSLY SET FORTH IN THIS CONTRACT. (b) Buyer shall, in claiming a breach of Seller's warranty, submit to Seller a written notice of claim containing full particulars of the claim and accompanied by reasonably adequate proof, within one (1) year from the date of delivery of such Goods or performance of such Services. Unless such notice is given within the said one (1) year period, Buyer shall be deemed to have waived all claims. (c) If the Goods or Services fail to meet Seller's warranty, Seller shall, at its option, repair or replace such Goods or Services. This is the exclusive remedy of Buyer for any claim that the Goods or Services fail to meet the Seller's warranty. (d) Buyer shall assume all risks and liabilities resulting from any use, process, consumption, resale or other disposition of the Goods delivered or Services performed under this Contract.

**6. INTELLECTUAL PROPERTY:** Seller makes no representation or warranty that the sale, use or other disposition of Goods or the performance of Services will not infringe on any patent, trademark, design, copyright or other intellectual property right (each an "Intellectual Property Right") of any third party in the United States or any other country. Seller hereby disclaims all liability for any loss, damages, penalty, claim, suit, action, cost and expense (including, without limitation, attorney's fees and disbursements) based on, arising out of or otherwise in respect of any actual or alleged infringement of any Intellectual Property Right of any third party resulting from the sale, use or other disposition of Goods or the performance of Services. In the event that any claim or dispute arises in connection with any allegation that the sale, use or other disposition of Goods or the performance of Services infringes upon any Intellectual Property Right of any third party, Seller hereby reserves the right to terminate this Contract in whole or in part and shall have no liability for any loss, damages, cost and expense based upon, arising out of or otherwise in respect of such termination.

**7. LIMITATIONS OF LIABILITY:** IN NO EVENT, WHETHER AS A RESULT OF A BREACH OF CONTRACT OR WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, FOR ANY LOSS OF PROFIT, REVENUE OR CONTRACT, LOSS OF USE, COST OF DOWNTIME, COST OF SUBSTITUTE GOODS OR SERVICES (WHETHER DIRECT, INDIRECT OR WHATSOEVER), OR FOR ANY CLAIMS MADE BY BUYER'S CUSTOMERS OR ANY OTHER PERSON FOR SUCH DAMAGES. ALL CLAIMS FOR SUCH DAMAGES, LOSSES, REVENUES OR COSTS WHICH MAY BE RECOVERABLE BY BUYER AT LAW, IN EQUITY, BY STATUTE OR OTHERWISE, ARE HEREBY EXPRESSLY WAIVED BY BUYER. ANY OF SELLER'S LIABILITY SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE PAID BY BUYER FOR GOODS OR SERVICES ON WHICH SUCH CLAIM IS MADE.

**8. FUTURE TRADE RESTRICTIONS:** If, following the date of this Contract, (i) there shall be imposed any import, export or other restrictions on interstate or international trade or commerce or there shall be enacted or otherwise issued any law, regulation, or order regulating or purporting to regulate any import, export or other restrictions on interstate or international trade or commerce in any way (such restrictions, laws, regulations and orders being hereinafter collectively referred to as "Trade Restrictions"), including, without limitation, any creation or increase (whether retaliatory or otherwise) of tariffs (pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, or otherwise), import surcharges, antidumping or countervailing duties, fees, or any other form of charges whatsoever, or the imposition of any import or export quota or embargo, and (ii) Seller's ability to perform this Contract is adversely affected thereby, or its underlying economic assumptions with respect to this Contract become inaccurate in any respect, Seller shall have the option either (a) to terminate this Contract in whole or in part by written notice to Buyer, without incurring any liability to Buyer thereby, or (b) to continue to perform all of its obligations hereunder in respect of deliveries of the Goods or performance of the Services, and in either case (except, if this Contract is terminated in whole), Seller shall have the right to increase

the price of the Goods or Services by an amount equal to the full amount of all such tariffs, surcharges, duties, fees, and other charges, and any other cost or expense, imposed on or incurred by Seller in connection with the sale of Goods or the performance of Services as a result of the imposition, enactment or issuance of any Trade Restriction.

**9. TRADE RESTRICTIONS AND SANCTIONS:** Upon the Seller's request at any time, Buyer shall provide Seller with a certificate of information with respect to the final destination and the end-use of the Goods or Services and other matters related to the transaction, in the form satisfactory to Seller. Buyer further represents and warrants to Seller that (a) the Goods or Services are not intended for sale or delivery to a country subject to a U.S. trade sanction, according to the list published by the U.S. Office of Foreign Assets Control ("OFAC"), Department of Treasury, at internet address: [www.treas.gov/ofac](http://www.treas.gov/ofac), and (b) Buyer will not require delivery of Goods or Services aboard a vessel that is flagged by, or owned or controlled by nationals of, a country named on the above referenced OFAC list. In the event that Buyer learns any fact that is contrary to the foregoing representations and/or warranties or that otherwise puts Seller in violation of a U.S. trade sanction (the "Fact"), Buyer shall immediately notify Seller. Seller shall, within three (3) business days of receipt of such notice, or within a reasonable time after Seller learns the Fact through another means, notify Buyer whether Seller elects to terminate this Contract for cause with respect to the shipment at issue or apply to OFAC for an appropriate license. In the event that Seller applies for a license but OFAC fails for any reason to issue a license within a reasonable time following receipt of Seller's application, Seller may elect to terminate this Contract, which shall be deemed a termination for cause. Buyer shall reimburse Seller for any loss resulting from market price movements calculated as the difference between the market price for the Goods or Services on the original delivery date under this Contract and that on the date of cancellation or date of delayed delivery (in the event that an OFAC license is obtained by Seller), as well as any other related costs or charges incurred by Seller due to the cancellation or delay in performance.

**10. FORCE MAJEURE:** Seller shall not be liable for any delay or default in delivery of any Goods or performance of any Services if such delay or default is directly or indirectly due, in whole or in part, to act of God or of a public enemy, war (whether declared or not) or act of terrorist or threat of the same, export restriction, act of any government or any state or political subdivision thereof, court injunction or order, fire, flood, explosion or other catastrophe, epidemic or quarantine restriction, strike, lockout, sabotage, slowdown or other labor disputes, explosion, accident, breakdown or unavailability in whole or in part of machinery, plant, transportation or loading facility, inability or difficulty to obtain power, material, labor equipment or transportation, freight embargo, delay or failure in suppliers' or subcontractors' furnishing goods or services to Seller due to any such cause, any supplier's or subcontractor's insolvency or bankruptcy, or any other cause or causes beyond the reasonable control of Seller. In the event of any such occurrence, Seller may, at its option, extend the time of delivery of the Goods or performance of Services or terminate unconditionally and without liability the unfulfilled portion of the Contract to the extent so affected or prevented.

**11. DEFAULT:** If Buyer fails to carry out any of the terms and conditions of this Contract or of any other contract with Seller, or becomes insolvent, or if a proceeding is instituted or commenced by or against Buyer under any bankruptcy, insolvency or similar law, or if a receiver, trustee or liquidator is appointed for Buyer or any of its assets, or Buyer executes an assignment for the benefit of creditors, Seller may, at its sole discretion, (i) terminate this Contract or any part thereof, (ii) declare all obligations of Buyer immediately due and payable, (iii) resell the Goods or Services, (iv) hold the Goods for Buyer's account and risk, (v) postpone the delivery of Goods or performance of Services and/or (vi) stop the Goods in transit, without prejudice and in addition to any other rights or remedies available for Seller under this Contract or at law, by statute or in equity. Buyer shall reimburse Seller for all losses or damages arising directly or indirectly from such events of default.

**12. REMEDIES:** The remedies herein reserved to Seller shall be cumulative and in addition to any other or further remedies provided at law, by statute or in equity.

**13. APPLICABLE LAW AND RULES; AND SUBMISSION TO JURISDICTION:** This Contract shall be governed by the laws of the State of Texas, without regard to the conflicts of laws principles thereof; provided, however, that if this Contract is made for the sale or delivery to Buyer the address of which shown on the face of this document is outside the United States, the trade terms provided herein such as EXW, FAS, FOB, CIF or DDU shall have the meanings set forth in the Incoterms® 2000. Seller and Buyer hereby expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to the sales covered by this Contract. Buyer hereby irrevocably consents to the jurisdiction of the Federal and Texas State courts located in Houston, Texas in connection with any and all suits, actions or other proceedings arising out of or in relation to this Contract. BUYER WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, ANY WORK, OR ANY MATTERS CONTEMPLATED HEREUNDER.

**14. CONFIDENTIALITY:** Buyer shall not use any proprietary information received from Seller hereunder (other than such information as is known to Buyer or in public domain without the fault of Buyer) for any purpose other than the performance of this Contract, and shall not disclose the same to any third party.

**15. ENTIRE AGREEMENT; MODIFICATION ASSIGNMENT; AND WAIVER:** This Contract constitutes the entire agreement between Buyer and Seller in respect of the subject matter hereof and supersedes all prior agreements whether written or oral, with respect thereto. Any alterations or modifications hereof shall be by mutual agreement of the parties and shall not be binding on Seller unless agreed to by Seller in writing. Buyer shall neither assign any rights nor delegate any duties under this Contract without the prior written consent of Seller. No claim or right of Seller arising out of a breach of this Contract shall be discharged in whole or in part by waiver or renunciation of such claim or right unless such waiver or renunciation is made by Seller in writing. No delay on the part of Seller in exercising any right hereunder shall operate as a waiver or renunciation thereof, nor preclude any further exercise thereof or the exercise of any other such right.