

the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods, Parts, and/or Software.

**9. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

**10. CANCELLATION:** Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

**11. CHANGES:** Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

**12. NUCLEAR/MEDICAL:** GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

**13. ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

**14. SOFTWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a non-exclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

**15. TOOLING:** Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

**16. DOCUMENTATION:** Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

**17. INSPECTION/TESTING:** Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from (i) the date of delivery of Goods, Parts, and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods, Parts, and/or Software, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Goods, Parts, and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods, Parts, and/or Software. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

**18. RETURNED GOODS:** Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA)

procedures and a return authorization number issued. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

**19. BILLABLE SERVICES:** Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

**20. DRAWINGS:** Seller's documentation, prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request thereof. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

**21. BUYER SUPPLIED DATA:** To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, Parts, and/or Software, and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

**22. EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

**23. NON-SOLICITATION:** Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

**24. GENERAL PROVISIONS:** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

**25. DATA COLLECTION AND USE:** By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data: (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services; and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred,