

## Terms and Conditions

**Sale of any products and/or services ordered by Buyer is expressly conditioned on Buyer's assent to the additional or different terms contained herein (including those in Seller's quotation). Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Seller unless specifically assented to in writing by Seller. Any order for, or any statement of intent to purchase products and/or services, shall constitute assent to Seller's terms and conditions.**

1. **WARRANTIES:** Seller warrants to Buyer that products furnished hereunder will, at the time of sale, transfer or delivery, conform to the Seller's written specifications as set forth in the applicable product certification delivered to Buyer, and will be free of any defects in title. Buyer agrees to inspect all products for non-conformance, including damage, defect or shortage, promptly after receiving them, and will give Seller notice of any such non-conformance within a period of sixty (60) days after the date of shipment.

The warranty and remedies set forth in this Article 1 are conditioned upon Buyer notifying Seller of any non-conformance with the above warranty within the above notice period and, if required, promptly making the product available for inspection. In addition, this warranty shall be void if the Buyer makes any additions to, or effects any changes in the products that have not been authorized by the Seller in writing.

If any product fails to meet the foregoing warranties (except title), Seller shall correct any such failure at its option, (i) by modifying such non-conforming products either at Buyer's facility, or Seller's facility with shipping at Buyer's expense, or (ii) by making available, any necessary replacement products at Buyer's facility. Where a failure cannot be corrected by Seller's reasonable efforts, the parties will negotiate an equitable adjustment in price.

The preceding paragraph sets forth the exclusive remedies for claims (except as to title) based on failure of products to conform to the above warranty, whether the claim is in contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise and however instituted. The foregoing warranties are (i) given only to the original buyer and do not extend to any subsequent buyer or transferee of the products; and (ii) exclusive and in lieu of all other warranties, whether written, oral, implied or statutory, except for the patent warranty in Article 2. **NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY.** Seller does not warrant any products or services of others that Buyer has designated.

2. **PATENTS:** (a) Subject to the provisions of this Article 2, Seller warrants that products furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, and contingent upon Buyer not taking any position adverse to Seller in connection with such claim, Seller shall defend, or may settle, at its expense, any suit or proceeding against Buyer so far as based on a claimed infringement which would result in a breach of this warranty and Seller shall pay all damages and costs awarded therein against Buyer due to such breach. In case any product or part thereof is in such suit held to constitute such an infringement and the use for the purpose intended of said product or part is enjoined, Seller shall, at its expense and option, either procure for Buyer the right to continue using said product or part, or replace same with a non-infringing product or part, or modify same so it becomes non-infringing, or remove the product and refund the purchase price (less reasonable depreciation for any period of use) and any transportation costs separately paid by Buyer. The foregoing states the entire liability of Seller for patent infringement by said products or any part thereof.

(b) The preceding paragraph shall not apply to any product or part specified by Buyer or manufactured to Buyer's design, or to the use of any product furnished hereunder in conjunction with any other product in a combination not furnished by Seller as a part of this contract. As to any such product, part, or use in such combination, Seller assumes no liability whatsoever for patent infringement and Buyer will hold Seller harmless against any infringement claims arising therefrom.

3. **DELIVERY, TITLE AND RISK OF LOSS:** Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Unless otherwise specified by Seller, delivery will be made Ex Works Seller's facility (Incoterms 2000), with shipping and insurance prepaid by Buyer. Risk

of loss or damage pass to Buyer on delivery, and Buyer is responsible for making claims, if necessary, pertaining to damage or loss with the carrier chosen by Seller. Title will pass to Buyer upon Seller's receipt of all payments for the products.

If any part of the products cannot be shipped to Buyer when ready due to any cause referred to in Article 4 (Excusable Delays), Seller may place such products in storage (including storage at the Seller's facility). In such event, (i) Seller shall notify Buyer of the placement of any product in storage, (ii) Seller's delivery obligations shall be deemed fulfilled and all risk of loss or damage shall thereupon pass to Buyer, (iii) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller's invoices and certification as to cause for storage; (iv) all expenses incurred by Seller, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, removal charges and any taxes shall be payable by Buyer upon submission of Seller's invoices; and (v) when conditions permit and upon payment of all amounts due, Seller shall assist and cooperate with Buyer in any reasonable manner with respect to the removal of any product which has been placed in storage.

4. **EXCUSABLE DELAYS:** Seller shall not have any liability or be considered to be in breach or default of its obligations under this contract to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to: (i) causes beyond its reasonable control; or (ii) acts of God, acts (or failures to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), epidemics, civil unrest, riot, terrorist acts, delays in transportation, or car shortages; or (iii) acts (or omissions) of Buyer including, but not limited to, failure to promptly: (a) provide Seller with information and approvals necessary to permit Seller to proceed with work immediately and without interruption, or (b) comply with the terms of payment, or (iv) shipment to storage under Article 3 or (v) inability on account of causes beyond the reasonable control of Seller to obtain necessary labor, materials, components or services through Seller's usual and regular sources at usual and regular prices. Seller shall notify Buyer in the event of any such delay. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay. Seller shall notify Buyer, as soon as practicable, of the revised delivery date. If Seller is delayed by acts or omissions of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall also be entitled to an equitable price adjustment.

If delay excused by this Article extends for more than thirty (30) days and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either party (except where delay is caused by Buyer, in which event only Seller), upon thirty (30) days written notice, may terminate the order with respect to the unexecuted portion of the work, whereupon Buyer shall promptly pay Seller its termination charges determined in accordance with Seller's standard accounting practices upon submission of Seller's invoices therefore.

5. **PAYMENTS AND FINANCIAL CONDITION:** Except to the extent otherwise specified by Seller in its quotation, pro rata payments shall become due without setoff as shipments are made. If Seller consents to delay any shipment after it is ready to ship, payment shall become due on the date when Seller is prepared to make shipment. Buyer agrees to reimburse Seller for collection costs if Buyer fails to make any payment within the earlier of thirty (30) days after shipment or receiving an invoice, including interest at 1.5% per month or part thereof.

In addition, if Buyer fails to fulfill any condition of its payment obligations, Seller may suspend performance and delivery. Any cost incurred by Seller in accordance with such suspension, including storage costs (including storage at the Seller's facility), shall be payable by Buyer upon submission of Seller's invoices. Performance of Seller's obligations shall be extended for a period equaling the period of Buyer's nonfulfillment of any portion of the payment terms, whether or not Seller suspends performance and such additional time as may be reasonably necessary in the circumstances. If Buyer does not correct such failure in the manner and time satisfactory to Seller, then Seller may, at its option, terminate the contract in respect to the portion of the products not delivered and work not yet performed. Buyer shall pay Seller its reasonable and proper termination charges in the event of such termination, in addition to any non-refundable down payments.

Any order for products from Buyer shall constitute a representation that Buyer is solvent. In addition, upon Seller's request, Buyer will furnish a written representation concerning its solvency at any time prior to shipment.

If Buyer's financial condition at any time does not justify continuance of the work to be performed by Seller hereunder on the agreed terms of payment, Seller may require full or partial payment in advance. In the event of Buyer's bankruptcy or insolvency or in the event any proceeding is brought against Buyer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its proper cancellation charges. Seller's rights are in addition to all rights available to it at law or in equity.

6. **DISCLOSURE OF INFORMATION:** Any information, suggestions or ideas transmitted by Buyer to Seller in connection with performance hereunder are not to be regarded as secret or submitted in confidence except as may be otherwise provided in a writing signed by a duly authorized representative of Seller.

7. **TAXES:** In addition to any price specified herein, Buyer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale or delivery of any products or services furnished hereunder or to their use by Seller or Buyer, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

8. **LIMITATIONS OF LIABILITY:** In no event, whether as a result of breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise, shall Seller's liability to Buyer or its insurers for any loss or damage arising out of, connected with, or resulting from any non conformance in the products furnished hereunder, exceed the lesser of the cost of replacing the products or part thereof failing to conform to the warranty or the price of the particular product or part thereof giving rise to the claim, and except as to title, any such liability shall terminate upon the expiration of the period specified in Article 1 for Buyer to give Seller notice. Any such claim of liability must be timely commenced in a court of competent jurisdiction in accordance with the applicable statute of limitations and/or of repose, but in no event later than 1 year from the expiration of the period specified in Article 1.

In no event, whether as a result of breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise, shall Seller be liable for any special, consequential, incidental, exemplary or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of Buyer's customers for such damages. If the products or services being provided by Seller will be furnished by the Buyer to a third party by contract or otherwise or relate to a contract between the Buyer and a third party, the Buyer shall obtain from such third party a provision affording Seller the protection of this Article. Buyer shall indemnify, defend and hold Seller harmless from all claims, losses, damages and expenses, including reasonable attorney's fees, arising from any failure to obtain a provision affording Seller the protection of this Article.

If Seller furnishes Buyer with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be utilized and which is not required pursuant to this contract, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise. For the purposes of this Article, the term Seller includes the Seller's subcontractors and suppliers.

9. **HAZARDOUS APPLICATIONS:** The products sold hereunder are not intended for application, and are prohibited from use, in connection with any hazardous application. A hazardous application is one in which any failure, defect, malfunction or inaccuracy of a product carries a risk of death or serious bodily injury, such as, but not limited to nuclear facilities, medical equipment, life support or other applications representing a similar degree of hazard. Buyer warrants that it shall not use any products for hazardous applications, or permit others to use the products for any such applications. If, in breach of the foregoing, any such use occurs, Seller shall have no liability for any damages or injuries, including but not limited to nuclear or other damage, injury or contamination, and Buyer shall indemnify, defend and hold Seller harmless from all claims, losses, damages and expenses, including reasonable attorney's fees, arising from any prohibited use or hazardous application of any product, whether based on breach of contract, indemnity, warranty, tort (including Seller's negligence), strict liability or otherwise.

10. **TECHNICAL ADVICE AND OTHER SERVICES.** Buyer is responsible for the design, processing, testing and labeling of any product that Buyer makes using products bought from Seller, and Buyer will not rely on anything on Seller's website or any statement by Buyer about the suitability of products or services provided hereunder. Buyer has tested and investigated products sold by Seller enough to form an independent judgment concerning their suitability for the use, conversion or processing intended by Buyer and will not make any claim against Seller based on our technical advice, statements, data, services or recommendations of Seller.

11. **SECURITY INTEREST:** Seller reserves, until full payment has been received, a purchase money security interest in the products sold. If the Buyer defaults on any of its obligations to Seller, Seller will have the right to take all actions necessary to repossess the products sold hereunder without liability to Buyer. Buyer may satisfy the security interest of Seller by paying for the products purchased hereunder in full. Buyer agrees to execute any UCC Financing Statement or such other document appropriate or necessary to perfect its security interest, or in the alternative, Seller may file this contract as evidence of a financing statement and/or chattel mortgage.

12. **ENVIRONMENTAL COMPLIANCE:** If required, Seller will provide Buyer with Material Safety Data Sheets ("MSDSs") and Buyer will provide the MSDSs to all those required by law to receive them. Buyer will take such precautions (without further reliance on Seller) as may be appropriate for hazards identified in the MSDSs and properly manage and dispose of all wastes and residues resulting from Buyer's use of the materials in accordance with applicable laws and regulations. Buyer agrees to dispose of disposable packaging as required by any applicable disposal or recycling laws.

13. **EXPORT CONTROL COMPLIANCE:** Buyer agrees to comply with all applicable laws, including the U.S. export control laws, in the event that Buyer exports any products, technology or software received from Seller. Buyer certifies that it will not use or knowingly support the use of such products, technology or software in the design, development, production or use of nuclear, chemical or biological weapons or ballistic missiles, or in any use contrary to applicable laws.

14. **GENERAL:** Buyer shall not take any action whatsoever, in writing or otherwise, that would inhibit, restrict or prevent Seller and its customers from manufacturing, producing, developing, using, licensing, marketing and/or selling products (or otherwise seeking financial gain from any other commercial activity involving Seller's products and associated technology) with the same composition as the products provided hereunder, or similar to, or modifications or derivatives of, such products. Any action taken by Buyer contrary to the preceding sentence shall have no force and effect on Seller and its customers.

Any products delivered hereunder will be produced in compliance with the Fair Labor Standards Act of 1938, as amended and applicable. Seller will comply with applicable federal, state and local laws and regulations as of the date of any quotation which relate to (i) nonsegregated facilities and equal employment opportunity, (ii) workers' compensation, and (iii) the production in Seller's manufacturing facilities of products furnished hereunder. Price and, if necessary, delivery will be equitably adjusted to compensate Seller for the cost of compliance with any other laws or regulations.

The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Seller's prior written consent shall be void.

Any representation, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on Seller. These Terms and Conditions, including Seller's quotation, contain the entire and only contract between the Buyer and Seller regarding the sale of products and services and supersedes and cancels all previous negotiations, agreements, commitments, representations and writings in respect thereto. These Terms and Conditions may not be amended, supplemented, changed or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date, signed by a duly authorized representative of each party.

The validity, performance and all matters relating to the interpretation and effect of this contract and any amendment hereto shall be governed by the law of the State of New York, excluding its conflict of law rules which would result in a choice of law for this contract other than New York law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The invalidity, in whole or part, of any of the articles or paragraphs in these Terms and Conditions will not affect the remainder of such article or paragraph or any other article or paragraph.

The provisions of this contract are for the benefit of the parties hereto and not for any other person except as specifically provided herein.

Buyer may terminate an order only upon paying Seller its termination charges determined in accordance with Seller's standard accounting practices upon submission of Seller's invoices therefor. Termination of an order shall not relieve either party of any obligation arising out of work performed prior to termination.

The following Articles shall survive termination of any contract between Buyer and Seller regarding products and services: Article 1 (Warranties), Article 2 (Patents), Article 7 (Taxes); Article 8 (Limitations of Liability); Article 9 (Limitations on Use), Article 10 (Technical Advice And Other Services), Article 11 (Security Interest), Article 12 (Environmental Compliance), Article 13 (Export Control Compliance), Article 14 (General) and any remaining payment obligations of Buyer.

**EEMS™ - Feb. 2010**

**EEMS-LLC.com**