

## GENERAL CONDITIONS OF SALE - COMMERCIAL

1. **TAXES.** Except as otherwise specified, the prices stated do not include any state, federal, or local sales, use or excise taxes applicable to the sale, delivery, or use of equipment sold hereunder, including, as applicable, associated software delivered with such equipment (Products), and the Buyer expressly agrees to pay to Seller, in addition to the prices stated, the amount of any such taxes, domestic or foreign, which may be imposed upon or payable by Seller.
2. **PAYMENT TERMS.** Notwithstanding any statement of terms or time of payment to the contrary appearing on the face of the order, Seller reserves the right to require payment in advance of shipment or to ship C.O.D. In the event Buyer fails to pay any invoice when due, in addition to any other right reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. Further, Seller reserves the right to charge interest at one and one half percent (1.5%) per month or the maximum allowable by law, whichever is less, on any unpaid balance owing by Buyer from the date on which the unpaid balance was due to Seller. It is agreed that title to any Product described herein not fully paid for at the time of delivery to Buyer shall be retained by and remain in Seller until said purchase price is fully paid and if the purchase price is to be paid on an installment basis, Buyer will prior to the time of delivery execute a note, security agreement and financing statement for such purchase price, all upon forms customarily used by Seller in similar transactions.
3. **DELIVERY.** Unless otherwise specified, delivery will be made EXW (Incoterms 2000) the place or location of Seller's factory from which Seller elects to make shipment, according to the delivery schedule specified, which schedule is subject to delays due to causes beyond Seller's control. Cancellation or rescheduling of the delivery by Buyer may be subject to additional charges by Seller.
4. **FORCE MAJEURE (EXCUSABLE DELAY).** Seller shall not be liable for default or for delay in deliveries due to cause beyond its control and without its fault or negligence, including but not limited to inability to obtain material, labor or manufacturing facilities, acts of God, or of the public enemy, any preference, priority or allocation order issued by the Government, changes in applicable law or any other act of Government, fires, floods, unusually severe weather, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Seller's suppliers. In the event of such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. Seller shall use its reasonable efforts to remove the cause of delay and resume work as soon as possible and to mitigate delivery schedule delay. In no event shall Seller be liable for any damages. Seller reserves the right to provide, at no change in price, a substitute product of equal or better capability provided however that such substitute product maintains the form, fit and functionality of the original Product.
5. **SHIPMENT AND RISK OF LOSS.** In the absence of specific instructions, Seller will select the carrier to whom delivery will be made for shipment to Buyer. Except for its obligations under the sections hereof entitled "Warranty" and "Patent and Copyright Indemnification," all responsibility of Seller, including but not limited to risk of loss for all items purchased hereunder by Buyer, shall pass to Buyer EXW (Incoterms 2000) the place or location of Seller's factory from which Seller elects to make shipment at the time the articles are duly delivered to the carrier. All claims to the carrier for Products damaged or lost in transit shall be made by the Buyer.
6. **WARRANTY.** The equipment sold hereunder and its associated software delivered hereunder are subject to the following warranties:
  - A. Seller agrees to repair or replace at its discretion, without charge, any such equipment, which is defective as to design, workmanship or material, and which is returned to Seller at its factory, transportation prepaid, provided:
    - i. Notice of the claimed defect is given Seller within one (1) year from the date of delivery.
    - ii. Software shall not be deemed to be defective if the software or the host medium is exposed to any computer virus or to any condition in excess of those published in the applicable specification(s).
    - iii. Seller's obligations are conditioned upon the proper installation and operation of software and the host medium in accordance with Seller's written instructions.
    - iv. The warranty stated in this Section 6A shall be void if such equipment is altered or repair is attempted or made by other than Seller or Seller's authorized service center.
  - B. Seller warrants that any software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, will substantially provide the functions(s) set forth in the applicable specification (or absent a specification, as described in the applicable Service Bulletin). Seller will, at its option, without charge, revise or replace such nonconforming software provided:
    - i. Notice of the claimed defect is given Seller within one (1) year from the date of delivery.

- ii. Software shall not be deemed to be defective If the software or the host medium is exposed to any computer virus or to any condition in excess of those published in the applicable specification(s).
  - iii. Seller's obligations are conditioned upon the proper installation and operation of software and the host medium in accordance with Seller's written instructions.
  - iv. The warranty stated in this Section 6B shall be void if such software (or its host medium) is altered (or alterations are attempted) by other than Seller or Seller's authorized service center.
- EXCLUSIONS: For purposes of this warranty, the following Product are excluded from coverage: (i) Expendables, including but not limited to: light bulbs; batteries; cables and accessories, (ii) Equipment and software not manufactured by Seller or from Seller's designs. Such third party equipment and software are subject only to such adjustments as Seller may obtain from the supplier thereof.

**NO OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO ANY EQUIPMENT SOLD OR SOFTWARE DELIVERED HEREUNDER, AND THE FOREGOING SHALL CONSTITUTE THE BUYER'S SOLE RIGHT AND REMEDY UNDER THIS GENERAL CONDITIONS OF SALE.**

7. **PATENT AND COPYRIGHT INDEMNIFICATION.** Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or copyright covering, or alleged to cover, the Product described herein in the form sold by Seller and Seller agrees that it will pay all sums which, by final judgment or decree in any such suits, may be assessed against the Buyer on account of such infringement, provided that Seller shall be given (i) immediate written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of the Buyer to continue the use, as contemplated, of the Product so purchased. If in any such suit so defended the Product is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller may either procure the right to continue the use of the same for the Buyer, or replace the same with a noninfringing product, or modify said Product so as to be noninfringing, or, if the foregoing options are not reasonably available, take back the infringing Product and refund the purchase price less a reasonable allowance for use, damage or obsolescence.
8. **SOFTWARE LICENSE FOR EQUIPMENT SPECIFIC SOFTWARE.** Software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, is copyrighted by Seller and shall remain the sole and exclusive property of Seller. Seller grants the Buyer a perpetual, worldwide, non-exclusive license to use the software only in or with the equipment. The Buyer shall not copy, modify, or disassemble the software, or permit others to do so. Buyer shall not transfer the license granted hereby or possession of the software except as part of or with the equipment, such transfer being subject to the restrictions contained herein. Seller may terminate this license upon written notice for violation of any of the terms of the foregoing license.
9. **GOVERNING LAW.** This Agreement shall be construed in accordance with, and the rights of the parties shall be governed by, the laws of the State of Iowa, U.S.A., as the same would be applied to transactions between residents thereof, but without regard to that state's conflict of laws principles and specifically excluding the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Buyer agrees to abide by all US Government laws and export regulations, including without limitation those applicable to re-export, and when required by such laws or regulations, Buyer shall apply for the necessary and appropriate export licenses. Seller shall, at no charge to Buyer, promptly provide reasonable support and documentation if required for such export license application.
10. **NO WAIVER.** No failure by either party to exercise and no delay in exercising any right, power or privilege hereunder will operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any of the provisions hereof shall not be deemed a continuing one.
11. **DISCLAIMER AND LIMITATION OF LIABILITY. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE ANY PRODUCT, EQUIPMENT OR ASSOCIATED SOFTWARE DESCRIBED HEREIN EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PRODUCT, EQUIPMENT, SOFTWARE OR OTHER MATERIALS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES. SELLER SHALL HAVE NO OBLIGATION OR LIABILITY FOR ANY GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY, BUT NOT**

**REQUIRED OF SELLER HEREUNDER. SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PRICE PAID BY BUYER FOR PRODUCTS SOLD HEREUNDER.**

12. **ENTIRE CONTRACT.** These General Conditions of Sale shall comprise the exclusive terms, conditions and agreements of the parties respecting sale of Products described herein, and supersede any provisions on the face and reverse side of Buyer's order or any prior agreement inconsistent with the provisions hereof. Acceptance by Buyer of such Products covered hereunder shall, absent a contrary agreement in writing signed by Seller, constitute acceptance of these General Conditions of Sale. The invalidity of the whole or in part of any provisions hereof shall not affect the validity of any other provision. The headings of the sections herein have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

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## **GENERAL CONDITIONS OF SALE – GOVERNMENT**

1. **TAXES.** Except as otherwise specified, the prices stated do not include any state, federal, or local sales, use or excise taxes applicable to the sale, delivery, or use of equipment sold hereunder, including, as applicable, associated software delivered with such equipment, and the Buyer expressly agrees to pay to Seller, in addition to the prices stated, the amount of any such taxes, domestic or foreign, which may be imposed upon or payable by Seller.
2. **PAYMENT TERMS.** Notwithstanding any statement of terms or time of payment to the contrary appearing on the face of the order, Seller reserves the right to require payment in advance of shipment or to ship C.O.D. In the event Buyer fails to pay any invoice when due, in addition to any other right reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. Further, Seller reserves the right to charge interest at the rate of one and one half percent (1.5%) per month, or the maximum rate permitted by law, whichever rate is lower, on any unpaid balance owing by Buyer from the date due until the date paid. It is agreed that title to any equipment described herein not fully paid for at the time of delivery to Buyer shall be retained by and remain in Seller until said purchase price is fully paid and if the purchase price is to be paid on an installment basis, Buyer will prior to the time of delivery execute a note, security agreement and financing statement for such purchase price, all upon forms customarily used by Seller in similar transactions.
3. **DELIVERY.** Unless otherwise specified, delivery will be made EXW (Incoterms 2000) the place or location of Seller's factory from which Seller elects to make shipment, according to the delivery schedule specified, which schedule is subject to delays due to causes beyond Seller's control. Cancellation or rescheduling of the delivery by Buyer may be subject to additional charges by Seller.
4. **FORCE MAJEURE (EXCUSABLE DELAY).** Seller shall not be liable for default or for delay in deliveries due to cause beyond its control and without its fault or negligence, including but not limited to inability to obtain material, labor or manufacturing facilities, acts of God, or of the public enemy, any preference, priority or allocation order issued by the Government, changes in applicable law or any other act of Government, fires, floods, unusually severe weather, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Seller's suppliers. In the event of such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. Seller shall use its reasonable efforts to remove the cause of delay and resume work as soon as possible and to mitigate delivery schedule delay. In no event shall Seller be liable for any damages. Seller reserves the right to provide, at no change in price, a substitute product of equal or better capability provided however that such substitute product maintains the form, fit and functionality of the original equipment.
5. **SHIPMENT AND RISK OF LOSS.** In the absence of specific instructions, Seller will select the carrier to whom delivery will be made for shipment to Buyer. Except for its obligations under the sections hereof entitled "Warranty" and "Patent and Copyright Indemnification," all responsibility of Seller, including but not limited to risk of loss for all items purchased hereunder by Buyer, shall pass to Buyer EXW (Incoterms 2000) the place or location of Seller's factory from which Seller elects to make shipment at the time the articles are duly delivered to the carrier. All claims to the carrier for equipment damaged or lost in transit shall be made by the Buyer.
6. **WARRANTY.** The equipment sold hereunder and its associated software delivered hereunder are subject to the following warranties:
  - A. Seller agrees to repair or replace at its discretion, without charge, any such equipment, which is defective as to design, workmanship or material, and which is returned to Seller at its factory,

transportation prepaid, provided:

- i. Notice of the claimed defect is given Seller within one (1) year from date of delivery and equipment is returned in accordance with Seller's instructions.
  - ii. Such equipment shall not be deemed to be defective, if, due to exposure to any condition in excess of those published in the equipment specification, it shall fail to operate in a normal manner.
  - iii. Seller's obligations with respect to such equipment are conditioned upon the proper installation, operation and maintenance of such equipment by Buyer in accordance with Seller's written directions.
  - iv. The warranty stated in this Section 6A shall be void if such equipment is altered or repair is attempted or made by other than Seller or Seller's authorized service center.
- B. Seller warrants that any software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, will substantially provide the functions(s) set forth in the applicable specification (or absent a specification, as described in the applicable Service Bulletin). Seller will, at its option, without charge, revise or replace such nonconforming software provided:
- i. Notice of the claimed defect is given Seller within one (1) year from the date of delivery.
  - ii. Software shall not be deemed to be defective if the software or the host medium is exposed to any computer virus or to any condition in excess of those published in the applicable specification(s).
  - iii. Seller's obligations are conditioned upon the proper installation and operation of software and the host medium in accordance with Seller's written instructions.
  - iv. The warranty stated in this Section 6B shall be void if such software (or its host medium) is altered (or alterations are attempted) by other than Seller or Seller's authorized service center. EXCLUSIONS: For purposes of this warranty, the following equipment are excluded from coverage: (i) Expendables, including but not limited to: light bulbs; batteries; cables and accessories, (ii) Equipment and software not manufactured by Seller or from Seller's designs. Such third party equipment and software are subject only to such adjustments as Seller may obtain from the supplier thereof.

**NO OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO ANY EQUIPMENT SOLD OR SOFTWARE DELIVERED HEREUNDER, AND THE FOREGOING SHALL CONSTITUTE THE BUYER'S SOLE RIGHT AND REMEDY UNDER THIS GENERAL CONDITIONS OF SALE.**

7. **PATENT AND COPYRIGHT INDEMNIFICATION.** Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or copyright covering, or alleged to cover, the equipment described herein in the form sold by Seller and Seller agrees that it will pay all sums which, by final judgment or decree in any such suits, may be assessed against the Buyer on account of such infringement, provided that Seller shall be given (i) immediate written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of the Buyer to continue the use, as contemplated, of the equipment so purchased. If in any such suit so defended the equipment is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller may either procure the right to continue the use of the same for the Buyer, or replace the same with noninfringing equipment, or modify said equipment so as to be noninfringing, or, if the foregoing options are not reasonably available, take back the infringing equipment and refund the purchase price less a reasonable allowance for use, damage or obsolescence.
8. **SOFTWARE LICENSE FOR EQUIPMENT SPECIFIC SOFTWARE.** Software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, is copyrighted by Seller and shall remain the sole and exclusive property of Seller. Seller grants the Buyer a perpetual, worldwide, nonexclusive license to use the software only in or with the specific equipment for which it was delivered. The Buyer shall not copy, modify, or disassemble the software, or permit others to do so. Buyer shall not transfer the license granted hereby or possession of the software except as part of or with the equipment, such transfer being subject to the restrictions contained herein. Seller may terminate this license upon written notice for violation of any of the terms of the foregoing license.
9. **GOVERNING LAW.** This Agreement shall be construed in accordance with, and the rights of the parties shall be governed by, the laws of the State of Iowa, U.S.A., as the same would be applied to transactions between residents thereof, but without regard to that state's conflict of laws principles and specifically

excluding the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Buyer agrees to abide by all US Government laws and export regulations, including without limitation those applicable to re-export, and when required by such laws or regulations, Buyer shall apply for the necessary and appropriate export licenses. Seller shall, at no charge to Buyer, promptly provide reasonable support and documentation if required for such export license application.

10. **FEDERAL ACQUISITION REGULATION (FAR) CLAUSES APPLICABLE TO SALES TO THE U.S. GOVERNMENT.**

- A. The word "Contractor," as used in the FAR, shall be synonymous with the word "Seller" as used in these General Conditions of Sale and any reference to the "Government" or to the "Contracting Officer" shall be synonymous with the word "Buyer." Similarly, any reference to the word "Supplies" shall be synonymous with the word "Products."
- B. The clause set forth at FAR 52.212-4, CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS as tailored herein [pursuant to FAR 12.302], shall be applicable to all sales made directly to the U.S. Government.
  - i. With respect to paragraphs (a) and (o) of the FAR clause, the Seller's Warranty set forth above at Article 6 shall have precedence and shall govern in the event of any post acceptance activity contemplated by said paragraph (a). The Seller's Warranty shall supersede and replace the Warranty set forth at said paragraph (o) of the FAR clause.
  - ii. With respect to paragraph (h) of the FAR clause, the Seller's PATENT AND COPYRIGHT INDEMNIFICATION set forth above shall supersede and replace the Patent Indemnity set forth at said paragraph (h) of the FAR clause.
  - iii. With respect to paragraph (k) of the FAR clause, the Seller's provision entitled "TAXES" as set forth above at Article 1 shall supersede and replace the Taxes provision set forth at said paragraph (k) of the FAR clause.
  - iv. With respect to paragraph(s) of the FAR clause, the clarifications set forth in this paragraph shall have precedence over all other provisions of this contract.
- C. The clause set forth at FAR 52.212-5, CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES EXECUTIVE ORDERS - COMMERCIAL ITEMS, as clarified herein, shall be applicable to all sales made directly to the U.S. Government.
  - i. Paragraphs (b) and (c) of said clause shall only be applicable when Buyer and Seller have duly executed an addendum to these General Conditions of Sale specifically citing which of the clauses referenced in paragraphs (b) and (c) are applicable to this contract.

11. **FEDERAL ACQUISITION REGULATION (FAR) CLAUSES APPLICABLE TO SALES TO COMMERCIAL CONCERNS IN SUPPORT OF SALES TO THE U.S. GOVERNMENT.** The clause set forth at FAR 52.244-6, SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS, and the FAR clauses cited therein, shall be applicable to sales made hereunder only when such sales are specifically identified in the order as being in support of U.S. Government prime contract requirements. The actions required under the referenced clauses made applicable under this paragraph shall constitute the entirety of Seller's FAR obligations hereunder for such sales.

12. **NO WAIVER.** No failure by either party to exercise and no delay in exercising any right, power or privilege hereunder will operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any of the provisions hereof shall not be deemed a continuing one.

13. **DISCLAIMER AND LIMITATION OF LIABILITY.**

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE OF OR INABILITY TO USE ANY EQUIPMENT OR ASSOCIATED SOFTWARE DESCRIBED HEREIN EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER EQUIPMENT, SOFTWARE OR OTHER MATERIALS EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES. SELLER SHALL HAVE NO OBLIGATION OR LIABILITY FOR ANY GRATUITOUS INFORMATION OR ASSISTANCE PROVIDED BY, BUT NOT REQUIRED OF SELLER HEREUNDER. SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PRICE PAID BY BUYER FOR EQUIPMENT SOLD HEREUNDER.

14. **ENTIRE CONTRACT.** These General Conditions of Sale shall comprise the exclusive terms, conditions and agreements of the parties respecting sale of equipment described herein, and supersede any provisions on the face and reverse side of Buyer's order or any prior agreement inconsistent with the provisions hereof. Acceptance by Buyer of such equipment covered hereunder shall, absent a contrary agreement in writing signed by Seller, constitute acceptance of these General Conditions of Sale. The invalidity of the whole or in

part of any provisions hereof shall not affect the validity of any other provision. The headings of the sections herein have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

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## REPAIR, OVERHAUL AND MODIFICATION

1. **TAXES.** Except as otherwise specified, the prices stated do not include any state, federal, or local sales, use or excise taxes applicable to the repair, overhaul, delivery, or use of said equipment, and the Buyer expressly agrees to pay to Seller, in addition to the prices stated, the amount of any such taxes, domestic or foreign, which may be imposed upon or payable by Seller.
2. **TERMS.** The net price for all repair, overhauls, or modifications are required to be paid thirty (30) days after receipt of invoice. Notwithstanding any statement of terms or time of payment appearing on the face of the order, Seller reserves the right to require payment in advance of shipment or to ship C.O.D. In the event Buyer fails to pay any invoice when due, in addition to any other rights reserved hereunder, Seller reserves the right to suspend or limit performance until all past due sums are paid. Further, Seller reserves the right to charge interest at the rate of one and one half percent (1.5%) per month, or the maximum rate permitted by law, whichever rate is lower, on any unpaid balance owing by Buyer from the date due until the date paid.
3. **DELIVERY.** Unless otherwise specified, Buyer shall deliver any equipment returned for repair to Seller's designated repair facility, transportation prepaid. Seller will return equipment to Customer's designated receiving facility at Customer's expense, according to the delivery schedule specified, which schedule is subject to delays due to causes beyond Seller's control including but not limited to, inability to obtain material, labor, acts of God, or of the public enemy, any preference, priority or allocation order issued by the Government or any other act of Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of Seller's suppliers. In the event of such delay, delivery dates shall be extended accordingly for a period equal to the time lost by reason of such delay. Partial deliveries are acceptable. Further, subject to Buyer failing to accept/take delivery of serviced equipment within thirty (30) days of the service completion date, and Buyer being notified in writing of such infringement, Seller reserves the right to charge a one-hundred dollar (\$100) storage fee for each subsequent thirty (30) day period that Buyer's equipment is not claimed (first fee to be applied and invoiced sixty (60) days after completion of service.)
4. **SHIPMENT.** In the absence of specific instructions Seller will select the carrier to whom delivery will be made for shipment to Buyer. Except for its obligations under the sections hereof entitled 'Warranty' and 'Patents and Copyright Indemnification', all responsibility of Seller for said equipment ceases upon delivery to carrier. All claims to the carrier for equipment damaged or lost in transit shall be made by the Buyer.
5. **WARRANTY.** The equipment repaired, overhauled or modified hereunder and any software provided in connection therewith are subject to the following warranties:
  - A. Seller agrees that it will correct, without charge, any defect in material or workmanship provided by Seller for the repair, overhaul, or modification work performed hereunder, provided that the equipment is returned, transportation prepaid, to Seller's service center which performed the repair work, subject to:
    - i. Unless another warranty duration is specified in writing and signed by Seller, written notice of the claimed defect being given to Seller within the period stated below:
      - i. Repair and Modification Labor and Material: Warranted for one (1) year from date equipment is shipped.
      - ii. Overhauled equipment shall be covered under this warranty clause for a period of one (1) year from date shipped, except for conditions set forth in C below. Any repair, modification labor and material required to repair such overhauled equipment within the one (1) year warranty period will be performed at no cost and such repair and/or modification shall be covered under this warranty clause for the remaining balance of the one (1) year overhaul warranty.
      - iii. Test Equipment Repair and Modification Labor and Material: Warranted for sixty (60) days from date equipment is shipped.
    - ii. Seller's obligations with respect to such equipment are conditioned upon the proper installation and operation of such equipment by Buyer in accordance with Seller's written directions.
    - iii. The warranty stated in this Section 5A shall be void if such equipment is altered or repair is

attempted or made by other than Seller or Seller's authorized service center.

- B. Seller warrants that any software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or with such equipment, will substantially provide the function(s) set forth in the applicable specification (or absent a specification, as described in the applicable Service Bulletin). Seller will, at its option, without charge, revise or replace such nonconforming software provided:
- i. Notice of the claimed defect is given Seller within one (1) year from the date of delivery or one hundred eighty (180) days from the date of first installation, whichever occurs first. An exception to the aforementioned guidelines is Test Equipment, such notice of the claimed defect is given Seller within sixty (60) days from date equipment is shipped or from the date of first installation, whichever occurs first.
  - ii. Software shall not be deemed to be defective if the software or the host medium is exposed to any computer virus or to any condition in excess of those published in the applicable specification(s).
  - iii. Seller's obligations are conditioned upon the proper installation and operation of software and the host medium in accordance with Seller's written instructions.
  - iv. The warranty stated in this Section 5B shall be void if such software (or its host medium) is altered (or alterations are attempted) by other than Seller or Seller's authorized service center.
- C. Repair, overhaul, or modification shall not be deemed to be defective if failure is caused by interface with other equipment, customer caused damage, shipping or handling damage, or exposure to conditions in excess of those published in the equipment specifications.

The warranty of these paragraphs is void if the equipment is altered or repair is attempted or made by other than Seller or Seller's authorized service center or Buyer has supplied non-Rockwell Collins' material(s) used in the repair.

**NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO ANY EQUIPMENT SOLD OR SOFTWARE REPAIRED, OVERHAULED OR MODIFIED HEREUNDER, AND THE FOREGOING SHALL CONSTITUTE THE BUYER'S SOLE RIGHT AND REMEDY UNDER THIS AGREEMENT.**

6. **PATENT AND COPYRIGHT INDEMNIFICATION.** Seller agrees that it will defend, at its own expense, all suits against Buyer for infringement of any United States patent or copyright covering, or alleged to cover, repair, overhaul, and modification of equipment and any software associated therewith in the form delivered hereunder by Seller. Seller agrees that it will pay all sums which, by final judgment or decree in any such suits, may be assessed against the Buyer on account of such infringement, provided that Seller shall be given (i) immediate written notice of all claims of any such infringement and of any suits brought or threatened against Buyer and (ii) authority to assume the sole defense thereof through its own counsel and to compromise or settle any suits so far as this may be done without prejudice of the right of the Buyer to continue the use, as contemplated, of the equipment repaired or modified hereunder. If in any such suit so defended such repair, overhaul, or modification is held to constitute an infringement and its use is enjoined, or if in the light of any claim of infringement Seller deems it advisable to do so, Seller may either procure the right to continue the use of the same for the Buyer, or replace the same with a noninfringing equipment or modify said equipment so as to be non-infringing, or remove the infringing apparatus and refund the price of the repair, overhaul or modification, less a reasonable allowance for use, damage, or obsolescence.
7. **SOFTWARE LICENSE FOR EQUIPMENT SPECIFIC SOFTWARE.** Software delivered hereunder, either embedded in equipment described herein or specifically designed for use in or such equipment, is copyrighted by Seller and shall remain the sole and exclusive property of Seller. Seller grants the Buyer a perpetual, worldwide, nonexclusive license to use the software only in or with the equipment. The Buyer shall not copy, modify, or disassemble the software, or permit others to do so. Buyer shall not transfer the license granted hereby or possession of the software except as part of or with the equipment, such transfer being subject to the restrictions contained herein. Seller may terminate this license upon written notice for violation of any of the terms of the foregoing license.
8. **GOVERNING LAW.** This agreement shall be construed in accordance with, and the rights of the parties shall be governed by, the laws of the State of Iowa, USA, as the same would be applied to transactions between residents thereof, but without regard to that state's conflict of laws principles and specifically excluding the provisions of the 1980 UN. Convention on Contracts for the International Sale of Goods. The Parties will abide by all U.S. Government laws and regulations, including without limitation, those applicable to export regulations and the export and re-export, as well as the regulations promulgated by the U.S. Dept. of Treasury, Office of Foreign Assets Control ("OFAC"), implementing Executive Orders which require the blocking of property or interests in property of persons and/or companies listed on the Specially Designed Nationals and Blocked Entities List. When required by such export and import laws or regulations, Buyer will apply for the necessary and appropriate export licenses. Rockwell Collins will apply for an export license

when necessary for the purpose of exporting hardware and/or data to be provided under this Agreement to the Buyer or end user during or at the completion of this Agreement. If U.S. Government regulation or laws preclude the approval of the issuance of such license or performance of this Agreement in any manner, such event will not impede payment of the fees hereunder and is to be considered an excusable delay and not a default under this Agreement. Rockwell Collins will inform Buyer in writing of any delays or difficulties relating thereto. Buyer is responsible for all charges associated with obtaining an import or export license. If Rockwell Collins pays, on behalf of Buyer, any fees or charges associated with the export or import of Equipment or documentation, Buyer will reimburse Rockwell Collins for such fees or charges. Rockwell Collins and Buyer are each responsible for any fines imposed due to their own action or in-action. In addition, Rockwell Collins will, at no cost to Buyer, promptly provide reasonable support and documentation, if required, for export license application. All costs and expenses associated with import, export or re-export will be paid by Buyer or end user in accordance with Article 2 herein. Buyer will identify all material being sent in for repair by Part Number, Commodity Code, Description, End Use, End User, and indicate that the equipment is being returned for repair. In connection with the regulations promulgated by OFAC implementing Executive Orders which require the blocking of property or interests in property of persons and/or companies listed on the Specially Designated Nationals and Blocked Entities List, regardless of whether Buyer is considered to be a U.S. Person under such regulations, Buyer will comply with such regulations relating to any transactions under this Agreement and will not retransfer any product received from Rockwell Collins to any persons or companies listed on the Specially Designated Nationals and Blocked Entities List.

9. **FEDERAL ACQUISITION REGULATION (FAR) CLAUSES APPLICABLE TO SALES TO THE U.S. GOVERNMENT.**

- A. The word "Contractor", as used in the FAR, shall be synonymous with the word "Seller" as used in these General Conditions of Sale and any reference to the "Government" or to the "Contracting Officer"- shall be synonymous with the word "Buyer". Similarly, any reference to the word "Supplies" shall be synonymous with the word "Equipment".
- B. The clause set forth at FAR 52.212-4, CONTRACT TERMS AND CONDITIONS-COMMERCIAL TERMS, as tailored herein [pursuant to FAR 12.302], shall be applicable to all sales made directly to the U.S. Government.
  - i. With respect to paragraphs (a) and (o) of the FAR clause, the Seller's Warranty set forth above at Article 5 shall have precedence and shall govern in the event of any post acceptance activity contemplated by said paragraph (a). The Seller's Warranty shall supersede and replace the warranty set forth at said paragraph (o) of the FAR clause.
  - ii. With aspect to paragraph (h) of the FAR clause, the Seller's PATENT AND COPYRIGHT INDEMNIFICATION set forth above at Article 6 shall supersede and replace the Patent Indemnity set forth at said paragraph (h) of the FAR clause.
  - iii. With respect to paragraph (k) of the FAR clause, the Seller's provision entitled 'TAXES' as set forth above at Article I shall supersede and replace the Taxes provision set forth at said paragraph (k) of the FAR clause.
  - iv. With respect to paragraph (s) of the FAR clause, the clarifications set forth in this Article shall have precedence over all other provisions of this contract.
- C. The clause set forth at FAR 52.212-5, CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES EXECUTIVE ORDERS COMMERCIAL ITEMS, as clarified herein, shall be applicable to all sales made directly to the U.S. Government.
  - i. Paragraphs (b) and (c ) of said clause shall only be applicable when Buyer and Seller have duly executed an addendum to these General Conditions of Sale specifically citing which of the clauses referenced in paragraphs (b) and (c ) are applicable to this contract.

10. **FEDERAL ACQUISITION REGULATION (FAR) CLAUSES APPLICABLE TO SALES TO COMMERCIAL CONCERNS IN SUPPORT OF SALES TO THE U.S. GOVERNMENT.** The clause set forth at FAR 52.244-6, SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS, and the FAR clauses cited therein, shall be applicable to sales made hereunder only when such sales are specifically identified in the order as being in support of U.S. Government prime contract requirements. The actions required under the referenced clauses made applicable under this Section shall constitute the entirety or Seller's FAR obligations hereunder for such sales.

11. **NO WAIVER.** No failure by either party to exercise and no delay in exercising any right power or privilege hereunder will operate as a waiver hereof, nor will any single or partial exercise of any right or privilege hereunder preclude further exercise of the same right or the exercise of any right hereunder. A waiver on one or more occasions of any of the provisions Hereof shall not be deemed a continuing one.

12. **LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT**



**LIMITATION, DAMAGES FOR LOSS OF PROFITS, OR BUSINESS INTERRUPTION) RELATING TO OR ARISING UNDER THIS CONTRACT AND/OR THE USE OF OR INABILITY TO USE ANY PRODUCT, EQUIPMENT OR ASSOCIATED SOFTWARE DESCRIBED HEREIN, EITHER SEPARATELY OR IN COMBINATION WITH] ANY OTHER PRODUCT, EQUIPMENT, SOFTWARE OR OTHER MATERIALS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OR CERTAINTY OF SUCH DAMAGES. SELLER'S TOTAL AGGREGATE LIABILITY HEREUNDER, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PRICE PAID BY BUYER HEREUNDER.**

13. **PHYSICAL DAMAGE AND CANNIBALIZATION.** Except as otherwise specified, prices stated are for equipment subjected to normal use only. Physically damaged or cannibalized equipment, or equipment which has a secondary failure or parts availability problems, will be repaired only after Buyer approval of an estimate of additional charges.
14. **PRESERVATION, PACKING, AND PACKAGING.** Except as otherwise specified, Seller will use commercial standards to preserve, pack, and package equipment for return shipping to Buyer. Equipment returned to Seller's service center must be packaged in the original shipping container or equivalent. Seller reserves the right to charge Buyer the cost of such proper shipping container for return shipment should Buyer fail to comply with the aforementioned shipping requirement.
15. **ENTIRE CONTRACT.** These General Conditions of Sale shall comprise the exclusive terms, conditions and agreements of the parties respecting Repair, Modification or Overhaul described herein, and supersede any provisions on the face and/or reverse side of Buyer's order or any prior agreement inconsistent with the provisions hereof. Acceptance by Buyer of such Repair, Modification or Overhaul covered hereunder shall, absent a contrary agreement in writing signed by Seller, constitute acceptance of these General Conditions of Sale. The invalidity of the whole or in part of any provisions hereof shall not affect the validity of any other provision. The headings of the sections herein have been inserted for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.