



## TERMS AND CONDITIONS

The following terms and conditions apply to all quotations made and purchase orders accepted by Quest ("Seller") and any subsequent contracts arising between Seller and a buyer (the "Buyer") purchasing equipment, products, or services:

**1. OFFER AND ACCEPTANCE** - Unless specifically agreed to in writing by an authorized officer of Seller, all products, equipment, and services are sold by Seller subject to all of the terms and conditions stated herein. If this writing accompanies a quotation or other offer of sale, then such offer is expressly limited to the terms and conditions stated herein. If this writing accompanies an acknowledgment or other form of acceptance of a Buyer purchase order, then all conflicting or additional terms and conditions of sale contained in any such Buyer writing are hereby rejected. By accepting delivery of Seller products, equipment or services Buyer accepts the terms and conditions stated herein. Price and other commitments contained in the quote are based upon information known by Seller at the time the quote is issued.

**2. PAYMENT TERMS** – Unless otherwise noted and subject to credit approval by Seller, **payment shall be 50% due at time of the order and remaining 50% due prior to shipment. Additional payment terms available based on approved credit.** Shipments, deliveries, and performance of work by Seller shall be subject to the continuing approval of the Seller Credit Dept., which may require full or partial payment in advance if the financial condition of Buyer (in the sole opinion of Seller Credit Dept.) does not justify continuing to ship products or perform work (including start-up of equipment) by Seller on the terms of payment agreed upon. Invoices not paid by the due date are subject to finance charges of 1 ½ % per month for each month (or partial month) that such invoice remains unpaid. Should Buyer default in the payment of any amount owing to Seller for products or equipment, requiring Seller to expend costs and incur expenses in collecting such amount, Seller shall be entitled to reimbursement for all such costs of collection (including reasonable attorney fees). Until the entire amount is paid, Buyer grants Seller a purchase money security interest in all deliverables, including the proceeds thereof, with all rights and remedies of a secured party in any jurisdiction. Buyer authorizes Seller to file financing statements, or such other documents, appropriate to protect Seller's security interest, without Customer's signature.

### **3. SHIPMENT AND DELIVERY**

**3.1 Shipment** - Unless otherwise specified, all domestic shipments are made FOB origin and all imported shipments are made FOB factory loading dock. All inland transportation expenses shall be paid by Buyer.

**3.2 Title and Risk of Loss** - Title to any products shipped by Seller shall pass to Buyer upon delivery by Seller to the carrier. Risk of loss or damage to products in transit is assumed by Buyer, and Buyer shall bear responsibility for filing and pursuing any claims for loss or damage with the carrier. Title and risk of loss or damage shall pass to Buyer as stated herein, regardless of whether Seller selects the carrier or mode of shipment and regardless of whether payment to the carrier is made by Seller or by Buyer.

**3.3 Delivery** - Shipping dates are approximate only based upon prompt receipt from Buyer of all information required by Seller to meet Buyer expectations. Seller shall not be liable for delays in delivery or failure to perform hereunder where such delay or failure results from: (i) causes beyond the reasonable control of Seller, (ii) acts of God, acts of Buyer, or acts of civil or military authorities, (iii) inability of Seller to obtain necessary labor, materials, components, or facilities, or (iv) any other cause rendering Seller's timely performance commercially impracticable. In the event of any such delay, the date of delivery shall be deferred for a period of time equal to the time lost by reason of the delay.

**4. FACTORY ASSISTED START-UP AND FACTORY FIELD SERVICE** – Seller will provide such services as may be specifically described in these terms or the quotation of which these terms are a part but shall have no obligation to provide any services unless agreed by Seller in writing. Services are not provided as work-for-hire and Seller retains on an exclusive basis all rights to any intellectual property developed, delivered and/or used in providing services. No installation or start up is included unless specifically set forth in the quotation. If installation, start up or other services are included in the quotation, Buyer takes fully responsibility for the safety and suitability of the work site and all costs and expenses. If factory assisted start-up or factory field services are sold, Seller will provide a factory trained technician to assist Buyer in the initial start-up or unit commissioning of the equipment and to instruct Buyer's employees in the proper operation of the equipment. Unless otherwise agreed by Seller, factory assisted start-up or factory field services will be scheduled during normal business hours (8:00AM - 5:00 PM) Monday through Friday, legal holidays excepted. Buyer must provide a completed factory-assisted startup checklist prior to requesting a factory-assisted startup date.

**5. INSPECTION** - Promptly upon delivery, but no later than fifteen (15) days after delivery, Buyer shall (i) examine and inspect all deliverables; and (ii) notify Seller of any defect in material or workmanship or any other fact that causes the deliverables not to conform to the agreement between Buyer and Seller. Failure to inspect and inform Seller of a defect within the foregoing time period or the use of a deliverable by Buyer at any time shall be conclusive evidence that Seller has satisfactorily tendered delivery and that the Buyer has inspected and accepted the deliverables.

**6. LIMITED PRODUCT WARRANTY** - Seller provides a manufacturer's limited warranty for its equipment, products and services. **COMMENCEMENT OF LIMITED PRODUCT WARRANTY IS CONTINGENT ON RECEIPT BY SELLER OF FULL PAYMENT FOR EQUIPMENT AND SERVICES. EXCEPT FOR SELLER'S WARRANTY EXPRESSLY SET FORTH HEREIN, SELLER DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY WARRANTIES, EXPRESS OR IMPLIED CONCERNING ITS PRODUCTS, EQUIPMENT OR SERVICES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF DESIGN, MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, OR OTHERS THAT ARE ALLEGED TO ARISE FROM COURSE OF DEALING OR TRADE.** All of the terms and conditions of the limited warranty in effect at the time of product shipment are incorporated herein and shall apply to the equipment, products and services delivered by Seller to Buyer pursuant to this contract.

**7. TAXES** - Any taxes which Seller may be required to pay or collect, under any existing or future law, with respect to the sale, purchase, delivery, storage, or use of any product covered hereunder or any start-up or other field services performed by Seller shall be the responsibility of Buyer. If not collected by Seller as part of its normal billing, Buyer agrees to reimburse to Seller, upon demand, the amount of any such tax determined by any applicable governmental taxing authority to be payable by Seller as a result of the products, equipment, or services furnished by Seller to Buyer.

**8. PERMISSIBLE VARIATIONS, STANDARDS AND TOLERANCES** - All products, equipment, or services furnished to Buyer by Seller shall be subject to tolerances and variations consistent with usages of the trade concerning dimensions, composition and mechanical properties, and normal variations in performance characteristics and quality.

**9. DISPUTES** - In lieu of court action, all claims, disputes, and controversies arising out of the performance of Seller shall be submitted to arbitration. With respect to sales within the United States, any controversy or claim arising out of or relating to the Agreement between Buyer and Seller, or the breach thereof, shall be finally settled in the City and State of the Seller's accepting offices, by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. With respect to sales outside the United States, any controversy or claim arising out of or relating to the Agreement between Buyer and Seller, or the breach thereof shall be finally settled in Toronto, Ontario under the Canadian Arbitration



Association Arbitration Rules in force at the time of the commencement of the arbitration. In any such proceedings, the prevailing party shall be entitled to recover all its costs and expenses (including reasonable attorney's fees).

#### **10. CANCELLATION, MODIFICATION AND RETURNS**

**10.1 Cancellation by Buyer** - An order for products or equipment may be cancelled by Buyer or Seller upon written notice. The effective date of order cancellation shall be five (5) working days following receipt of written cancellation notice. Orders cancelled by Buyer shall be subject to cancellation and restocking charges of 50% of total payment. Cancellation charges for orders for custom products or equipment specifically manufactured according to Buyer's specifications may equal the order price for the products or equipment.

**10.2 Order Modifications (Change Orders)** - Buyer-requested order changes must be made in writing and are subject to Seller's written approval. Where a proposed change may result in substantial delays or increased production or engineering costs, Seller may condition its approval upon adjustments in order pricing, scheduling or other affected terms and conditions. Seller may also assess a change order fee to all order modifications received after order-acknowledgement-letter date. Seller reserves the right to reject any change that it deems unsafe, technically inadvisable, and inconsistent with established industry or engineering practices, or incompatible with Seller design or manufacturing capabilities.

**10.3 Buyer Delays** - Buyer-requested delays in shipment for partially completed equipment may result in removal and storage of such equipment at Buyer risk and expense. Buyer will be invoiced for partial payment based on pro-rata completion of the equipment, together with costs for removal and storage. Standard storage costs are \$1,500 for the first week including transit, and \$500 per week thereafter, billable monthly or upon instruction to ship to final destination, whichever occurs first.

**10.4 Returns** - No deliverable may be returned except upon Seller's written authorization in Seller's sole discretion. All authorized returns must (i) be in new condition, resalable or usable in Seller's sole discretion and (ii) not have been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. Buyer shall pay a restocking charges of 50% of the price for all returns.

#### **11. MISCELLANEOUS**

**11.1 Entire Agreement** - When accepted by Buyer, this writing constitutes the entire agreement between the parties, and all prior negotiations and representations of the parties are merged herein.

**11.2 Governing Law** - Any contract resulting from Buyer's acceptance of this offer of sale shall be deemed to have been executed and delivered in Seller's accepting office, and shall be construed under, and in accordance with, the laws of the State of the Seller's accepting offices.

**11.3 Limitation of Liabilities** - neither Party shall be liable to the other Party for any special, exemplary, incidental, consequential or punitive damages. With regard to any breaches of this Agreement by Seller, notwithstanding anything to the contrary contained in this Agreement, Seller's liability under this agreement for damages (monetary or otherwise) under any circumstances for claims or any type or character, will be limited to the lesser of (i) the amount of actual damages incurred by Buyer or (ii) the amount paid by Buyer to Seller for the one year period immediately prior to said breach. Any action against Seller arising out of this transaction shall be commenced within one (1) year from the date such cause of action has accrued, otherwise the same shall be barred.

**11.4 Waiver** - One or more waivers of any breach of any term or condition herein shall not be construed as a waiver of any subsequent breach of the same term or condition. The consent or approval by one party of any act done or omitted to be done by another party shall not be deemed to waive or render unnecessary the consent or approval of any subsequent similar acts or omissions. Buyer shall be responsible for overtime and premium charges. Start-up and factory field services must be scheduled at least two (2) weeks in advance. On the scheduled service date, Buyer is responsible to have equipment completely installed and ready for operation, including all necessary fuel, power, water, exhaust, venting, and necessary connections. Should Seller not be able to perform services after arriving at Buyer's site due to failure of Buyer to provide fully operational equipment, Seller may surcharge Buyer for all resulting expense actually incurred by Seller on the scheduled start-up date, as well as any additional expenses incurred by Seller to re-schedule.