



## General Conditions of Sale TERMS AND CONDITIONS

SAGEBRUSH TECHNOLOGY, Inc. (hereinafter "Seller") shall provide the all products, engineering data, materials, and equipment described in their Proposal (hereinafter the "Proposal") strictly in accordance with, and subject to, the following terms and conditions, which shall be deemed accepted by the Buyer in the event that the Buyer either signs this Proposal, or issues a purchase order or contract covering the Proposal or authorizes Seller to proceed to perform the Proposal, in writing or orally. The terms contained herein shall govern should any conflict between these terms and conditions and those of the Buyer contained in any purchase order or contract regardless of whether these terms and conditions were tendered prior to receipt by Seller of the conflicting terms from the Buyer.

### 1. ACCEPTANCE OF PURCHASE ORDERS

Seller's acceptance of any purchase order issued by Buyer shall be expressly limited to the terms and conditions set forth below or referenced in Seller's acceptance letter. Any additional or different terms set forth or referenced in Buyer's purchase order are hereby objected to by Seller and shall not be deemed a part of any resulting order.

The date of the Seller's acceptance letter shall be the start date of the contract. All delivery schedules shall be calculated from this date.

### 2. DELIVERY

Seller shall make reasonable efforts to meet the proposed delivery schedule, however, Seller shall not be held in default of performance for any delay in delivery of goods or nonperformance when such delay or nonperformance is directly or indirectly caused by or in any manner arises or results from fire, flood, accident, riot, war, government interference, rationing, allocations or embargoes, strikes or shortage of labor, delays in delivery or inability to deliver by Seller's suppliers, or other causes (whether or not similar in nature to any of those specified) beyond the control of the Seller. After such causes have been remedied, Seller shall make and Buyer shall accept deliveries under the purchase order. The delivery dates set out in the purchase order shall be extended by a period equal to the time of delay.

### 3. PACKING AND SHIPPING

Seller shall pack and ship all goods in accordance with good commercial practices.

### 4. FOB, TITLE, AND RISK OF LOSS

The FOB point shall be Destination, Buyer's plant. Title will pass to the Buyer upon delivery of the goods by the carrier at the FOB point. Risk of damage or loss following delivery to the carrier shall be on Seller, and Buyer shall in no way be responsible for safe arrival of the goods.

### 5. INSPECTION AND ACCEPTANCE

All goods shall be subject to final inspection at Seller's plant. Final inspection and acceptance by Buyer shall be conclusive except for the latent defects, fraud or such gross mistake as amount to fraud. Failure by Buyer to accept or reject the goods within thirty (30) days after delivery will be deemed to constitute final acceptance.

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6. PROCEDURE FOR RETURNING GOODS

Claims for incorrect or defective materials must be received in writing within thirty (30) days from delivery at Buyer's place of business. No units or systems may be returned, in or out of warranty, without first obtaining a return authorization number from the Seller, and no claim will be allowed nor credit given for units or systems returned without such approval. When requesting a return authorization, the Buyer must provide a written statement that the units or systems have not been exposed to pathogens or hazardous materials. Where the units or systems have been exposed to pathogens or hazardous materials, it is the responsibility of the Buyer to decontaminate the equipment prior to its return. The request for return authorization must be accompanied by a certification that the unit has been cleaned and decontaminated. In addition, Material Safety Data Sheets must be provided for all hazardous materials to which the unit or system has been exposed. After approval from Seller, the defective system or unit is to be returned to the factory with a written statement of the problem and transportation prepaid (no C.O.D. or collect freight shipments will be accepted). After Seller's in-plant examination, warranty or out-of-warranty status will be determined. If upon examination of such unit or system, warranted defects exist, then the unit or system will be repaired at no charge and shipped prepaid back to the Buyer via common carrier. If an out-of-warranty situation exists, the Buyer shall be notified of the repair cost immediately. At such time, the Buyer must issue a purchase order to cover the cost of the repair or authorize the unit or system to be shipped back as is, at the Buyer's cost.

7. FIELD SERVICE POLICY

If the system or unit cannot be made functional by no-charge telephone assistance or purchased replacement parts, and cannot be returned to the Seller's factory for repair, then the following field service policy will apply: Seller will provide an on-site field service representative in a reasonable amount of time, provided that the Buyer issues a bona fide purchase order to Seller covering all transportation and subsistence costs and the prevailing cost per hour (eight-hour minimum) including travel time necessary to complete the repair, regardless of warranty determination. If the Seller's field service representative determines during his on-site repair that the system or unit's problem is not warranty-related, then the prevailing service charge per hour (eight-hour minimum) shall be assessed against the issued purchase order.

8. PAYMENT

Advance payments shall be made if requested by Seller. Buyer shall pay for all goods within thirty (30) days from the date the goods are delivered to the carrier for shipment to the Buyer.

In the event payment is not made in accordance with the above stated terms, Buyer agrees to pay Seller interest on the outstanding, overdue invoices at the rate of one and one-half percent (1.5%) per month until paid. In addition, Seller shall be entitled to all reasonable costs associated with the collection of past due invoices, including reasonable attorneys' fees.

In the event that Buyer delays the shipment of the materials, Buyer agrees to pay all reasonable storage costs, handling, increased costs of transportation and increased administrative costs incurred by Seller.

Payment for equipment shipped outside the United States shall be in the legal currency of the United States.

9. TAXES

Unless otherwise agreed in writing by Seller and the Buyer, Seller's proposal does not include any applicable sales tax and/or use taxes and all fees and permits imposed upon the production, shipments, installation, or sale of the goods covered hereby, whether in the United States or in another country, and shall be the sole responsibility of, and payable by, the Buyer. Buyer shall indemnify and hold harmless Seller for such taxes, fees and permits as well as any and all related penalties, interest charges or fines assessed by any Foreign, Federal, State or Local authority on account of nonpayment.

10. STANDARD WARRANTY

Seller warrants to original equipment manufacturers, distributors and industrial and commercial users of its products that each new product manufactured or supplied by Seller shall be free from defects in materials and workmanship. Seller's sole obligation under this warranty is limited to furnishing without additional charge a replacement for, or at its option, repairing or issuing credit for any product which shall within one year from the date of sale by Seller be returned freight prepaid to the plant designated by Seller and which upon inspection is determined by Seller to be defective in materials or workmanship. Complete information as to operating conditions and machine set-up must accompany any product returned for inspection. The provisions of this warranty shall not apply to any product which has been subjected to misuse, improper operating conditions, machine set-up, or which has been repaired or altered. Seller makes no warranty that its products are fit for the use or purpose to which they may be put by the Buyer, whether or not such use or purpose has been disclosed to Seller in specifications or drawings previously or subsequently provided Seller, and whether or not Seller's products are specifically designed and/or manufactured for this purpose. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Seller's sole liability on any such claim of any kind, whether in contract, tort or otherwise, for any loss or damage arising out of, connected with, or resulting from the manufacture, sale, delivery or use of the products sold hereunder shall in no case exceed the cost of replacement or repairs as provided herein. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES. There are no other warranties, expressed or implied, made by Seller except the warranty against defects in materials and workmanship set forth above and neither assumes nor authorizes any other person or firm to assume for it any other obligations or liability in connection with its products.

11. CHANGES

No changes, extras or other work (whether an addition, deletion or other change to a product order, product design or scope of work, within or without the general scope of this order) shall be authorized unless separately agreed to and accepted by Seller as evidenced by a separate written purchase order amendment signed by the Buyer and Seller.

No modification of any kind or description (whether oral, written, express or implied) shall be valid unless in a formal written amendment to this order signed by authorized representatives of the Buyer and Seller.

12. CANCELLATION

No purchase order accepted by Seller may be canceled by the Buyer except by mutual agreement of the Buyer and the Seller as evidenced by a written purchase order amendment signed by both parties.

13. LIMITATION OF LIABILITY

Seller shall not be responsible, whether to Buyer or any third party, in contract or in tort (including negligence) for any indirect, consequential or special damages arising out of or in any manner related to or associated with Seller's performance or omissions hereunder, and Buyer hereby agrees to waive any claims against Seller with respect thereto. And, in any event, Buyer agrees Seller's liability (including negligence) whether to Buyer or any third party shall not exceed the obligations of Seller identified under Article 10 (Standard Warranty). Further, Buyer agrees to indemnify and hold harmless Seller from and against any cause, matter or liability whether to Buyer or any third party arising out of or in any matter associated with Seller's performance or omissions under this purchase order.

Seller's total liability for damages related to the performance of this contract shall be limited to the amount of the contract price and in no event shall Seller be liable for INCIDENTAL or CONSEQUENTIAL DAMAGES, or for loss of profits, lost profit by reason of plant shutdown, non-operation, or increase of expense of operation of other equipment or facilities or for any special or indirect damages, including but not limited to loss of profits or revenues, loss of use of equipment, cost of replacement power, additional expenses incurred in the use of equipment, facilities and claims of customers of the Buyer, regardless of whether the claim arises out of contract, tort, warranty (express or implied), product liability, strict liability, negligence, or any other equitable or legal theory.

14. FORCE MAJEURE EVENT

Seller shall not be liable for any loss, damage, or expense, direct or indirect, resulting from delay or failure in the performance of Seller's obligations hereunder if such delay or failure is due to acts of God, or the public enemy, strikes, labor trouble, fire, explosions, floods, riots, war, governmental orders or restrictions, shortages of materials or labor, delay of transportation, theft, accidents, or any other cause for which Seller is not solely responsible (herein collectively referred to as "force majeure"). Seller shall, upon the occurrence of a force majeure event provide notice to the Buyer of the event. Seller shall, after cessation of the force majeure event be entitled to a reasonable time to complete its obligations under this contract.

15. TIME FOR COMPLETION/SCHEDULE

Unless otherwise agreed in writing by Seller and the Buyer, Seller shall perform such work as required by its contract within a reasonable time. Seller shall not be responsible for any consequential damages which may result from any untimely delivery, regardless of any knowledge by Seller of any condition requiring timely delivery.

16. WAIVER

The failure of Seller to enforce any applicable provision of these terms and conditions, or to require at any time performance by Buyer of any provision or obligation hereof, shall in no way be construed to be a waiver of such provision, nor in any way effect the validity of this purchase order or any part hereof, or the right of Seller thereafter to enforce each and every provision.

17. ASSIGNMENT

Neither the rights nor the duties of either party under this Agreement may be assigned, in whole or in part, by either party without having first obtained the prior written consent of the other party. Any attempted assignment or delegation without such consent shall be void. Notwithstanding the above, Seller may, upon notice to Buyer, assign this agreement to any person, firm, or corporation with which Seller may merge or consolidate or to which Seller may assign rights to payments due or to become due hereunder.

18. EXPORT LICENSES

These commodities may require an export license for shipment outside of the United States. Export without an appropriate export license is contrary to U.S. law. Seller will proceed diligently to obtain the proper export licenses for this order. Buyer shall pay Seller for all fees and expenses including, but not limited to, those covering preparation of consular documents, consular fees, ocean freight, storage, insurance, and Seller's then current fee for such services. Notwithstanding any extension of credit to Buyer, all such charges shall be promptly reimbursed by Buyer in U.S. Dollars upon submission of Seller's invoices therefor. In performing any of the foregoing services, Seller shall comply with any reasonable instruction of Buyer or, in the absence thereof, shall act according to its best judgment. In so acting on Buyer's behalf, neither Seller nor its agents shall be liable for negligence or for any special, consequential, incidental, indirect or exemplary damages to Buyer resulting therefrom.

The Seller makes no representations as to the Buyer's ability to legally sell or export these commodities to countries other than the United States and the country listed on the export license.

19. PROPRIETARY RIGHTS

All information including, but not limited to, drawings, prints, publications, specifications, processes, manufacturing techniques, verbal explanations, schedules and financial reports, obtained by Buyer from Seller prior to and during the performance of this Proposal which is identified as proprietary by Seller shall be received in confidence by the Buyer and shall remain the property of the Seller. The Buyer shall respect the proprietary rights of Seller and shall take measures to prevent unauthorized disclosure of information relating to the product and any additional custom design work. Such information shall not be reproduced, used, or disclosed to any third party by Buyer without the prior written consent of the Seller. Seller will retain all copyright and other proprietary rights to the product and any additional custom work, and shall have the right and authority to use, sell, market, research, and utilize for any other purpose at its sole discretion said product and custom design work without notification or any liability whatsoever, including but not limited to monetary remuneration, to the Buyer.

20. CONFIDENTIALITY AND DISCLOSURE 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 writing signed by a duly authorized representative of Buyer. Seller shall agree to keep confidential and not to disclose to any person or entity, other than the Seller's employees, subconsultants, and subcontractors, if appropriate, any data and information not previously known to and generated by the Seller or furnished to the Seller and marked CONFIDENTIAL or PROPRIETARY by the Buyer. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Seller from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administration agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Seller to defend himself or herself from any suit or claim.

21. DISPUTES

Both parties shall use their best efforts to resolve all disputes arising out of or related to this Agreement as expeditiously as possible. In the event that a mutual settlement is not made, the matter in question shall be settled by arbitration in the State of New Mexico, U.S.A., under the then current rules of the American Arbitration Association. The arbitration shall be conducted in the English language and shall be conducted by a single arbitrator who shall be appointed by the American Arbitration Association. The arbitrator shall be knowledgeable of commercial business

transactions and electromechanical systems and shall follow the substantive law of the State of New Mexico, U.S.A.

The decision and award of the arbitrator shall be accompanied by findings of fact and a statement of reasons for the decision and shall be final and binding upon the parties and the award so rendered may be entered and enforced in any court of competent jurisdiction thereof.

22. ENGLISH LANGUAGE

The English language shall be in use in all documents, communications, and transactions.

23. ENTIRE AGREEMENT

These terms and conditions represent the entire agreement between the Buyer and Seller pertaining to the subject matter of this purchase order and shall supersede all prior oral and/or written agreements, proposals, communications and documents.

24. GOVERNING LAW

This purchase order will be construed and interpreted according to the laws of the State of New Mexico, U.S.A.

25. NON-RECURRING EXPENSE PAYMENTS

All non-recurring expenses (NRE) for engineering design, development, and manufacturing development activities will be billed on a time and materials basis at the labor rates given in the Statement of Work document.

Seller shall provide monthly invoices for NRE charges unless a milestone payment schedule has been agreed to between the parties.

Buyer shall make payment for all NRE within thirty (30) days from the date of invoice.

26. INDEPENDENT CONTRACTOR

Seller shall perform the work hereunder as an independent contractor and shall have the right to select the means and method of operation of its employees and subcontractors. Seller shall conform to all applicable safety standards required by any Federal, State, or Local government and shall comply with all OSHA requirements as may be applicable to the project. Seller shall have the right to subcontract those portions of the work that Seller deems in its best interest without interference from the Buyer.

27. NEGLIGENCE AND INDEMNITY

Unless otherwise agreed in writing between Seller and the Buyer, Seller shall not be liable for any claim, damage, judgment, cost or expense arising out of the negligence of the Buyer. In the event that both Seller and the Buyer are named in an action or claim arising out of the joint or several negligence of the parties hereunder, Seller will only be responsible for that portion of damage, claim, judgment, cost or expense that its negligence bears in proportion to the total negligence of all responsible parties. It is expressly understood between Seller and the Buyer that Seller shall not be responsible to Buyer for any indirect or special damage including incidental or consequential damages arising from any action in which Seller is named as a party responsible for any and all of the claimed damages. Additionally, Seller shall have no indemnity obligation and shall not be required to hold harmless and defend the Buyer for any claim, damage, judgment, cost or expense except as may have been caused by the negligence, proportional or otherwise, of Seller.

Both Seller and Buyer agree to waive their rights to subrogation under any policy of insurance relating to or covering the project. The foregoing indemnity shall be further limited as follows:

- a. as between Seller and the Buyer, Seller's liability for loss of or damage to property of Buyer, including property constituting the work, shall be limited to the extent and scope of insurance as provided;
- b. the Seller's construction liability for damage to or destruction of property of Buyer, including the work to be performed hereunder, shall terminate upon the transfer of care, custody, and control thereof; and
- c. when the work has been completed, Seller shall give Buyer written notice to such effect. Unless Buyer shall, upon receipt of such notice, give Seller written notice of any item of the work not completed and acceptable, the care, custody, and control shall pass to Buyer.

## 28. PATENTS

Seller warrants that any product (or part thereof) manufactured by Seller and furnished hereunder shall be free of any rightful claim of any third party for infringement of any U.S.A. patent. If Buyer notifies Seller promptly of the receipt of any claim that such product infringes a U.S.A. patent and gives Seller information, assistance, and exclusive authority to settle and defend such claim, Seller shall, at its own expense and option, either (i) settle or defend such claim or any suit or proceeding arising therefrom and pay all damages and costs awarded therein against Buyer, or (ii) procure for Buyer the right to continue using such product, or (iii) modify the product so that it becomes non-infringing, or (iv) replace the product with a non-infringing product, or (v) remove the product and refund the purchase price less reasonable depreciation and any transportation or installation costs which have been separately paid by Buyer. If, in any such suit arising from such claim, the continued use of the product for the purpose intended is enjoined by any court of competent jurisdiction, Seller shall, at its option, take one or more of the actions under (ii), (iii), (iv), or (v) above. Buyer loses rights under (i), (ii), (iii), (iv) and (v) if Buyer does not give written notice to the Seller specifying the nature of the right or claim of the third party within ten (10) days after Buyer has become aware or ought to have become aware of the right or claim. The foregoing states the entire liability of Seller for patent infringement of any product and is subject to the limitation of total liability set forth in Article 13 (Limitation of Liability).

The preceding paragraph shall not apply (i) to any product (or part thereof) which is manufactured to Buyer's design or (ii) to the use of any product (or part thereof) furnished hereunder in conjunction with any other product in a combination not furnished by Seller as a part of this transaction. As to any product, part or use described in the preceding sentence, Seller assumes no liability whatsoever for patent infringement. Buyer agrees to indemnify Seller for any and all damages for infringement of patents or trademarks resulting from reliance on Buyer's purchase order, specifications, drawings, blue prints, etc.

With respect to any product (or part thereof) furnished hereunder which is not manufactured by Seller, only the patent indemnity of the manufacturer, if any, shall apply.

The patent warranty and indemnity obligations recited above are in lieu of all other patent warranties and indemnities whatsoever, whether oral, written, express, implied, or statutory.

FEDERAL AGENCY CONTRACTS  
COMPLIANCE WITH FEDERAL LAWS

If this Proposal is in response to a purchase order, contract or subcontract which is identified as being subject to a U.S. Federal Agency Prime Contract or Grant, the applicable clauses listed below are incorporated into, and form a part of, the terms and conditions of this Proposal. The term "FAR" means the Federal Acquisition Regulations, including revisions in effect on the date of this Order. The term "DFAR" means the Department of Defense Supplement to the Federal Acquisition Regulations, including revisions in effect on the date of this Order. The terms "Contractor," "Government," and "Contracting Officer" as used in the clauses incorporated by this reference shall be deemed to refer to the "Seller" and "Buyer", respectively.

***The following provisions apply regardless of the amount of this Order:***

1. Restrictions of Subcontractor Sales to the Government - FAR 52.203-6
2. Anti-Kickback Procedures - FAR 52.203.7 and Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)
3. Defense Priority and Allocation Requirements (when applicable) - FAR 52.212-8
4. Equal Opportunity - FAR 52.222-26, E.O. 11246, E.O. 11375, and 41 CFR Part 60.
5. Hazardous Material Identification and Material Safety Data (when applicable) - FAR 52.223-3
6. Drug-Free Workplace - FAR 52.223-6
7. Restrictive Markings on Technical Data - DFAR 52.227-7013
8. Rights to Inventions Made By Non-Profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements - 37 CFR Part 401.
9. Resource Conservation and Recovery Act - 40 CFR Parts 247 - 254.

***The following provision applies if the amount of this Order exceeds \$2,500.00:***

1. Affirmative Action for Handicapped Workers - FAR 52.222-36

***The following provisions apply if the amount of this Order exceeds \$10,000.00:***

1. Examination of Records by Comptroller General (if order was entered into by negotiation) - FAR 52.215-1
2. Audit-Negotiation (if order was entered into by negotiation) - FAR 52.215-2
3. Utilization of Small Business Concerns and Small Disadvantaged Business Concerns - FAR 52.219-8
4. Walsh-Healey Public Contracts Act - FAR 52.222-20
5. Affirmative Action for Special Disabled and Vietnam Era Veterans - FAR 52.222-35

***The following provisions apply if the amount of this Order exceeds \$25,000.00:***

1. Utilization of Women-owned Small Businesses - FAR 52.219-13
2. Utilization of Labor Surplus Areas Concerns - FAR 52.220-3
3. Authorization and Consent - FAR 52.227-1
4. Notice and Assistance Regarding Patent and Copyright Infringement - FAR 52.227-2

5. Responsibility for Supplies - FAR 52.246-16 1
6. Default (Fixed-Price Supply and Service - FAR 52.249-8
7. Debarment and Suspension - E.O.'s 12549 and 12689.

***The following provisions apply if the amount of this Order exceeds \$100,000.00:***

1. Price Reduction for Defective Cost or Pricing Data - FAR 52.215-22
2. Subcontractor Cost or Pricing Data - FAR 52.215-24
3. Subcontractor Cost or Pricing Data - Modifications - FAR 52.215-25
4. Clean Air Act and Federal Water Pollution Control Act - FAR 52.223-2 and 42 U.S.C. 7401 et seq. and 33 U.S.C. 1251 et seq.
5. Overseas Distribution of Defense Subcontracts - DFAR 52.204-7005
6. Byrd Anti-Lobbying Amendment - 31 U.S.C. 1352.

***The following provisions apply if the amount of this Order exceeds \$500,000.00:***

1. Small Business and Small Disadvantaged Business Subcontracting Plan (does not apply to small business concerns) - FAR 52.219-9
2. Labor Surplus Area Subcontracting Program - FAR 52.220-4