



**CLYDE INDUSTRIES INC.
GENERAL TERMS AND CONDITIONS FOR SALE OF EQUIPMENT**

1. **THE CONTRACT:** The Contract shall be comprised of the following terms, together with such terms and conditions as are set forth in CLYDE INDUSTRIES INC's written proposal or quotation, including any documents, drawings or specifications incorporated therein by reference, and any additional or different terms proposed in Buyer's purchase order (the "Purchase Order") that are accepted by CLYDE INDUSTRIES INC in writing, which together shall constitute the entire agreement between the parties, provided, however, that preprinted terms on Buyer's purchase order or invoice shall not apply and CLYDE INDUSTRIES INC gives notice of objection to such terms. An offer by CLYDE INDUSTRIES INC in its Proposal or Quotation that does not stipulate an acceptance date is not binding. This Contract shall be deemed to have been entered into upon written acknowledgement of the Purchase Order by an officer or authorized representative of CLYDE INDUSTRIES INC, which may not be modified, supplemented, or waived except in writing, executed by an authorized representative of the party to be bound.
2. **DEFINITIONS:** The term "Seller" means Clyde Industries Inc., acting through or on behalf of its subsidiaries, successors in interest, affiliates and/or Parent Company. The term "Buyer" means the individual, corporation or other legal entity that has submitted an order to Seller. The term "Order" means Buyer's expressed request, whether oral or written, to purchase Goods from Seller. The term "Goods" means all of the products, materials and related services that Buyer desires to purchase from Seller.
3. **PRICE:** The price quoted in the Proposal or Quotation shall be the Purchase Price unless otherwise agreed in the Purchase Order. The Purchase Price for equipment shall include packing for shipment. Field Services shall be provided at CLYDE INDUSTRIES INC's standard rates. All other costs, including packing for storage, freight, insurance, taxes, customs duties and import/export fee, any country specific taxes such as VAT, or any other item not specified in the Contract, shall be paid by Buyer unless separately stated in the Proposal or Quotation and included in the price quoted. Any sales, use, or other taxes and duties imposed on the transaction or the equipment supplied shall be paid or reimbursed by Buyer.
4. **PAYMENT TERMS:** Payment shall be made in US Dollars by electronic funds transfer (ACH/Wire) or check deposit and must be received by Seller in full, without set-off or other deduction, no later than the due date indicated on the Clyde Industries Inc invoice. If the payment due date falls on a day which is a Saturday, Sunday or legal holiday in the US, then payment shall be due on the last business day immediately prior to such Saturday, Sunday or legal holiday. Failure by Buyer to make full payment by the due date shall constitute a default. In such case, and in addition to any other rights available to Seller at law or in equity, Seller will be entitled to assess a late fee of seventy-five dollars (\$75) plus interest charges equivalent to 3% per month upon Buyer for any overdue amounts (as well as on any judgment for the same). Additionally, CLYDE INDUSTRIES INC may, after giving not less than 14 calendar days' notice to the Buyer for non-payment, suspend the carrying out of all or any part of the Works. All Orders are subject to credit approval by Seller. Whenever reasonable grounds for insecurity arise with respect to due payment from Buyer or with respect to Buyer's financial condition generally, Seller may demand different terms of payment from those specified above, and may demand additional assurance of Buyer's due payment at any time. Any such demand may be oral or in writing and Seller may, upon the making of such demand, stop production and suspend shipments hereunder. If within the period stated in such demand, Buyer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of due payment, Seller may, at its option, treat such failure or refusal as a repudiation of the portion of this Order which has not been fully performed or may resume production and may make shipment under reservation of possession or of a security interest and may demand payment against tender of documents of title.
5. **Order Acceptance:** Buyer's Order is subject to acceptance by Seller, which acceptance is made expressly contingent upon Buyer's agreement to Seller's terms and conditions. Acceptance of this Order is subject to all of the terms set forth herein upon which such terms shall constitute the



sole terms and conditions of this Order. Buyer's assent to all such terms and conditions shall be conclusively presumed (A) when Buyer receives this document, electronically or otherwise, and makes no written objection within ten (10) days of such receipt; or (B) when Buyer accepts all or any part of the Goods reflected by the Order. Seller objects to any terms or conditions that differ from or are additional to those stated herein. This Order, can be modified only by a writing signed by Seller.

6. **ACCEPTANCE AND INSPECTION:** Buyer shall promptly inspect all equipment within 14 days after delivery or such other period of time as is agreed in the Purchase Order. In the event Buyer does not act within the time limit provided above, Buyer agrees that it shall be conclusively presumed to have accepted the Equipment and waived its right to revoke acceptance. Buyer shall make all claims including claims for shortages, excepting only those provided for under the warranty clause contained herein, in writing within such 14-day period or they are waived. Services shall be accepted upon completion. Buyer shall not revoke its acceptance. Buyer may reject the equipment only for material defects that substantially impair its value, but shall not withhold or delay taking over of the Works for defects, which do not prevent the Buyer from safe and reasonable commercial operation of the Works. Such defects shall be listed in a mutually agreed list of pending issues, including a mutually agreeable date for their remedy. Buyer's remedy for lesser defects shall be in accordance with Section 15, Warranty. If tests are made by Buyer to demonstrate the ability of the equipment to operate under the contract conditions and fulfill the warranties in Section 15, Buyer is to make all preparations and incur all expenses incidental to such tests. CLYDE INDUSTRIES INC will have the right of representation at such tests at its expense, and the right to technically direct the operation of the equipment during such tests, including requiring a preliminary run for adjustments. In the event that a performance test, trial operation, or taking over is delayed for reasons beyond CLYDE INDUSTRIES INC's control for more than (10) days, the respective Works shall be considered as tested and taking over shall be deemed to have occurred upon expiry of such () days period and a taking over certificate shall be issued or deemed to be issued immediately.
7. **SHIPMENTS:** Seller may make partial shipments and may invoice for each such partial shipment separately. Each partial shipment will be deemed to be a separate sale however; delay in delivery of any partial shipment will not relieve Buyer of its obligation to accept delivery of remaining shipments.
8. **TITLE AND RISK OF LOSS:** CLYDE INDUSTRIES INC warrants that it will deliver to Buyer title to the Equipment free of any liens or claims created or suffered by CLYDE INDUSTRIES INC; provided, however, that CLYDE INDUSTRIES INC will, at its option, retain a security interest in the Equipment (with right of repossession) until full payment of the purchase price is received by CLYDE INDUSTRIES INC from Buyer. Buyer agrees to execute all instruments reasonably required to evidence and perfect such security interest or its equivalent under the laws of the United States. Full risk of loss (including transportation delays and losses) shall pass to Buyer upon shipment unless agreed upon otherwise, regardless of whether title has passed to Buyer, transport is arranged or supervised by CLYDE INDUSTRIES INC, or start-up is carried out under the direction or supervision of CLYDE INDUSTRIES INC. Delivery shall be undertaken by a transport company by a transport company of CLYDE INDUSTRIES INC's choosing. Loss or destruction of the equipment or injury or damage to the equipment that occurs while the risk of such loss or damage is borne by Buyer does not relieve Buyer of its obligation to pay CLYDE INDUSTRIES INC for the equipment.
9. **GURANTEES AND BONDS:** With respect to all financial securities to be provided by CLYDE INDUSTRIES INC under the Contract, the following shall apply: All securities shall have a term of validity expressed as a calendar date. Notwithstanding anything to the contrary, all securities shall terminate at their respective expiry date, whether or not returned by the Buyer. Any intended draw down first involve notification to CLYDE INDUSTRIES INC 15 days in advance and include information of the Contract violation and damages giving raise to the draw down, sufficiently specific to allow CLYDE INDUSTRIES INC to remedy the violation. The Buyer shall not be permitted to assign or to otherwise transfer the securities issued by CLYDE INDUSTRIES INC. In the event the reason of the draw down has been removed, the amount drawn shall be paid back to CLYDE INDUSTRIES INC immediately.
10. **TAXES:** The prices and charges stated on the face of the Form do not include state or federal excise, sales or use, or other taxes (if any) now in effect or hereafter levied by reason of this transaction. All such taxes shall be for the Buyer's account.



11. DELIVERY, DELAYS & FORCE MAJEURE: Although CLYDE INDUSTRIES INC will arrange for shipment, Buyer shall pay all insurance and freight charges and bear the risk of transportation and all other risk of loss after delivery. The date of delivery is based upon CLYDE INDUSTRIES INC's current scheduling. CLYDE INDUSTRIES INC reserves the right to make delivery at any time within 30 days before or after the date indicated. Seller shall use reasonable efforts to fill this Order in accordance with the estimated shipping date, but shall not be responsible for any delays in filling this Order nor liable for any losses or damages resulting from such delays, and this Order shall not be subject to cancellation for such delays. CLYDE INDUSTRIES INC shall use reasonable efforts to meet quoted delivery dates, which are estimated based on conditions known at the time of quotation. Under no circumstances shall CLYDE INDUSTRIES INC be liable for any nonperformance, loss, damage, or delay due to, but not limited to, such events as war, riots, insurrection, fire, flood, strikes or other labor difficulty, order or directive of any government authority, acts of God, acts of the Buyer or its customer, delays in transportation, failures of suppliers or subcontractors, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of CLYDE INDUSTRIES INC (Force Majeure). In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended to reflect the length of time lost by reason of such delay. Any additional costs due to such causes shall be submitted to Buyer by Change Order for approval upon which Buyer's approval shall not be unreasonably withheld. CLYDE INDUSTRIES INC shall not be liable for any loss or damage to Buyer resulting from any delay in delivery, or any material delay, impediment or prevention caused by or attributable to the Buyer or End Customer, the Buyer's or End-Customer's personnel, or other suppliers at site. CLYDE INDUSTRIES INC shall also be entitled to an extension of time and to additional costs if there is a suspension of the Works by the Buyer, or a change of the applicable Laws or in the judicial or official governmental interpretation of such Laws, made after the signing date of the Contract, which affect CLYDE INDUSTRIES INC in the performance of its obligations under the Contract. The duty to pay for any outstanding deliverables received from CLYDE INDUSTRIES INC to Buyer and accepted by Buyer shall not be delayed by this clause.
12. PATENT OR TRADEMARK INFORMATION: CLYDE INDUSTRIES INC warrants that the Equipment and components and the sale or use of them will not infringe any United States patent and CLYDE INDUSTRIES INC agrees to defend, protect and save harmless Buyer, and its successors and assigns, against all lawsuits and from all damages and expenses resulting from 3rd party claims or demands for actual or alleged infringements of any United States patent or intellectual property rights of any third party by reason of the sale or use of the Equipment. However, if the equipment sold hereunder is to be prepared, installed or manufactured according to Buyer's specifications, Buyer shall indemnify CLYDE INDUSTRIES INC and hold it harmless from any claims or liability for patent or trademark infringement on account of the sale, installation or manufacture of such goods. The parties agree to provide information and reasonable assistance to each other, upon request, to the extent such information and assistance are required by such party to defend against any infringement claim arising under this clause. The Buyer shall not be entitled to indemnification under this clause as to any claim of infringement concerning which it does not give the Seller prompt notice in writing upon learning thereof and full opportunity, at the expense of such Seller, to defend and dispose of such claim of infringement. The sale of Goods covered by this Order shall not grant to Buyer any right or license of any kind under any patent owned or controlled by Seller or under which Seller is licensed, but the foregoing shall not be understood to limit in any way Buyer's right to use such Goods.
13. CLYDE INDUSTRIES INC shall indemnify and hold harmless the Buyer against all actions, 3rd party claims, demands, costs, charges, and expenses arising from or incurred by reason of any infringement of alleged infringement of the intellectual property rights of any third party by the use or possession of CLYDE INDUSTRIES INC's Works. If the customer notifies CLYDE INDUSTRIES INC promptly of the receipt of any such infringement or claim, affecting the use of the Works, CLYDE INDUSTRIES INC shall, at its own expense and option, either:
 - a. Settle the claim or any suit or proceeding and pay all damages and costs awarded in it against the Buyer
 - b. Modify the Works so that they become non-infringing
 - c. Replace the Works with non-infringing Works
 - d. Remove the infringing item and refund the price
 - e. These shall be CLYDE INDUSTRIES INC's sole remedies under this clause.



14. **CHANGES:** Buyer may request, in writing, changes in the design, drawings, specifications, shipping instructions, and shipment schedules of the equipment. As promptly as practicable after receipt of such request, CLYDE INDUSTRIES INC will advise Buyer what amendments to the Contract, if any, may be necessitated by such requested changes, including but not limited to amendment of the Purchase Price, specifications, shipment schedule, or date of delivery. Any changes agreed upon by the parties shall be evidenced by a Change Order signed by both parties. CLYDE INDUSTRIES INC shall not be liable for any delays that occur due to Changes requested by Buyer.
15. **CANCELLATION OR TERMINATION:**
- a. **Insolvency.** Either party shall be entitled to terminate this Contract and any outstanding Statement of Work, and the parties' duties and obligations hereunder and thereunder, on thirty (30) days prior written notice to the other party in the event the other party becomes insolvent or seeks protection, voluntarily or involuntarily, under applicable bankruptcy laws.
 - b. **Payment Default.** This Contract, and the parties' duties and obligations hereunder, may be terminated by CLYDE INDUSTRIES INC upon Buyer's failure to make payment under any undisputed portion of any invoice on the due date for such invoice and Buyer's failure to cure such delinquency within ten (10) days following receipt of written notice thereof from CLYDE INDUSTRIES, INC to Buyer. CLYDE INDUSTRIES INC may not withhold performance if Buyer disputes any invoice or portion of any invoice in good faith and fails to pay such invoice while the dispute is pending. Buyer shall deposit all funds equaling the disputed amount in an escrow account until such time as the dispute has been resolved as per Section 14 of this Agreement.
 - c. **Termination for Cause.** Either party may terminate this Contract at any time, upon forty-five (45) days prior written notice to the other party, if the other party materially breaches any term or condition of this Contract (other than a payment default) and fails to cure such breach within a reasonable period of time. As used in this Contract, a "material breach" shall mean a material misstatement or omission in any representation or warranty of a party, or a breach or default in the performance of any agreement, covenant or obligations of a party hereto which, in any such case, deprives the non-breaching party of a material right or benefits in any material respect. Buyer shall be entitled to reject the respective Works if CLYDE INDUSTRIES INC fails to remedy a defect, if the un-remedied defect or damage is such, that the End-Buyer would be substantially deprived from the benefit of the Works, or if the Buyer is permanently prevented from carrying out its obligations due to any infringement or alleged infringements of the intellectual property right of any third party. These are sole and exclusive reasons for a rejection by the Buyer.
 - d. **Effect of Termination.** In the event of termination, both parties shall be liable for all obligations that accrued prior to termination, including completion of deliveries under any open Statement of Work unless the non-breaching party elects not to have the open Statement of Work completed, and for all obligations that survives the termination or expiration of this Contract. The Buyer shall further pay CLYDE INDUSTRIES INC all outstanding payments for Works performed until the termination's effective date as well as the cost of equipment and materials reasonably ordered for the Work which have been delivered to the Buyer, or of which CLYDE INDUSTRIES INC is liable to accept delivery. The Buyer shall promptly return any security CLYDE INDUSTRIES INC has issued after notice of termination, and CLYDE INDUSTRIES INC shall be released from any further warranty obligation.
 - e. **Buyers Termination of Specially Designed Equipment:** Buyer acknowledges that the Equipment is to be fabricated specially upon Buyers order to specifications unique to Buyers requirement, that CLYDE INDUSTRIES INC will enter into commitments with suppliers and subcontractors for such purpose, and that the Equipment is not readily saleable to other purchasers. Buyer shall have the right to cancel the Contract upon 15 days prior written notice to CLYDE INDUSTRIES INC and CLYDE INDUSTRIES INC shall stop its performance upon the receipt of such notice except as otherwise agreed with Buyer. If Buyer cancels the contact it shall pay: (a) the agreed unit price for equipment or components completed and delivered, (b) additional material and labor costs incurred, and for engineering services supplied by CLYDE INDUSTRIES INC with respect to the canceled items, which shall be charged to Buyer at CLYDE INDUSTRIES INC's rates in effect at the time of cancellation, but which shall not exceed the contract price for such items and (c) such other costs and expenses including cancellation charges under subcontracts as CLYDE INDUSTRIES INC may incur in connection with such cancellation or termination.



- f. Buyer may not terminate this order without the written consent of Seller. If Seller consents to such termination, reasonable termination charges computed by Seller shall be assessed in connection with such termination
16. WARRANTY: CLYDE INDUSTRIES INC warrants that the equipment or services supplied will be free from defects in material, and workmanship for a period of 12 months from the date of initial operation of the equipment, or 18 months from the date of shipment, whichever shall first occur? Repairs, replacement parts and spares shall be warranted for 12 months in the aggregate after such initial repair or, if the repair is performed under this warranty, for the remainder of the original warranty period, whichever is less. The warranty period shall be the period between the earlier of the acceptance or deemed acceptance and 24 months after that date, in no event shall the Warranty Period extend beyond 36 months from delivery of CLYDE INDUSTRIES INC's equipment. Buyer shall report any claimed defect in writing to CLYDE INDUSTRIES INC immediately upon discovery and in any event, within the warranty period. CLYDE INDUSTRIES INC shall, at its sole option, repair the equipment or furnish replacement equipment or parts thereof, at the original delivery point. CLYDE INDUSTRIES INC shall not be liable for costs of removal, reinstallation, or gaining access. If Buyer or others repair, replace, or adjust equipment or parts without CLYDE INDUSTRIES INC's prior written approval, CLYDE INDUSTRIES INC is relieved of any further obligation to Buyer under this section with respect to such equipment or parts. The repair or replacement of the equipment or spare or replacement parts by CLYDE INDUSTRIES INC under this section shall constitute CLYDE INDUSTRIES INC's sole obligation and Buyer's sole and exclusive remedy for all claims of defects. If CLYDE INDUSTRIES INC refuses to remedy a defect, fails to remedy after a reasonable number of attempts to remedy the defect, or in case of imminent danger, the Buyer shall be entitled to remedy the defect at CLYDE INDUSTRIES INC's expense, but not at CLYDE INDUSTRIES INC's risk. Notwithstanding any other provision contained herein or any other obligation of Buyer, hereunder, Buyer, upon acceptance of Goods that are the subject of this Order, warrants that Buyer, its successors, assigns, agents and employees are industrial users of such Goods and possess the knowledge and expertise to use the same in accordance with:
- a. Accepted industry standards
 - b. All applicable laws,
 - c. Prudent safety practices and
 - d. Operating manuals or other instructions provided by Seller, if any.
17. CLYDE INDUSTRIES INC MAKES NO OTHER WARRANTY OR REPRESENTATION OF ANY KIND WITH RESPECT TO THE EQUIPMENT OR SERVICES OTHER THAN AS SPECIFIED IN THIS AGREEMENT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.
- a. For purposes of the Section, the equipment warranted shall not include equipment, parts, and work not manufactured, supplied or performed by CLYDE INDUSTRIES INC. With respect to such equipment, parts, or work, CLYDE INDUSTRIES INC's only obligation shall be to assign to Buyer any warranty provided to CLYDE INDUSTRIES INC by the manufacturer or supplier providing such equipment, parts or work. No equipment furnished by CLYDE INDUSTRIES INC shall be deemed to be defective by reason of normal wear and tear, failure to resist erosive or corrosive action of any fluid or gas, Buyer's failure to properly store, install, operate or maintain the equipment in accordance with good industry practices or specific recommendations of CLYDE INDUSTRIES INC, or Buyer's failure to provide complete and accurate information to CLYDE INDUSTRIES INC concerning the operational application of the equipment. This Warranty shall not apply: (i) if the Equipment has been modified, changed or altered by anyone other than CLYDE INDUSTRIES INC; (ii) if the Equipment is improperly installed and CLYDE INDUSTRIES INC did not provide the installation services, (iii) if the Equipment is being improperly operated and/or used in any way other than as contemplated by its Specifications or the applicable Statement of Work; or (iv) if the damage or defect is caused by fire, flood, wind, lightning or similar occurrences. If any of Buyer's warranty claims fall within any of the above exceptions, then the Warranty shall become immediately null and void and shall be of no further force or effect with respect to such Equipment and Buyer shall pay CLYDE INDUSTRIES INC's costs of investigating and identifying the problem, and CLYDE INDUSTRIES INC's expenses to repair or correct the problem, based on CLYDE INDUSTRIES INC's then-current charges.

18. LIMITATION OF LIABILITY:

- a. CLYDE INDUSTRIES INC shall in no event be liable for any consequential, incidental, indirect, special or punitive damages arising out of the Contract, or out of any breach of any of its obligations hereunder, or out of any defect in, or failure of, or malfunction of the equipment, including but not limited to, claims based upon loss of use, lost profits or revenue, interest, lost goodwill, work stoppage, impairment of other equipment, environmental damage, nuclear incident, loss by reason of shutdown or non-operation, increased expenses of operation, cost of purchase replacement power or claims of buyer or customers of buyer for service interruption whether or not such loss or damage is based on contract, tort (including negligence and strict liability) or otherwise. CLYDE INDUSTRIES INC's maximum aggregate liability, including liquidated damages, excluding any further limitations stated within these terms/conditions, under this Contract shall not exceed the Purchase Order amount of the equipment or portion thereof upon which such liability is based. All such liability shall terminate at expiration of the warranty period, if not sooner terminated. The liabilities contained herein are in lieu of and to the exclusion of any other liability, whether written, oral or statutory. Any liquidated damages claim may not exceed:
- b. For Delivery: Delay damages shall be liquidated damages and not a penalty, shall not exceed 5% of the contract price in the aggregate, shall be the sole and exclusive remedy for delay, and in lieu of and to the satisfaction of any other damages or liability.
- c. For Performance: As may have been expressly agreed upon with Buyer but in no event in excess of a total aggregate cap of such liability exceeding 10% of contract value in the aggregate.
- d. Possible exemptions: CLYDE INDUSTRIES INC shall indemnify and hold harmless the Buyer and the Buyer's personnel against and from all claims, damages and expenses by third parties (including legal fees), which are attributable to CLYDE INDUSTRIES INC, in respect of:
- e. Bodily injury, sickness, disease or death, of any person arising out of or in the course of or by reason of the design, execution and completion of the Works or
- f. Damage to or loss of any property, real or personal (other than the Works)
- g. CLYDE INDUSTRIES INC's liability for all claims of any kind under this clause shall in no case exceed Contract Value, except for bodily injuries or death. Unless otherwise stipulated by compulsory law, any such obligation shall expire and become time-barred upon expiry of the warranty period.

19. MISCELLANEOUS: No waiver, alteration or amendment hereof shall be binding unless made in writing and executed by the party against whom such waiver, alteration or amendment is sought to be enforced. Waiver by either party of any default shall not be deemed a waiver of any other default. This Contract, together with each Statement of Work and Change Order issued hereunder (each of which is incorporated herein by reference), sets forth the entire agreement and understanding of the parties with respect to transactions contemplated hereby and thereby and supersedes any and all prior contracts, agreements and understandings of the parties relating to the subject matter hereof and thereof

20. TECHNICAL DOCUMENTS: Technical documents furnished by CLYDE INDUSTRIES INC to Buyer, such as drawings, descriptions, designs and the like, shall be deemed provided to Buyer on a confidential basis, shall remain CLYDE INDUSTRIES INC's exclusive property, shall not be provided in any way to third parties, and shall only be used by Buyer for purposes of installation, operation and maintenance of the specific equipment which is the subject matter of such documentation. CLYDE INDUSTRIES INC's liability with respect to technical data is limited to such data, which are expressly agreed to be "guaranteed" values. All other technical data are to be used for information only. CLYDE INDUSTRIES INC may deviate therefrom in its detailed design, provided the quality of the Works is thereby not affected. Technical documents submitted in connection with a Quotation that does not result in a Purchase Order shall be returned to CLYDE INDUSTRIES INC upon request.

21. DISPUTE RESOLUTION: Any Dispute arising out of or relating to this contract, including the breach, termination or validity thereof, whether based on action in contract or tort, shall be finally resolved by civil litigation by a judge sitting without a jury.

a. Negotiation

- i. The parties shall attempt to resolve any Dispute promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration or

performance of this Agreement. Any party may give another party written notice of any Dispute ("Notice"). Within 10 business days after delivery of the Notice, the receiving party shall submit to the other a written response. The Notice and the response shall include (a) a short statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 15 business days after delivery of the Notice, the executives of both parties shall confer at a mutually acceptable time and place, and thereafter as often as they reasonable deem necessary, to attempt to resolve the Dispute. All reasonable requests for information made by one party to the other will be honored. If the Dispute has not been resolved by these persons within 15 business days after delivery of the Notice, the Dispute shall be referred to more senior executives of both parties who have authority to settle the Dispute and who shall confer in the same manner to attempt to resolve the Dispute. The parties shall attempt in good faith to resolve any Dispute arising out of or relating to their contract promptly by negotiation between executives who have authority to settle the controversy, who are at a higher level of management than the persons with direct responsibility for administration of the contract and who have not been previously involved in the Dispute. Any party may give another party written notice of any Dispute not resolved in the normal course of business by letter or email captioned

- b. "Demand for Negotiation of Business Dispute."
- c. Litigation
 - i. If the dispute has not been resolved by negotiation as provided herein within 45 days - this Agreement does not preclude either party from initiating litigation; provided, however, that if one party fails to participate in the negotiation as agreed herein, the other party can initiate litigation prior to the expiration of the time periods set forth above.
- d. No Arbitration
 - i. Because arbitration proceedings can deprive parties the rights to seek remedies of law and equity in courts, as well as the right to appeal judgments, the parties hereby agree not to seek arbitration as a remedy but rather negotiation and/or litigation for all matters arising under the contract, arising out of the contract, or relating to the contract.
- e. Waiver of Jury Trial
 - i. The parties agree that any trial of their Dispute shall be heard by a judge sitting without a jury and that their constitutional right to trial by jury is hereby waived. The parties knowingly, intelligently and voluntarily waive their right to trial by jury, after having opportunity to confer with counsel regarding such waiver. The parties acknowledge that they understand their right to trial by jury includes submitting their Dispute to a jury of their peers, randomly chosen from the community, in which they would have the opportunity to challenge any jurors whom they believe to be biased or for other good cause and that judgments only could be rendered upon a jury verdict determined by five/sixths of the jury or such other portion of agreement by the jurors as required by the applicable jurisdiction.

22. **GOVERNING LAW:** This Contract shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Georgia (without giving effect to principles of conflicts of laws) and federal intellectual property laws, without regard for choice of Law). Both parties irrevocably submit to the exclusive jurisdiction of the state and federal courts located in Atlanta, Georgia and both parties waive any right to object to the jurisdiction or venue of the courts in Atlanta, Georgia for such purpose.

23. **ATTORNEY FEES.** The prevailing party in any legal proceeding, including but not limited to, litigation, or bankruptcy, and whether in trial court or on any appeal, shall be entitled to recover its reasonable attorney fees from the other party.

24. **CONFIDENTIALITY:**

- a. **Non-Disclosure.** The parties anticipate that both Buyer and CLYDE INDUSTRIES INC may learn Confidential and Proprietary Information (as defined below) of the other as a consequence of the transactions contemplated by this Contract. The parties therefore agree, on behalf of themselves, their agents, employees, parents, subsidiaries, officers, directors, and all other persons acting on or for their behalf, (i) to keep all Confidential and Proprietary Information



confidential and not to disclose such Confidential and Proprietary Information, either directly or indirectly, to any third party, and (ii) not to use any such Confidential and Proprietary Information for any purpose other than performance of this Contract or as otherwise authorized under any other signed Agreement between the parties without the prior written consent of the non-disclosing party.

- b. Exceptions. The obligations in this Section 22 shall not apply to any: (i) information that either party knows about the other prior to the execution of this Contract except any information which is the subject of unexpired confidentiality obligations; (ii) information that is publicly known, or becomes publicly known, through no breach by either party; (iii) information that is rightfully obtained by either party from any third party who has no duty of confidentiality under this Contract; (iv) information that is independently developed by or for a receiving party completely apart from the disclosures hereunder, (v) information that is released pursuant to a binding court order or government regulation, provided that the receiving party delivers a copy of such order or action to the other party and reasonably cooperates with the other party if it elects to contest such disclosure or seek an appropriate remedy such as a protective order or (vi) is otherwise necessary to disclose in order to file or prosecute patent applications, prosecute or defend litigation or comply with applicable law, including regulatory filings, or otherwise establish rights or enforce obligations under this Contract, but only to the extent that any such disclosure is reasonably necessary.
- c. Precautions. The parties mutually agree to take all reasonably necessary steps, and to prepare and execute all necessary documents, to protect and prohibit the disclosure of Proprietary and Confidential Information under this Section 22 using the higher of a reasonable standard of care or the care used by such party to protect its own confidential or proprietary information. Each party will immediately notify the other party of any information that comes to its attention which might indicate that there has been a loss of confidentiality with respect to such other party's Confidential and Proprietary Information.
- d. Remedies. In the event of a breach or threatened breach by either party of such party's confidentiality obligations in this Section 22, the parties acknowledge and agree that it would be difficult to measure the damage to the non-breaching party from such breach, that injury to such non-breaching party from such breach would be impossible to calculate and that money damages would therefore be an inadequate remedy for such breach. Accordingly, the non-breaching party, in addition to any and all other rights which may be available, shall have the right of injunctive relief and other appropriate equitable remedies to restrain any such breach or threatened breach.
- e. Return of Property. Upon request, each party shall immediately return to the other party the originals and all copies of any Confidential and
- f. Proprietary Information of the other party.
 - i. Confidential Information defined. "Confidential Information" is any information disclosed by a Party under this Agreement which is disclosed in tangible form or if disclosed in intangible form, such as orally or by visual inspection. Confidential Information may include, but is not limited to, data, know-how, formulas, compositions, processes, documents, designs, sketches, photographs, plans, graphs, drawings, specifications, equipment, samples, reports, customer lists, pricing information, studies, findings, inventions and ideas. Confidential Information may also include and mean all financial, technical and other information, including all copies thereof (including, without limitation, all agreements, files, books, logs, charts, records, studies, reports, surveys, schedules, plans, maps, statistical information and any proprietary information including but not limited to patents, copyrights, trademarks, service marks, technical data, methods, techniques, that may be furnished or disclosed by either party, or acquired directly or indirectly from a party or either of their respective affiliates, including as a result of an inspection of, or visit to, any facility of either party or their respective affiliates, or either Party's or their respective affiliates' licensors, licensees, or other customers in connection with the scope and purpose of this Agreement. Confidential Information shall also mean all other information contained in the material that is not a Trade Secret, except that information which is specifically excluded from the definition by mutual consent of the Parties.
- g. Intellectual Property Protection: CLYDE INDUSTRIES INC agrees to grant to the Buyer a perpetual, irrevocable, royalty-free, non-exclusive license to use CLYDE INDUSTRIES INC's



Project related Intellectual Property Rights limited to the extent as required for the operation and maintenance on CLYDE INDUSTRIES INC's Works. The Buyer shall not be entitled to grant any sub-licenses to third parties except together with a transfer of the Works to the End-Buyer in accordance with this Contract. CLYDE INDUSTRIES INC's documents shall exclude shop or manufacturing drawings or calculations. Documentation, data and drawings provided by CLYDE INDUSTRIES INC must not be used to manufacture or to have manufactured proprietary products of CLYDE INDUSTRIES INC or its sub-suppliers and for reverse engineering. The Buyer shall treat as confidential all information, data and drawings received from CLYDE INDUSTRIES INC.

25. MISCELLANEOUS:

- a. Headings used herein are for convenience only and shall not be used for interpretive purpose.
- b. A party's failure to act with respect to another party's breach of any provision contained herein does not constitute a waiver.
- c. If any provision herein is held to be invalid or unenforceable, such provision shall be narrowly construed, if possible, or otherwise deemed ineffective and the remaining provisions shall not be affected.
- d. These terms and conditions will survive the fulfillment of this Order.
- e. With respect to any Orders for shipment outside the U.S., the United Nations Convention on Contracts for the International Sale of Goods will not apply.

26. NO SOLICITATION: During the Term of this Contract and for a period of one (1) year after termination of this Contract, Buyer shall not induce, solicit, assist, or have discussions or any other communications with any employee of CLYDE INDUSTRIES INC or its Affiliates to influence or cause that employee to terminate employment with such party, and will not facilitate, inducement, solicitation, discussion or any other communication by a third person of or with any employee of the other party to influence or cause that employee to terminate employment with the other party.

27. CONSTRUCTION: In the interpretation and construction of this Contract, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Contract shall not be deemed, for the purpose of construction and interpretation, to have been drafted by either party.

28. LIENS: Seller shall have the exclusive right to initiate any form of Lien against the equipment or site upon which such equipment, which is the subject matter of a dispute, is located.

29. EXPORT LICENSING.

- a. Buyer and Seller shall comply with all national and international export and control regulations. Equipment, technology and technical data shall not be exported, re-sold, diverted, re-exported or disposed of in other than the country of ultimate destination (currently approved by the United States Government), without the prior approval of the United States Department of State or Commerce or other Agency of the United States Government, whichever is appropriate.
- b. Seller shall assume no liability in the event that an export license is not approved or later withdrawn by the United States Government or other applicable Government.
- c. Where Buyer requests a routed transaction (meaning it will along with its U.S freight forwarder accept responsibility as U.S Exporter of Record to attain such applicable Government approvals) it shall supply all required documentation to the Seller including the required routed transaction letters from both Buyer and its designated U.S. designated Forwarder/agent. Further, Buyer shall comply with all laws and regulations applicable to the use, sale, distribution, transfer, export, or re-export, directly or indirectly, of any Goods, including the laws of the United States ("U.S.") and any other country in which Buyer or Seller undertakes any of the foregoing. Buyer will not transfer, export, or re-export, directly or indirectly, any Goods to U.S. embargoed countries, or any nationals thereof, or to any other country subject to restriction under applicable laws and regulations, (including but not limited to those indicated by the U.S. Treasury Department and Buyer hereby warrants that it is not located in, under the control of, or a national or resident of any such country). Buyer will not transfer, export, or re-export, directly or indirectly any Goods to



any party listed by any applicable government or law as prohibited from receiving such products, and Buyer hereby represents that it is not on, or under control of any person or entity which is on any such list.

30. ELECTRONIC COMMERCE: At Seller's request, Seller and Buyer will facilitate business transactions by electronically transmitting data. Any data digitally signed pursuant to this section and electronically transmitted will be as legally sufficient as a written, signed, paper document exchanged between the parties, notwithstanding any legal requirement that the data be in writing or signed. Each authorized representative of a party will adopt a unique, verifiable digital identification consisting of symbols or codes to be transmitted with each transmission. Use of the digital identification will be deemed for all purposes to constitute a "signature" and will have the same effect as a signature on a written document.
31. SUCCESSOR/ASSIGNMENT: These terms and conditions shall be binding upon and unure to the benefit of Buyer and Seller and their Respective Successors and permitted assigns. Except as set forth within these terms, neither party may sell, assign, transfer, convey or delegate any of its rights or obligations under this Order without the prior written consent of the other.
32. SUBSIDIARIES AND AFFILIATES: Seller may be acting hereunder on its own behalf or as agent for any one or more persons subsidiary to or affiliated with Seller. This Order may be performed and all rights hereunder against Buyer may be enforced by:
 - a. Seller
 - b. Any one or more persons subsidiary to or affiliated with Seller
 - c. A third party designated by Seller;
 - d. In part by Seller and in part by one or more of said subsidiaries, affiliated persons or third parties.
33. SURVIVAL: The provisions of Sections 4, 6, 14, 15, 16, 22 and 26 shall survive termination of this Contract.