

Information & Instructions: General and administrative clauses for goods or services

PREVIEW

1. Most contracts have general or administrative provisions that are designed to facilitate the administration and/or interpretation of the contract and set forth general rules or guidelines to regulate the parties' conduct. These rules may merely recite current contract law, or may impose obligations beyond the statutory guidelines. The forms that follow contain typical examples of general contract clauses.

2. To assist the practitioner in using the standard contract clauses, we have provided an example of the use of some of the general and administrative contract provisions. It is a combination of many of the most common of such provisions, and illustrates how the separate provisions enumerated above may be integrated into one comprehensive section for a contract. The comments to these provisions appear grouped below, and the clauses have been merged together without intervening comments so that they may be copied and inserted directly into a contract.

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GENERAL AND ADMINISTRATIVE PROVISIONS

1 ACCEPTANCE AND DATE OF EFFECTIVENESS:

This Agreement and all documents associated herewith may be signed on a facsimile transmitted document. Any and all signatures may be affixed by electronic and/or digital means. Both the facsimile transmissions and the electronic or digital signatures shall be considered original documents and signatures. Said documents and signatures may be used for all purposes in lieu of original signed documents and signatures; they shall have the same binding legal effect as original documents or signatures.

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This Agreement shall not be binding until it is executed by all parties to this Agreement. At that time this Agreement shall become effective and all obligations contained herein shall be conclusive and binding upon all of the parties.

2 ADDITIONAL COMPANIES:

Manufacturer may apply this Agreement for any and all parent, subsidiaries, divisions or affiliated companies including but not limited to operating companies and joint ventures which may be owned, in whole or part, by Manufacturer.

THANK YOU

3 ENTIRE AGREEMENT:

This Agreement along with any Exhibits represents the entire Agreement by and between the parties.

4 AMENDMENT, CHANGES OR MODIFICATION:

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This Agreement may not be amended, added to, changed or modified except by a written Agreement which has been executed by all of the parties' authorized representatives.

PREVIEW

Notwithstanding Buyer's act of accepting or paying for any shipment or similar act of Buyer, this Agreement shall not be modified by or interpreted by reference to any course of dealing or usage of trade and shall not be modified by any course of performance.

Each shipment received by Buyer from Vendor shall be deemed to be only upon the terms and conditions contained in this Agreement notwithstanding any of Vendor's terms and conditions that may be contained in any acknowledgment, bill of lading, certificate, invoice, Order or any other form or document between Vendor and Buyer.

5 ASSIGNMENT AND SUBCONTRACTING:

Except as to a subsidiary, affiliate, or operating division of either party hereto, neither this Agreement, nor any duty, right or interest therein may be delegated, assigned, subcontracted or otherwise transferred in any manner without the prior written consent of Buyer, and any effort to the contrary shall be void.

Vendor will not subcontract without Buyer's prior written consent for the design, development or procurement of the whole or any substantial portion of any goods ordered hereunder. This limitation shall not apply to Vendor's purchases of standard commercial supplies or raw material.

Either party may, upon written notice to the other, assign this Agreement to any person, firm or corporation with which such party may merge or consolidate or to which such party may assign substantially all of its assets, and either party may assign claims for moneys due or to become due hereunder to any bank, trust company or other financial institution, including any Government lending agency.

THIS DOCUMENT

The assigning party shall furnish the other party with a signed copy of any such assignment.

6 AUDITS:

In those instances where Buyer is entitled to discounts, tier pricing, or other considerations which may need reviews or audits, Vendor agrees to permit Buyer's auditors access, at reasonable times, to all records, copies, invoices, account books, invoices, canceled checks, payroll and other records that relate to this Agreement for the purpose of verifying that this Agreement has been complied with.

THANK YOU

Vendor shall preserve such records for three (3) years after completion of the work.

7 CHOICE OF LAW, CURRENCY AND LANGUAGE:

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This Agreement shall be subject to and governed under the laws of the State of Texas. Venue for purposes of any and all lawsuits, causes of fact or arbitrations, or other disputes shall be in the city and county where the Buyer's corporate headquarters are located.

And any and all obligations and payments are due and performable and payable in the city and county where the Buyer's corporate headquarters are located.

All prices, payments and other terms which relate to money shall refer to United States of America (U.S.) dollars. Prices quoted shall be those in effect at the time quoted regardless of any currency changes which may occur between the time the price was quoted and payment is made.

All documentation, notices, and oral communications concerning this Agreement shall use the English language. In the event that English communications are translated into another language, the meaning conveyed by the English version of the communication shall govern this Agreement and the parties' performance.

8 COMPLETION:

Vendor agrees that for all work or services which may be performed for Buyer, the work or services shall be deemed to be completed when the work or services are fully completed and functioning. If the work or services are installed as part of a piece of equipment or item, the unit must work as represented in order for the work or services to be deemed "completed"; until said time, the Vendor shall bear the risk of loss on said work, services or unit and payment shall not be due.

For all service or other work which may be performed that may leave excess work materials or other debris, Vendor agrees that upon completion of this Agreement, Vendor shall leave the premises used by it in the performance of this Agreement as clean and free from rubbish, trash, excavations and structures as they were upon Vendor's initial entry.

9 COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS:

Vendor represents that it has complied with all applicable federal, state, and local laws, regulations, rules, ordinances, zoning requirements, licensing permit requirements and executive orders which may be applicable to this Agreement and the transactions contemplated hereunder.

Some of the laws include but are not limited to the applicable provisions of the Environmental Protection Act, Fair Labor Standards Act, the Occupational Safety and Health Act, and any and all regulations and standards or amendments which may be applicable thereto.

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Vendor shall pay any and all employment taxes, sales taxes, use taxes, excise taxes, and any other taxes of every kind applicable to its employees of purchase of its raw materials or the manufacture of the materials contemplated in this Agreement.

In the event such taxes are not paid, and demand is made on Buyer to pay the same, Buyer is hereby authorized to pay the amount and withhold the same from the moneys owed to Vendor.

It is expressly agreed that Buyer shall not be responsible for or liable for any payment of any taxes accruing by reason of any purchases made hereunder or services performed hereunder.

Vendor hereby indemnifies and holds Buyer harmless from any and all liability and claims for payments for any unpaid taxes, assessments, liens or other contingencies which may be owed by Vendor that could be claimed against Buyer including but not limited to any and all penalties, interest, costs, or legal defense fees incurred in connection therewith.

Vendor agrees that it is an independent contractor under this Agreement for purposes of the Immigration Reform and Control Act of 1986 (IRCA). Vendor acknowledges that IRCA may require verification of the identity and work authorization status of its employees performing work in the United States applicable to this Agreement.

10 NON DISCRIMINATION, UTILIZATION OF SMALL BUSINESS, WOMEN-OWNED BUSINESS, VIET NAM VETERANS, HANDICAPPED WORKERS AND SMALL DISADVANTAGED BUSINESS CONCERNS:

For all transactions which may require special considerations to protected categories of individuals or entities such as small business, minority or women-owned business and small disadvantaged business concerns in support of Government laws, rules, regulations, executive orders, policies, consent decrees or agreed judgments that are deemed legal and enforceable, the parties hereto agree to accomplish the required amount of subcontracting to said protected categories and to use reasonable efforts to place subcontracts in areas of persistent or substantial labor surplus, where this can be done consistent with the efficient performance of this Agreement and at prices no higher than are available elsewhere.

11 Government Contracts:

If this Agreement is subject to any government requirements, then all terms and conditions required by law, with respect to this Agreement are incorporated herein by reference.

To the extent that the terms and conditions of this Agreement are inconsistent with any such required terms and conditions, then the required terms and conditions will prevail and be binding on both Buyer and Vendor.

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Vendor agrees, upon request, to furnish Buyer with a certificate or certificates if such forms are required.

PREVIEW

12 Required Information and Notices:

Each party shall furnish to the other party any and all required forms and information including but not limited to tax forms such as 1099 forms, their taxpayer identification or social security number.

Additionally, Buyer may be required to obtain correct taxpayer identification numbers from all non-corporate payees who receive payment for services, rents, royalties, or interest that would be subject to IRS Form 1099 reporting. Twenty percent (20%) back-up tax withholding may be imposed on all Form 1099 reportable payments made to Vendor, if Vendor fails to provide a correct taxpayer identification number.

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Vendor is required to obtain any required information on its subcontractors and other third parties that perform work or services at Buyer's facilities. Each party shall give to the other all notices required by law which may be applicable to the manufacture, sale, pricing and delivery of any and all products or services ordered under this Agreement or any party of the subject matter of this Agreement.

Such notices include but are not limited to the subject matter of this Agreement includes but is not limited to those of the Consumer Product Safety Commission relating to defects and harmful ingredients, the Toxic Substances Control Act and OSHA Hazards Communication Rule.

THIS DOCUMENT

13 CONTRACT INTERPRETATION AND PRECEDENCE:

This Agreement may establish a comprehensive commercial arrangement, which may contemplate subsequent individual transactions. This Agreement may also cover procedures and prices for the purchase of both goods, work or services.

Since this Agreement is intended to cover a wide range of both products, services and other contractual relationships, some of the terms or conditions may not be applicable to a specific transaction. In that event, the inapplicable language may be disregarded as surplus or inapplicable language.

THANK YOU

This Agreement represents a cooperative business relationship, which shall be based on mutual trust, open communication and teamwork. The parties agree to modify this Agreement and re-negotiate this Agreement, if the primary goals and objectives of this Agreement are not being met anytime during the term of this Agreement.

Buyer expects to leverage its buying power by purchasing goods, work or services for multiple facilities, standardize the purchase of products and obtain significant price discounts on consumables, remain high quality products or equipment, and maintain increased reliability and service.

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By execution of this Agreement, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Agreement.

This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the non-drafting party.

14 CONFIDENTIAL INFORMATION AND RELATIONSHIP:

The parties agree that the information and data at each other's disposal during the term of the negotiation, operation and enforcement of this Agreement is considered proprietary information and confidential.

Such information, which includes but is not limited to information contained in reports, drawings, documents, or other records, if disseminated to third parties, would be detrimental to the owner of the proprietary data.

Accordingly, each party agrees to take any and all reasonable precautions to restrict the dissemination of such information by its employees, agents or subcontractors.

Each party shall treat as proprietary all specifications drawings, blueprints, nomenclature, samples, models, and other tangible information supplied by the other party.

Without the prior written consent of the other party, neither party shall in any manner advertise, publish, disclose, or release for publication orally or in writing, any statement mentioning that the other party has furnished or contracted to furnish items and/or services to a party under this Agreement.

Vendor shall issue no news release (including photographs and files), public announcement, advertisement, denial, or confirmation concerning all or any part of the subject matter of this Agreement or any phase of any program hereunder without the prior written approval of Buyer.

During the term of this Agreement or any extension of this Agreement, neither party shall permit access by any nonaffiliated employees or person to the proprietary information, without the other party's written permission.

The party who receives confidential information shall only use the information supplied by the disclosing party to accomplish the work contemplated in this Agreement and for no other purpose.

In the event that the Buyer believes that additional contractual protection is required to protect its confidential information, Vendor and its employees, agents and subcontractors shall execute a separate confidentiality Agreement.

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By execution of this Agreement, Vendor acknowledges that it has had the opportunity to read and review the confidentially Agreement.

PREVIEW

Upon completion or termination of this Agreement, if directed by the disclosing party in writing, all proprietary information shall be returned to the disclosing party.

The obligations contained in this paragraph shall continue and shall survive notwithstanding the completion, modification or termination of this Agreement for a period of three (3) years from the effective date of this Agreement.

15 CORPORATE AUTHORITY:

If any party to this Agreement is a legal entity, including, but not limited to, an association, corporation, joint-venture, limited partnership, partnership, or trust, the party represents to the other that this Agreement and the transactions contemplated in this Agreement and the execution and delivery hereof have been duly authorized by all necessary corporate, partnership, or trust proceedings and actions including, but not limited to, action on the part of the directors, officers and agents of the entity, if said actions are required.

Furthermore, a corporate party represents that all appropriate corporate meetings were held or the actions contemplated herein will be ratified to authorize the aforementioned obligations and certified copies of all corporate meetings or minutes and corporate resolutions authorizing this transaction have been delivered to all parties to this Agreement prior to or at the time of execution of this Agreement, if such corporate authorization was requested by the party desiring such authorization, within five (5) days of the execution of this Agreement.

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16 DEFAULT:

Buyer may cancel this Agreement in whole or in part upon a breach of this Agreement by Vendor.

Events That Constitute A Default of This Agreement by Vendor:

- a. failure to comply with any of the terms of this Agreement,
- b. failure to comply with any time or delivery deadlines,
- c. failure to meet any specifications, representation or quality requirements, or
- d. failure to perform under this Agreement.

THANK YOU

It shall be presumed that if Vendor shall become insolvent, make a general assignment for the benefit of creditors, Vendor's creditors file an involuntary bankruptcy against the Vendor or Vendor files for bankruptcy protection under any chapter other than chapter 11 then Vendor is not able to perform under this Agreement.

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For services to be performed under this Agreement, if Vendor fails to begin or prosecute the work with reasonable diligence, without interruption, and in a good workmanlike manner, Buyer may at its option, upon three (3) days notice in writing to Vendor terminate this Agreement.

Without prejudice to any other remedy Buyer may have, Buyer may take control of the work for the purpose of completing the same, either by its own employees or by another independent contractor.

If Buyer takes control of the work, then Vendor shall be entitled, upon Buyer's completion of the work, only to the difference between the price in this Agreement and the reasonable cost and expense incurred by Buyer in finishing the work.

If such cost and expense should exceed the original price then Vendor shall pay Buyer the excess as liquidated damages agreed upon by the parties hereto in consideration of the difficulty in ascertaining the actual damages.

In the event Buyer cancels this Agreement, in whole or in part based on Vendor's default, then Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, items or services similar to those so canceled and Vendor shall be liable to Buyer for any excess costs of such similar items or services.

After receipt of notice of such cancellation, Vendor shall transfer title and deliver to Buyer satisfactorily completed work and such work in process as may be directed by Buyer.

The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

17 DISPUTES:

In the event that a dispute occurs applicable to the operation, construction, interpretation, or enforcement of this Agreement, the parties hereby agree to submit the dispute to a commercial arbitrator so that the matter may be arbitrated in lieu of resolving the dispute in a court of law or equity.

The parties shall choose an arbitrator from the American Arbitration Association pursuant to the following process: The parties shall request from the American Arbitration Association a list of nine commercial arbitrators. Each party, assuming there are two parties to the Agreement, shall have four strikes, and thereby strike from the list the arbitrators they do not wish to use. The remaining arbitrator, the one that has not been stricken, will be the arbitrator to hear the matter.

The parties agree to follow the American Arbitration Association rules, guidelines and procedures. The Arbitrator shall not base his or her ruling on strict state or federal rules of civil procedure or evidence which may be contained in any state or federal law, code or

regulation including but not limited to the Federal or any State's rules of civil procedure or evidence.

PREVIEW

The Arbitrator shall set the matter for hearing and hear the case; no summary judgment or dismissal shall be allowed.

The parties shall abide by the Arbitrator's decision, which shall be final and binding. The Arbitrator shall be required to give reasons to support the decision. The losing party agrees to reimburse the prevailing party for any and all attorney's fees and costs of arbitration incurred.

The parties agree that there shall be no right to appeal the Arbitrator's decision.

In the event the prevailing party is required to file a lawsuit to enforce this Agreement or the arbitrator's decision, then the losing party agrees to pay any and all attorney's fees that the prevailing party may incur in order to require the other party's compliance with the arbitrator's or court's decision.

Pending the final resolution of any dispute involving this Agreement, Vendor agrees to proceed with performance of this Agreement.

18 FORCE MAJEURE AND SUSPENSION OF WORK:

Buyer's Purchasing Representative may, by written order, suspend all or part of the work to be performed under this Agreement for a period not to exceed ninety (90) days.

Within such period, or any extension thereof to which the parties may agree, Buyer shall either:

- a. cancel such suspension, or
- b. terminate the work covered by suspension.

Vendor shall resume work whenever a suspension is canceled or expires.

An equitable adjustment shall be made in the delivery schedule or contract price, or both, if:

the suspension results in a change in Vendor's cost of performance or ability to meet the Agreement delivery schedule and

Vendor asserts a claim for adjustment within thirty (30) days after the end of the period of suspension.

Whenever Vendor has knowledge that any actual or potential labor dispute is delaying or threatening to delay the timely performance of this Agreement, Vendor shall immediately

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give notice thereof, and all relevant information with respect thereto, and shall notify Buyer of any material changes in the information required hereunder.

PREVIEW

Vendor agrees to insert the substance of this paragraph in any subcontract hereunder wherein a labor dispute may delay the timely performance of this Agreement.

19 FURTHER ASSURANCES:

Each party further agrees that it shall take any and all necessary steps and sign and execute any and all necessary documents or Agreements required to implement the terms of the Agreement of the parties contained in this Agreement.

Each party also agrees to refrain from taking any action, either expressly or impliedly, which would have the effect of prohibiting or hindering the performance of the other party to this Agreement.

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20 INDEMNITY:

Vendor agrees to indemnify and hold Buyer harmless from any and all obligations, loses, damages, claims, demands or lawsuits which are caused in whole or part by Vendor.

This indemnity shall protect Buyer in the event Vendor causes, either directly or indirectly, any personal or property damage, loss, destruction, including but not limited to any fires, explosions, death, injury, liability, or other claims that could be made against Buyer, its successors, assigns, customers and users of its goods, work or services, as a result of Vendor's actions, goods, work or service, including but not limited to Vendor's, its employees, agents, subcontractors or other personnel's intentional conduct, negligence or other damaging actions.

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This indemnity shall become effective in the event that Buyer or any other person or entity claims or alleges to have suffered any damages, claims, injury, loss or other contingency which could or did result from the goods, work or services purchased or ordered per this Agreement.

Vendor shall pay for all legal defense expenses incurred pursuant to this indemnification and Vendor shall reimburse Buyer for all expenses, fees, damages or other costs that result from the actions or conduct of Vendor, its employees, agents, subcontractors or other personnel.

THANK YOU

This indemnification will apply whether Vendor or Buyer defends any such suit or claim and whether the matter involves property damage or personal injury claims.

This indemnification clause shall survive this Agreement and be enforceable as a separate Agreement in the event the same becomes necessary.

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Vendor warrants that it has not infringed on any patent, trademark, trade secret or copyright. Vendor agrees to indemnify Buyer for any and all costs, expenses, losses or adverse consequences which may occur if an infringement or other claim is made against Vendor which could adversely affect Buyer.

Vendor will undertake the defense of such claim, and pay all costs and amounts necessary to compromise and settle the claim, or the damages awarded to the claimant if litigation ensues. Vendor will reimburse Buyer for its attorney's fees and other costs of defense.

In addition to the above remedies, if Buyer or Buyer's customers are enjoined from using the items sold or provided hereunder, Vendor will, at its expense, either procure for Buyer or Buyer's customers the right to continue using the items/replace, or modify the same so that they become non-infringing, to Buyer's satisfaction, or if none of the foregoing is possible, grant Buyer a credit for such items and accept their return.

22 INDEPENDENT CONTRACTOR RELATIONSHIP NO PARTNERSHIP INTENDED:

By virtue of entering into this Agreement, all work or services provided hereunder shall be performed in the capacity of an independent contractor rather than an employee and the parties hereto have not formed, either expressly or impliedly, any joint venture or partnership arrangement. Under no circumstances shall any party to this Agreement be deemed an employee, partner of the other, nor shall either party act as an agent of the other party.

Each party is interested only in the results obtained hereunder and has the general right of inspection and supervision in order to secure the satisfactory completion of the work. Neither party shall have control over the other party with respect to its hours, times, employment, or the like with the exception that Vendor shall comply with and observe any rules, operating schedules, deadlines or other time considerations which may be applicable to Vendor's facilities.

23 INSURANCE:

For Agreements which require services or labor, Vendor and its subcontractors shall maintain at its sole cost and expense, from the time any work is commenced hereunder until the work is fully performed and discharged, insurance of the kind and with minimum limits as listed below.

Vendor and its subcontractors shall furnish Buyer with a Certificate of Insurance naming Buyer as an additional insured.

Workers' Compensation	Statutory
Employers' Liability	\$1,000,000
Commercial General Liability*	\$2,000,000
Comprehensive Automobile Liability*	\$2,000,000

*or Excess Liability Insurance with Limits in the aggregate of \$5,000,000.

24 LIENS OR CLAIMS AGAINST MATERIAL OR SERVICES PERFORMED:

Vendor represents that all work performed by it or its subcontractors and all material used on Buyer's behalf, shall be completely paid for.

Title to all goods, products, merchandise, materials or services which are provided by Buyer shall be completely paid for and Vendor represents that there are no materialman's or other liens attached to the goods, products, merchandise, materials or services which are provided to Buyer.

Vendor warrants that no lien rights are pending or have been filed on Buyer's facilities. In the event liens are filed against Buyer, then Vendor shall be liable to Buyer for the same and Vendor agrees to indemnify and hold Buyer harmless for any and all losses, damages, suits, causes of action, or other legal proceedings that may accrue as a result of the lien filings, claims, litigation or other actions, if any. Vendor agrees to reimburse Buyer for any and all legal costs or expenses associated with the defending or removing of the liens, claim, litigation or other actions, if any.

25 NEW TECHNOLOGY:

The parties agree that Buyer may desire to establish the capability to use newer technology to implement this Agreement.

Such technology may include procurement cards, master Agreements which allow releases of goods, work or services, or the ability to receive orders electronically and provide by electronic means, inventory lists, merchandise lists, pricing, and such other data, communications and information as may be necessary to implement this Agreement. In that event, Vendor agrees to work with Buyer to implement such a system.

26 NOTICES:

Any and all notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if sent by facsimile transmission or mailed by certified mail, return receipt requested, postage prepaid, and addressed as follows:

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Either party hereby reserves the right to designate in writing to the other party any change of name, change of person, or address to which the notices shall be sent.

PREVIEW

27 PARTS AVAILABILITY:

In order to protect Buyer's investment in the goods, products or equipment purchased hereunder and as an obligation, which survives the acceptance of goods hereunder, Vendor shall maintain and provide spare parts for the goods purchased hereunder for a period of at least five (5) years from the date of the original purchase of the item which may need the spare part.

28 PARAGRAPH HEADINGS, USE OF PRONOUNS, AND CAPTIONS:

The captions, numbering, references, titles, paragraph headings, punctuation and organization used in this Agreement are for convenience only and shall in no way define, limit or describe the scope or intent of this Agreement or any part of it. The paragraph headings used in this Agreement are descriptive only and shall have no legal force or effect whatsoever other than to aid a reasonable interpretation of the Agreement. The titles to each of the various articles and paragraphs are included for convenience or reference only and shall have no effect on or be deemed as part of the text of this Agreement. Use of the neuter or the singular to refer to the parties described in this Agreement shall be deemed a proper reference whether a party is an individual, partnership, corporation, association, trust, a group of two or more individuals, partnerships, or corporations, or a joint venture.

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Any grammatical changes required to make the provisions of this Agreement applicable to individuals, or groups of individuals, such as males versus females, corporations, associations, partnerships, trusts or other entities shall, in all instances be assumed as though each case were fully expressed.

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29 PAROL EVIDENCE, STATUS OF AGREEMENT AND PRIOR UNDERSTANDINGS:

This Agreement and the exhibits attached hereto and incorporated herein, if any, contain the entire Agreement of the parties and there are no representations, inducements, promises, Agreements, arrangements or undertakings, oral or written, between the parties to this Agreement other than those set forth herein and duly executed in writing.

THANK YOU

No Agreement of any kind shall be binding upon either party unless and until the same has been made in writing and duly executed by both parties.

Upon execution of this Agreement by all parties, all previous Agreements, Agreements, oral understandings, representations, arrangements, or undertakings of any kind relative to the matters contained in this Agreement are hereby superseded and canceled and all claims and demands not contained in this Agreement are deemed fully completed and satisfied.

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Buyer's remedies shall be cumulative and an indication of any other rights or remedies that Buyer may have at law or in equity. Any remedies herein specified do not exclude any remedies allowed by law.

Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision.

30 PARTIES BOUND CLAUSE AND SUCCESSORS:

This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, executors, administrators, legal representatives, successors and assigns.

The parties to this Agreement expressly agree that in the event a party seeks to or does transfer part or all of its assets to a separate entity, not a party to this Agreement, the party shall be liable under this Agreement as if the transfer had not occurred.

Any party to this Agreement may assign its rights and obligations under this Agreement without consent to a successor to all or substantially all of its business, whether the successor has acquired this business by sale, merger, consolidation, or otherwise.

31 RISK OF LOSS:

Vendor shall bear the risk of loss for all of Vendor's, its employees, agents and subcontractors' personal or other property which may be used in the performance of this Agreement applicable thereto.

THIS DOCUMENT

Loss in Transit and Environmental Responsibility:

Title and risk of loss in transit shall not pass to Buyer until delivery to Buyer. Buyer shall not be liable for payment until Vendor or Vendor's carrier has complied with all applicable federal, state, provincial, or local laws or regulations, including but not limited to U.S. Department of Transportation and U.S. Environmental Protection Agency regulations for hazardous substances.

Vendor shall indemnify Buyer for any damages that may be asserted against Buyer as a result of Vendor's or its carrier's failure to comply with the requirements contained in this Agreement.

THANK YOU

Buyer shall not be liable for any discharge, spill, or other incident, including, but not limited to, expenses for any clean up costs involving any materials transported hereunder. Vendor assumes any and all risk of loss, injury, harm or other calamity that could or may occur when its agents, employees or contractors come on to Buyer's properties or facilities.

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In addition to the UCC allowed contract by contract right of setoff, Buyer is entitled to a "party by party" right of set off. Buyer is not required to mitigate its damages in order to obtain the relief for any breach of contract remedies available to it.

Buyer is granted the right to withhold, as retainage, from moneys owed to Vendor any amounts allowed by law, or if the percentage amount is not specified at law, ten %(10) of the contract price for any transaction which may involve subcontractors, workmen, mechanic's or materialman's liens or specially fabricated goods.

Buyer may pay the retainage directly to the person or entity that the money is owed in the event of a dispute or claim.

33 SEVERABILITY: PLEASE DO NOT COPY

If any provision of this Agreement is, for any reason, held violative of any applicable law, governmental rule or regulation, or if the provision is held to be unenforceable or unconscionable, then the invalidity of that specific provision shall not be held to invalidate the remaining provisions of this Agreement.

All other provisions and the entirety of this Agreement shall remain in full force and effect unless the removal of the invalid provision destroys the legitimate purposes of this Agreement, in which event this Agreement shall be canceled and terminated.

34 SURVIVAL OF OBLIGATIONS:

THIS DOCUMENT

All obligations shall continue notwithstanding the expiration, termination or cancellation of the Agreement.

35 THIRD PARTY BENEFICIARIES:

This Agreement is intended to be solely for the benefit of the parties named herein, their successors and permitted assigns. This Agreement shall not provide any person who is not a party to this Agreement with any rights, benefits, remedies, claims, liabilities, reimbursements, commissions, causes of action or other rights that are conferred by virtue of this agreement.

36 TERM:

THANK YOU

Initial and Extension Terms:

The initial term of this Agreement is three (3) years commencing from the date that the Agreement is signed and effective. Thereafter, the Agreement shall automatically be extended for additional terms of one (1) year each unless terminated by either party in writing within (30) days prior written notice.

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Termination for Convenience:

PREVIEW

Buyer may at any time terminate this Agreement in whole or part for its convenience upon written notice to Vendor.

In this event Vendor shall be entitled to reasonable termination charges, consisting of a percentage of the price reflecting the percentage of any work performed prior to termination, plus actual direct costs resulting from termination.

In no event shall Buyer be liable for more money than this Agreement provided for, if this Agreement had not been terminated.

Termination for Default:

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Buyer may terminate the whole or any part of this Agreement if Vendor defaults under this Agreement.

Events of default are stated above in the Default paragraph.

In the event of a termination for default, Vendor shall deliver the goods, work or service to Buyer which were completed or delivered prior to the termination.

Payment for said goods, work or services shall be at a price determined in the same manner as provided in this Agreement, except that Vendor shall not be entitled to profit on this Agreement. Furthermore Buyer shall be entitled to any and all damages which it may suffer as a result of Vendor's breach of Agreement.

THIS DOCUMENT

Buyer may withhold from Vendor moneys which may have otherwise been due to Vendor for completed goods and/or manufacturing materials in such amounts as Buyer determines necessary to protect itself against loss due to outstanding liens or claims against said goods, work or services.

37 TIME LIMITS:

Time is of the essence in this Agreement and, accordingly, all time limits shall be strictly construed and strictly enforced.

Failure of one party to this Agreement to meet a deadline imposed hereunder shall be considered a material and significant breach of this Agreement and shall entitle the non-breaching party to any and all rights of default as stated above.

THANK YOU

38 WAIVER:

The failure or delay of either party in the enforcement of the rights detailed in this Agreement shall not constitute a waiver of the rights nor shall it be considered as a basis for estoppel, either at equity or at law. That party may exercise its rights under this

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Agreement despite any delay or failure to enforce those rights at the time the cause of action or right or obligation arises.

PREVIEW

39 WARRANTIES:

Whether or not Vendor is a merchant of goods, work or services provided by it, Vendor warrants that all goods and/or services provided by it shall be performed in a manner that does not interrupt Buyer's normal operations at any of its facilities. Vendor further warrants that:

For products and goods:

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- a. shall be new, not used, substituted, restocked or refurbished and are of good quality and workmanship and are free from defects, latent or patent.
 - b. shall conform to all representations, drawings or plans given to Buyer from Vendor,
 - c. shall conform to all of Buyer's specifications,
 - d. shall be merchantable and shall pass without objection in the trade,
 - e. shall be suitable and sufficient for their intended purpose, Vendor acknowledges that Buyer is relying on Vendor's skill, judgment and recommendations in the purchase of goods, service or work contemplated herein, and
 - f. shall be free of any claim, lien, security or encumbrance of any party so that good, free and clear title passes to the Buyer.

For services: THIS DOCUMENT

in addition to all of the above warranties:

- a. the services must be performed only by qualified persons who are both properly trained or licensed and have prior actual work experience in the trade or craft to which the services relate to,
 - b. the Vendor warrants that it will provide proper supervision to all persons or sub contractors who provide services to the Buyer,
 - c. if Buyer believes that any person or sub contractor is either not qualified to perform the work or is not performing the services according to the agreed to standard or representation, then Buyer may remove said person from the work and
 - d. Vendor shall find a qualified replacement so that the work is not delayed or performed improperly.
- THANK YOU**

None of the remedies available to Buyer for the breach of any of the forgoing warranties may be limited except to the extent and in the manner agreed upon by Buyer in a separate Agreement specifically designating such limitation and signed by an authorized representative of Buyer.

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Buyer's inspection or acceptance of or payment for goods, work or services shall not constitute a waiver by it of any warranties. Buyer's approval of any sample or acceptance of any goods shall not relieve Vendor from responsibility to deliver goods and to perform services conforming to specifications, drawings, and descriptions.

The parties agree that any and all goods, products or items purchased by Buyer shall also be covered by Vendor's express warranties.

Vendor agrees to provide free repair or replacement of all labor and parts for at least one year from the date of delivery of the product or longer if provided for in Vendor's express warranty.

Other Warranties:

Vendor is liable for all costs and expenses, if any associated with any product recalls applicable to any parts or supplies used to fulfill the Agreement.

All warranties, including special warranties specified elsewhere herein, shall inure to Buyer, its successors, assigns, customers and users of its products.

Price Warranty:

The prices stated herein is all that Buyer will pay. Buyer shall not be liable for any additional charges including but not limited to delivery charges, charges for returnable or reusable containers. Vendor agrees that no prices will be escalated to match market price at the time of delivery.

Vendor agrees not to sell the same product under substantially the same terms and conditions to anyone else at a lower price; if Vendor does, then Vendor agrees to lower the price to Buyer to match the lower price, terms or conditions.

Pricing for the term of this Agreement shall be the stated herein or an Exhibit, which shall be attached thereto. Any increase in prices during the term of this Agreement shall be limited to a maximum of 10% per calendar year.

40 Year 2000 WARRANTY:

Short Form:

THANK YOU

Consultant represents and warrants that all software, hardware, embedded processors, material, products, goods, services and/or Work ("software products") provided to Client will be year 2000 compliant. All software products shall correctly and properly process, provide and/or receive electronic data by itself and in conjunction with other computer programs or systems. All software products shall also continually function without any degradation in performance or functionality, during and after the year 2000. All software products shall also function properly during any leap year.

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PREVIEW

This warranty shall also cover any and all customizations, modifications, maintenance, upgrades, updates, changes or supplements which may be issued or applicable to the software products provided to Client.

Long Form:

The Vendor represents and warrants that:

all software, hardware, material, products, goods, work or services ("products or services") provided to Buyer will operate accurately and process dates and times without any interruption prior to, during, and after the Year 2000;

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the software shall also function properly during any leap year ("Year 2000 Compliant"), the products or services which contain or use any calendar function must record, present, insert, calculate, process, store and work accurately both by itself and with other computer programs or systems which calculate or use days, dates, or spans of dates so that the correct time, day, year and decade are both calculated and used by the products or services.

any products or services which have previously been sold to Buyer shall contain enhancements on or before March 1999 which are Year 2000 Compliant

To further define Year 2000 Compliant products or services, without limiting the above, the Vendor warrants that the products or services shall:

THIS DOCUMENT
correctly process date, time and any other field, and internal date or time field dependent logic to accurately and correctly process and utilize dates beyond December 31, 1999, and

store and represent dates and times in a manner which enables the Buyer to easily use or identify the century portion of any date fields without any special processing.

The Year 2000 Warranty shall also cover any and all customizations, modifications, maintenance, upgrades, updates, changes or supplements which may be issued or applicable to the products or services provided to Buyer.

THANK YOU
The Vendor shall indemnify, defend and hold the Buyer harmless from any and all claims, losses, damages or other costs which arise from the breach of this warranty. This warranty shall survive the termination of this Agreement.

SIGNATORY CLAUSE

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This Agreement is signed, accepted and agreed to by all parties, either in their individual capacities or by and through their duly authorized officers, agents, trustees, attorneys-in-fact or representatives.

PREVIEW

All parties, and if appropriate, by and through their authorized agents, hereby acknowledge that they have read and understood this Agreement, the attachments and exhibits hereto and if this Agreement is signed by an authorized agent, then the agent states that the principal has read, authorized and agreed to this Agreement.

All parties, and if appropriate, by and through their authorized agents, further acknowledge that they have executed this legal document voluntarily and of their own free will.

BUYER

Signature: _____

By: _____

Title: _____

Date: _____

VENDOR

Signature: _____

By: _____

Title: _____

Date: _____

Tax I.D. Number: _____

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THANK YOU

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