

GENERAL TERMS & CONDITIONS OF SALE

INTRODUCTION

The Terms and Conditions of Sale set forth herein, and any supplements which may be attached hereto, constitute the full and final expression of the terms and conditions of the contract for the sale of equipment ("Equipment") or technical assistance ("Technical Assistance") and any associated spare parts or software by Aspin Kemp & Associates Inc. and any such additional associated or affiliated corporations, partnerships, limited liability companies, subsidiaries, successors and assigns, or other entities as may be designated in writing (hereinafter referred to as "Seller") to the Buyer (Seller and Buyer individually referred to as a "Party" and collectively referred to as the "Parties"), and supersedes all prior quotations, purchase orders, correspondence or communications whether written or oral between the Seller and the Buyer. Notwithstanding any contrary language in the Buyer's purchase order, correspondence or other form of acknowledgment, Buyer shall be bound by these Terms and Conditions of Sale when it sends a purchase order or otherwise indicates acceptance of this contract, or when it accepts delivery from Seller of the Equipment or Technical Assistance. THE CONTRACT FOR SALE OF THE EQUIPMENT OR TECHNICAL ASSISTANCE ("Contract") IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF SALE STATED HEREUNDER. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY AGREED TO IN WRITING BY SELLER. No contract shall exist except as hereunder provided.

COMPLETE AGREEMENT

1. No amendment or modification hereto nor any statement, representation or warranty not contained herein shall be binding on the Seller unless made in writing by an authorized representative of the Seller. Prior dealings, usage of the trade or a course of performance shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.

QUOTATIONS/TENDERS

2. Written quotations are valid for thirty (30) days from the date of the quotation unless otherwise stated in the quotation or terminated sooner by written notice. Prices for Equipment and Technical Assistance and any associated spare parts or software supplied after the quotation expires shall be the prices that are current at the time of supply.
3. A complete signed order must be provided within the time period referred to in Section 2 otherwise the price and shipment date will be subject to re-negotiation.
4. A complete signed order must be received by Seller within twenty (20) calendar days of notification of award of tender; otherwise the price and shipment date will be subject to re-negotiation.

INFORMATION

5. The Buyer shall provide Seller with all necessary information to proceed. In the event that the work to be done by the Seller is delayed or the extent of the work is increased due to the delay in the provision of necessary information by the Buyer, or by reason of any change in such information, Seller shall have the right to extend the delivery date by a reasonable period. All reasonable costs and expenses incurred by Seller as a result of such delay or increase to the work shall be paid by the Buyer in accordance with the payment terms hereunder.
6. Unless otherwise specified in Seller's tender, all drawings and particulars of weights and dimensions submitted therewith shall be construed as being approximate only.

7. Seller shall submit to the Buyer during the progress of the Contract within reasonable times as the Buyer may require such drawings of the general arrangement and details of the Equipment as may be specified in the Contract.

PRICES

8. All prices are quoted in U.S. Dollars unless otherwise specified in a written quotation (in which event the applicable currency shall be specified) and are subject to change. In the event of a price change, the effective date of the change will be the date of the new price sheet, discount sheet, letter or telegram. All quotations made or orders accepted after the effective date will be on the new basis. For existing orders, the price of the unshipped portion of an order will be the price in effect at time of shipment.

TAXES

9. The price does not include any taxes. Buyer shall be responsible for the payment of all taxes applicable to, or arising from the transaction, the Equipment, its sale, value, or use, or any Technical Assistance performed in connection therewith regardless of the person or entity actually taxed.

TERMS OF PAYMENT

10. Acceptance of all orders is subject to the Buyer meeting Seller's credit requirements. Terms of payment are subject to change for failure to meet such requirements. Seller reserves the right at any time to demand full or partial payment before proceeding with a Contract as a result of changes in the financial condition of the Buyer.
11. All payments are due and payable on date of invoice unless Seller's invoice provides for other payment terms.
12. Invoices will be issued as follows:
 - (a) Unless otherwise provided in the quotation, time and materials portion of any project shall be billed on a bi-monthly (twice per month or every 15 days) basis based on Buyer approved time sheets.
 - (b) For everything other than time and materials portion of projects, invoices will be issued as follows unless otherwise provided in the quotation:
 - Fifteen percent (15%) as down payment within thirty (30) days after the signing of the Contract.
 - Eighty five percent (85%) mutually agreed milestones (minimum of four (4) milestones).
 - (c) Spare parts invoices will be issued for one hundred percent (100%) of the shipment.
13. If payment is not made within thirty (30) days of invoice date, Seller shall be entitled to interest without formal notice and without prejudice to any other right or remedy. Interest may be charged at the rate of one and one-half percent (1.5%) per month (equivalent to 19.56% per annum) or fraction thereof.

FREIGHT

14. Unless otherwise specifically agreed in writing between the Parties, Equipment shall be delivered Ex Works per the Incoterms of the International Chamber of Commerce ("Incoterms") at the premises of the Seller identified in the quotation or other confirmation by the Seller of the order except that the Buyer and not the Seller shall be responsible for export packing. In the event the Buyer requests that the Seller arrange export packing, Seller shall arrange packing on behalf of the Buyer at the



Buyer's expense and risk, and the Seller shall not, in any event, be responsible for any damage or loss of Equipment sustained in shipment as a result of packing. All packing costs shall be billed to the Buyer with original receipts.

right to deem the witness tests waived with the right to ship and invoice Equipment.

SHIPMENT AND ROUTING

15. In the event the Parties have agreed in writing that the Seller shall arrange for shipment, Seller shall select the point of origin of shipment, the method of transportation and the routing of the shipment. If the Buyer specifies a special mode of transportation, routing, or delivery requirement, Buyer shall pay all special freight and handling charges. In the event the Parties have agreed in writing that freight is included in the price, no allowance will be made in lieu of transportation if the Buyer accepts shipment at factory, warehouse, or freight station or otherwise supplies its own transportation.
16. Title (subject to payment) and risk of loss shall be transferred from Seller to the Buyer on an Ex Works basis defined in Incoterms regardless of who arranges shipping and even if the Seller arranges storage pursuant to Section 17.
17. If Buyer is unable to take receipt of all or any part of the Equipment on the date specified in the Contract or as modified in accordance therewith, Seller shall be entitled to arrange storage either at its own premises or elsewhere on the Buyer's behalf. All costs and expenses incurred by Seller including (but without limitation) the cost of packing and storage, insurance, demurrage, additional carriage and any re-testing and necessary refurbishing shall be paid by the Buyer. In any case, delivery under the Contract shall be deemed completed upon delivery of such Equipment into storage and the Buyer shall make any payment due to Seller on delivery as though delivery was accepted and shall pay the balance of the Contract Price (if any) as though delivery was accepted by Seller upon delivery of such Equipment to storage

CONCEALED DAMAGE

18. Unless otherwise agreed in writing by the Parties, Buyer shall be responsible for inspection of Equipment prior to shipping. Any defect shall be raised by the Buyer before shipment. In the event that the Buyer declines to or fails to conduct inspection of Equipment prior to shipping, Seller shall have no responsibility for any damage to the Equipment. Seller will not participate in any settlement of claims for concealed damage. If the terms agreed upon by the parties are other than Ex Works as defined by the Incoterms, the Buyer must unpack immediately and, if damage is discovered, must:
 - (a) not move the Equipment from the point of examination;
 - (b) retain shipping container and packing material;
 - (c) notify the carrier in writing of any apparent damage;
 - (d) notify Seller representative within seventy two (72) hours of delivery; and
 - (e) send Seller a copy of the carrier's inspection report.

WITNESS TESTS/CUSTOMER INSPECTION

19. Standard factory tests may be witnessed by the Buyer at Seller's factory on the Seller's scheduled testing date provided Buyer requests witnessing in the order in which event, Seller shall give reasonable advance notice of scheduling. Any additional testing requested by the Buyer may be arranged with the Seller for an additional charge calculated at the rate of \$2,500 per day (not to exceed eight (8) hours) per Equipment type.
20. Additional witness tests will add on time to the scheduled shipping date and Seller shall give Buyer notice of the amount of delay when such testing is requested. In the event Buyer is unable to attend, the Parties shall mutually agree on a rescheduled date. However, Seller reserves the

WARRANTY

21. Equipment

Seller warrants that the Equipment supplied by it will conform to Seller's applicable specifications and will be free of defects in workmanship and material. In the event any Equipment fails to comply with this warranty, and Buyer notifies Seller promptly in writing of such nonconformity within twelve (12) months from the date of shipment, Seller shall correct such nonconformity, at its option, by repair or replacement of nonconforming part(s) delivered Ex Works. If Seller has installed or provided Technical Assistance with respect to the Equipment, the Equipment warranty shall be twelve (12) months from the date the Equipment is initially placed into operation or eighteen (18) months from the date of shipment, whichever occurs first. **This warranty does not apply to consumable and wearing parts.**

22. Technical Assistance

Seller warrants that the Technical Assistance performed by it hereunder will be performed in accordance with generally accepted professional standards.

The Technical Assistance, which does not so conform, shall be corrected by Seller upon notification in writing of such nonconformity within twelve (12) months after completion of the Technical Assistance.

Unless otherwise agreed to in writing by Seller, Seller assumes no responsibility with respect to the suitability of the Buyer's, equipment or with respect to any latent defects in equipment not supplied by Seller. This warranty does not cover damage to Buyer's, equipment, components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. Buyer will, at its cost, provide Seller with unobstructed access to the equipment or part thereof subject of defective Technical Assistance, as well as adequate free working space in the immediate vicinity of the defective Technical Assistance and such facilities and systems, including, without limitation, docks, cranes and utility disconnects and connects, as may be necessary in order that Seller may perform its warranty obligations. The conducting of any tests shall be mutually agreed upon and Seller shall be notified of, and may be present at, all tests that may be made.

23. Software Warranty

Seller's software ("Software") is warranted to be free from errors, which materially affect its utility and shall achieve the function described in Seller's applicable specifications.

This Software warranty does not apply to any application software or set of instructions composed by the Buyer utilizing Seller provided Software; however, this warranty will extend to any application software composed by Seller in accordance with the Buyer's instructions, but only to the extent that such instructions and information supplied by the Buyer are error free, correct and complete.

Should Seller be notified promptly in writing of any documented failure to conform to this warranty within twelve (12) months from the date of shipment of the Software, Seller, at its option, will furnish corrected Software in the medium in which the Software originally was supplied to the Buyer or will provide a procedure which will correct the operating effect of the error.

Third party software or documentation is not warranted as to form and content by Seller and is provided subject only to such warranties, if any, which may be provided by such third party.



24. System Performance

The system delivered hereunder will perform and function as described in Seller's applicable specifications, provided the actual operating requirements are within the operating limits of the Equipment as defined in Seller's applicable specifications. The system warranty is applicable only when final adjustment, tuning and pilot operation are approved by Seller personnel. In no case does the warranty apply to any failure or non-conformance due to products or processes supplied by others. In the event the system materially fails to perform and function as described in the Seller's applicable specifications and Buyer notifies Seller promptly, in writing, within twelve (12) months from the date of shipment, Seller will remedy the material non-conformance in accordance with the remedies described in this Section 24. However, in the event Seller cannot reasonably correct the material non-conformance, Seller shall make an equitable price adjustment with the Buyer based on the functions and performance actually provided.

25. Spare Parts

All spare parts are warranted against defects in material and workmanship as described in Section 21. Any Equipment supplied pursuant to this Section 25 is warranted for a period of ninety (90) days from the date of shipment or the remainder of the original Equipment warranty, whichever occurs last.

26. Warranty Conditions

The warranties and remedies set forth in this Article are conditional upon:

Buyer's receipt, handling, storage and maintenance of Equipment, Software, system, and spare parts (hereinafter, "Work") in a normal and proper manner with competent supervision. Buyer's actions shall be in accordance with the recommendations of Seller to the extent applicable or, in the absence of such recommendations or to the extent such recommendations are not applicable, in accordance with generally accepted industry standards and practices. In addition, such Work shall not have been operated in excess of limitations specified in writing by Seller and shall not have been subjected to accident, alteration, abuse or misuse; and Buyer providing, without cost to Seller, diagnosis, working access to the nonconformity by disassembling, removing, replacing and reinstalling any equipment, product, materials or structures to the extent necessary to permit Seller to perform its warranty obligations. NOTWITHSTANDING ANYTHING TO THE CONTRARY EXPRESSED OR IMPLIED ELSEWHERE IN THE CONTRACT, UNDER NO CIRCUMSTANCES WHATSOEVER SHALL THE SELLER BE LIABLE FOR THE COSTS OR CHARGES IN CONNECTION WITH ANCILLARY MATERIALS, FUELS, ASSISTING VESSELS, TOWING OF THE VESSEL, DOCKING OF THE VESSEL, DIVERS, TOOLS, WAGES (OTHER THAN THE WAGES OF THE SELLER'S EMPLOYEES), DISMANTLING OF OTHER EQUIPMENT TO PROVIDE ACCESS TO THE CONTRACT PRODUCTS, BOARD AND LODGING OFFSHORE, TRANSPORT TO FROM AND AT ANY OFFSHORE LOCATION, HEAVY LIFT OPERATIONS OFFSHORE, OR WORK PERFORMED BELOW THE WATERLINE.

THE WARRANTIES IN THIS ARTICLE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE). The remedies provided hereunder are the Buyer's exclusive remedies for any failure of Seller to comply with its warranty obligations. Correction of any defect or nonconformity in the manner and for the period of time provided above shall constitute complete fulfillment of all such liabilities of Seller whether the claims of the Buyer are based in contract, tort (including negligence), strict liability and alternative tort remedies or any other theory of law with respect to or arising out of the Work furnished or performed hereunder.

27. Responsibility for Warranty: Examples

Identifying each Party's responsibility for various costs related to Warranty activities is a complicated task. Accordingly, the following Examples are proposed as representative cases to assist in interpretation of each Party's Warranty responsibility.

Example 1

A transformer experiences a short circuit in a secondary winding, during the warranty period. The transformer is within the Seller's scope of supply. In a telephone conference, the Buyer and Seller agree to send a team of three field engineers to arrive on date D to conduct field repair of the transformer. The team arrives and is prepared to work on date D, but the Buyer does not permit field work to commence until date D+3. The field team repairs the vessel in 2 days (end of day D+4). The Buyer requests that testing wait for another day while associated electrical systems are rendered ready for test (to end of D+5). The field team conducts two days of tests and confirms the unit is serviceable (days D+6 and D+7). The field team departs the following day (D+8)

Costs are shared in the following manner:

Cost	Responsible
Travel expenses for field team from place of origin to vessel location, stay onsite, and travel from vessel location to place of origin, including airfare, other reasonable transportation costs, accommodations, and per diem for 3 field engineers x 10 days	BUYER
Day rate of field team to travel to site (D-1) 3 field engineers x 1 day	BUYER
Day rate of field team while waiting to effect repairs (D to D+2 inclusive) 3 FE x 3 days	BUYER
Day rate of field team while effecting repairs (D+3 to D+4 inc.) 3 FE x 2 days	SELLER
Day rate of field team while waiting for test window (D+5) 3 FE x 1 day	BUYER
Day rate of field team while conducting testing (D+6 and D+7) 3 FE x 2 days	SELLER
Day rate of field team to return to place of origin (D+8) 3 FE x 1 day	BUYER
Equipment and materials needed to effect repairs	SELLER
Cost to pack and ship repair equipment and materials from place of origin to site, and ship repair equipment to place of origin	BUYER

Example 2

A small control panel module experiences an unexplained failure, during the warranty period. The panel is within the Seller's scope of supply. In a telephone conference, the Buyer and Seller agree to send the panel to the Buyer's facility for diagnosis and repair or replacement. The Buyer's staff removes the panel and the part is sent by courier to the Seller's works. A diagnostic test identifies a failed component in a sub-assembly of the panel, which the Seller replaces. The part is returned by courier and the Buyer's staff re-installs it. Procedures for testing the re-installation are relayed to the Buyer by telephone and email. The Buyer's staff tests the part to ensure proper function.

Costs are shared in the following manner:

Cost	Responsible
Labour cost to remove part	BUYER
Packaging and courier cost to ship part to Seller	BUYER



Cost	Responsible
Labour and materials to test and repair part	SELLER
Packaging and courier expenses for returning part to Buyer	BUYER
Labour cost to re-install part	BUYER
Labour cost to develop and relay test instruction	SELLER
Labour cost to perform test	BUYER

Example 3

A systems interface, which connects equipment in the Seller's scope of supply to equipment provided by a third party, is found to be malfunctioning. The interface is within the Seller's scope of supply. In a telephone conference, the Buyer and Seller agree to send a field engineer to examine the interface. The engineer arrives and in the course of testing, discovers that the problem is caused by the third party's equipment.

Costs are shared in the following manner:

Cost	Responsible
Travel expenses for field engineer from place of origin to vessel location, stay onsite, and travel from vessel location to place of origin, including airfare, other reasonable transportation costs, accommodations, and per diem expenses	BUYER
Day rate of field team while conducting tests	BUYER

Example 4

A 110V power supply is installed by the Seller's technicians during the installation period. The 110V power supply is within the Seller's scope of work. During initial testing, the 110V power supply is damaged and requires a new component sub-assembly. The component sub-assembly is built at the Seller's fabrication facility and shipped to the Buyer's facility. The component sub-assembly is replaced on site and tested.

A breakdown of costs is as follows:

Cost	Responsible
Day rate for removal of sub-assembly	BUYER
Cost for shipping new sub-assembly from Seller's fabrication facility to ship location	BUYER
Day rate for installation of sub-assembly	BUYER
Day rate for testing of new sub-assembly at ship location	SELLER
Cost of fabricating and testing new sub-assembly at Seller's fabrication facility	SELLER

EXTRA COSTS

28. Should Seller incur extra cost owing to variation or suspension of the work by the Buyer's instructions or lack of instructions or to interruptions, delays, overtime, unusual hours, mistakes or work for which Seller is not responsible, or to any specified site facilities and working conditions not being maintained by the Buyer, the Contract price shall be adjusted by such amounts as may be reasonable in all the circumstances.

CHANGES

29. Buyer may request changes in the scope of Work and, if accepted by Seller, the price, scheduling and other pertinent provisions of the Contract

shall be adjusted by written agreement of the parties prior to implementation of the change.

30. Seller shall be entitled to adjust the Contract, in particular the price, schedule and other pertinent provisions in the following circumstances: (a) delays other than delays within the reasonable control of Seller; (b) changes in applicable laws, regulations, applicable industry codes or standards after the date of Seller's offer; or (c) additional inspections or tests required by Buyer beyond those required for compliance with Seller's quality assurance program.

INTELLECTUAL PROPERTY RIGHTS

31. Seller retains for itself all of its intellectual property rights in any Software and documentation supplied hereunder, including but not limited to all designs, engineering details, and other data pertaining to any Equipment sold except where such rights are assigned under written agreement by the Seller.
32. Seller shall defend any action brought against Buyer to the extent based on a claim that any Equipment furnished by it infringes any Canadian patent or copyright and, if notified promptly in writing and given authority and assistance for the defence of same, Seller shall pay the damages and costs awarded therein against Buyer. If the use of the Equipment is enjoined, Seller shall, at its expense and option, either procure for Buyer the right to continue using it, replace it with non-infringing Equipment, modify it so it becomes non-infringing, or remove it and refund the applicable portion of the purchase price. These provisions do not apply if the Equipment is furnished in accordance with designs supplied by Buyer or to the extent any Equipment furnished hereunder is modified or combined by Buyer or others with Equipment not furnished hereunder. If a suit or proceeding is brought against Seller arising out of such design, modification or combination, then Buyer shall protect Seller to the same extent that Seller has agreed to protect Buyer herein. THIS IS AN EXCLUSIVE STATEMENT RELATING TO INTELLECTUAL PROPERTY RIGHTS AND ALL THE REMEDIES OF THE PARTIES RELATING THERETO.

PROPRIETARY INFORMATION

33. Specifications, drawings, data and other information transmitted by either Party in connection herewith are the property of the respective transmitting Party. Information marked proprietary shall be disclosed in confidence on a need to know basis on the condition that it is not to be reproduced, copied or used for any other purpose than the purpose for which it is provided and shall not be disclosed to third parties without the prior written permission of the respective disclosing Party. The provisions of this Article shall not apply to information which: (a) is or becomes generally available to the public through no act or fault of the receiving Party; (b) is, prior to disclosure hereunder, already in the possession of the receiving Party and was not received from the disclosing Party; (c) is hereafter rightfully received from a third party who did not receive the same from disclosing Party; or (d) is required by law or governmental agency to be disclosed, after the receiving Party notifies disclosing Party of the disclosure requirements and affords disclosing Party an opportunity to object to and minimize such disclosure.

INTERPRETATION

34. The validity, construction and performance of the Contract shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario without application of its choice of law rules.

EXCUSABLE DELAY

35. Neither Party shall be liable for failure to perform any obligation or delay in performance except payment of money due, resulting from any cause



beyond its reasonable control, or the control of its suppliers or from any act of God; act of civil or military authority; terrorism; act of war whether declared or undeclared; act of any governmental authority; civil disturbance; insurrection or riot; sabotage; fire; inclement weather conditions; earthquake; flood; strike; work stoppage or other labour difficulty; embargo; fuel or energy shortage; wreck; major equipment or product breakdown; delay or accident in shipping or transportation. In the event of delay in performance excusable under this Article, the time for performance of work will be extended by a period of time reasonably necessary to overcome the effect of any such delay.

ASSIGNMENT

36. Seller reserves the right to assign any or all of its rights and obligations under the Contract to a subsidiary or an affiliated company of Seller, to any person, firm, or corporation with which Seller may merge or consolidate or to which Seller may convey substantially all of its assets, without the consent of Buyer and Seller may assign claims for monies due or to become due hereunder to any bank, trust company or other financial institution, including any governmental lending agency.

HIRING OF EMPLOYEES

37. During the period that this Contract is in force, the Parties hereto agree that neither shall solicit for employment, any technical or professional employees of the other, assigned to work on the project, without the prior written agreement of the Party whose employee is being considered for employment. All employees of each Party to this Contract shall remain the employees of such Party for all purposes. Further, each Party shall be responsible for the payment of the wages, salaries and benefits of its employees and all payroll taxes, contributions, travel expenses and other payments required to be made with respect thereto.

SUSPENSION

38. For any order held, delayed, suspended or rescheduled at the request of the Buyer, Seller may, at its sole option: (a) require payment to be based on any reasonable basis, including but not limited to, the Contract price and any additional expenses or costs resulting from such a delay; (b) store Equipment at the sole cost and risk of loss of the Buyer; and/or (c) charge to the Buyer those prices under the applicable price policy. Any order so held, delayed, suspended or rescheduled beyond twelve (12) months will be treated as a Buyer termination.

TERMINATION

39. Seller shall have the right to cancel any order at any time by written notice if Buyer breaches any of the terms hereof, becomes the subject of any proceeding under provincial, state or federal law for the relief of debtors, or otherwise becomes insolvent or bankrupt, generally does not pay its debts as they become due or makes an assignment for the benefit of creditors.
40. Buyer shall have the right to cancel any order at any time by written notice if Seller becomes the subject of any proceeding under provincial, state or federal law for the relief of debtors, or otherwise becomes insolvent or bankrupt, generally does not pay its debts as they become due or makes an assignment for the benefit of creditors.

EXCLUSIVE REMEDIES

41. Where the Contract sets out the specific rights or obligations of either Party and provides an express remedy then such remedy shall be in full satisfaction of the rights or obligations that gave rise to the remedy.

WAIVER

42. No waiver of any of the terms of the Contract shall be valid unless in writing and signed by authorized representatives of both Parties.
43. Except as otherwise provided, the failure of either Party to insist upon strict adherence to any provision of the Contract on any occasion shall not be construed as waiver of any right to insist thereafter upon strict adherence to that provision or any other under the Contract.

SEVERABILITY

44. If any provision of the Contract shall be held to be invalid, prohibited or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity, prohibition or unenforceability, without invalidating the remaining provisions of the Contract or affecting the validity or enforceability of such provisions.

LIMITATION OF SELLER 'S LIABILITY

THE REMEDIES OF THE BUYER SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND ARE ITS SOLE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS HEREUNDER.

NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE FOR DAMAGE TO PROPERTY OR EQUIPMENT OTHER THAN PRODUCTS SOLD HEREUNDER, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, COST OF CAPITAL, CLAIMS OF CUSTOMERS OF THE BUYER OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, REGARDLESS OF WHETHER SUCH POTENTIAL DAMAGES ARE FORESEEABLE OR IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE TOTAL CUMULATIVE LIABILITY OF SELLER ARISING FROM OR RELATED TO THIS CONTRACT WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE EQUIPMENT OR TECHNICAL ASSISTANCE ON WHICH SUCH LIABILITY IS BASED.

THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS IN THIS CONTRACT.

