

TROY INNOVATIVE



Customer Terms and Conditions

These terms and conditions of sale (these “Terms and Conditions of Sale”) are the only terms which govern the sale of the Goods and Services by Seller to Buyer. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms and Conditions of Sale. The Contract comprises the entire agreement between the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The Contract prevails over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these terms and conditions. Notwithstanding anything to the contrary contained in this Contract, Seller may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Acknowledgement.

1. Definitions

Whenever used herein with initial capitalization, the following definitions shall be applicable:

- A. “Acknowledgement” shall mean Seller’s acceptance of Buyer’s purchase order.
- B. “Buyer” shall mean the entity purchasing Goods and/or Services under the Contract.
- C. “Buyer’s Material” shall mean product, materials, components and items of any kind which Buyer is to provide under the Contract.
- D. “Contract” shall mean the Seller’s Proposal, these terms and conditions, and Buyer’s purchase order (excluding any preprinted terms therein or attached thereto), the Acknowledgement or other document evidencing acceptance of Seller’s Proposal; or, an integrated agreement signed by Seller and Buyer for the supply of Goods and/or Services.
- E. “Equipment” shall mean equipment, hardware, components, parts, and materials provided by Seller.
- F. “Goods” shall mean, as applicable to Buyer, products, including parts, Equipment, fixtures, tooling, and components manufactured by Seller and purchased by Buyer as set forth in the Contract.
- G. “Seller” shall mean Troy Innovative, its subsidiaries, successors and assigns.
- H. “Seller’s Proposal” shall mean written documents provided to Buyer that define a scope of supply of Seller’s Goods and/or Services, the price to be paid by the Buyer, and complete Seller’s terms and conditions of sale. The Seller’s Proposal also may contain or reference specifications for system

performance and Buyer's Materials, and other descriptive materials as appropriate, i.e. customer supplied specifications and/or industry standards.

These Terms and Conditions of Sale will apply strictly unless Seller's Proposal states otherwise. The terms "Proposal", "Seller's Quotation" and "Quotation" shall have identical meanings to that given above for "Seller's Proposal."

I. "Supplier" shall mean any subcontractor or supplier of any tier who supplies goods and services to Seller in connection with Seller's obligations under the Contract.

J. "Work" shall mean all Goods, Services and Technical Assistance which may be provided by Seller under the Contract.

2. Scope

Seller will furnish to Buyer Goods and/or Services as specified in Seller's Proposal.

3. Price Basis

Prices are quoted in US Dollars and are valid for acceptance within 3 days from the Proposal date unless otherwise stated therein. Prices for deliveries are firm for the agreed period of delivery, subject, nevertheless, to the Seller's right to change prices due to raw material price fluctuations and price increases from Suppliers.

Prices for deliveries are understood to be net and FOB, Seller's manufacturing facilities. Freight will be prepaid and invoiced to the Buyer unless Buyer's Purchase Order indicates otherwise and is agreed to by Seller. The price includes packing in accordance with Seller's general practices.

4. Taxes/Duties/Charges

In addition to any price specified herein, Buyer shall pay or reimburse Seller the gross amount of any sales, use, gross receipts, excise, value-added, or similar tax, duties, and charges of any kind imposed by a governmental authority and applicable to this Contract or the subject matter hereof, or Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities.

5. Terms of Payment

Except as otherwise noted in the Purchase Order or Contract, all payments are due and payable net 30 days from date of invoice. Invoices may be issued in accordance with payment milestones that have been mutually agreed and specified in the Contract. Invoices for Technical Assistance are provided on a per diem basis unless otherwise specified in the Purchase Order or Contract, and invoices for training and spare parts will be issued for the total amount due immediately upon delivery of the services or parts.

Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms and Conditions of Sale or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any Services and

stop Goods in transit if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

6. Credit Approval and Payment

Seller may alter or suspend credit, or change credit terms provided herein, when in its sole opinion the financial condition of Buyer so warrants. In such case, in addition to any other remedies herein or by law provided, cash payment or satisfactory security from Buyer may be required by Seller before shipment, or the due date of payment by Buyer under any contract or order with Seller may be accelerated. If such assurances are requested by Seller and not provided by Buyer, Seller may stop work and withhold all subsequent deliveries and the portion of the selling price representing hours and material in process at such time shall be due and payable. Failure to pay any invoice at maturity shall make all other invoices from Seller to Buyer immediately due and payable, irrespective of terms, and Seller may stop work and withhold all subsequent deliveries on any open orders and retain possession of all other property of Buyer in its possession, until full payment is settled. Acceptance of less than full payment by Seller shall not be a waiver of any of its rights. The waiver by Seller of any of its rights hereunder shall not be construed to be a waiver of those rights upon any subsequent default.

7. Default

Failure of Buyer to perform its obligation hereunder, including but not limited to, payment in full of purchase price, as a result of insolvency, bankruptcy, assignment for the benefit of creditors or dissolution, liquidation, or closing of business by Buyer, shall constitute a default under this agreement and shall afford the Seller all remedies or a secured party under the Uniform Commercial Code of the State of Ohio.

8. Delivery

A. Delivery time is the number of weeks included in the Proposal for delivery calculated from the date on which Seller has acknowledged the Contract or received down payment (if applicable), whichever is later. Seller shall not be liable for any delays, loss, or damage in transit. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

B. Goods manufactured by Seller to meet Buyer's instructions, specifications or requirements which are not included in Seller's standard line of products are subject to an overage of ten (10) percent in quantity and Buyer will accept and pay for such goods at the stated unit price.

9. Returns

A. Buyer's failure to reject any non-conforming Goods within ten (10) days of delivery receipt and/or tender by Seller shall constitute acceptance of such Goods. Buyer must provide Seller with written notice of rejection of any non-conforming Goods within said ten (10) day period. If Buyer timely notifies Seller of any non-conforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such non-

conforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship the non-conforming Goods to Seller's designated facility. If Seller exercises its option to replace non-conforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point. Buyer acknowledges and agrees that the remedies set forth in this section are Buyer's exclusive remedies for the delivery of non-conforming Goods.

B. Goods may be returned to Seller only after Buyer has obtained a Return Merchandise Authorization number from Seller. No credit will be given for items returned without a Return Merchandise Authorization number and confirmation of Non-Conformance caused by Seller.

C. Reference Section 12 in the agreement for Limited Warranty Returns.

10. Changes

Buyer may request changes in the scope of the Work and, if accepted in a writing signed by Seller, the price, schedule and other pertinent provisions of the Contract shall be adjusted by written agreement of the parties prior to implementation of the change. No changes to the Contract are binding on Seller unless approved by Seller, in writing signed by Seller, in advance of the proposed or agreed change. Any change to the Contract resulting in a price adjustment shall be automatically added to the Contract Price and becomes due and payable as set forth in Section 5 hereof. Seller's expenses due to (a) delays (other than delays which are within the reasonable control of Seller), (b) changes in applicable laws and requirements after the date of Seller's Proposal and (c) additional inspections or tests required by Buyer beyond those required for compliance with Seller's quality assurance program will be treated as changes to the scope of Work and the Contract will be adjusted as set forth in the previous paragraph.

11. Force Majeure

Seller will not be liable for failure to perform any obligation or delay in performance resulting from any cause beyond the reasonable control of Seller or its Suppliers or from any act of God: act of civil or military authority: act of war whether declared or undeclared; act (including delay, failure to act, or priority) of any governmental authority, Buyer, Buyer's Customer, or other contractors; or civil disturbance; insurrection or riot; sabotage; fire; inclement weather conditions; earthquake; flood; strike; work stoppage or other labor difficulty; embargo; fuel or energy shortage; wreck; major Good breakdown; delay or accident in shipping or transportation; failure or delay beyond its reasonable control in obtaining necessary manufacturing facilities, labor or materials from its usual sources; or inability to obtain raw materials at commercially acceptable prices. In the event Seller anticipates that the delay will last in excess of 60 days, it may terminate this Agreement without further liability.

12. Limited Warranties

A. Goods and Services

As more particularly set forth in the Acknowledgement, a Good may include Equipment, component parts, Buyer's Material and documentation. A Buyer may also purchase Services. Each aspect of a Good and a Service is subject to separate warranties as set forth below. Seller's warranties do not

apply to Buyer's Material, including, without limitation process specifications, interfaces, installation labor, operation, and maintenance services

1. Limited Warranty and Exclusive Remedy. Seller warrants that the Goods will be of the kind and quality specified in the Seller's Proposal and will be free of defects in workmanship and material for a period of three (3) months from date of delivery to the Delivery Location or as is otherwise defined in the Customer Quality Agreements (the "Warranty Period"). In the event any Good fails to comply with this warranty, and Buyer notifies Seller of such noncompliance within the Warranty Period, Seller shall correct such noncompliance, at its option, by repair or replacement of defective products, F.O.B. Seller's repair plant or factory.

B. Warranty Conditions

The warranties and remedies set forth in this Section are conditioned upon:

Buyer's receipt, handling, storage and maintenance during any such storage, installation, testing, operation and maintenance, including tasks incidental thereto, of Work in normal and proper manner with competent supervision 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 not have been subjected to accident, alteration, abuse or misuse.

C. Exclusivity of Warranties and Remedies

EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 10, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by any warranty in this Section 10. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.**

The Seller shall not be liable for a breach of the warranty set forth herein if: (i) Buyer makes any further use of such Goods after giving notice of breach of warranty; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

THE REMEDIES PROVIDED HEREIN ARE THE BUYER'S EXCLUSIVE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS. Correction of any defect or noncompliance 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, in tort (including negligence or strict liability), or otherwise with respect to or arising out of the Work furnished or performed hereunder.

13. Suspension

If performance under this Contract is held, delayed or rescheduled for not more than 90 days at the request of the Buyer, it will be subject to Section 8. If performance under this Contract is held, delayed or rescheduled for more than 90 days at the request of the Buyer, Seller may define these actions as a termination for Buyer's convenience, and Seller will then be entitled to recover all costs and fees as defined in Paragraph 12.A.1 below.

14. Termination

A. For Convenience

1. This contract may not be terminated by the Buyer for Buyer's convenience. Any attempt to terminate other than for material breach will result in Buyer being charged a reasonable cancellation fee equivalent to all of Seller's costs for labor, materials and overhead identified to the contract which have been incurred up to the date of notice of termination, plus the cost of all special tooling, fixturing, manufacturing equipment, special software, and other materials or supplies required by Seller to complete the contract; together with the payment of an additional amount equal to ten (10) percent of the contract price to compensate Seller for the administrative and overall organizational support required to perform under the contract.

2. This contract may be terminated by the Seller for Seller's convenience only by written notice and upon return of Buyer's Materials and any pre-payments to date of termination. Seller shall not be liable to Buyer for any compensatory damages, including consequential and incidental damages, as a result of termination for Seller's convenience.

B. For Material Breach

In the event either Buyer or Seller commits a material breach (other than Seller's obligations under any of its warranties, for which the remedies provided are exclusive), and the breaching party fails to take steps to remedy such breach within 30 days from receipt of written notice specifying the nature and extent of such breach, the other party may, by subsequent written notice, terminate the Contract. Any recoveries of Buyer and Seller shall be determined by mutual agreement. In no event will any such recovery be in excess of any limitations contained in this Contract as to the types or amounts of damages recoverable.

15. Intellectual Property Rights

A. Proprietary Information Seller may have a proprietary interest in any information that may be furnished pursuant to the Contract. Buyer will keep in confidence and will not disclose any such information without the prior written permission of Seller or use any such information for other than the purpose for which it is supplied. The provisions of this paragraph shall not apply to information, notwithstanding any confidential designation thereof, which is known to Buyer without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally

available to the public without breach of any agreement, or which is received from a third party without limitation or restriction on said third party or Buyer at the time of disclosure.

Seller also has a proprietary interest in the Proposal and the Contract. Accordingly, neither document will be disclosed in whole or in part to third parties without the prior written permission of Seller.

Notwithstanding any other Section of the Contract and/or the Goods provided by Seller can only be exported or re-exported after Buyer has obtained the appropriate export license or authorization from the US Department of Commerce required by the Export Administration Regulations. Buyer's Contract will contain a notice of Buyer's intention to export, or re-export Goods contracted hereunder.

B. Infringement

1. Seller will, at its own expense, defend or at its option settle any suit or proceeding brought against Buyer so far as based on an allegation that any Services, Goods (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States intellectual property rights of others, if Seller is notified promptly in writing and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. Seller will pay the damages and costs awarded in any suit or proceeding so defended after all appeals are exhausted. Seller will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In the event that the Service, Good or any part thereof is held to constitute infringement or its use by Buyer is enjoined, Seller will, at its option and its own expense, either (a) procure for Buyer the right to continue using said Good or Service; (b) replace it with substantially equivalent non-infringing Goods; (c) modify it so it becomes non-infringing; or (d) if all else fails, refund a portion of the price paid to Seller for the infringing Good.

2. Seller will have no duty or obligation to Buyer under this Section to the extent that the Service or Good is (a) supplied according to Buyer's design or instructions, (b) modified by Buyer or its contractors after delivery, or (c) combined by Buyer or its contractors with items not furnished hereunder and by reason of said design, construction, modification or combination, a suit is brought against Buyer. In addition, if by reason of such design, instruction, modification or combination, a suit or proceeding is brought against Seller, Buyer shall protect Seller in the same manner and to the same extent that Seller has agreed to protect Buyer under the provisions of paragraph 13.D.1 above.

3. THIS ARTICLE IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO INTELLECTUAL PROPERTY RIGHTS AND DIRECT OR CONTRIBUTORY INFRINGEMENT AND OF ALL THE REMEDIES OF BUYER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING INTELLECTUAL PROPERTY RIGHTS.

Compliance with this Article as provided herein shall constitute fulfillment of all liabilities of the parties under the Contract with respect to intellectual property rights.

16. Assignment

Seller reserves the right to assign any or all of its rights and obligations under the Contract to a subsidiary, an affiliated company, or successor(s) of interest of Seller, in which event Seller shall notify the Buyer in writing. Buyer may not assign this Contract without Seller's prior written consent.

17. Limitation of Liability

BUYER EXPRESSLY AGREES THAT NEITHER SELLER NOR ITS SUPPLIERS WILL UNDER ANY CIRCUMSTANCES BE LIABLE UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY, OR OTHERWISE, FOR: ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE WHATSOEVER; DAMAGE TO OR LOSS OF PROPERTY, EQUIPMENT AND/OR GOOD; LOSS OF PROFITS OR REVENUE; LOSS OF USE OF BUYER'S MATERIAL; EQUIPMENT, GOOD OR POWER SYSTEM; INCREASED COSTS OF ANY KIND, INCLUDING BUT NOT LIMITED TO CAPITAL COST, FUEL COST AND COST OF PURCHASED OR REPLACEMENT POWER; OR CLAIMS OF CUSTOMERS OF BUYER.

BUYER EXPRESSLY AGREES THAT THE REMEDIES PROVIDED HEREIN ARE EXCLUSIVE AND THAT UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SELLER AND ITS SUPPLIERS UNDER ANY THEORY OF RECOVERY, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER WARRANTY OR OTHERWISE, EXCEED TEN (10) PERCENT OF THE TOTAL PRICE PAID TO SELLER UNDER THE CONTRACT WITH RESPECT TO THE GOODS THAT ARE THE SUBJECT OF THE CLAIM.

THE PROVISIONS OF THIS ARTICLE SHALL PREVAIL OVER ANY CONFLICTING OR INCONSISTENT PROVISIONS SET FORTH ELSEWHERE IN THIS CONTRACT AND SHALL SURVIVE TERMINATION, EXPIRATION OR CANCELLATION OF THIS CONTRACT.

18. Interpretation

The validity, construction and performance of the Contract, shall be governed by and interpreted in accordance with the laws of the State of Ohio, United States, without application of its choice of law rules.

19. Survival

The Article contained in the Contract titled "Limitation of Liability", "Intellectual Property Rights" and all other Articles providing limitation of or protections against liability of Seller and/or its Suppliers, shall apply notwithstanding any other Sections of the Contract and shall survive termination, cancellation or expiration of the Contract.

20. Codes and Standards

Seller will manufacture Goods under this Contract in accordance with the applicable United States codes and standards relating to manufacturing, which prevail as of the date of the Proposal, unless otherwise specified in writing by Seller. Where such codes and standards are not applicable, Seller will manufacture the Goods to Seller's standards. Seller will consider Buyer's request for compliance with new or revised codes and standards effective after the date of the Proposal as a revision in accordance with Section 8 hereof. If not contained in the design specifically in the Seller's Proposal,

charges required to comply with state or local codes and standards shall be brought to Seller's attention prior to the commencement of manufacturing and shall also be subject to Section 8.

21. Government Regulations

Each party hereto shall comply with all applicable laws, regulations, and ordinances. Each party shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Contract. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Contract or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

22. Independent Contractor

Seller shall be an independent contractor with respect to any goods, services, or workmanship provided by Seller hereunder. Neither Seller nor its subcontractors, nor the employees of either, shall be deemed to be servants, employees, or agents of the Buyer.

23. Applicable Law

All questions arising in connection with this transaction shall be resolved in accordance with the Laws of the State of Ohio.

24. Disputes

All disputes, unless previously settled between the parties, shall finally be settled in accordance with the Commercial Rules of Arbitration of the American Arbitration Association by one or more arbitrators appointed in accordance with the rules. The decision of the arbitrators shall be final. Notwithstanding the foregoing, either party may petition a court of appropriate jurisdiction for emergency or injunctive relief to enforce its rights hereunder in which case, Buyer and Seller consent to the exclusive jurisdiction of the State and Federal District courts.

25. Severability

If any term or provision of this Contract is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Contract or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Amendment and Modification

This Contract may only be amended or modified in a writing stating specifically that it amends this Contract and is signed by an authorized representative of each party.

27. Battle of the Forms Not Applicable

The parties agree and it is their intent that the battle of the forms in Section 2-207 of the Uniform Commercial Code shall not apply to this Contract or to any invoice or acceptance form of Seller relating to this Contract. It is the parties' intent that this Contract shall exclusively control the relationship of the parties, and in the event of any inconsistency between any document sent by Buyer to Seller and this Contract, this Contract shall control.