



CS&P TECHNOLOGIES, LP

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CS&P TECHNOLOGIES, LP – TERMS AND CONDITIONS OF SALE

These terms and conditions, the attendant quotation or acknowledgment, and all documents incorporated by reference therein, bind the company(s) which issue the quotation or acknowledgment for the sale of the goods (“Goods”) and/or the license of the software and/or firmware which are preloaded, or to be loaded into the Goods (“Software”) to be provided hereunder (i.e., Chemical Seal & Packing, CS&P, or CS&P Cryogenics), hereinafter “Seller”, and the buyer, hereinafter “Buyer”, and constitute the entire agreement (“Agreement”) between the Buyer and Seller regarding such sale and/or license.

- 1. TERMS OF PAYMENT:** Subject to the approval of Seller’s credit department, terms are F.O.B. shipping point, net 30 days from date on Seller’s invoice in U.S. currency, except for applicable milestone payments set forth in Section 12 below, or export shipments for which Seller may require other arrangements. If any payment owed to the seller hereunder is not paid when due, it shall bear interest at a rate to be determined by Seller which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including attorney’s fees.
- 2. PRICES:** Unless otherwise specified by Seller, Seller’s price for Goods shall remain in effect for thirty (30) days after the date of Seller’s quotation of acceptance of the order for the Goods, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods pursuant to Seller’s standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods to Seller’s price in effect for the Goods at the time the order is released for final manufacture. Notwithstanding any of the foregoing to the contrary, the price for the Goods sold by Seller, but manufactured by others, shall be Seller’s price in effect at the time of shipment to Buyer.
- 3. DELIVERY AND DOCUMENTATION:** All shipping dates are approximate and are based upon Seller’s prompt receipt of all necessary information from Buyer to properly process the order. Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Seller, they shall be provided to Buyer at Seller’s price then in effect.
- 4. EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or unforeseen circumstances or causes beyond Seller’s reasonable control.
- 5. TERMINATION AND SUSPENSION BY BUYER:** Buyer may terminate or suspend its order for any or all of the Good covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice of such termination or suspensions and reimburses Seller for all losses, damages, costs and expenses arising from such termination or suspension.
- 6. LIMITED WARRANTY:** Except for the limitations set forth in Section 7 and except as otherwise expressly provided herein, Seller warrants that the Software will execute the programming instructions provided by Seller, and that the Goods manufactures by Seller will be free from defects in materials or workmanship under normal use and service until the expiration of the earlier of twelve (12) months from the date of initial installation or eighteen (18) months from the date of shipment by Seller. Seller does not warrant that the operation of Software will be uninterrupted. Consumables, including, without limitation, glass parts and electrodes, membranes, liquid junctions, electrolytes and reagents, o-rings, plastic tubing, mechanical seals, cold end software, software kits, etc. are warranted to be free from defects in material and workmanship under normal use and service for a period of ninety (90) days from date of shipment by Seller. Products purchased by Seller from a third party for resale to Buyer (“Resale Products”) shall carry only the warranty extended by the original manufacturer. Buyer agrees that Seller has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If within thirty (30) days after Buyer’s discovery of any warranty defects during the applicable warranty period, Buyer notifies Seller thereof in writing, Seller shall, at its option and as Buyer’s sole and exclusive remedy hereunder, promptly correct any errors that are found by Seller to exist in the Software, pumps, or equipment or repair or replace goods F.O.B. point of manufacture, that portion of the Goods of Software found by Seller to be defective and covered by this limited warranty. All replacements or repairs necessitated by inadequate preventive maintenance, or by normal wear and usage, or by cavitation of pumps, or by fault of Buyer, or by unsuitable power sources or by attack or deterioration under unsuitable conditions, or by abuse, accident, alteration, misuse, improper installation, improper cool down procedures, modification, repair, storage or

handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by an Authorized Seller representative. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Failure by Buyer to give such written notice of defects within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. Good repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Seller and can be amended only in writing signed by an authorized representative of Seller. The warranty for Control Systems software is covered in Seller's standard license agreement referenced in Section 11 herein. Except as otherwise expressly provided in the Agreement, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SOFTWARE.

7. **LIMITATION OF REMEDY AND LIABILITY:** SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSE BY DELAY IN PERFORMANCE. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY HERUNDER SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT UNDER THE LIMITED WARRANTY CLAUSE IN SECTION 6. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE TO BUYER OF THE SPECIFIC GOODS MANUFACTURED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL. SELLER SHALL NOT BE RESPONSIBLE TO SERVICE ANY GOODS OR SOFTWARE WHICH ARE FUNCTIONING WITHIN SELLER'S PUBLISHED SPECIFICATIONS, AND THE LIMITED WARRANTY SET FORTH HEREIN SHALL NOT APPLY WHEN ANY GOOD OR SOFTWARE ARE ORIGINALLY INSTALLED BY SOMEONE OTHER THAN AN AUTHORIZED REPRESENTATIVE OF SELLER, OR IF SERVICE IS REQUIRED DUE TO BUYER'S FAILURE TO OPERATE OR MAINTAIN THE GOOD OR SOFTWARE ACCORDING TO THE OPERATOR'S MANUAL OR WHERE SERVICE IS REQUIRED BECAUSE THE GOODS OR SOFTWARE ARE SUBJECTED TO MISUSE, ABUSE, OR ALTERATION, OR ARE REPAIRED BY SOMEONE OTHER THAN AN AUTHORIZED REPRESENTATIVE OF SELLER.
8. **PATENTS:** Subject to the limitation contained in Section 7, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Seller or use of the Software constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against buyer, provided that buyer: promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provided all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that only the Goods manufactured by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at Sellers' option and expense procure for Buyer the right to continue using the goods, replace them with a non-infringing product or modify them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that buyer shall fully indemnify Seller therefore, if infringement is based upon the use of Goods in connection with goods not manufactures by Seller or in a manner for which the Goods were not designed by the Seller or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing.
9. **INSTALLATION:** Buyer shall be responsible for receiving, storing, installing starting up and maintaining all Goods. Seller shall provide a quotation for services to assist Buyer in these functions if requested.
10. **TAXES:** Any tax or governmental charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, selling or delivering the Goods or of procuring material used therein, and any tax now in effect or increase in same payable by the Seller because of the manufacture, sale, or delivery of the Good, may at Seller's option, be added to the price herein specified.
11. **SOFTWARE AND COMPUTER PROGRAMS:** Buyer is granted a nonexclusive royalty free license only for Buyer's use of the Software subject to the terms and conditions set forth in the license agreement enclosed with the Software upon delivery thereof, which contains limitations on warranty. Under this license Buyer may: (a) Use the Software with the Goods provided; and (b) Adapt the Software for Buyer's use with the Goods. It is recognized and agreed that title to all Control Systems software provided by Seller shall remain with Seller and that such Control Systems software shall be furnished to, and used by, Buyer only after execution of Seller's standard license agreement.
12. **MILESTONE PAYMENTS:** Unless otherwise provided in Seller's written quotation, periodic milestone payment shall be made by Buyer when the price of the Goods exceed \$100,000. In such cases, invoices shall be issued by Seller and paid by Buyer based on the following milestones: Milestone 1: 30% of price upon acceptance of order by Seller. Milestone 2: 30% of price upon release by Seller of approved bills of material to manufacturing for assembly. Milestone 3: 40% of price upon shipment of the Good by Seller. Seller reserves the right to designate additional Milestones where the Agreement provides for engineering service in excess of \$50,000.

- 13. BUYER SUPPLIED DATA:** To the extent that Seller has relied upon any specifications, information, representation of operating conditions or other data supplied in writing by Buyer to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.
- 14. GENERAL PROVISIONS:** (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) There are no understandings, agreements or representations, expressed or implied not specified in the Agreement. (c) No action, regardless of form, arising out of transaction under the Agreement, may be brought by either party more than two (2) years after the cause of action has occurred. (d) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (e) The Agreement is formed and shall be construed, performed and enforced under the laws of the State of Texas. However, Buyer and Seller agree that the proper venue for all actions arising under the Agreement shall be only in the State where the Good involved in such actions were manufactured. (f) If Goods supplied hereunder are to be used in nuclear applications, including, without limitation, any power generation facility, Buyer fully indemnifies Seller pursuant to Seller's, "Special Nuclear Terms of Sale".