



Terms & Conditions

1. Sale; Delivery.

1.1 Seller hereby sells to Buyer, and Buyer hereby purchases from Seller, the equipment/good/materials/services (the "Equipment") described in "The Proposal". The terms and conditions stated herein shall govern the transaction between Buyer and Seller. Any additional terms or conditions supplied by Buyer, unless specifically agreed to in writing by Seller, are rejected and shall be deemed null, void, and to no effect.

1.2 Buyer will arrange all customs' clearances, if any, at its expense. Buyer will reimburse Seller for any additional transportation costs incurred by Seller because of delays in customs due to Buyer's failure to comply with all customs requirements for the importation of the Equipment, including, without limitation, the payment of duties and other charges.

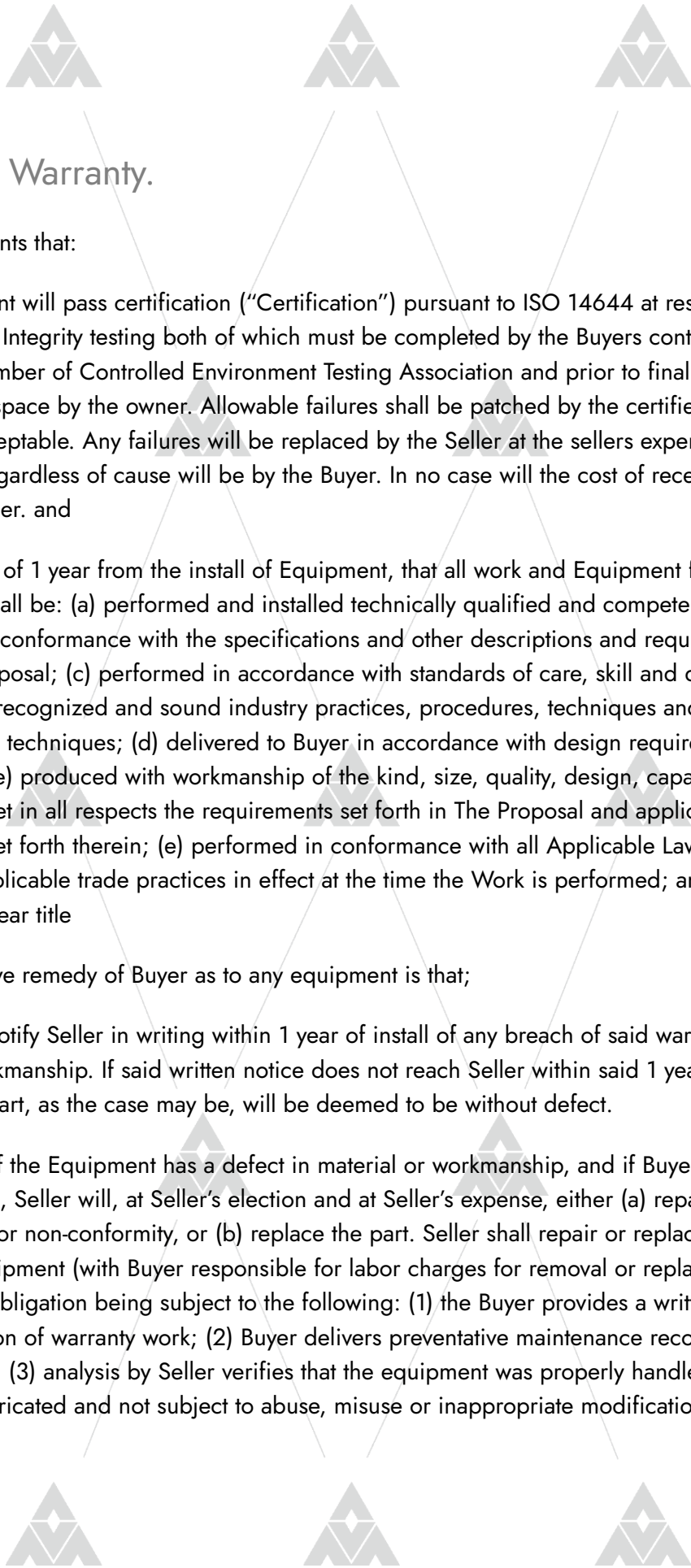
1.3 Permitting. All additions, delays, changes, required modifications and adjustments required by local building codes and/or local building officials will be at the expense of the buyer. Any work required outside of what is listed in the attached proposal is not included and if required will be at buyers' expense.

1.4 Unforeseen Conditions. Should Seller encounter either:

(i) latent or unknown conditions (including subsurface structures such as utilities, mains, pipes, tanks, and telephone cables, human remains, burial markers, archeological sites, wetlands or hazardous materials or any wastes not identified in The Proposal); or

(ii) concealed or unknown conditions at variance with the conditions indicated by the The Proposal or information furnished to or obtained by Seller; or

(iii) unknown subsurface, concealed, or latent conditions that differ materially from those ordinarily encountered, and said conditions cause Seller to incur additional expense or time to complete the services, the Parties shall agree on a revised Proposal/Scope of Work providing for an equitable adjustment of the price and/or time of performance to account for such unknown or changed conditions.



2. Limited Warranty.

2.1 Seller warrants that:

(i) the Equipment will pass certification ("Certification") pursuant to ISO 14644 at rest (if applicable); and In-situ filter Integrity testing both of which must be completed by the Buyers contractor a recognized member of Controlled Environment Testing Association and prior to final acceptance of the cleanroom space by the owner. Allowable failures shall be patched by the certifier and will be considered acceptable. Any failures will be replaced by the Seller at the sellers expense. Costs of any retesting regardless of cause will be by the Buyer. In no case will the cost of recertification be born by the Seller. and

(ii) for a period of 1 year from the install of Equipment, that all work and Equipment furnished under The Proposal shall be: (a) performed and installed technically qualified and competent personnel; (b) provided in conformance with the specifications and other descriptions and requirements set forth in The Proposal; (c) performed in accordance with standards of care, skill and diligence consistent with recognized and sound industry practices, procedures, techniques and workmanship, procedures and techniques; (d) delivered to Buyer in accordance with design requirements stated in The Proposal; (e) produced with workmanship of the kind, size, quality, design, capability, and materials to meet in all respects the requirements set forth in The Proposal and applicable Buyer specifications set forth therein; (e) performed in conformance with all Applicable Laws, Applicable Permits and applicable trade practices in effect at the time the Work is performed; and (f) conveyed with free and clear title

2.2 The exclusive remedy of Buyer as to any equipment is that;

(i) Buyer shall notify Seller in writing within 1 year of install of any breach of said warranty, defect in material or workmanship. If said written notice does not reach Seller within said 1 year, then the Equipment or part, as the case may be, will be deemed to be without defect.

(ii) If any part of the Equipment has a defect in material or workmanship, and if Buyer timely notifies Seller in writing, Seller will, at Seller's election and at Seller's expense, either (a) repair or correct the defect and/or non-conformity, or (b) replace the part. Seller shall repair or replace (at Seller's option) the equipment (with Buyer responsible for labor charges for removal or replacement thereof), such obligation being subject to the following: (1) the Buyer provides a written request and detail explanation of warranty work; (2) Buyer delivers preventative maintenance records of the equipment; and (3) analysis by Seller verifies that the equipment was properly handled, installed, maintained, lubricated and not subject to abuse, misuse or inappropriate modification.



(iii) Any equipment that is repaired or replaced by Seller shall be redelivered to Buyer F.O.B. Sellers Facility and shall be warranted, subject to the terms hereof, until its shareholders, directors, officers, affiliates, predecessors, successors, and assigns expiration of the original Warranty Period.

(iv) Any manufacture warranties extending beyond this 1 year period will be passed through to the Buyer.

(v) Notwithstanding the foregoing, Seller shall have no warranty obligations unless and until Buyer performs its obligation hereunder, including payment in full of the purchase price.

2.3 This warranty does not cover any defects or costs caused by:

- (i) modification, alteration, repair or service of the Equipment by anyone other than Seller;
- (ii) physical abuse to, or misuse of, the Equipment or operation thereof; or
- (iii) any use of the Equipment other than that for which it was intended.

This warranty also excludes all costs arising from routine maintenance, including the replacement of any parts required by such maintenance. Seller reserves the right to modify, alter or improve the Equipment, or parts thereof, at any time without incurring an obligation to modify, alter, improve or replace the Equipment, or parts thereof, previously sold.

2.4 SELLER'S EXPRESS WARRANTIES AS STATED IN THIS AGREEMENT ARE EXCLUSIVE. EXCEPT AS EXPRESSLY PROVIDED IN PARAGRAPH 2,

(i) SELLER MAKES NO PROMISE OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT,

(ii) SELLER WILL HAVE NO OBLIGATION OR LIABILITY TO BUYER WITH RESPECT TO ANY DEFECT IN THE EQUIPMENT OR ANY FAILURE TO PASS CERTIFICATION OR ANY DAMAGE TO OR CONDITION OF OR IN THE EQUIPMENT, AND

(iii) BUYER WILL HAVE NO OTHER REMEDIES IN RESPECT OF SUCH DEFECT, NONCERTIFICATION, DAMAGE OR CONDITION.

THERE ARE NO WARRANTIES WHICH ARE PROVIDED OR WHICH EXTEND BEYOND THE DESCRIPTION STATED HEREIN. ANY EXPRESS WARRANTY NOT PROVIDED HEREIN, AND ANY REMEDY WHICH BUT FOR THE WARRANTY CONTAINED HEREIN MIGHT ARISE BY IMPLICATION OR OPERATION OF LAW, IS HEREBY EXCLUDED AND DISCLAIMED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE OR USE.



THIS WARRANTY GIVES BUYER SPECIFIC LEGAL RIGHTS, AND BUYER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

2.5 REGARDLESS OF THE CIRCUMSTANCES, AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, OR ELSEWHERE:

(i) The total combined and cumulative liability of Seller, including its subcontractors and material men, if any, arising out of or in connection with this

The Proposal and/or this Agreement, however caused, whether such liability is based on breach of any express or implied warranty or whether such liability arises in contract, negligence, strict liability, tort, product liability, statute, or otherwise, shall not exceed the amount paid to Seller by Buyer under the applicable Proposal; and

(ii) In no event shall Seller be liable for consequential, incidental, special, exemplary, or punitive damages, regardless of (a) whether such damages were foreseeable, (b) whether or not Buyer was advised of the possibility of such damages, and/or (c) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based.

Consequential damages, as used herein, shall be deemed to include loss of use, loss of income, loss of revenue, lost profits, loss of financing, loss of business, loss of reputation, business interruptions, liquidated damages, and/or loss of productivity or services.

3. Payment Terms.

3.1 Unless otherwise stated in The Proposal, Seller will submit pay applications to Buyer, and a final bill within sixty (60) days of completion of the Work. Each invoice shall specify the days and dates for which compensation is claimed, and the applicable work phase. Buyer shall pay all invoice amounts within ten (10) days of receipt of the invoice from Seller. Payment of the amounts the Buyer owes under this Agreement will be made without set off or counterclaim, but any such payment will be without prejudice to the rights and obligations of Buyer and Seller under this Agreement. If any amount owing under this Agreement is not paid when due, then Buyer will pay Seller interest on that amount at the rate of eighteen percent (18%) per annum from the due date thereof until it is paid.

3.2 If Seller does not receive any payment within ten (10) days after the applicable payment is due, Seller may cancel this Agreement by giving Buyer notice of cancellation at any time prior to receipt of such payment. Seller shall be entitled to retain any deposits previously paid by Buyer as liquidated damages and not as a penalty. Each buyer and Seller acknowledge that Seller's damages would be difficult to determine.



4. Return of Deposits.

In the event that Buyer cancels this Agreement prior to the start of material production by Seller, Buyer shall be responsible for paying 30% of the contract price. In the event that Buyer cancels this Agreement after the start of material production, but prior to shipment, Buyer is responsible for paying 75% of the contract price as restocking fee and Seller will retain the materials. In the event that Buyer cancels this Agreement after shipment of materials and prior to commencement of installation, Buyer shall pay 90% of the total contract amount.

5. Shipment Estimates.

It is understood that shipment dates are best estimates and can be affected by delays in drawing approval, delays in permit approval, material availability, and other circumstances outside of sellers control. Seller will not be liable for delays in shipments and final completion dates.

6. Taxes and Other Charges.

Unless Buyer furnishes Seller with a properly executed exemption certificate, Buyer will pay any applicable sales or use tax or other tax or governmental charge imposed on or with respect to the sale or use of the Equipment other than any tax on the overall net income of Seller. Buyer is responsible for filing sales or use tax directly with the necessary jurisdictions.

7. Indemnity.

(i) Seller shall indemnify, defend and hold harmless the Buyer, its directors, officers, agents, and employees from and against any and all claims, causes of action, suits, losses, costs, fines, taxes, penalties and damages, including, reasonable attorneys' fees ("Losses"), related to personal injury, illness, disease, death, or property damage, which are caused by the negligence, willful misconduct, or intentional conduct of Seller, its subcontractors, or its employees, and which relate to the performance or non-performance of the services provided; provided, however, Seller's duty to defend, indemnify and/or hold harmless shall not apply to the extent the Losses were caused by the actions or omissions of any Indemnified Party; and

(ii) Buyer shall indemnify, defend and hold harmless the Seller, its directors, officers, agents, and employees from and against any and all claims, causes of action, suits, losses, costs, fines, taxes, penalties and damages, including, reasonable attorneys' fees ("Losses"), related to personal injury, illness, disease, death, or property damage, which are caused by the negligence, willful misconduct, or intentional conduct of Buyer, its representatives, agents, and employees; provided, however,



Buyer's duty to defend, indemnify and/or hold harmless shall not apply to the extent the Losses were caused by the actions or omissions of any Indemnified Party.

8. Force Majeure.

Under the terms of this Agreement, "Force Majeure" shall mean any act of God, strikes, lockouts, other industrial disturbances, governmental action, wars or war-like action (whether actual, impending or expected and whether de jure or de facto), epidemics, pandemics, landslides, lightning, earthquakes, tornados, fires, storms, floods, washouts, civil disturbances, explosions, breakage or accident to equipment or machinery, confiscation or seizure by any government or public authority, any orders, restrictions or executive actions by any government or public authority, nuclear reaction or radiation, radioactive contamination, and any other causes which make fulfillment of Seller's obligations commercially impossible or commercially impractical, whether of the kind herein enumerated or otherwise, that are not reasonably within Seller's control, and that by the exercise of due diligence, Seller is not able to avoid or overcome. Except as specifically provided otherwise in this Agreement, if Seller is rendered unable, wholly or in material part, by reason of Force Majeure to carry out any of its obligations hereunder, then on Seller giving notice and reasonably full particulars of such Force Majeure to Buyer within seven (7) days after the occurrence of the cause relied on, such obligation of the Seller, so far as it is effected by such Force Majeure event, shall be suspended during the continuance thereof, and the obligations and rights of the affected Party will be extended on a day-to-day basis for the time period equal to the period of the excusable delay; however Seller agrees to undertake reasonable steps to mitigate the effect of such delays and such cause or delay shall, as far as reasonably practicable, be remedied with all reasonable dispatch.

9. Substitution of Materials.

In the event that the Seller is unable to procure or purchase the materials called for in the building plans or as contained in the Design Documents, which are to be contained in the project and Seller's inability is due to shortages, work stoppage, manufacturer's delays and other like causes, Seller may substitute other and different materials in the place thereof and Buyer hereby expressly agrees to accept such substitutions provided that they occur in writing and that said substitution is acceptable to the local municipality if applicable and further, that the said substitutions are reasonable and of comparable quality to The Buyer. Should the Buyer choose not to accept the proposed alternative materials, the Seller shall not be held liable for construction delays or any damages, including liquidated damages, associated with the delays. In the event, the substituted materials exceed the originally quoted material costs, the Buyer agrees to bear the cost difference therein.





10. Market Volatility and Economic Price Adjustment Considerations.

Buyer acknowledges that The Proposal is presented during a period of material price volatility. Seller has considered materials and equipment and labor in The Proposal at prices available as of the date thereof. In the event of extraordinary price increases (in the amount of 3% or more) in the market price of fuel, materials, raw materials, equipment, labor and other production costs of Seller, Seller shall have the right to recover, and Buyer agrees to pay, such incremental price increases. Seller shall substantiate such changes in cost with documentation satisfactory to Buyer.

11. Site Access.

Unless otherwise stated in The Proposal, Buyer is responsible for obtaining, maintaining, and reinstating access to the site of the Work. Provided such rules, procedures and regulations are made known to Seller prior to tendering The Proposal, Seller shall make itself familiar with, and shall comply with, all of Buyer's rules, procedures, and regulations pertaining to the site, including security, safety, identification, and entrance procedures. Buyer rules, procedures and regulations which are made known to Seller after entering tendering The Proposal, and which effect Seller's performance of the work, efficiency in performance of the work, or additional time or expense, may result in the need for a change order and/or equitable adjustments.

12. Ownership of Work Product and Information; Examination of Records.

12.1 The following terms shall have the following meanings in this paragraph:

12.1.2 "Deliverables" means all documents, work product and other materials that are delivered to Buyer hereunder, or prepared by or on behalf of Seller in the course of performing the Services, including all software, software designs, code, data, and technical components, and all creative designs, images, artwork, and text.

12.1.2 "Intellectual Property Rights" means all (i) patents, patent disclosures and inventions (whether patentable or not), (ii) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (iii) copyrights and copyrightable works (including computer programs), and rights in data and databases, (iv) trade secrets, know-how and other confidential information, and (v) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or



extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

12.1.3 “Pre-Existing Materials” means all documents, data, know-how, methodologies, software and other materials, including computer programs, reports and specifications, provided by or used by Seller in connection with performing the Services, (i) in each case developed or acquired by Seller prior to execution of the applicable Order or (ii) developed during the course of a Work Order, but which (a) are developed at Seller’s cost, (b) are not uniquely applicable to the particular specifications, characteristics or functions of the Deliverables, (c) are generic in nature, used generally in the software or information technology consulting industry to perform functions common to software or Internet applications, or (d) do not, themselves, provide a significant competitive advantage to Seller or any competing organization in the Seller’s industry, such as login screens, password entry, and methods for manipulating animation or visual elements. Pre-Existing Materials also include any industry data, and any generic analyses of such data that do not contain any of Buyer’s confidential information.

12.1.4 “Buyer Materials” means all internal documents, data, know-how, methodologies, software and other materials, including computer programs, reports, plans and specifications, as may be available or provided by Buyer to Seller, or which Seller may reasonably request in order to carry out the Work, provided that

Buyer may refuse to provide any such materials either deems in its sole discretion to be particularly sensitive or confidential.

12.2 Except as set forth in Section 12.4, Seller is, and shall be, the sole and exclusive owner of all right, title and interest in and to the Deliverables, including all Intellectual Property Rights therein. Buyer agrees, and will cause its personnel to agree, that the Deliverables do not constitute “works made for hire” for Buyer within the meaning of the Copyright Act of 1976, as amended, and shall be the exclusive property of Seller, except as set forth in Section 12.4. To the extent that any of the Deliverables do constitute a “work made for hire,” Buyer hereby irrevocably assigns, and shall cause its personnel to irrevocably assign to Seller, in each case without additional consideration, all right, title and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein. Buyer shall cause its personnel to irrevocably waive, to the extent permitted by applicable law, any and all claims such personnel may now or hereafter have in any jurisdiction to so-called “moral rights” with respect to the Deliverables. Upon the request of Seller, Buyer shall, and shall cause its personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Seller to prosecute, register, perfect or record its rights in or to any Deliverables.



12.3 Seller and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to the Deliverables and the Pre-Existing Materials, including all Intellectual Property Rights therein.

12.4 Buyer and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to the Buyer Materials, including all Intellectual Property Rights therein. Seller shall have no right or license to use any Buyer Materials except solely during the Term of this Agreement to the extent necessary to perform the Work. In the event Buyer Materials are incorporated into the Deliverables, Buyer hereby grants Seller a limited, irrevocable, perpetual, non-exclusive, fully paid-up, royalty-free, worldwide license to use, perform, display, execute, reproduce, distribute, transmit, modify (including to create derivative works), import, make, have made, sell, offer to sell and otherwise exploit any Buyer Materials. All other rights in and to the Buyer's Materials are expressly reserved by Buyer.

13. Notices.

Notices and other communications under this Agreement must be in writing and sent to the parties at their respective addresses or fax numbers set forth above or to such other address or fax number as to which notice is given. Notice will be deemed given on receipt.



14. Amendment.

This Agreement may be amended only by an instrument in writing signed by Seller and Buyer.

15. Assignment.

Buyer may not transfer or assign any of its rights under this Agreement without Seller's written consent.

16. Waiver.



Neither party may waive any of its rights or any obligation of the other party or any provision of this Agreement except by an instrument in writing signed by that party.

17. Section Headings.

Section headings are for reference purposes only and shall not in any way affect the meaning or interpretation of any provision of this Agreement.





18. Governing Law; Arbitration.

This Agreement will be governed by and construed in accordance with the law of the State of Ohio, U.S.A. Any dispute or claim arising under or with respect to this Agreement will be resolved by binding arbitration in Cleveland, Ohio, U.S.A., to be conducted in accordance with the Rules for Commercial Arbitration of the American Arbitration Association before a single arbitrator. The decision or award of the arbitrator will be final and binding upon the parties. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. Notwithstanding the provisions for arbitration set forth above, either party may seek, without posting bond or other security, injunctive and other equitable relief in any court of competent jurisdiction.