

STANDARD TERMS AND CONDITIONS OF SALE

1. TERMS APPLICABLE

The Terms and Conditions of Sale listed below are the exclusive terms and conditions applicable to quotations made and orders acknowledged by Flottweg Separation Technology, Inc. (“**Seller**”) for the sales of products, equipment and parts relating thereto (“**Products**”). This quotation or acknowledgment is expressly made conditional upon Buyer’s assent to such terms and conditions. Any of Buyer’s terms and conditions which are in addition to or different from those contained herein, which are not separately agreed to by Seller in writing are hereby objected to and shall be of no effect. Objections to any terms and conditions herein shall be deemed waived if Seller does not receive written notice thereof within 20 days of the date of this quotation or acknowledgment. Buyer in any event will be deemed to have assented to the terms and conditions contained herein if delivery of any Product is accepted. The term “this Agreement” as used herein means this quotation or acknowledgment or purchase order, together with any attachment hereto, any documents expressly incorporated by reference and these Standard Terms and Conditions of Sale. In the event of any conflict between these STANDARD TERMS AND CONDITIONS OF SALE and any provision in Seller’s quotation or any other correspondence, these TERMS shall control.

2. DELIVERY

Delivery dates are good faith estimates and do not mean that “time is of the essence”. Buyer’s failure to promptly make advance or interim payments, supply technical information or drawings, or failure to approve submittals beyond the standard two (2) weeks included in the project timeline, will result in a commensurate and automatic extension of the delivery deadline, without additional notice to the buyer. Upon and after delivery, title and risk of loss or damage to the Products shall be Buyer’s. Unless otherwise agreed in writing by Seller, delivery of the Products and parts hereunder will be made F.O.B., Seller’s plant (or F.O.B., point of manufacture for any Product shipped direct to Buyer from any location other than Seller’s plant) or D.D.P. (Delivered Duty Paid) per INCOTERMS 2010 for Products and parts originating in Germany and delivered inside the United States or, CIF (Cost Insurance and Freight) Port of Entry INCOTERMS 2010 for Products and parts delivered outside the United States.

3. WARRANTY

- a. Seller warrants to Buyer that the Products manufactured by it will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the Products and shall expire on the earlier to occur of 12 months from initial operation of the Products and 18 months delivery from delivery thereof (the “Warranty Period”). If during the Warranty Period Buyer discovers a defect in material or workmanship and gives Seller written notice thereof within 10 days of such discovery, Seller will either deliver to Buyer, a replacement part or repair the defect in place. Seller will have no warranty obligations under this paragraph 3(a): (i) if the Products have not been operated and maintained in accordance with generally approved industry practice and with Seller’s specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by
-

someone other than the Seller or have been intentionally or accidentally damaged, or (v) for corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable.

- b. Seller further warrants to Buyer that at delivery, the Products manufactured by it will be free of any liens or encumbrances. If there are any such liens or encumbrances, Seller will cause them to be discharged promptly after notification from Buyer of their existence.
- c. THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- d. The remedies provided in paragraphs 3(a) and 3(b) are Buyer's exclusive remedy for breach of warranty.
- e. With respect to any Product or part thereof not manufactured by Seller, Seller shall pass on to Buyer only those warranties made to Seller by the manufacturer of such Product or part which are capable of being so passed on.

4. **LIMITATION OF LIABILITY**

Notwithstanding any other provision in this Agreement, the following limitations of liability shall apply: (a) In no event, whether based on contract, tort (including negligence), strict liability or otherwise, shall Seller, its officers, directors, employees, sub-contractors, suppliers or affiliated companies be liable to Buyer or any third party for loss of profits, revenue or business opportunity, loss by reason of shutdown of facilities or inability to operate any facility at full capacity, or cost of obtaining other means for performing the functions performed by the Products, loss of future contracts, claims of customers, cost of money or loss of use of capital, in each case whether or not foreseeable, or for any indirect, special, incidental or consequential damages of any nature. (b) At any time that Seller, in its sole and absolute discretion, determines that the Products will not meet the specifications required by this Agreement and/or will not be satisfactory to Buyer without the expenditure of funds in excess of 20% of the contract price including, but not limited to, funds to pay labor costs and expenses, Seller shall have the right to take back the Products in exchange for a full refund of the contract price in which case the refund amount shall be the limit of the aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with Products or this Agreement or from the performance or breach thereof. If Seller elects to take back the Products pursuant to the preceding sentence, Buyer shall cooperate with Seller's efforts and Seller shall be responsible for arranging and coordinating the return of the Products to Seller. (c) Except as set forth in subparagraph (b) above, the aggregate liability of Seller, its officers, directors, employees, subcontractors, suppliers or affiliated companies, for all claims of any kind for any loss, damage, or expense resulting from, arising out of or connected with Products or this Agreement or from the performance or breach thereof, together with the cost of performing make good obligations to pass performance tests, if applicable, shall in no event exceed 20% of the contract price.

5. **TAXES**

Seller's prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales use, excise or other tax applicable to the sales or use of the Products shall be billed to and paid by Buyer unless Buyer provided to Seller a tax exemption certificate acceptable to the relevant taxing authorities.

6. SECURITY INTEREST

Seller shall retain a purchase money security interest and Buyer hereby grants Seller lien upon and security interest in the Products until all payments hereunder have been made in full. Buyer acknowledges that Seller may file a Form UCC-1 financing statement and may take all other action it deems reasonably necessary to perfect and maintain such security interest in Seller and to protect Seller's interest in the Products.

7. SET OFF

Neither Buyer nor any of its affiliates shall have any right to set off claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise.

8. PATENTS

Unless the Products or any part thereof are designed to Buyer's specifications and provided the Product or any part thereof is not used in any manner other than as specified or approved by Seller in writing, (i) Seller shall defend against any suit or proceeding brought against the Buyer to the extent based on a claim that any Product, or any part thereof, infringes any United States patent; provided Seller is notified promptly in writing and given the necessary authority, information and assistance for the defense of such suit or proceeding; (ii) Seller shall satisfy any judgment for damages entered against Buyer in such suit; and (iii) if such judgment enjoins Buyer from using any product or a part thereof, then Seller shall, as its option: (a) obtain for Buyer the right to continue using such Product or part; (b) eliminate the infringement by replacing or modifying all or part of the Products; or (c) take back such Product or part and refund to Buyer all payments on the purchase price which Seller has received, in which case neither Buyer nor Seller will have any claim against the other under this Agreement or arising out of the subject matter of this Agreement. The foregoing states Seller's entire liability for patent infringement by any Product or part thereof.

9. TERMINATION

Buyer may only terminate its order upon written notice to Seller and upon payment to Seller of Seller's termination charges, which shall be specified to Buyer and shall take into account among other things expensed (direct and indirect) incurred and commitments already made by Seller and an appropriate profit; provided, that in no event shall Seller's termination charges be less than 25% of the contract price. In the event of the bankruptcy or insolvency of Buyer or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller shall be entitled to terminate any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

10. PAYMENT

- a. Terms of payment shall be as per corresponding offer. In the event of conflicting or missing information, payments terms shall be:
 - i. 50% due upon issuance of Purchase Order
 - ii. 50% due upon notice of readiness to ship
 - b. Seller shall invoice Buyer for such amounts as of the indicated dates, and Buyer will pay each such invoice within thirty (30) days after receipt of such invoice.
 - c. If Buyer uses a third party service for invoicing and/or payment, any costs associated with registering, renewal, or reductions in the amount remitted to Seller, shall be the Buyer responsibility. They will be added to the project cost and invoiced, either as a separate line item on the next payment milestone, or as a separate invoice.
-

11. CHANGES

Seller will not make changes in the Products unless Buyer and Seller have executed a written Change Order for such change. Such Change Order will include an appropriate adjustment to price and delivery terms. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the Change Order will include appropriate modifications to this Agreement. If, after the date of this quotation or acknowledgment, new or revised governmental requirements should require a change in the Products, the change will be subject to the paragraph 10. Payment terms for any Change Order shall be due, in full, upon the next payment milestone.

12. CONFIDENTIALITY

Buyer acknowledges that the information which Seller submits to Buyer in connection with this quotation or acknowledgment includes Seller's confidential and proprietary information, both of a technical and commercial nature. Buyer agrees not to disclose such information to third parties without Seller's prior written consent, Seller grants to Buyer a non-exclusive, royalty-free, perpetual license to use Seller's confidential and proprietary information for purposes of this specific order and the Products that are the subject hereof only. Buyer further agrees not to permit any third party to fabricate the Products or any parts thereof from Seller's drawings or to use the drawings other than in connection with this specific order. Buyer will defend and indemnify Seller from any claim, suit or liability based on personal injury (including death) or property damage related to any Product or part thereof which is fabricated by a third party without Seller's prior written consent and from and against related costs, charges and expenses (including attorney's fees). All copies of Seller's drawings shall remain Seller's property and may be reclaimed by Seller at any time.

13. END USER

If Buyer is not the end user of the Products sold hereunder (the "End User"), then Buyer will use its best efforts to obtain the End User's written consent to be bound to Seller by the provisions of paragraph 3, 4, 5 and 11 hereof. If Buyer does not obtain such End User's consent, Buyer shall defend and indemnify Seller and Seller's agents, employees, subcontractors, and suppliers from any action, liability, cost, loss, or expense for which Seller would not have been liable or from which Seller would have been indemnified if Buyer had obtained such End User's consent.

14. FORCE MAJEURE

- a. Force Majeure Defined. For the purpose of the Agreement "Force Majeure" will mean all unforeseeable events, beyond the reasonable control of either party which affect the performance of this Agreement, including, without limitation, acts of God, acts or advisories of governmental or quasigovernmental authorities, laws or regulations, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, insurrections, riots, epidemics, pandemics, outbreaks of infectious disease or other threats to public health, lightning, earthquakes, fires, storms, severe weather, floods, sabotage, delays in transportation, rejection of main forgings and castings, lack of available shipping by land, sea or air, lack of dock lighterage or loading and unloading facilities, inability to obtain labor or materials from usual sources, application of governmental tariff(s), serious accidents involving the work of suppliers or sub-suppliers, thefts and explosions. If the Force Majeure event is the application of any new governmental tariff(s), Seller shall have the right to terminate this Agreement by proving written notice to Buyer; provided, however, that Buyer shall have the option of paying such tariff(s), or a mutually agreed-
-

upon portion thereof, which shall be added to the purchase price by providing written notice to Seller within five (5) business days of receipt of the termination notice from Seller in which case the Agreement shall continue despite the applicable new governmental tariff(s).

- b. Suspension of Obligations. If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.
- c. Option to Terminate. If the period of suspension or reduction of operations will extend for more than four (4) consecutive months or periods or suspension or reduction total more than six (6) months in any twelve (12) month period, then either Buyer or Seller may terminate this Agreement.

15. INDEMNIFICATION

Seller agrees to defend and indemnify Buyer from and against any third-party claim for bodily injury or physical property damage ("Loss") arising in connection with the goods provided by Seller hereunder or the Work performed by Seller hereunder, but only to the extent such Loss has been caused by the negligence, willful misconduct or other legal fault ("Fault") of Seller. Buyer shall promptly tender the defense of any such third-party claim to Seller. Seller shall be entitled to control the defense and resolution of such claim, provided that Buyer shall be entitled to be represented in the matter by counsel of its choosing at Buyer's sole expense. Where such Loss results from the Fault of both Seller and Buyer or a third party, then Seller's defense and indemnity obligation shall be limited to the proportion of the Loss that Seller's Fault bears to the total Fault.

16. INSURANCE

Seller shall maintain commercial general liability with limits of not less than \$1,000,000 per occurrence and in the aggregate covering claims for bodily injury (including death) and physical property damage arising out of the Work. Seller shall also provide workers' compensation insurance or the like as required by the laws of the jurisdiction where the Work will be performed, and owned and non-owned auto liability insurance with limits of not less than \$1,000,000 combined single limit. Buyer shall be designed as an additional insured under Seller's commercial general liability insurance and auto liability insurance coverages, and Seller will provide a Certificate of Insurance certifying the existence of such coverages upon request.

17. NON-SOLICITATION OF EMPLOYEES

Buyer shall not knowingly, directly or indirectly, for Buyer or on behalf of any person or entity hire or attempt to hire any employee of Seller or take any other action which would encourage any such employee to leave the employment of Seller. The obligation set forth in the preceding sentence shall continue for a period of two years from the last purchase by Buyer of any Products, and apply to all employees and ex-employee of Seller. The restrictive period set forth in this paragraph shall toll during any period when Buyer is in violation of the same. In addition to all other remedies, Seller shall be entitled to its reasonable attorneys' fees and costs associated with the enforcement of this paragraph.

18. GENERAL

- a. Seller represents that any Products or parts thereof manufactured by seller will be produced in compliance with all applicable Federal, State and local laws applicable to their manufacture and in accordance with Seller's engineering standards. Seller shall not be liable for failure of the Products to comply with any other specifications, standards, laws or regulations.
- b. This Agreement shall inure only to benefit of Buyer and Seller and their respective successors and assigns. Any assignment of this Agreement or any of the rights or obligations hereunder, by either party without the written consent of the other party shall be void.
- c. This Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products, and any prior course of dealings or usage of the trade not expressly incorporated herein.
- d. This Agreement (including these standard terms and conditions of sale) may be modified, supplemented or amended only by a writing signed by an authorized representative of Seller. Seller's waiver of any breach by Buyer of any terms of this Agreement must also be in writing and any waiver by Seller or failure by Seller to enforce any of the terms and conditions of this Agreement at any time, shall not affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition thereof.
- e. **This Agreement and the performance thereof will be governed by and construed according to the laws of the State of Kentucky. The parties hereto irrevocably submit to the jurisdiction of the Federal and State courts sitting in Boone County, Kentucky and waive any claims as to inconvenient forum. In the event this Agreement pertains to the sale of any goods outside the United States, the parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this Agreement.**