

## General Terms and Conditions of Sale

Seller shall provide only the materials, equipment, the labor and services described in this Proposal in accordance with, and subject to, the following terms and conditions which are part of the Contract between Seller and Buyer and which are accepted by Buyer if Buyer either issues a purchase order covering the Work or otherwise authorizes the Seller to perform the Work. No other material, equipment, labor or services of any nature is included in the price stated in the Proposal. Buyer acknowledges it has inspected, examined, and studied all plans, specifications, prints, drawings, and material lists furnished by Seller and that it has approved the same.

### 1. DEFINITIONS.

- A. Seller shall be defined as Schenck USA Corp., a New York corporation with its principal place of business located at 535 Acorn Street, Deer Park, New York 11729 or any of its subsidiary companies or divisions issuing the Proposal to Buyer.
- B. Buyer shall be defined as the company or entity contracting for the provision of materials, equipment, labor, services and/or the company or entity that receives the Proposal.
- C. Contract shall be defined as the Terms and Conditions, Proposal and any attachments, drawings, specifications or other documents that are incorporated by reference, as each may be amended, modified or supplemented from time to time by mutual agreement of the Parties together with Buyer's Acceptance. As stated above, nothing in the Buyer's Acceptance shall have the effect of altering or changing the terms, conditions and provisions of the Terms and Conditions or Proposal.
- D. Proposal shall be defined as the proposal issued by Seller to Buyer and shall contain specific provisions for such items as the Work, price and delivery dates and which is subject to these Terms and Conditions.
- E. Work shall be defined as all labor, services, materials, supplies, equipment or other items or documentation furnished by Seller to Buyer pursuant to and in accordance with the provisions of the Proposal.

**2. VALIDITY.** Unless otherwise provided, the Proposal is subject to acceptance by Buyer within thirty (30) days from the Proposal date. Prior to such acceptance, prices are subject to change without notice.

**3. DELIVERY.** Unless otherwise provided, all shipments of materials and equipment shall be made by Seller Ex-works Origin. All transportation and storage costs and any special packing costs will be charged to Buyer. Seller may prepay such charges and add these to the invoice. Absent timely instructions from Buyer, Seller will select method of transportation and routing of shipment. The Contract is based on the current freight rates and the price is subject to adjustment in the event that a change in such rates affects Seller's cost of performance hereunder. Prices quoted are for furnishing and shipping complete, or in accordance with the delivery schedule specified, the quality or quantities listed for each item. Should shipping releases or schedules be changed for any reason beyond Seller's control, Seller reserves the right to invoice according to work performed by Seller through the date of any such change. If Buyer declines or is unable to take delivery at the time(s) specified in the Proposal or Contract, Seller will have the equipment stored for Buyer at Buyer's risk and account, and the materials shall be considered "delivered." Buyer shall pay storage, handling and re-handling charges and continue to make payments according to the payment terms contained herein.

**4. RISK OF LOSS.** Title and risk of damage to or loss of materials or equipment shall pass to Buyer upon delivery of material or equipment to carrier at Ex-works Origin. No claim will be allowed unless made by Buyer within 7 days from receipt of shipment. Loss for damage to, or destruction of, the material or equipment shall not in any manner release the Buyer from the obligation to make payment on any amount owed to Seller.

**5. SPIN TESTING, BALANCING SERVICES.** Buyer understands that there is an inherent risk in spin-testing or balancing Buyer's parts. Buyer assumes that risk in delivering the parts to the Seller for spin-testing or balancing, and Seller shall not be liable for damage to the part caused by such services so long as Seller has exercised reasonable care in performing the services. Reasonable care shall be that level of care normally given in performing such processes. If the Buyer's part is damaged as a result of Seller's negligence in performing such services, the Seller shall be liable to the Buyer for no more than the cost of the service being performed. In the event of a burst of Buyer's part in Seller's facility while spin testing or balancing, Buyer is responsible for the cost of repair and replacement of all items and components, and any repair which might be required as a result of the burst.

Already existing arbors, tooling, designs, and instrumentation needed for spin testing or balancing services remain the property of Seller and are covered by Seller's property and casualty insurance policies. At time of order, Buyer can request special terms for ownership of arbors, tooling and instrumentation. Seller may, at its option, store this Buyer owned equipment at Seller's place of business. Buyer owned equipment is expressly excluded from and not covered by Seller's property and casualty insurance. Buyer is responsible for maintaining insurance on any of its property while it is on Seller's premises or in transit thereto or therefrom Seller's premises. Buyer hereby acknowledges Buyer owned property is specifically excluded from coverage under Seller's property and casualty insurance. Buyer-owned equipment that is actively involved in a test is NOT covered by Seller's insurance policies.

If the Buyer elects to interrupt a test for any reason, including but not limited to, inspection of the part, a demurrage charge will be imposed to hold Seller's facility or equipment open for reinstallation of the part and resumption of the spin testing or balancing. The demurrage charge will be in effect immediately upon interruption of the test. No grace period applies.

**6. ASSEMBLY, INSTALLATION, COMMISSIONING.** If assembly, installation or commissioning work is a part of this Contract, the equipment and/or material shall be assembled, erected and installed under the personal direction of an employee or agent of Seller. Buyer shall furnish sufficient electricity, water, compressed air, light, heat, sanitary facilities, and fire protection as well as adequate all-weather storage space, ingress and egress to the job site and other items that may be listed under Buyer's responsibilities. In addition, Buyer is also responsible for installing necessary infrastructure and utilities to support equipment connection. The site is to be prepared for installation personnel to work in a normal fashion with no extra equipment or procedures required due to construction or production interference. Unless otherwise stated, installation shall be performed only during Seller's normal working hours and any overtime work required for any reason shall be requested by and paid for by Buyer.

**7. OTHER CONTRACTORS.** Seller has no duty or authority to direct, supervise or oversee any contractors of Buyer or to provide the means, methods or sequence of their work or to stop their work. Seller's services and/or presence at a site shall not relieve others of their responsibility to Buyer or to others. Seller shall not be liable for the failure of Buyer's contractors or others to fulfill their responsibilities, and Buyer agrees to indemnify, hold harmless and defend Seller against all claims arising out of such failures.

**8. OSHA – FEDERAL, STATE & LOCAL.** Seller will comply with the Federal OSHA requirements in effect as of the date of the Proposal relative to the Work. Seller's sole responsibility is limited to modification or replacement of the equipment cited as violating such standards. OSHA requirements with respect to noise are specifically excluded. Where state, local or Buyer's health and safety requirements differ from the Federal OSHA requirements, modifications or changes in design to meet such requirements will be incorporated at Buyer's request. Additional costs arising from such requests

and from erection procedures required by state, local or Buyer's health and safety regulations which deviate from Federal OSHA requirements are for Buyer's account.

**9. CHANGES AND MODIFICATIONS.** Any amendment to, waiver of or modification of, any of the terms and conditions of the Proposal shall be valid only when done in writing and signed by both Buyer and Seller. Buyer shall not make any changes or modifications to the Work, including substitutions of materials or accessories, without prior written agreement with Seller. If any such change or modification causes an increase or decrease in the cost of or the time required for performance of the Work, Seller shall notify Buyer. Buyer shall execute a written agreement satisfactory to the Seller which details such changes and modifications to the Work and which adequately amends the other relevant Contract terms including but not limited to price, delivery terms and demurrage. Seller will suspend performance unless and until Buyer and Seller have reached a mutual agreement on the scope of any changes or modifications and compensation for changes or modifications or the Buyer determines to continue with the Work for which Buyer originally contracted. During this suspension, demurrage charges may accrue.

**10. SHIPPING, DELAYS, SUSPENSION, PAYMENT ACCELERATION.** All shipping dates are approximate, based on prompt receipt by Seller of all necessary information and are subject to change by reason of conditions beyond Seller's reasonable control. If a delay in shipment or installation is caused by Buyer or by any other cause beyond Seller's reasonable control, the portion of the Contract price already performed by Seller shall become due and payable within 30 days of shipment, or if not shipped, 30 days from the date the equipment is ready for shipment. If Buyer requires Seller to delay portions of the Contract, Seller shall be entitled to full reimbursement for all costs incurred as a result of such delay. If Buyer suspends work on the Contract, Buyer shall reimburse Seller for all costs incurred by Seller as a result of such suspension. If the suspension exceeds 90 days, Seller shall also have the right to cancel the unfinished portion of the Contract without liability to Buyer of any kind and Seller will be paid according to Article 17.

**11. MATERIAL / WORKMANSHIP WARRANTY (APPLICABLE TO EQUIPMENT, SYSTEMS, AND SPARE PARTS ORDERS).** Seller warrants that all equipment it manufactures and furnishes and work provided will be free from defects in materials and workmanship for a period of twelve (12) months from the date of delivery. Seller's sole obligation is to repair or replace, at Seller's option, any part or component which, after Seller's inspection, proves to be defective, provided that Seller shall not be obligated for any removal, shipping or reinstallation costs. Seller will make repairs or replacement components available to Buyer in Seller's standard packaging. Ex-works Seller's shipping point. The warranty does not apply to consumable, replaceable parts or components normally subject to wear and replacement. Seller's obligations in this Article are subject to the following conditions:

- A. Receipt from Buyer of immediate written notice describing the defect in detail.
- B. Buyer shall not have attempted to correct the defect without Seller's approval.
- C. Buyer shall have installed (if applicable), operated and maintained the equipment strictly in accordance with Seller's operating and maintenance instructions, including, but not limited to, Seller's design basis or other design criteria stated in Seller's Proposal.
- D. The defect has been caused solely by faulty materials or workmanship for which Seller is responsible, and is not due to such things as erosion, corrosion, or deterioration resulting from the manner in which the equipment is operated, accident (including damage during shipment), neglect, misuse or abuse, or exposure to conditions beyond the environmental power or operating constraints specified by Seller. To the extent that the materials and equipment furnished consist of products manufactured by other parties, such manufacturer's warranty is hereby assigned to Buyer, and Seller's responsibility with respect to any such products shall not extend beyond the manufacturer's warranty. It is understood that Seller's warranty with respect to such products is limited to repair or replacement at Seller's option and does not include labor, repair or replacement costs, or travel unless otherwise provided.
- E. The warranty does not cover damage to the equipment that is a direct result of failure of customer test articles or any misuse or abuse of the equipment.

**12. SERVICES WARRANTY (APPLICABLE TO CONSULTING, DESIGN, ENGINEERING, INSPECTION, PLANNING, MACHINING, SPIN TESTING, AND BALANCING SERVICE ORDERS).**

- A. Seller warrants that the services shall be performed in a competent and non-negligent manner. Within a period of twelve (12) months from completion of such services, Seller shall, at its cost, correctly re-perform any non-conforming services or, if such services cannot be re-performed, refund the amount paid for such non-conforming services.
- B. Seller warrants that any engineering and/or design work that it performs hereunder shall be performed in accordance with generally accepted trade or industry practice. Seller's liability for such warranty shall be fully satisfied by revision and resubmission of all calculations and drawings incorrectly completed as a consequence of breach of this warranty.
- C. Buyer expressly acknowledges and agrees that the foregoing warranties in this Article are offered by Seller expressly contingent upon Buyer's strict compliance with Article 17, and further that any failure of Buyer to comply with the terms thereof shall be deemed as a breach of Buyer's obligations hereunder.

**13. PATENT WARRANTY.** Seller shall defend, at its expense, any suit or proceeding brought against Buyer based on any claim that the equipment or material covered herein, except for equipment or material manufactured or designed to Buyer's specifications, infringes any U.S. patent issued as of the date of this Proposal, and pay any court imposed damages and costs finally awarded against Buyer, but not to exceed the amount previously paid to Seller by Buyer hereunder provided:

- A. Seller is promptly notified by Buyer in writing of such claim; and,
- B. Seller is given full authority, information, and assistance by Buyer which Seller deems necessary for the conduct of such defense.

In order to avoid such claims and/or minimize potential liability, Seller shall have the right and option at any time to:

- A. Procure for the Buyer the right to use the equipment; or
- B. Modify the equipment so that it no longer infringes; or
- C. Replace the equipment with non-infringing equipment.

**14. PERFORMANCE WARRANTY.** Seller's sole warranties are those contained in its Proposal to Buyer. These warranties are contingent upon the correctness and accuracy of the information provided by Buyer and are based upon the conditions specified in Seller's Proposal and operation and maintenance by properly trained personnel. These warranties will be deemed satisfied by successful completion of performance tests in accordance with applicable standard procedures as specified in the proposal and in effect on the date of this proposal. Performance tests shall be conducted by the Buyer, (unless otherwise specified in Seller's Proposal), and witnessed by Seller, at its option, within 30 days of initial operation of the equipment. If the tests are not conducted within 30 days of the initial operation or within 6 months of shipment, whichever is earlier, and through no fault of Seller, the equipment shall be deemed accepted by the Buyer and in compliance with all contractual requirements. Seller makes no warranty whatsoever as to the inclusion of the equipment supplied by Seller into Buyer's manufacturing process, Seller's warranty being limited solely to the performance of its equipment in accordance with the applicable provisions in Seller's proposal. If the

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equipment fails to meet the Contract performance warranties, Seller will supply at its sole option, repaired or replacement parts pursuant to the delivery terms of the Proposal subject to the limitations stated in Article 27.

**15. IMPLIED WARRANTIES / GUARANTEES DISCLAIMER.** THE WARRANTIES AND GUARANTEES FURNISHED BY SELLER, AS EXPRESSLY INCLUDED HEREIN, CONSTITUTE THE SELLER'S SOLE OBLIGATION HEREUNDER AND ARE IN LIEU OF ANY OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**16. CANCELLATIONS.** If Buyer cancels for any reason at any time after Seller has received a purchase order (or other authorization) for any equipment, parts, or services or any combination thereof, Buyer shall pay to Seller within 30 days of such cancellation, all contract costs and other expenses incurred by Seller prior to receipt of the request for cancellation (including, but not limited to, machine hours, expenses, overhead costs, costs of expended materials, direct labor with factory burden, and all commitments to Seller's suppliers, subcontractors and others), plus cancellation charges of 20% of the Contract price to cover general and administrative expenses plus 10% of the Contract price to cover profit lost by reason of cancellation. If Buyer materially breaches any obligation, then Seller may cancel the unfinished portion of the Contract without liability of any kind to Buyer. In any such case the terms of this Article shall apply.

**17. PAYMENT.** Unless otherwise agreed, payment shall be as outlined in the Proposal and payments shall be made in current funds of the U.S. at par. Payments hereunder shall be made by Buyer against Seller's invoice within thirty (30) days from date of the invoice, terms net cash, unless otherwise indicated on the face hereof. Past due invoices shall be subject to a finance charge of 2% per month or the maximum rate allowed by law, whichever is less. If at any time in Seller's opinion, the financial responsibility of Buyer becomes impaired or unsatisfactory to seller, or inadequate to meet the obligations hereunder, the terms of payment may, at Seller's option, be revised or withdrawn, and Seller may require cash or other satisfactory security before making further shipments to Buyer. In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment, Seller may defer further delivery of goods hereunder or may, at its option, cancel all further delivery of goods to Buyer. In the event Seller is required to commence collection action to recover unpaid invoices of goods sold and delivered, Seller shall be entitled to interest on the unpaid balance at the highest legal rate permitted from the due date of invoice, attorneys' fees, and costs of suit.

**18 CREDIT.** Seller may at any time limit or withdraw Buyer's credit and may require full or partial payment prior to shipping without affecting the obligations of the Buyer under the Contract. In the event of bankruptcy or insolvency of the Buyer or if Buyer fails to pay Seller any sum when due, or any prepayment on demand as provided above, then upon seven (7) calendar days' written notice, Seller may cancel any order then outstanding under the Contract, sell all or any undelivered portion of the contract without notice at public or private sale, and hold Buyer responsible for all expenses and losses.

**19. TITLE, SECURITY INTEREST.** Seller retains Title to and a purchase money security interest in equipment, material, engineering studies and test data sold to Buyer hereunder and/or the proceeds thereof until the purchase price and other charges, if any, are paid in full. The contract constitutes a security agreement within the meaning of the Uniform Commercial Code and Seller shall have all rights & remedies of a secured party thereunder. Buyer authorizes Seller to file continuing financing statements covering Seller's security interest in the equipment or material and all after acquired equipment or materials. Seller may retake possession of the equipment or materials with or without legal process if the terms and conditions as provided herein or otherwise agreed to by the Buyer are not met by Buyer.

**20. ESCALATION.** Buyer will adjust the Contract price and pay Seller for costs Seller has or may incur that were not anticipated by Seller as of the date of the initial Proposal or the Contract exceeds the time frame contemplated by the parties.

**21. TAXES AND DUTIES.** Unless otherwise provided, any tax or import duty imposed by any federal, state, local or municipal authority arising out of the sale, manufacture or installation of the equipment or performance covered by this Contract, is not included in the price as quoted in the Proposal, and Buyer is responsible for any such amount(s). All such additional charges shall be invoiced to Buyer unless Buyer furnishes valid exemption documentation on or before shipment. Buyer shall reimburse the Seller promptly upon demand for all such charges paid by Seller.

**22. PROPRIETARY & CONFIDENTIAL MATERIALS.** All information supplied by Seller as to design, manufacture, erection, operation and maintenance of the equipment, including all drawings, patterns, specifications and information in Seller's Proposal or Contract, shall be the proprietary and confidential property of Seller and shall be returned to Seller at its request. Buyer shall have no rights in Seller's proprietary and confidential property and shall not disclose such to others or allow others to use such property, except as required for the Buyer to obtain service, maintenance, and installation for the equipment purchased from the Seller. Specifically, Buyer agrees that no drawings, specifications or information included in Seller's Proposal or Contract shall be used by Buyer for competitive bidding or similar purposes without Seller's consent and Buyer shall not reproduce or build assemblies or process systems per Seller's design drawings without explicit approval of Seller. Buyer shall hold in confidence and shall not disclose, divulge or publish to any person, or use or copy any trade secret, process, record, plan, projection, information pertaining to customers or prospective customers, financial information, marketing strategies, or any other confidential or proprietary information of Seller (including the terms and conditions of this Contract or any other agreement between Buyer or Seller) acquired or in connection herewith, or disclosed or transmitted by Seller or any of its agents, employees, or affiliates, except as authorized in writing by Seller, and Buyer shall keep, and shall require its officers, directors, employees, and agents to keep such information confidential. This clause shall survive the termination of this Contract and be in effect as long as Buyer has possession of any of Seller's proprietary or confidential information. The Seller shall have the remedy of specific performance for any breach by the Buyer of this provision.

**23. HAZARDOUS MATERIALS.** If the Buyer's facilities contain hazardous materials, including asbestos bearing materials and any such materials are encountered, Seller shall have no obligation to remove or remediate them in the absence of a separate agreement which includes separate consideration to Seller for such work. If Seller or any of its subcontractors is required to perform work within or immediately adjacent to any facilities that are determined to contain hazardous material and/or asbestos, and the said work must be interrupted to allow for the remediation or removal of such materials by others, Seller shall be entitled to any and all costs and other expenses associated with such interruption in work. Buyer shall fully defend, hold harmless and indemnify Seller and its agents from and against any claim arising out of exposure to such hazardous and/or asbestos bearing materials.

**24. HEALTH AND SAFETY.** Seller shall not be responsible for health or safety programs or precautions related to Buyer's activities or operations, Buyer's other contractors, the work of any other person or entity, or Buyer's site conditions. Seller shall not be responsible for inspecting, observing, reporting or correcting health and safety conditions or deficiencies of Buyer or others at Buyer's site, and Buyer agrees to indemnify, hold harmless and defend Seller against any claims arising out of such conditions or deficiencies. So as not to discourage Seller from voluntarily addressing health or

safety issues while at Buyer's site, in the event Seller does not address such issues by making observations, reports, suggestions or otherwise, it is understood and agreed that Seller shall nevertheless have no liability or responsibility arising on account thereof.

**25. FORCE MAJEURE.** Neither party hereto shall be responsible for any delay or failure of performance of these terms and conditions (other than to make payments due hereunder) if such delay or nonperformance is caused by acts of God, floods, fire, explosions, storms, transportation difficulties, strikes, lockouts, or other labor or industrial disturbances: wars, epidemic, pandemic, any law, rule, order, or action of any court, agency, or other instrumentality of the federal or any state or local government; exhaustion, reduction, or unavailability of product at the source of supply from which deliveries are normally made hereunder; or exhaustion or unavailability or delay in delivery of any product or material necessary in the manufacture of the goods to be sold hereunder (regardless of whether or not such exhaustion, reduction, unavailability, or delay is beyond such party's control, provided only that the same is not willfully done or brought about for the purpose of excusing failure or omission to perform under these terms and conditions); failure or presupposed conditions, commercial impracticability, or other cause or causes beyond a party's control whether similar or dissimilar to those stated above. In the event of any of the contingencies or conditions referred to in this provision, Seller shall have the right to curtail deliveries or allocate its supply of materials among all of its customers in any manner which in its sole discretion is fair and reasonable in the circumstances, and buyer shall not hold seller responsible in any manner for losses or damages which Buyer may incur as a result of any such failure, curtailment, or allocation by Seller. Seller shall not be required to make up any goods not so delivered.

**26. DISCLAIMER OF CONSEQUENTIAL DAMAGES.** Seller shall in no event be liable to the Buyer, any successors in interest or assignees of the Buyer; any customers of Buyer or any beneficiary or assignee of Buyer, for any consequential, incidental, indirect, special, or punitive damages arising out of any defect in, or failure of or malfunction of the goods or services sold hereunder, whether such damages are based upon lost good will, lost profits or revenue, interest, work stoppage, impairment of other goods or services, loss by reason of shutdown or non-operation, increased expenses of operation, loss of use of related goods or operations and / or cost of purchase of replacement goods, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability or otherwise.

**27. INDEMNIFICATION BY BUYER.** Buyer shall, to the extent permitted by applicable law, defend, indemnify, and hold harmless Seller, its subsidiaries, affiliates, customers and other designated parties from and against any and all claims, damages, losses, expenses, liens, demands and causes of action of every kind and character (including those of the parties, their agents and employees) for death, personal injury, property damage or any other liability, damages, fines or penalties (except where reimbursement of fines or penalties is prohibited by applicable law) including costs, attorney's fees and settlements arising out of the use of the Product or out of or in connection with the Work performed on Buyer's premises by: (1) any act, failure to act or omission, whether performed by Buyer or any agent, employee, invitee or licensee of the parties and whether resulting from or contributed to by the negligence in any form of Seller, its agents, employees and independent agencies directly responsible to Buyer; (2) any defect in, or condition of the premises, or any equipment thereon or any materials furnished or provided by Buyer; or (3) any equipment, components, labor, materials or products provided by Buyer in conjunction with the Work.

**28. LIMITATION OF LIABILITY.** The remedies of Buyer set forth herein are exclusive. The total liability of Seller, with respect to the goods or services furnished hereunder, or with respect to the manufacture, sale, delivery, repair, or technical direction covered by or furnished pursuant to these terms and conditions, whether such liability of Seller based on contract, warranty, negligence, strict liability, indemnity, or otherwise, shall not exceed the purchase price of the goods or services.

**29. BUYER'S NEGLIGENCE AND INSURANCE.** Seller shall not be responsible for losses or damages arising out of the negligence of the Buyer, its employees, agents or architects or those of third parties for whom Seller is not responsible, or losses for which the Buyer has agreed to provide insurance. If both Seller and Buyer are negligent and the negligence of both is the proximate cause of the accident, then each party will be responsible for its portion of the liability or damages (excluding consequential or indirect damages which are disclaimed by Seller) resulting therefrom equal to such party's comparative share of the total negligence.

**30. EXPORT COMPLIANCE.** Buyer represents and warrants that it will comply, and cooperate fully with the Seller in its compliance, with all applicable import and export control laws and regulations, including, without limitation, the United States Export Administration Regulation ("EAR"), the United States International Traffic in Arms Regulations ("ITAR"), the United States Office of Foreign Assets Control Regulations, the United States Foreign Trade Regulations, and country-specific import and export regulations and/or country-specific sanctions regimes, and other applicable laws and regulations, and will retain documentation evidencing such compliance. Buyer will obtain import and re-export approvals and licenses required for Products, Parts, Services and technical data delivered and will retain documentation evidencing compliance with those laws and regulations. Buyer agrees to indemnify and hold Seller harmless from any fines, penalties, or other liability imposed by any government entity arising from any failure of Buyer to comply with such laws and regulations or any failure by the Buyer to disclose to the Seller information required to assist it with its compliance with such laws and regulations.

**31. SEVERABILITY.** Should any part of this Contract be declared invalid or unenforceable, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in full force and effect, and Seller shall have the right to replace the part declared invalid or unenforceable with a provision which serves as much as validly possible the same commercial purpose as the part determined to be invalid or unenforceable.

**32. ASSIGNMENT/SUBCONTRACTS.** This Contract shall be binding upon and inure to the benefit of the parties, their successors, and assigns provided that Buyer may not assign the Contract without prior written consent of Seller. Seller may subcontract any portion of the work.

**33. DISPUTES.** Seller and Buyer shall use all reasonable efforts to amicably resolve disputes arising out of the Sales Agreement, prior to commencing any formal legal proceedings. Any action or proceeding filed by Buyer against Seller under the Sales Agreement shall be filed exclusively in the state or federal courts in New York, which shall then have exclusive jurisdiction. The Buyer consents to the personal jurisdiction of the state or federal courts of New York for any such action.

**34. ENTIRE AGREEMENT, CONTRACT INTERPRETATION, GOVERNING LAW.** All communications, written and verbal, between the parties with reference to the subject of this Contract prior to the date of acceptance are merged herein, and this Proposal, when duly accepted and approved, shall constitute the sole and entire agreement and Contract between the parties. No change in or modifications of said Contract shall be binding upon the parties or either of them, unless the changes or modifications shall be duly accepted in writing by both parties. Unless Seller expressly agrees to the contrary in writing, these General Terms and Conditions of Sale (including statements made in the Proposal) shall govern any conflict with any in Buyer's documents. Any contract resulting from this Proposal shall be construed, governed and enforced in accordance with the laws of the State of New York, exclusive of the choice of law rules thereof. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Contract.