

1. GENERAL

- A. Seller's prices are based on these sales terms, and (i) this document together with any additional writings signed by Seller shall represent the final, complete and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence, Buyer's purchase order, a course of dealing, Seller's performance or delivery, or in any other way except in writing signed by an authorized representative of Seller, and (ii) these terms are intended to cover all activity of Seller and Buyer hereunder, including sales and use of products, parts and work and all related matters (references to products include parts and references to work include construction, installation and start-up). Any reference by Seller to Buyer's specification and similar requirements are only to describe the products and work covered hereby and no warranties or other terms therein shall have any force or effect. Catalogs, circulars and similar pamphlets of the Seller are issued for general information purposes only and shall not be deemed to modify the provisions hereof.
- B. IF THIS AGREEMENT DIFFERS IN ANY WAY FROM BUYER'S ORDER OR IF THIS AGREEMENT IS CONSTRUED AS AN ACCEPTANCE OR CONFIRMATION ACTING AS AN ACCEPTANCE, THEN SELLER'S ACCEPTANCE IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS OR CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S WRITING. FURTHER, THIS AGREEMENT SHALL BE DEEMED NOTICE OF OBJECTION TO SUCH TERMS AND CONDITIONS OF BUYER. IF THIS AGREEMENT IS CONSTRUED AS THE OFFER, ACCEPTANCE OF SAME IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN. IN ANY EVENT, BUYER'S ACCEPTANCE OF THE ORDERED PRODUCTS OR SERVICES SHALL CONSTITUTE AND MANIFEST BUYER'S ASSENT TO SELLER'S TERMS AND CONDITIONS.
- C. The agreement formed hereby and the language herein shall be subject to the laws in effect on the date hereof of the State of Texas without regard to the conflict of laws rules of Texas.

2. TAXES

Any sales, use or other similar type taxes imposed on this sale or on this transaction are not included in the price. Such taxes shall be billed separately to the Buyer. Seller will accept a valid exemption certificate from the Buyer if applicable; however, if an exemption certificate previously accepted is not recognized by the governmental taxing authority involved, and the Seller is required to pay the tax covered by such exemption certificate, Buyer agrees to promptly reimburse Seller for the Taxes paid.

3. CONTRACT PERFORMANCE, INSPECTION AND ACCEPTANCE

- A. Unless Seller specifically assumes installation, construction or start-up responsibility, all products shall be finally inspected and accepted within thirty (30) days after receipt at point of delivery. Products not covered by the foregoing and all work shall be finally inspected and accepted within thirty (30) days after completion of the applicable work by Seller. All claims whatsoever by Buyer (including claims for storage) excepting only those provided for under the WARRANTY and PATENTS Clauses hereof must be asserted in writing by Buyer within said thirty (30) day period or they are waived. If this contract involves partial performance, all such claims must be asserted within said thirty (30) day period for each partial performance. There shall be no revocation of acceptance. Rejection may be only for defects substantially impairing the value of products or work and Buyer's remedy for lesser defects shall be those provided for under the WARRANTY Clause.
- B. Shipping dates are approximate and are based upon prompt receipt of all necessary information. Seller shall not be responsible for nonperformance or delays in performance occasioned by any causes beyond Seller's reasonable control, including, but not limited to, labor difficulties, delays of vendors or carriers, fires, governmental actions and material shortages. Any such delay shall affect a corresponding extension of Seller's performance dates which are, in any event, understood to be approximate. In no event shall Buyer be entitled to damages including but not limited to incidental or consequential damages for late performance.
- 4. RISK OF LOSS & TITLE  
Full risk of loss and title (including transportation delays and losses) shall pass to the Buyer upon delivery of products to the agreed to point of delivery per latest INCO terms or if Seller consents to a delay in shipment beyond the contract date at the request of the Buyer, upon notification by the Seller that the products are manufactured. All shipments, unless otherwise specified, shall be FCA manufacturer's plant per latest INCO terms.

5. WARRANTY

- A. Seller warrants that its products and parts when shipped will be free from defects in materials and workmanship and its services (including installation, construction and start-up) will be performed in a workmanship. All claims for defective products or parts or services under this warranty must be made in writing immediately upon discovery and, in any event, within one (1) year from start-up or eighteen (18) months from shipment of the applicable item, or the date services are provided whichever occurs first. Defective items must be held for Seller's inspection and returned to the original agreed to point of delivery per latest INCO terms upon request. THE FOREGOING IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES WHATSOEVER, EXPRESS, IMPLIED AND STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS.
- B. Upon Buyer's submission of a claim as provided above and its substantiation, Seller shall at its option either (i) repair or replace its product, part or work at the original agreed to point of delivery per latest INCO terms, or (ii) refund an equitable portion of the purchase price.
- C. The warranty specified herein shall apply to this contract, but it is specifically understood that products sold hereunder are not warranted for operation with erosive or corrosive fluids or those which may tend to buildup within the product quoted. No product or part shall be deemed to be defective by reason of failure to resist erosive or corrosive action of any fluid and Buyer shall have no claim whatsoever against Seller therefore nor for problems resulting from buildup of material within the unit.
- D. The foregoing is Seller's only obligation and Buyer's exclusive remedy for breach of warranty, and except for remedies permitted under THE CONTRACT PERFORMANCE, INSPECTION AND ACCEPTANCE and the PATENTS Clause hereof, the foregoing is Buyer's exclusive remedy hereunder by way of breach of contract, tort or otherwise. In no event shall Buyer be entitled to incidental or consequential damages. Any action for breach of this agreement must commence within two (2) years after the cause of action has accrued.

6. PATENTS

Seller agrees to assume the defense of any suit for infringement of any United States patents brought against Buyer to the extent such suit charges infringement of an apparatus or product claim by Seller's product in and of itself, provided (i) said product is built entirely to Seller's design, (ii) Buyer notifies Seller in writing of the filing of such suit within ten (10) days after the service of process thereof, and (iii) Seller is given complete control of the defense of such suit, including the right to defend, settle and make changes in the product for the purpose of avoiding infringement. Seller assumes no responsibility for charges of infringement of any process or method claims, unless infringement of such claims result from following specific instructions furnished by Seller.

7. TERMS OF PAYMENT

- A. Unless other terms are specified, all payments shall be in U.S. dollars. If delivery is delayed by Buyer, date of readiness for delivery shall be deemed date of delivery for payment purposes. If manufacture is delayed by Buyer, a payment shall be due based upon purchase price and percentage of completion. Balance shall be payable in accordance with terms stated herein.
- B. For contracts totaling less than \$100,000 U.S. dollars, all payment shall become due thirty (30) days after shipment.
- C. For contracts totaling \$100,000 U.S. dollars and greater, special progress payments, as offered by Seller, shall apply. In cases where special terms are not proposed, final payment shall become due thirty (30) days after shipment.
  - (1) In the event any equipment is ready for shipment prior to the scheduled date, any payment not due in accordance with the above terms shall immediately become due and payable upon notification by Seller to buyer that the equipment is ready for shipment.
  - (2) If shipments are delayed by Buyer for any cause whatsoever or are delayed by Seller for any cause whatsoever beyond Seller's control, payments shall become due and payable from the date of notification by Seller and the equipment is ready for shipment.
- D. Seller may, at its option, upon Buyer's default in payment hereunder, charge Buyer with any cost incurred by seller incidental to its collection efforts including without limitation, reasonable attorney's fees and court costs.
- E. A service fee equal to 1½ percent per month shall be charged on all amounts not received by the specified due date in order to recover costs and damages incurred as a result of the delay in payment.

8. LIMITATION OF LIABILITY

- A. THE LIABILITY OF SELLER UNDER THIS AGREEMENT OR WITH RESPECT TO ANY PRODUCTS SUPPLIED OR SERVICES PERFORMED PURSUANT TO THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT, IN STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID BY BUYER WITH RESPECT THERETO.
- B. IN NO EVENT WILL SELLER BE LIABLE IN CONTRACT, IN TORT, IN STRICT LIABILITY OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUES, LOSS OF USE, NON-OPERATION OR INCREASED EXPENSE OF OPERATION OF EQUIPMENT, COST OF CAPITAL.

9. US EXPORT CONTROL COMPLIANCE

Buyer shall comply with all applicable export control and trade embargo laws, rules and regulations, including but not limited to the U. S. Export Administration Regulations, and shall not resell, export, re-export, distribute, transfer or dispose of the ROOTS™ products, directly or indirectly, without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules and regulations. Failure by Buyer to comply with such laws, rules and regulations shall constitute a material breach of this Agreement. ROOTS' assumes no responsibility or liability for Buyer's failure to obtain required authorizations. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the ROOTS™ products. These commodities, technology or software shall be exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.