

IPSEN, INC.
TERMS AND CONDITIONS

These terms and conditions constitute the sole and entire offer of Ipsen, Inc. ("Ipsen") to Buyer. The form(s) to which these Terms and Conditions is attached is incorporated herein by reference and these Terms and Conditions shall relate to the sale of the goods (Goods) or equipment (Equipment) or the performance of the services (Services) described therein. Buyer's acceptance of this offer must be made on its exact terms and conditions and Ipsen is not and shall not be bound by, and Ipsen objects to, any terms and conditions on Buyer's purchase orders or acceptance or acknowledgment forms or similar documents which are at variance with or additional to the terms and conditions which are included herein. Ipsen's failure to object to provisions contained in the aforementioned forms shall not be deemed a waiver of the provisions of the terms and conditions contained herein, which shall constitute the entire agreement between the parties. Any contract for the sale of Goods or Equipment or for the performance of Services between Ipsen and Buyer shall be subject to the terms and conditions contained herein unless such contract is signed by Ipsen and specifically states that the provisions contained therein are intended to supersede the provisions contained herein. No contract shall exist except as hereinabove provided. Any acceptance or confirmation by Ipsen of any offer or order related to such Goods, Equipment or Services is conditioned upon and subject to the terms and conditions contained herein. Buyer's receipt or retention of the Goods, Equipment or Services constitutes Buyer's acceptance of and agreement to these terms and conditions regardless of any objections or writing contrary hereto.

1. **Price.** All prices are F.O.B. point of shipment, unless otherwise specified herein, and are subject to change by Ipsen without notice. All prices are based upon current labor, freight and material costs and increases in same before completion of the contract contemplated hereby, plus applicable overhead, will be added to the purchase price and paid by Buyer. Premium time, being that time in excess of eight (8) hours per day, that time outside normal daytime business hours, or any time on Saturdays, Sundays or holidays, required of Ipsen by Buyer for the completion of the contract contemplated herein shall be invoiced as an extra item and paid by Buyer.

2. **Taxes.** All taxes and other charges imposed by federal, state, local or foreign governments on the manufacture, sale, shipment, import, export or use of the Goods, Equipment and Services (other than income taxes) shall be paid by Buyer. Buyer shall defend, indemnify and hold harmless Ipsen from and against all liabilities for such taxes or charges and attorney's fees or costs incurred by Ipsen in connection therewith.

3. **Delivery, Performance and Inspection.** With respect to the Goods and Equipment, unless otherwise specified on the face hereof, all deliveries are F.O.B. point of shipment. Shipment will be made in accordance with Buyer's instructions. Upon delivery of Goods or Equipment to carrier, Buyer assumes risk of all loss and damage resulting from any cause whatsoever. Shipping, delivery or performance dates are approximate and are not guaranteed. Ipsen may ship and invoice for a quantity of up to ten percent over or under the quantity specified and Buyer agrees to accept and pay for such quantity and Ipsen's performance shall be deemed complete. Partial deliveries shall be accepted and paid for by Buyer at contract prices and terms. If scheduled work in Buyer's plant is delayed or interrupted through no material fault of Ipsen, or because of inability of Buyer for whatever reason to accept delivery of materials or to permit normal and unrestricted installation of equipment, Buyer shall pay Ipsen for all additional costs resulting therefrom.

Buyer shall inspect the Goods, Equipment, or Services, immediately upon arrival of the Goods or Equipment at the facilities of Buyer or other consigned destination or the stated completion of the Services, as the case may be, and, within such period as set forth on the face hereof (or, if none, within five (5) days after arrival or stated completion), Buyer shall give written and telephonic or telegraphic notice to Ipsen detailing any manner (including, but not limited to, shortages or nonconformance) in which the Goods, Equipment, or Services, fail to conform with the terms contained herein. Buyer shall allow Ipsen a reasonable time, after receipt of written notice, to determine whether any nonconformance exists and correct any nonconformance with which Ipsen concurs, and Buyer shall give full cooperation to Ipsen in making such determination and correction. Failure by Buyer to give notice within such period shall constitute an irrevocable acceptance of the Goods and Equipment by Buyer, and Buyer shall be bound to pay the purchase price of the Goods and Equipment. Without limitation on any other provision hereof, Buyer may not assert a claim for breach of contract or warranty by Ipsen, and no such breach can occur or be deemed to have occurred, unless it is material and unless and until Buyer has given Ipsen prior written notice thereof, specifying the details thereof, and Ipsen has not substantially cured the nonconformance or other failure of performance within sixty-days following receipt of such notice; provided also that in the event such nonconformance or other failure in performance is not reasonably capable through normal channels of supply and services of being cured by Ipsen within such sixty-day period, then Ipsen shall have such additional time as it reasonably requires to cure such nonconformance or other failure in performance.

4. **Force Majeure.** Ipsen shall not be liable for delay or other failure of performance due to causes beyond its reasonable control including without limitation acts of God, acts of Buyer, acts of military or civil authorities (including but not limited to any orders, rules or regulations issued by any official or agency of any state, local authority or the federal government), fire or other casualty, strikes, lockouts, weather, epidemic, war, riot, embargoes or delays in transportation or car shortages, or inability to obtain necessary labor, materials, components, equipment, services, energy or utilities through Ipsen's usual and regular sources at usual and regular prices. In any such event Ipsen may, at any time without further liability to Buyer, (a) postpone performance under this contract, (b) make partial performance or cancel all or any portion of this contract, or (c) allocate available quantities among its customers in any manner which Ipsen deems reasonable. Cancellation of any part of this contract shall not affect Buyer's obligation to pay for performance of any other part hereof.

5. **Returns.** Except as otherwise provided herein. Buyer shall not return any of the Goods or Equipment sold by Ipsen without a prior written request by Buyer and the prior written consent of Ipsen and the receipt of shipping instructions from Ipsen. All Goods or Equipment returned by Buyer shall be subject to the standard restocking and reconditioning charges established from time to time by Ipsen.

6. **Warranty and Remedy.** Unless otherwise expressly stated on the face hereof, Ipsen warrants to Buyer for a period one hundred eighty (180) days from the date of shipment of the Goods or Equipment and/or performance of the Services, whichever is applicable, that the Goods and Equipment delivered hereunder are free from defects in materials and

workmanship and/or that the Services hereunder are performed in a good and workmanlike manner, except that goods, equipment, materials and services furnished by Ipsen's suppliers or subcontractors are warranted by Ipsen only to the extent of the supplier's or subcontractor's enforceable express warranty to Ipsen. If, during such period, Buyer promptly notifies Ipsen in writing of any breach of such warranty and complies with any applicable warranty procedures of Ipsen, Ipsen shall, at Ipsen's option, re-perform Services, repair or replace any defective Goods or Equipment at Ipsen's plant (Buyer to pay all transportation charges), or refund the price of the Goods, Equipment or Services or part thereof which gives rise to the claim. If it becomes necessary for Ipsen to provide labor within the warranty period for repair or replacement of defective Goods or Equipment, the buyer shall be responsible for the labor and related travel expenses. Ipsen shall make no allowance for repairs or alterations made by Buyer, unless made with Ipsen's prior written consent.

The foregoing shall constitute the sole and exclusive remedy of Buyer and the full liability of Ipsen for any breach of warranty or otherwise relating to the Goods, Equipment or Services, whether in contract or in tort, at law or in equity. **THE FOREGOING IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUPERSEDES AND EXCLUDES ANY ORAL WARRANTIES OR REPRESENTATIONS, OR WRITTEN WARRANTIES OR REPRESENTATIONS NOT EXPRESSLY DESIGNATED IN WRITING AS A □ WARRANTY □ OR □ GUARANTEE □ OF Ipsen, MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS.**

Without limitation on any other provision herein, Ipsen makes no warranty with respect to:

(a) Failures not reported to Ipsen within 30 days of defect while under the warranty period above specified;

(b) Failure or damage due to negligence (other than that exclusively of Ipsen), accident, abuse, improper installation (other than installation made exclusively by Ipsen), improper operation, abnormal conditions of temperature, moisture, dirt, corrosive matter; or the use of any Goods and Equipment by Buyer in any fashion which is not in conformity with the specifications or operations procedures with respect to such Goods or Equipment; or the failure of Buyer to promptly install Software (as that term is defined in Paragraph 18 hereof) updates;

(c) Goods or Equipment, (including, but not limited to, Software) which have been in any way tampered with, reprogrammed, repaired, or altered, by anyone other than an authorized representative of Ipsen;

(d) Goods or Equipment damaged in shipment or otherwise without the fault of Ipsen;

(e) Expenses incurred by Buyer in an attempt to correct or repair any alleged defect unless approved by Ipsen in writing;

(f) Materials or standard equipment purchased by Ipsen and resold without alteration. As an accommodation to its customer, Ipsen will, upon request of Buyer, reassign any rights it may have arising out of warranties given by any manufacturer of materials or standard equipment purchased by Ipsen and resold to Buyer;

(g) Quality of product or process of manufacture on which Equipment is used;

(h) Warranty does not cover items that fall into the classification of consumables, which shall include but not be limited to: (a) oils, fluid and greases (i.e. pump oil, vacuum greases, bearing box lubes, drive shaft lubes); (b) fuses, temperature sensing probes and thermocouples (i.e. Control thermocouples, Overtemp thermocouples, Diffusion pump thermocouples, Work load thermocouples); (c) tubes, including but not limited to vacuum sensing tubes, Pirani and cold cathode; (d) seals, including but not limited to "O"-rings, door lip seal, power feed thru seals, and valve quad seals; (e) main solenoid valve control bank; (f) hot zone components (i.e. washers, tie wires, rods, bolts, nuts); (g) fixtures; (h) bulbs; or (i) maintenance.

7. **Limitation of Ipsen's Liability.** In no event, whether as a result of breach of contract or warranty, negligence of Ipsen or otherwise, shall Ipsen be liable for consequential, incidental, special, punitive or other damages arising out of a delay in or failure of delivery, expressed or implied warranty, defects in material or workmanship, or otherwise relating to the Goods, Equipment or Services. Nor, in any event, shall Ipsen's liability on any claim exceed the price of the Goods, Equipment or Services, or part thereof, which gives rise to the claim.

Certain equipment supplied hereunder may be of a special gaseous atmosphere type. It is generally known that if a flammable gas is allowed to mix with air in certain proportions, an explosive mixture results. Since improper mixtures can result from faulty operation or maintenance of equipment, Ipsen will not be responsible for any damage whatsoever whether suffered by Buyer or a third party from resultant explosions. Similarly, certain equipment supplied hereunder may utilize a sealed type oil quenching system. It is generally known that if water is allowed to mix with or emulsify in oil, it promotes a distinct fire hazard. Since water contamination of quench oil can occur from improper handling of oil or inadequate equipment maintenance, Ipsen will not be responsible for any damage whatsoever suffered by Buyer or any third party resulting from a quench oil fire. Without limitation on any other provision hereof, Buyer shall defend and indemnify Ipsen and hold it harmless from all claims and liabilities, including but not limited to attorneys fees and costs of defense, based in whole or in part upon any such explosion or quench oil contamination or fire.

8. **Performance Testing.** If the terms and conditions contained herein set forth performance specifications of any kind, Ipsen shall, following completion of installation, schedule and supervise or conduct such tests or test as may be necessary to determine whether the Goods or Equipment is capable of meeting such performance specifications. Buyer assumes all responsibility for fire, explosion, personal injury, or damage, of any kind in starting, testing, and subsequent operation of the Goods or Equipment occurring at any time when an employee of Ipsen is not present and in charge of the starting, testing or operation, whether or not the Equipment has been paid for. Without limitation on any other provision hereof, Buyer shall defend and indemnify Ipsen and hold it harmless from all claims and liabilities, including but not limited to attorneys fees and costs of defense, based in whole or in part upon any such fire, explosion, personal injury or other damage.

9. **Installation.** All Goods and Equipment will be used or installed by and at the risk and expense of Buyer unless otherwise specified herein. If the terms of sale includes installation or other Services then the following additional terms and conditions shall apply:

(a) **Tools, Materials, Labor and Utilities.** Ipsen shall supply all tools, materials, labor and supervision necessary for installation. Buyer shall provide adequate heating, air conditioning and ventilation and adequate lighting to perform the installation, the necessary electric power for power tools, and sufficient space on the premises for the storage of materials and for the performance of the work during the period of installation. Buyer shall be responsible for the tools used or left onsite by Ipsen or its subcontractors in connection with the Goods, Equipment and/or Services.

(b) **Licenses, Permits and Certificates.** Buyer, at its own cost and expense, shall obtain and pay for all licenses, permits and certificates which are required for the commencement or completion of the work hereunder.

(c) **Fire/Casualty Insurance.** Buyer shall maintain fire and other casualty insurance in effect upon the premises in which the work hereunder is to be performed and upon all Goods and Equipment ordered herein and all other materials in or adjacent to such premises and intended for use thereon, and all tools of Ipsen or its subcontractors used or left onsite, to the full insurable value thereof. The proceeds of said insurance policy shall be payable to Ipsen or Buyer as their respective interests may appear.

(d) **Delays.** Buyer shall be responsible for and pay all costs incurred by, and other charges imposed by, Ipsen in connection with or as a result of delays in installation of Goods or Equipment or performance of Services not caused solely by Ipsen.

(e) **Cancellation.** Should the installation of the Goods or Equipment or performance of the Services be stopped by any public authority for a period of thirty (30) days or more through no material fault of Ipsen, or should the work be stopped due in whole or in part to acts or omissions of Buyer for a period of ten (10) days, or should Buyer fail to pay Ipsen any payment when due, Ipsen may delay and/or cancel the sale and installation of all or any part of the uninstalled portion of the Goods and Equipment or performance of all or any portion of the Services, without any liability whatsoever, and recover from Buyer payment for all Goods or Equipment and work executed, any losses sustained and reasonable lost profits.

(f) **Subcontracts.** Ipsen reserves the right to subcontract the installation of the Goods and Equipment. Buyer shall afford such contractors the same rights as are provided to Ipsen pursuant to this Paragraph 9.

10. **Assignment.** Buyer shall not assign this offer or any agreement of which these Terms and Conditions are a part or delegate any duties hereunder without Ipsen's prior written consent, and any such attempted assignment or delegation shall be void.

11. **Limitation of Actions.** Any action for any loss or damage with respect to the Goods, Equipment or Services covered hereunder must be commenced by Buyer within one year after Buyer's cause of action has accrued, but in no event beyond the period prescribed by the applicable statute of limitations.

12. **Indemnification and Waiver; Waiver of Subrogation.** Buyer shall defend, indemnify and hold harmless Ipsen from any loss or damage sustained directly by Ipsen and from and against all claims asserted against Ipsen with respect to the Goods, Equipment or Services covered hereunder arising out of or based upon, in whole or in part, any (a) failure of Buyer, its agents, employees or customers to follow specifications, instructions, warnings or recommendations furnished by Ipsen, (b) failure of Buyer, its agents, employees or customers, or anyone other than Ipsen, to comply with all applicable legal requirements, including but not limited to the Occupational Safety and Health Act of 1970, as amended, (c) misuse or improper use of the Goods or Equipment by Buyer, its agents, employees or customers, or anyone other than Ipsen, (d) misrepresentation by Buyer, its agents, employees, or customers, (e) the sole or contributing negligence, gross negligence or intentional conduct of, or other acts or omissions of, Buyer, its agents, employees or customers, or (f) alleged infringement of any patent, trademark or copyright as a result of Ipsen's performance in accordance with Buyer's designs, plans or specifications. Buyer hereby waives and releases Ipsen from all rights of contribution or indemnity to which it may otherwise be entitled. Without limitation on any other provision hereof, Buyer waives and releases all claims against Ipsen to the extent of any proceeds of insurance Buyer receives directly or on its account or to which it is or becomes entitled, from any source, including without limitation its own insurance, and waives and releases all rights of subrogation it or its insurance carrier or any other party may otherwise have as against Ipsen. Buyer shall assure that all insurance policies required hereunder shall contain a waiver of all subrogation rights against Ipsen. As used in this paragraph, the term "Ipsen" shall mean Ipsen, its officers, directors, agents, employees, subcontractors, and its direct and indirect parents, subsidiaries, divisions and affiliates.

13. **Cancellation by Buyer.** Buyer may cancel this contract only upon written notice to Ipsen and payment of all cancellation charges including but not limited to (1) the price for Goods, Equipment and Services completed prior to Ipsen's receipt of such notice, (2) all costs previously incurred in connection with uncompleted Goods, Equipment or Services together with reasonable profit thereon, (3) the expenses incurred by Ipsen by reason of such cancellation, and (4) Ipsen's anticipated profit on the canceled portion of the contract.

14. **Termination.** Ipsen reserves the right to terminate this offer, order or contract without liability to Buyer therefor by written notice to Buyer in the event that any law, regulation, order or decision by any foreign or domestic governmental authority or court establishes prices for the Goods, Equipment or Services which shall be lower than the prices stated herein or otherwise makes impracticable the performance of the contract contemplated hereby.

15. **Advice and Assistance.** Upon request, Ipsen in its discretion, may furnish as an accommodation to Buyer, technical advice or assistance regarding the Goods, Equipment or Services. Ipsen assumes no obligation or liability for the advice or assistance given or results obtained, which shall be at Buyer's sole risk, whenever given or obtained.

16. **Buyer's Materials.** All of Buyer's tooling, goods and other property in Ipsen's possession shall be fully insured by Buyer and Buyer releases Ipsen from all liability for loss or damage to such materials caused by Ipsen's negligence or otherwise. At any time after one year from completion of any order requiring the use of such materials, Ipsen may use or dispose of such materials without liability to Buyer.

17. **Proprietary Information.** Ipsen has devoted considerable effort and expense in the generation of a body of technical information (including, but not limited to, sales proposals, technical data, know-how, models, reports, drawings, designs, specifications, schedules, devices and equipment) relating to the design, development, manufacture, specification and sale of equipment (Proprietary Information) and considers this body of technical information as proprietary information that represents a valuable property right of its organization, and has taken steps to maintain such technical information in confidence and to avoid its disclosures to parties outside its organization on a non-confidential basis.

Accordingly, Buyer shall maintain and shall cause to be maintained in confidence all Proprietary Information which may be disclosed, delivered or otherwise made available to Buyer, directly or indirectly, in writing or otherwise, or which Buyer may have occasion to observe or obtain, and Buyer shall not at any time disclose, nor shall Buyer allow at any time to be disclosed, Proprietary Information to any person, firm, corporation, association or other entity, or use the Proprietary Information for its own benefit or the benefit of any other person, firm, corporation, association or other entity except as required in connection with the use by Buyer of the Goods, Equipment and Services covered hereunder. All specifications, drawings, designs, data, inventions, discoveries and improvements developed, made or conceived by Ipsen in connection with the performance of the contract contemplated hereby shall be and remain the sole property of Ipsen. Buyer shall not reproduce, and Buyer shall not allow to be reproduced, any Proprietary Information furnished by Ipsen.

18. **Software.** If any contract created hereunder includes computer software (as used herein, the term "Software" will include the computer software, program codes and all documentation in whatever form recorded). With respect to Software owned and provided by Ipsen ("Ipsen Software"), Buyer agrees that as to such Ipsen Software, Buyer is obtaining only a personal, non-transferable, non-exclusive, license to use the Ipsen Software, that Ipsen retains title to and ownership of all Ipsen Software and that the license does not authorize Buyer to grant sublicenses, assign or transfer the Ipsen Software, or reproduce, publish or otherwise communicate or make the Ipsen Software available to any third party. Buyer agrees that the Ipsen Software is proprietary to Ipsen and shall be treated by Buyer as Proprietary Information and a trade secret as set forth in paragraph 17. Buyer is not authorized to modify the Ipsen Software. With respect to Software purchased or licensed by Ipsen from other providers ("Purchased Software"), Buyer is obtaining only such license provided by the owner/provider of the Purchased Software.

Any modifications to any Software by Buyer are at Buyer's own risk, and Buyer recognizes that if Buyer modifies the Software, there is an attendant risk of malfunction, property damage, personal injury or death due to such modifications and Buyer therefore agrees to defend and indemnify Ipsen and hold it harmless from any claim of malfunction, property damage, personal injury or death, arising out of or related to use of Software modified by Buyer, its employees or agents, or anyone other than Ipsen. Buyer agrees that all Software updates/upgrades supplied by Ipsen, whether Ipsen Software or otherwise, will be promptly and properly installed by Buyer. Buyer agrees that Ipsen has no duty to update/upgrade any Software. Buyer shall register with the suppliers of Purchased Software and, whether registered or not, shall be responsible that the Purchased Software is the current and most recent version and that all updates/upgrades are installed immediately and properly.

19. **Security Agreement, Credit and Collection.** To secure payment of all sums due Ipsen hereunder or otherwise, Ipsen shall retain a security interest in the Goods and Equipment delivered hereunder and this contract shall be deemed a security agreement under the Uniform Commercial Code. Buyer authorizes Ipsen as its attorney to execute and file on Buyer's behalf all documents Ipsen deems necessary to perfect such security interest. Ipsen is relying upon Buyer's representation of solvency and if Ipsen at any time reasonably believes that Buyer is insolvent or that Buyer's credit is impaired, Buyer shall be in material breach hereof and Ipsen may, without liability to Buyer, withhold performance hereunder, change the payment terms, and/or repossess Goods and Equipment theretofore delivered. Ipsen may charge Buyer finance, service, or late charges in an amount not greater than allowed by law, and if Buyer fails to make payment when due, Buyer shall be liable to Ipsen for all costs of collection including attorney's fees.

20. **Representations and Warranties; Covenants.** Buyer hereby represents and warrants to Ipsen that: (i) it is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and in every jurisdiction in which the nature of its business requires qualification as a foreign corporation; (ii) it has taken all corporate action which may be required to authorize the execution, delivery and performance of this Agreement, and such execution, delivery and performance will not conflict with or violate any provisions of its Articles or Certificate of Incorporation, By-Laws or any provisions of, or result in a default or acceleration of any obligation under any agreement, order, decree or judgment to which it is a party or by which it is bound, nor is it now in default under any of the same; (iii) there is no litigation or proceeding pending or threatened against it which may have a materially adverse effect on Buyer or which would prevent or hinder the performance by it or of its obligations hereunder; (iv) this Agreement and attendant documents constitute valid obligations of Buyer, binding and enforceable against it in accordance with their respective terms; (v) all financial statements that have heretofore been presented by it to Ipsen (though Ipsen has no responsibility to ask for or obtain same) in conjunction with this transaction are true and correct and present fairly the financial condition and results of operations of the subject of such statements as of the date thereof or for the period reflected therein, do not contain any untrue statement or omission of a material fact, and there is no fact, situation or event which materially adversely affects or will materially adversely affect the properties, business, assets, income, prospects or condition (financial or otherwise) of Buyer; (vi) it has the corporate power to own its assets and to transact the business in which it is engaged; and (vii) it is able in all respects to pay its obligations as they come due and it is not currently in default of any obligation under any agreement, instruments or undertaking, or decree or judgment to which it is a party or by which it is bound. At any time prior to the payment in full of the Purchase Price, Buyer shall notify Ipsen immediately upon the occurrence of an event which would cause any of the representations or warranties contained in this Section 6 to be false or misleading in any way.

21. **Miscellaneous.** No waiver by Ipsen of default by Buyer shall be deemed a waiver of any subsequent default. Captions used herein shall have no substantive significance.

22. **Governing Law.** The contract contemplated hereby shall be governed, where applicable, by the laws of the State of Illinois and the Uniform Commercial Code as adopted and in force in the State of Illinois on the date hereof.