

MEGTEC SYSTEMS, INC.
TERMS AND CONDITIONS OF SALE FOR
PARTS AND FIELD SERVICES

1. GENERAL

All parts, service, preventive maintenance repair or refurbishment services performed by MEGTEC Systems, Inc. (MEGTEC) for Buyer is subject to these terms and conditions. Provisions in addition to or inconsistent with the terms herein shall not be binding on MEGTEC unless such provisions are specifically accepted in writing by MEGTEC. Orders shall be binding only after acceptance by MEGTEC in writing.

2. WARRANTIES, REMEDIES, AND LIMITATIONS**a. Parts; Service; Preventive Maintenance:**

MEGTEC warrants its repair or refurbishment work to be free from defects in workmanship and material for a period of 90 days from shipment completion of work performed by MEGTEC. During the warranty period, MEGTEC's liability and Buyer's remedy under this warranty are limited to the judgment to have been defective in workmanship or material with MEGTEC's maximum liability being limited to the original price MEGTEC charged for the work performed. Should further damage be discovered while performing the work or additional components or services required beyond the written scope of work, the buyer will be informed of the additional cost. MEGTEC will commence with the additional work will after receiving written authorization acknowledging approval from the buyer. For components or units purchased by MEGTEC, this warranty shall apply only to the extent of the warranty granted by the suppliers thereof. MEGTEC will not pay for travel and living expenses incurred in connection with the repair or replacement, which expenses will be billed to the Buyer at MEGTEC's prevailing rates.

b. Engineering Consulting Work:

MEGTEC warrants that it possesses the requisite knowledge and skill to perform those services and that MEGTEC will perform the engineering consulting work with the degree of skill and care currently exercised by consultants in good standing performing the same or similar services in the same or similar locality.

c. This warranty is conditional upon receipt by MEGTEC of written notice of defects within fifteen (15) days after discovery by Buyer within the warranty period. Unless Buyer provides MEGTEC with written documentation of the maintenance performed on the allegedly defective work, MEGTEC reserves the right not to honor a warranty claim. Unless specifically agreed in writing, MEGTEC shall have no responsibility for the overall performance of Buyer's equipment not worked on by MEGTEC. This warranty does not cover any defects or failures due to (i) negligence, accidents, abuse, improper installation, improper operation, improper maintenance, improper storage procedures, improper electrical/mechanical interfacing of MEGTEC products with other products, electrical failure, or abnormal conditions of moisture, temperature, dirt, and corrosive matter, (ii) products tampered with or altered, modified or repaired by anyone not previously approved by MEGTEC, (iii) products damaged in shipment or otherwise without MEGTEC's fault. This warranty does not include the cost of any labor or expenses incurred for diagnostic purposes or for the adjustment of products sold hereunder. Transportation charges and risk of loss for allegedly defective products will be assumed by MEGTEC only if returned by Buyer in strict accordance with written instructions and under a returned goods authorization from MEGTEC. Replacement parts and charges associated with their replacement will be charged to the Buyer until defective parts are returned prepaid, accompanied by an Authorized Return of Goods Tag, to MEGTEC's plant in De Pere, Wisconsin. If, in the opinion of MEGTEC, the parts are found to be defective, then credit

will be given to the Buyer for the replacement parts. This warranty does not apply to experimental or non-standard products which are sold "as is".

d. Limited Warranties; Disclaimer:

MEGTEC's foregoing warranties are exclusive and are given and accepted in lieu of any and all other warranties, express or implied, including without limitation, the implied warranties of merchantability and fitness. The remedies of buyer for any breach of warranty shall be limited to those provided herein. In no event shall MEGTEC be liable for special, indirect or consequential damages, including without limitation, loss of use, production or profits, no agreement varying or extending the foregoing warranties, remedies or this limitation will be binding upon MEGTEC unless in writing signed by a duly authorized officer of MEGTEC.

e. Buyer Responsibilities:

Buyer will provide to MEGTEC, in appropriate form, all data and information necessary for MEGTEC to perform the services requested from MEGTEC. Buyer understands and agrees that MEGTEC relies on the information Buyer supplies to MEGTEC and that MEGTEC's opinions and conclusions are based on the information provided by Buyer. Furthermore, Buyer will identify all hazards relevant to MEGTEC's work hereunder, and will promptly notify MEGTEC whenever Buyer observes or determines a deficiency in MEGTEC's work as a result of incomplete or incorrect information provided to MEGTEC. Buyer represents and warrants to MEGTEC that all information it supplies to MEGTEC during the term of this Agreement is true, accurate, and complete.

3. DELIVERY AND FREIGHT; RISK OF LOSS

Title to and risk of loss of all goods sold hereunder shall pass to Buyer upon delivery F.O.B. MEGTEC's plant to an agent of the Buyer including a common carrier. MEGTEC has the option to select point of origin shipment, method of transportation and routing of shipment. In no event will MEGTEC be liable for any delay, loss or damage in transportation however occasioned. All prices listed provide for standard packing for domestic shipment in accordance with MEGTEC's standard specifications. Special packaging shall be requested and invoiced accordingly.

4. PRICES, CREDIT AND PAYMENT

- a. Buyer shall pay for goods and services according to the terms of payment as specified on the face hereof or those terms specifically quoted to Buyer in writing. Pro rata payments shall become due as deliveries are made or as work is performed by MEGTEC due as deliveries are made or as work is performed by MEGTEC. Minimum billing by MEGTEC shall be \$25.00 net. If any work is delayed by the Buyer, payments shall be made on the purchase price and the percentage of completion as determined by MEGTEC. MEGTEC shall be entitled to invoice in addition to the price quoted all additional wage costs, including premiums thereon incurred for overtime requested by Buyer. Price quotes shall remain firm for thirty days from the date of MEGTEC's quote, but prices otherwise are subject to change without notice.**
- b. If Buyer shall fail to fulfill the terms of payment or if MEGTEC or if MEGTEC at any time shall have any doubt as to Buyer's financial responsibility, MEGTEC without liability to Buyer may decline to make further shipments or continue to perform services except against cash or satisfactory security at its option. In addition, MEGTEC may claim interest on any late payment and claim compensation on any loss it has suffered, up to the agreed price.**
- c. Parts shall remain the property of MEGTEC until paid for in full, to the extent that such retention is valid.**

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d. If MEGTEC is prevented from revising prices or from continuing any price already in effect by an action of government, MEGTEC may cancel this contract or any undelivered portion thereof without liability to Buyer upon written notice of such termination to Buyer.

e. In addition to any right of setoff or recoupment provided by law, all amounts due MEGTEC shall be considered net of indebtedness of MEGTEC and its affiliates/subsidiaries to Buyer and its affiliates/subsidiaries; and MEGTEC shall have the right to setoff against or to recoup from any amounts due to Buyer and its affiliates/subsidiaries from MEGTEC and its affiliates/subsidiaries.

5. TAXES, DUTIES AND EXCISES

In the absence of satisfactory evidence of exemption supplied to MEGTEC by Buyer, Buyer shall pay in addition to the price of the goods all taxes, duties, excises or other charges for which MEGTEC may be responsible for collection or payment to any government (national, state or local) upon, measured by or relating to the importation, exportation, production, or any phase or part of the production, storage, sale, transportation and/ or use of the goods identified on the face hereof.

6. CANCELLATION

a. Requests for cancellation of any order by Buyer must be in writing and, if accepted by MEGTEC, will be subject to payment by Buyer on the following basis:

Any items or services which, upon receipt of a written notice of cancellation are within thirty calendar days of completion, are to be completed and paid for by the Buyer in full under the regular terms and conditions of billing. On all items for which materials have been purchased but on which no actual production or work has been started or performed, payment will be made on the basis of actual cost of materials purchased, plus 35% on the total of such cost and expenses. On all items or services which are not within thirty calendar days of completion, payment will be made on the basis of actual cost of labor (including without limitation engineering services), materials and supplies applied to the production of such items plus overhead expenses allocated in accordance with generally accepted accounting practice as applied by MEGTEC, plus 25% on the total of such cost and expenses; provided the total shall not exceed 90% of the contract price. In the event of cancellation of incomplete services or items, MEGTEC's figures shall be accepted as final and conclusive and Buyer's request for disposition of the material canceled shall be given to MEGTEC within thirty calendar days from date of notice to Buyer of the cost cancellation. Buyer's failure to request final disposition of canceled material within said thirty days shall be conclusive evidence of Buyer's agreement that MEGTEC may dispose of the canceled material as it sees fit without obligation of any nature by MEGTEC to Buyer. No refunds on completed custom equipment.

b. MEGTEC may terminate its obligations hereunder in the event of (i) insolvency of Buyer. Buyer shall be deemed to be insolvent if it has ceased to pay its debts as they become due, whether or not a petition has been filed under the federal Bankruptcy Code; or (ii) the filing of a voluntary or involuntary petition regarding Buyer under the federal Bankruptcy Code.

7. RETURNED MATERIAL

MEGTEC may, at its discretion, accept return of standard products for restocking credit. No products are to be returned without MEGTEC's prior written approval and an

authorized returned goods authorization (RGA) number. Standard products authorized by MEGTEC for return are subject to a 10% service charge plus MEGTEC's original transportation costs and must be returned to MEGTEC at Buyer's expense and risk of loss and in their original condition.

8. DELAY

a. Buyer acknowledges that delivery dated for products and services sold hereunder are based on the assumption that there will be no delay due to causes beyond the reasonable control of MEGTEC.

b. MEGTEC shall not be charged with any liability for delay or non-delivery when due to delays of suppliers, production problems, acts of God or the public enemy, compliance with any applicable foreign or domestic court order or governmental regulation, order or request whether or not it proves to be invalid, fires, riots, labor disputes, unusually severe weather or any other cause beyond the reasonable control of MEGTEC. In the event of any such delay, the date of delivery shall be extended for a period of time equal to the time lost be reason of the delay, but this contract shall remain otherwise in effect and Buyer shall not be relieved of his obligations to accept delivery as so delayed.

9. ENGINEERING DRAWINGS

General layout drawings will be submitted to the Buyer for approval and the Buyer (when applicable) and will be asked to approve or comment on these drawings in regard to the scope of the work and overall dimensions. In the event of interference, the Buyer will be responsible for supplying MEGTEC with information that will eliminate interferences of MEGTEC's equipment with other equipment, piping and wiring. Layout drawings will be used for the preparation of fabrication drawings after they are returned with the Buyer's approval or comments.

All additional engineering and/or drafting costs required to revise layout drawings and manufacturing drawings as a result of changes requested by Buyer after initial approval will be invoiced to the Buyer at MEGTEC's prevailing per hour rates. Increases in manufacturing costs that result from such changes will be presented to the Buyer for approval of MEGTEC's increased price before work commences.

10. MEGTEC reserves the right to make product changes and modify product specifications without notice. MEGTEC shall be under no obligation to incorporate any such changes or modifications in products manufactured prior to implementation of such changes and medications.

11. STORAGE OF EQUIPMENT

If a delay in the shipping date is requested by the Buyer within 60 days before the scheduled shipping date, MEGTEC at its option may place the equipment in storage facilities and the Buyer will pay the cost of special handling, storage and insurance. Goods held for the Buyer shall be at the risk of Buyer.

12. ASSIGNMENT AND NON-WAIVER

a. This contract is not assignable or transferable by Buyer whether voluntary or by operation of law, in whole or in part, without the prior written consent of MEGTEC.

b. MEGTEC's failure to insist upon strict performance of any provision hereof shall not be deemed to be a waiver of MEGTEC's rights or remedies or a waiver by MEGTEC of any subsequent default by compliance with any subsequent default by compliance with any of the terms hereof.

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13. SEPARATE CONTRACT

Each delivery or project shall and may be recovered for as a separate and independent contract. If Buyer fails to fulfill the terms of order, purchase, or payment under this or any other contract with MEGTEC, MEGTEC without prejudice to other lawful remedies may at its option defer further shipments hereunder until such default is made good, treat such default as a breach of this entire contract or terminate this contract.

14. ROYALTIES; MISCELLANEOUS

The purchase of equipment and services from MEGTEC confers no license, express or implied, under any patents. When good identified on the face hereof include goods suitable for use upon request) is included in the purchase price. Goods identified on the face hereof may vary according to MEGTEC's established limits, sizes and tolerances in effect at the time of delivery in respect of such goods.

ANY ADVICE FURNISHED BUYER CONCERNING THE USE OF THE GOODS SHALL REPRESENT MEGTEC'S BEST JUDGMENT IN THE CIRCUMSTANCES BUT IS ACTED UPON AT BUYER'S SOLE RISK.

15. ENTIRE CONTRACT AND CONSTRUCTION

- a. The agreement between Buyer and MEGTEC in respect of the goods and services identified on the face hereof consists in its entirety of the terms and conditions appearing on the face and back of this document in lieu of all others and supersedes all previous communications, representations or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof. No modification shall be effected by the acknowledged or acceptance of Buyer's purchase order forms or other documents containing terms and conditions different from or in addition to those contained herein.
- b. Acceptance or use by Buyer of any goods and services delivered hereunder shall be an acceptance of these as they only terms and conditions applying to the purchase and sale of said goods and services unless other terms and conditions be agreed to in writing signed by both parties specifically referring to this agreement.
- c. This agreement shall be interpreted in accordance with and the construction thereof shall be governed by the laws of the State of Wisconsin. Captions as used in these in these terms and conditions are for convenience of reference only and shall not be deemed or construed as in any way limiting or extending the language of the provisions to which such captions may refer.

16. LIMITATION ON LIABILITY AND INDEMNITY

MEGTEC's maximum aggregate liability to Buyer on all claims of any kind, whether based on contract, warranty, tort (including negligence), or strict liability, for all losses or damages to Buyer arising out of, connected with, or resulting from this Agreement shall in no event exceed the Price stated in this Agreement. The foregoing limitation of liability shall be exclusive of liability arising out of MEGTEC's fraud or willful misconduct. All liability under this Agreement, except with respect to claims already made, patent infringement claims or claims of third parties for bodily injury or property damage, shall terminate Twelve (12) months after issuance of the acceptance and signoff by Buyer. Each party ("Indemnitor") shall, to the extent permitted by law, indemnify, defend and holds safe and harmless the other party from and against any and all claims, demands, complaints or actions by third parties (including employees of the parties, their subcontractors

under the Agreement, or government agencies) arising from or relating to the Agreement (including personal injury, death, property damage or damage to the environment), to the extent arising out of the negligence, willful misconduct, breach of the Agreement, breach of a related agreement, or violation of law by the Indemnitor or any subcontractor of the Indemnitor ("Fault or Negligence"). Further, in the event the Parties are jointly at fault or negligent, they agree to indemnify each other in proportion to their relative Fault or Negligence, include all settlements, losses, liabilities, judgments, court costs, reasonable attorneys' fees, fines, penalties and other litigation costs and expenses arising from or related to such claims, demands, complaints or actions.

17. DISPUTE RESOLUTION**a. Negotiation between Executives:**

The parties shall attempt (in good faith) to resolve any dispute arising out of or relating to this Agreement by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any person may give the other party written notice of any dispute not resolved in the normal course of business. Within (15) days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of that party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within (30) days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. (All reasonable requests for information made by one party to the other will be honored.) All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

Mediation

If the dispute has not been resolved by negotiation as provided herein within (45) days after delivery of the initial notice of negotiation, (or if the parties failed to meet within (30) days after delivery), the parties shall endeavor to settle the dispute by mediation under the CPR Mediation Procedure (then currently in effect OR in effect on the date of this Agreement), (provided, however, that if one party fails to participate in the negotiation as provided herein, the other party can initiate mediation prior to the expiration of the (45) days.) Unless otherwise agreed, the parties will select a mediator from the CPR Panels of Distinguished Neutrals.

Arbitration

Any dispute arising out of or relating to this Agreement, including the breach, termination or validity thereof, which has not been resolved by mediation as provided herein (within 45 days after initiation of the mediation procedure) (within (30) days after appointment of a mediator), shall be finally resolved by arbitration in accordance with the CPR Rules for Non-Administered Arbitration (then currently in effect OR in effect on the date of this Agreement), by (a sole arbitrator) three independent and impartial arbitrators, of whom each party shall designate one) (Three arbitrators of whom each party shall appoint one in accordance with the 'screened' appointment procedure provided in Rule 5.4)

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(three independent and impartial arbitrators, none of whom shall be appointed by either party); (provided, however, that if one party fails to participate in either the negotiation or mediation as agreed herein, the other party can commence arbitration prior to the expiration of the time periods set forth above.) The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be in Wisconsin.

18. GOVERNING LAW

The validity, construction and performance of this Agreement shall be governed by and interpreted exclusively in accordance with the laws of Wisconsin.

MEGTEC SYSTEMS, INC.

By: _____

Date: _____