

EQUIPMENT TERMS AND CONDITIONS

These terms and conditions of sale ("Terms and Conditions") are applicable to all goods and services provided by Best Technology, Inc. ("Supplier") for or on behalf of the customer ("Customer") who places a Customer purchase order based on a proposal or quotation ("Quote") supplied by Supplier (the "Order") to receive Goods and/or Services (defined below) from Supplier.

1. **ACCEPTANCE OF TERMS AND CONDITIONS.** The agreement ("Agreement") between Supplier and Customer shall consist of the Quote, Order and these Terms and Conditions. These Terms and Conditions are integrated into, and form an integral part of, the Agreement. A Quote shall remain in effect for thirty (30) days from the date of the Quote, unless otherwise specified in the Quote. A Supplier, upon acceptance of the Order from a Customer, will supply the Goods and any associated services specified in the Order to Customer, pursuant to the terms and conditions of this Agreement. No terms or conditions in any acceptance, acknowledgement, invoice, or other document submitted by Customer which are in conflict with, different from, or in addition to this Agreement shall be binding upon Supplier unless expressly agreed to in writing by a duly authorized officer of Supplier. Supplier's performance is expressly subject to these Terms and Conditions notwithstanding any contrary provision contained in Customer's purchase orders, invoices, acknowledgments or other documents. In the event of any inconsistency between the Order and these Terms and Conditions, these Terms and Conditions shall control.
2. **ORDERING.**
 - A. Scope and Changes. Supplier shall supply the goods, equipment, components, parts, or products (the "Goods") as described in the Quote to Customer at the prices and in accordance with the payment terms outlined in the Quote. If Customer requests additions, deletions or other revisions with respect to the specifications of the Goods, Supplier and Customer will discuss the changes and shall advise Customer of changes in the pricing, time of delivery or other matters arising from the proposed change. Supplier shall not be obligated to implement a requested change in the Goods, pricing, terms or method of delivery unless Supplier has executed a written document making specific reference to a change order.
 - B. Cancellation of Orders. Supplier reserves the right to refuse any cancellation of any Order by Customer. In particular and without limiting the foregoing, no cancellation will be accepted by Supplier if Supplier's vendor is in the process of completing the manufacture of the Goods or has completed the manufacture of such Goods. In the event the Supplier elects to accept a cancellation, Supplier reserves the right to charge Customer for all actual costs incurred including reasonable profit and a \$5,000.00 cancellation charge. Any down payments, progressive payments or milestone payments made by Customer will not be returned to Customer if the Order is canceled.
3. **PRICING AND PAYMENT TERMS.**
 - A. Prices. Customer shall pay Supplier the costs described in the Quote plus any expenses incurred, including, without limitation, travel and associated expenses, all state, local and service taxes or fees, and express and courier services, in accordance with the payment terms outlined in the Quote. All prices quoted are in U.S. currency and all invoices are made out in U.S. currency.

- B. Payment Terms. Customer shall comply with the payment terms as provided in the Quote. Supplier may, in its sole discretion, extend credit to Customer. Payment terms shall be effective from the date of invoice and/or detailed on the specific Quote. Supplier may, in its sole discretion, extend credit to Customer subject to Supplier's credit requirements to determine credit status or credit limits. Customer must keep their account current at all times.
- C. Non-Compliance. In the event Customer does not comply promptly and completely with the payment terms, Supplier has the right to place the Order on hold until the issue is resolved to Supplier's satisfaction. Supplier has the right to impose additional charges to Customer for any cost resulting from Customer's failure to comply with payment terms. Supplier reserves the right to suspend or cancel (at its option) other Customer Orders and/or deliveries when an invoice remains unpaid after the due date.

4. DELIVERY.

- A. Shipments. Unless otherwise specified in the Quote or invoice, all Goods will be shipped FOB manufacturing facility and will be shipped to Customer via carriers selected by Customer. All freight costs will be the responsibility of Customer. Title and risk of loss passes to Customer upon delivery of the Goods to the carrier. Supplier shall not be liable for any delays, loss or damage in transit.
- B. Lead Times. Supplier shall use commercially reasonable efforts to meet any schedule or date specified in the Quote. Supplier, however, will not be liable for any delay or failure in the estimated delivery or shipment, or for any damages that may result to Customer from such delay.
- C. Partial Shipments. Supplier may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order. Any failure or defect in any one (1) shipment shall not affect the remaining shipments.
- D. Inspection Period. Customer shall inspect the Goods within seven (7) days of the date they are first delivered and made available for Customer's use (the "Inspection Period"). Customer will be deemed to have accepted the Goods unless it notifies Supplier in writing and within the Inspection Period of any damage, shortage, loss or failure of the Goods to comply with the specifications and requirements related thereto as set forth in the Order and any other documentation provided by Supplier which details specifications applicable to the Goods (collectively, the "Specifications"). Supplier will have no liability for damage, shortage, or loss caused by acts or omissions of the carrier, or by other causes beyond Supplier's reasonable control. Goods reportedly damaged will be held by Customer for disposition as instructed by Supplier. If Customer timely notifies Supplier of any non-conforming Goods, Supplier shall, in its sole discretion, (a) replace such non-conforming Goods with conforming Goods or (b) repair such non-conforming Goods to make them conforming. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS SECTION 4(D) ARE CUSTOMER'S EXCLUSIVE REMEDIES FOR THE DELIVERY FOR NON-CONFORMING GOODS. EXCEPT AS PROVIDED UNDER THIS SECTION 4(D), ALL SALES OF GOODS TO CUSTOMER ON A ONE-WAY BASIS AND CUSTOMER HAS NO RIGHT TO RETURN THE GOODS TO SUPPLIER.

- 5. **CONFIDENTIAL INFORMATION.** The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. "Proprietary or Confidential Information" means any information that parties receive or otherwise have access to incidental to or in connection with this Agreement: (i) whose confidential nature has been made known by the disclosing party, orally or in writing, to the receiving party; or (ii) which a reasonable person under like circumstances would treat as confidential due to its character and nature. "Proprietary or Confidential Information" shall not include any information which (a) was

known by the other party prior to disclosure by or on behalf of such party; (b) becomes available to the other party from a source other than such party that is not bound by a duty of confidentiality; (c) becomes generally available or known in the party's industry other than as a result of the other party; or (d) is developed by a party without the use of the other party's Proprietary or Confidential Information. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement.

6. CUSTOMER RESPONSIBILITIES AND WARRANTIES.

a. Responsibilities.

- i. Customer will perform those tasks and fulfill those responsibilities necessary for the procurement of the Goods or specified in the Order ("Customer Responsibilities"). Customer understands that procurement of the Goods is dependent on Customer's timely and complete performance of Customer Responsibilities, including decisions and approvals. Supplier will be entitled to rely on all decisions and approvals of Customer. Customer shall be solely responsible for any data, information, and documents provided to Supplier. Supplier shall be entitled to rely on such data, information, and documents and shall have no duty to independently verify the accuracy of the same.
- ii. Customer shall provide and pay for all necessary preparations for the placement and use of the Goods, according to the specifications given by Supplier, including but not limited to, power connections, foundations, exhaust and ventilation. Failure to do so shall excuse performance, further performance or nonperformance by Supplier, but shall not affect the Customer's obligation to pay Supplier in accordance with applicable payment terms in the Quote. Unless expressed otherwise in the specific Quote, as with all custom manufacturing equipment, there are no ETL, UL, CE or other certification marks included in the pricing. Customer is solely responsible for verifying whether any state, local, or municipality certification requirements or laws apply to the Goods being purchased. The materials of construction including heaters, immersion coils, pumps and any other wetted components are not warranted for compatibility with any particular chemical or chemical solution. Unless as otherwise stated by Supplier in writing, the determination of such suitability of materials of construction with the chemical(s) to be used is the sole responsibility of Customer in conjunction with Customer's chemical supplier.

- b. Use of Goods. Customer will be responsible for: (a) Customer's operation and use of the Goods, (b) ensuring that the Goods meet Customer's requirements, and (c) Customer's compliance with all applicable federal, state and local laws and regulations.

- ## 7. WARRANTIES OF SUPPLIER; DISCLAIMER OF WARRANTY.
- Supplier warrants that it will convey the Goods free and clear of all liens, security interests and encumbrances created by, through or under Supplier. Supplier makes no warranty, with the respect to the Goods, of any kind, expressed or implied or otherwise whatsoever, including but not limited to, any implied warranties of merchantability or fitness for any particular purpose or use or any implied warranty arising out of a course of dealing, custom, or usage of trade. There is no guaranty of result, or of functionality. Further, no term, condition or warranty is included by Supplier as to the quality, marketability, or for any other purpose of the Goods contemplated by Customer, or as to any other matter in respect of which the Goods are supplied, whether the Goods are used alone or in combination with other equipment. Any warranties for the Goods will be provided by the manufacturer of the Goods and not Supplier. Customer acknowledges as a term of the Agreement that

these exclusions are reasonable. Supplier will assume no liability for parts processed with the Goods, improper customer use of the Goods, accidental damage, negligence, improper service or poor practice.

8. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 7 ABOVE OR IN THE QUOTE, GOODS ARE PROVIDED ON AN “AS-IS” BASIS. SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES WHATSOEVER CONCERNING THE PERFORMANCE OR CONDITION OF THE GOODS AND ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES. SUPPLIER DOES NOT ASSUME ANY RESPONSIBILITY FOR THE GOODS OR ACTIONS OF ANY THIRD PARTIES.
9. **INDEMNIFICATION.** Customer agrees to indemnify, defend, and hold harmless Supplier (and its affiliates, officers, employees, owners, and agents) from and against any and all losses, damages, liabilities, claims, actions, penalties, costs or expenses of whatever kind, relating to, resulting from or arising out of any third-party claim or any direct claim for: (i) breach of this Agreement by Customer; (ii) use by the Customer (or any third party acting on behalf of or under authorization from Customer) of the Work or any information, reports, deliverables, materials, products, or other results of Supplier’s work under this Agreement; (iii) Customer’s infringement of a third party’s intellectual property rights or Customer’s violation of any rule, law, or regulation in the provision of any materials or information to Supplier; (iv) any negligent act by Customer or its employees, agents, or representatives; or (v) any negligent act by Supplier that is not intentional or reckless in nature.
10. **LIMITATION ON LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOST PROFITS, UNDER ANY CIRCUMSTANCE OR ANY THEORY WHATSOEVER, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY FOR SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. SUPPLIER’S TOTAL LIABILITY FOR DAMAGES UNDER THE AGREEMENT SHALL BE LIMITED TO THE TOTAL FEES DUE HEREUNDER FOR THE INVOICE UPON WHICH A CLAIM IS BASED. The limitation of liability set forth in this section shall not apply to (i) liability resulting from Supplier’s gross negligence or willful misconduct and (ii) death or bodily injury resulting from Supplier’s acts or omissions.
11. **NON-SOLICITATION.** Neither party will hire or retain the services of any employee of the other party during the term of this Agreement and for a one (1) year period thereafter without the prior written consent of the other party, such consent to be made at the discretion of the consenting party. Consent for hiring an employee may be conditioned on payment of a recruitment fee or other payment to compensate the consenting party for the expense of replacing the employee.
12. **INDEPENDENT CONTRACTOR.** The parties agree that Supplier and Customer will be independent contractors and neither Supplier nor its employees will be considered employees of Customer. It is understood and agreed that nothing herein is intended nor shall be construed to create an employer/employee, partnership or joint venture relationship between Supplier and Customer. Customer will not deduct from Supplier’s compensation income tax, FICA payments, or any other expenses, unless required by law. Payment of federal income tax, FICA payments, and state income taxes are the responsibility of Supplier. Customer agrees and acknowledges that neither it nor any of its employees, agents or representatives has any right or authorization, express or implied to act for Vendor or incur, assume or create any obligation, responsibility, or liability on behalf of Supplier or make any representations or warranties concerning Supplier or the Work in the name of or on behalf of Supplier or bind Vendor in any manner whatsoever.
13. **INSURANCE.** Supplier and Customer represent that each has and will continue to have appropriate levels of insurance during the term of this Agreement.

14. **COMPLIANCE WITH LAWS AND REGULATIONS.** Each party agrees to comply with all federal, state, county and local laws, regulations, ordinances, and rules applicable to this Agreement and the exercise of its rights and performance of its obligations hereunder.
15. **NOTICES.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified first-class mail, postage prepaid, or commercial overnight delivery service to the address listed above for the party to whom notice is to be given, and shall be effective upon delivery if hand-delivered, three (3) days after mailing if mailed or one (1) day after delivery to a commercial overnight delivery service.
16. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Minnesota, without reference to conflicts of law principles. Any legal suit, action or proceeding arising out of or relating to the Work or this Agreement shall be commenced in a federal or state court in Hennepin County, Minnesota, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. The parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury. In the event that litigation is instituted to interpret or enforce any term or provision hereof, the prevailing party shall be entitled to reasonable attorney's fees to be awarded by the court in the same action or in a separate action brought for that purpose.
17. **FORCE MAJEURE.** Supplier shall not be responsible for delays or failure to perform due to, any delays or failure to perform any obligation under this Agreement due to fires, explosions, floods, acts of God, strikes, riots, lock-outs or other disturbances, including, without limitation, pandemic, war, insurrection, embargoes, government restrictions, compliance with or any action taken to carry out the intent or purpose of any law or regulation, inability to obtain raw materials, energy availability, lack of correct or complete data, changes or revisions, delay of third party suppliers, or other accidents or other causes or contingencies not caused by Supplier or over which Supplier has no reasonable control.
18. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall remain in full force and effect and will in no way be affected, impaired or invalidated.
19. **ENTIRE AGREEMENT.** This Agreement supersedes all prior agreements and constitutes a complete and exclusive statement of the terms of the agreement among the parties with respect to its subject matter. There have been and are no representations, warranties or covenants between the parties other than those set forth in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by all of the parties.
20. **WAIVER.** No waiver of any provisions of this Agreement will be deemed a waiver of any other provisions, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.