

## Standard Terms & Conditions for Products & Services

**1. Period of Quotation.** This Quotation for the furnishing of products, materials and/or services (collectively referred to as "Product"), manufactured by Spectex, Inc. ("Seller"), will remain in effect for a minimum period of thirty (30) days from the date signed by or on behalf of Seller and (unless previously accepted by Customer) may be withdrawn anytime thereafter by Seller.

**2. Prices.** The prices quoted are those in effect on the date of this Quotation, and will remain in effect during the period of Quotation. Seller shall have the right, however, to issue a modified Quotation in the event of unforeseeable changes in the costs of raw materials. Seller's prices are F.O.B. Seller's factory or other designated point of shipment. Prices do not include, and Customer shall pay all costs and expenses incident to shipment and handling of materials from the point of delivery of the Product by Seller to carrier at Seller's factory or other point of shipment, including without limitation all transportation, shipping and handling costs, costs of insurance and costs and expenses of preparation and installation at Customer's site.

**3. Taxes.** Prices quoted do not include (and Customer agrees to pay) taxes, tariffs, duties, or fees of any kind which may be levied or imposed on either party by federal, state, municipal, or other governmental authorities in connection with the sale or delivery of the Product or Services provided by Seller.

**4. Terms of Payment.** Unless otherwise specifically agreed in writing by Seller, the total price is due and payable to Seller, without setoff or other deductions or charges, thirty (30) days net after date of Seller's invoice. In some circumstances, the seller may, at its option, require customer to make a down payment and to make progress payments commensurate with performance by seller.

Any amounts due by Customer to Seller, which are unpaid, on or after thirty (30) days of invoice for such amount, Seller may choose to charge interest at the rate of one and one-half (1-1/2%) per month, or the maximum rate permitted by law, whichever is less. The accrual of payment of any interest as provided above shall not constitute a waiver by Seller of any rights and remedies in connection with a default by Customer. Customer shall pay all court costs, attorneys' fees, and other costs incurred by Seller in collecting past due accounts, including interest.

**5. Limited Warranty - Disclaimer of Warranties.** Seller warrants that the products will be free of material manufacturing defects or in the case of services, shall meet the quality specifications as defined by customer and agreed to by seller. Seller expressly disclaims any warranty for further use and handling of the product. Such warranty shall not apply in any event to failure or defects in materials due to normal wear and tear, failure to perform recommended or customary maintenance procedures, exposure to detrimental elements, improper or extended storage, or corrosion, and shall not extend to any person or entity other than Customer.

In the event of any such defect in materials or workmanship, the sole liability and obligation of Seller shall be limited to the value of the Purchase Order or in the alternative to furnish replacement parts. In the case of services, Seller's liability shall be limited to the cost of the material consumed during processing. At the option of Seller, Seller may arrange for repair of any such Product, or components or parts thereof, provided that Customer pays all costs of shipment to and from Seller's factory.

The obligations of Seller under this limited warranty are subject, however, to the following conditions:

The above limited warranty shall apply solely with respect to Products manufactured by Seller or services provided, and Seller makes no warranties with respect to materials and components of the Product described in the Quotation, or elsewhere, which are manufactured by others. The sole remedy available to Customer with respect to defects in such materials or components supplied by others shall be against such manufacturer under any manufacturer's warranty relating to such materials or components to the extent available to Customer. This warranty is not transferrable unless otherwise agreed in writing by Seller.

**EXCEPT AS SPECIFICALLY PROVIDED ABOVE, SELLER DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO OR IN ANY WAY RELATING TO THE PRODUCTS, WHETHER BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES STATED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**6. Limitation of Liability and Remedies.** The sole and exclusive remedies of Customer, and the sole and exclusive obligation of Seller, with respect to any defects or failures of the Products or Services (whether resulting from defects, failures, or errors in design, materials or workmanship, or otherwise) shall be under the limited warranties described in Clause 5 above.

**SELLER SHALL IN NO EVENT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY ALLEGED DEFECTS OR FAILURES OF THE PRODUCTS OR SERVICES, INCLUDING BUT NOT LIMITED TO DAMAGES RELATING TO USE OR LOSS OF USE OF THE MATERIALS, OR DELAYS IN MANUFACTURE OR DELIVERY OF THE PRODUCTS OR SERVICES.**

Unless otherwise specifically agreed to in writing, in no event shall Seller be directly or indirectly liable for any drawings, designs, parts, items, or materials specified or furnished by the buyer or its agents or suppliers for incorporation into the product or service. In no event shall any damages in the aggregate payable by Seller as a result of any and all breaches of this contract by Seller exceed one hundred percent (100%) of the price for the Products or Services.

**7. Indemnification.** Customer agrees to defend, indemnify, and hold harmless Seller, and its respective employees and agents, from and against all liabilities, claims, damages, losses, and expenses (including reasonable attorney fees) for injury to any person or property which directly or indirectly arises out of: 1) any breach of these terms, or 2) the misuse, unsafe, negligent, or inappropriate use of the Product.

**8. Delivery.** Any delivery dates, or other schedule of performance by Seller are approximations, and the sole obligation of seller with respect to the schedule of delivery or performance shall be to use commercially reasonable efforts to deliver the Product or Services, or otherwise to perform, consistent with the reasonable demands of its business and the availability of materials and components. In any event, Seller shall have no liability to Customer or any other person for delays in performance due to strikes or labor disputes of any type; accidents, fire, floods, acts of God, or action by governmental authority; acts, omissions, or delays of Customer or any other third party; shortages of labor and materials; or without limitation of the above for any causes reasonably beyond the control of Seller. Customer shall make all arrangements for transportation, handling, and installation of products, or materials for services.

**9. Changes.** Seller reserves the right from time to time to correct any typographical or clerical errors, including errors in mathematical computations, which may exist in any terms of the Quotation or invoice. All Products and services shall be furnished subject to any and all variations and tolerances based on the standard practice of Seller. Seller may at any time cease manufacturing any Product (including replacement parts or components) at its discretion without liability to Customer.

**10. Title and Risk of Loss.** Title to and risk of loss or damage to the materials shall pass to Customer upon delivery by Seller F.O.B. point of shipment exit-factory date, subject only to the security interest retained by Seller.

**11. Cancellation or Termination.** In the event of cancellation of an order by Customer, after production has been begun or service has started, Customer shall pay to Seller all direct and indirect costs (including, without limitation to engineering, product development, overhead, and administrative costs) incurred directly or indirectly by Seller.

**12. Approval of Specifications and Drawings.** Customer shall promptly approve, reject, or otherwise respond to any and all specifications or engineering drawings submitted by Seller to Customer in connection with the manufacture of Products. Any approval by Customer of specifications or drawings shall constitute conclusive approval of Product supplied in conformity to such specifications or drawings. Technical information shall not be construed as a warranty and no liability shall be assumed.

**13. Modifications and Waiver - Entire Agreement.** Neither party has rights, warranties or conditions expressed or implied, statutory or otherwise, other than those herein contained. This Quotation contains the entire agreement between Seller and Customer and can be modified or rescinded only by a writing signed by both parties. No waiver of any provision of this Quotation shall be binding unless in writing signed by an authorized representative of the party against whom the waiver is asserted, and unless expressly made generally applicable shall apply only to the specific case for which the waiver is given. Failure of either party to insist upon strict performance of this quotation shall not be construed as a waiver of any term or conditions thereof.

Any execution by Seller of a document submitted by Customer in connection with purchase of the Products described herein does not constitute acceptance of or agreement to any terms and conditions in addition to or different from those contained herein, but shall constitute only acknowledgment of receipt of such document. In addition, notwithstanding any terms contained in any documents submitted by Customer in connection with purchase of the Product described hereunder, the acceptance of delivery by Customer of Products described in this Quotation shall constitute a course of conduct constituting Customer's agreement to the terms and conditions of this Quotation, to the exclusion of any additional or different terms and conditions.

**14. Governing Law.** This Quotation shall be governed by and construed in accordance with the laws of the State of New Hampshire.

**15. Agreement to Arbitrate.** Customer agrees that all disputes between the Seller and Customer (and their respective affiliates) relating in any way to or arising in any way out of Seller's Quotation(s) and/or Purchaser's Purchase Order(s), whether pleaded in contract or tort, at law or in equity, and whether for damages or equitable relief, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with the AAA's Commercial Arbitration Rules, and judgment entered on an award by the arbitrator(s) may be entered by any Court having jurisdiction thereof. Customer agrees that the location of any arbitration as provided for in this paragraph shall be conducted in New Hampshire, and Customer waives any right to contest or object to the location of the arbitration in New Hampshire, under R-11 of the Commercial Arbitration Rules, and/or any other rule or law.