



TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE ("**TERMS AND CONDITIONS**") CONSTITUTE THE ENTIRE AGREEMENT BETWEEN APPLIED EXTRACTS, INC. ("**SELLER**") AND THE CUSTOMER INDICATED ON THE FACE HEREOF ("**CUSTOMER**") WITH RESPECT TO THE SALE OF ANY PRODUCT OR PROVISION OF ANY SERVICES BY SELLER TO CUSTOMER. SUCH TERMS AND CONDITIONS ARE EXCLUSIVE, AND SELLER REJECTS ANY AND ALL TERMS AND CONDITIONS PROPOSED BY CUSTOMER. ACCEPTANCE OF THE PRODUCTS OR SERVICES INDICATES CUSTOMER'S ACKNOWLEDGEMENT OF AND ASSENT TO THE TERMS AND CONDITIONS.

1. DEFINITIONS

1.1 "**Delivery**" means the first instance at which the customer can take receipt of the Product/s.

1.2 "**Product**" means any good sold or distributed by Seller or any product manufactured or processed by Seller and sold through its representatives or distributors.

1.3 "**Services**" means the furnishing of personnel by Seller to the Customer's location for services in connection with a Product including installation, start-up, testing, training, inspection, maintenance, repairs, or otherwise.

1.4 "**Specifications**" means Seller's specific technical information about a given Product which is published in the applicable user manuals and technical data sheets distributed together with such and which are in effect on the date Seller ships Customer's order.

2. PRICES

2.1 Prices exclude delivery charges, unless otherwise indicated on the applicable quotation delivered to Customer by Seller (each, a "**Quote**"), and are valid for the period indicated on such Quote.

2.2 Prices are exclusive of all applicable withholding, excise, sales, use, service, duties, value added or like taxes in each case imposed now or in the future by any governmental authority in connection with the transactions or amounts payable by Customer (collectively, "**Taxes**"). Customer shall pay all Taxes, unless Customer has provided Seller with an appropriate exemption certificate for such Taxes for the delivery jurisdiction. Customer will provide VAT-ID numbers to support VAT exemptions of intra-community supplies where appropriate as governed by national and European legislation and Customer will notify Seller immediately if the VAT-ID number provided becomes invalid or is changed or amended in any way. Seller may have to retrospectively charge VAT in the event that VAT has been incorrectly exempted due to Customer failure to notify Seller of the invalidation or change of VAT-ID number.

3. ORDERS

3.1 All orders are subject to acceptance by Seller. Customer will specify the address for Delivery to take place in the country where the order is placed, unless otherwise agreed by Seller in writing. Each order must specify a delivery date that is within twelve (12) months from the applicable order date, including possible rescheduling, unless otherwise agreed or indicated on the applicable Quote.

3.2 Seller reserves the right to renegotiate the terms under which it has accepted any Purchase Order from Customer in the event of extraordinary changes to the price of any component or raw material used in the manufacture of the Products. Absent agreement on any changed terms, Seller's sole remedy shall be to cancel the order without liability.

3.3 Except as provided in these Terms and Conditions, orders for Products and Services accepted by

Seller are firm and non-cancelable. Buyer may not cancel an order for custom Products. Buyer may cancel an order for non-custom Products and shall pay (a) all charges which have been incurred in conjunction with the canceled or rescheduled Products, in the sole discretion of Seller as to charges incurred on an actual or percent-of-completion basis including labor, materials, purchased items, overhead, profit, vendor cancellation charges, and other related charges, PLUS (b) a cancellation or rescheduling charge equal to twenty five percent (25%) of the order price of the items so affected, but in no event will the total amount exceed the total order price. Seller may cancel any order or portion thereof without liability on its part in the event of Customer's default of any terms herein or upon material adverse change in Customer's financial condition. Cancellation and rescheduling charges shall be payable within thirty (30) days of receipt of an invoice for such charges.

4. DELIVERY AND ACCEPTANCE

4.1 Seller will make reasonable efforts to ship Products or provide Services on Customer's requested delivery dates. If Seller is unable to meet Customer's delivery requirements, alternative arrangements may be agreed.

4.2 Customer may reschedule the delivery dates for the Products by up to sixty (60) days by giving notice at any time prior to fifteen (15) days prior to the original ship date. For any rescheduled delivery dates in excess of 60 days, Seller shall be entitled to store the Products at a third-party facility and Buyer shall pay Seller, prior to shipment, storage costs of \$500 per month and transportation costs to a storage facility.

4.3 Qualification Testing: Prototypes and all other Product orders which have not undergone a qualification testing program are quoted on a "best efforts basis" and therefore any performance values listed shall be considered as design goals and not as firm specifications.

4.4 Product Testing: Upon request, Seller may perform certain Product testing for the Customer. Product testing is incapable of duplicating all factors which a product might be subject to during its operation. Therefore, neither the results of such testing, nor the testing itself, shall be construed as a warranty or guarantee, of any kind, by Seller. The determination of whether a particular Product or Service is suitable or fit for a Customer's particular purpose must be by the Customer, and is the Customer's sole responsibility.

5. SHIPMENT AND RISK OF LOSS

Seller will ship Products according to Seller standard commercial practice, unless otherwise indicated on the applicable Quote. All shipments of Product will be made EX Works (Incoterms 2010) Seller authorized facility, unless otherwise agreed to in writing by both parties. If special packing or shipping instructions are agreed by Seller, charges for such packing and/or shipping will be quoted and billed separately to Customer.

6. PAYMENT; TERMINATION

6.1 Payment terms are subject to credit approval of Customer by Seller, in its sole discretion. Except as otherwise indicated on the applicable Quote with respect to required prepayments and completion/pre-shipment payments, payment is due Net 30 days from Seller invoice date. Payments shall be made in US dollars. Any invoice which is unpaid by Customer when due shall be subject to the interest rate of 1% per month or the maximum allowable by applicable law, whichever is lower, plus such late payment charge as Seller may reasonably require to cover its additional costs of administration and collection.

6.2 Seller may change credit or payment terms at any time if Seller determines, in its sole discretion, that Customer's financial condition, previous payment record, or the nature of Customer's relationship with Seller so warrants.

6.3 Seller may discontinue performance and/or terminate these Terms and Conditions if Customer fails to pay any sum when due, or fails to perform under these Terms and Conditions or any other agreement with Seller if, after ten (10) days written notice, the failure has not been cured.

7. WARRANTY; DISCLAIMER

7.1 Seller warrants (“**Warranty**”) solely to Customer that any Products consisting of equipment, machinery and spare parts and any Services described in an order (each, a “**Covered Product/Service**”) shall (a) be free of material defects in materials and workmanship and (b) materially conform to the applicable Specifications (or Customer’s specifications to the extent expressly accepted in writing by Seller) during the period (“**Warranty Period**”) of the lesser of (i) ninety (90) days from the date of Delivery or performance of the applicable Covered Products/Services, or (ii) the operation of the applicable Product for one thousand (1,000) hours. This Warranty is non-assignable and extends only to Customer and not to indirect purchasers or users. If during the Warranty Period Seller receives Customer’s notice that a given Covered Product/Service fails to conform to the Warranty, as Customer’s sole and exclusive remedy and Seller’s sole liability, Seller will, at its option, use commercially reasonable efforts to repair or replace the affected Covered Products/Services. If Seller is unable, within a reasonable time, to repair, replace or correct such defect or nonconformance in the applicable Covered Products/Services to a condition as warranted, Customer will be entitled to a refund of the purchase price for the Covered Product/Service that was actually paid by Customer to Seller or its authorized distributor for the affected Covered Product/Service. Notwithstanding the above, Seller shall have no obligations under this section unless, in each case, Customer returns the applicable Covered Products/Services to Seller within the Warranty Period in accordance with Seller’s standard RMA process (if requested by Seller) and provides a detailed description of the nature of the defect or non-conformity which is confirmed by Seller in its sole discretion. Any such repair or replacement will not extend the original Warranty Period for such Covered Product/Service.

7.2 Customer will prepay shipping charges (and will pay all duties and taxes) for Covered Products/Services returned to Seller for Warranty claims. For valid Warranty claims, Seller will reimburse Customer for prepaid freight charges and return Covered Products/Services to Customer at Seller’s expense.

7.3 Unless Seller agrees in writing that Customer has configuration control, Seller may make process or materials changes affecting the performance or other characteristics of Products. Covered Products/Services supplied after such a change will continue to materially meet Seller’s published Specifications, but may not be identical to the Covered Products/Services supplied as samples or under prior orders.

7.4 Customer acknowledges and agrees that Seller may include in certain components or sub-assembly Products remanufactured parts that are equivalent to new in performance.

7.5 Notwithstanding anything herein to the contrary, Seller shall have no liability or obligation for any Product rendered defective or non-conforming to the Warranty, in whole or in part, due to improper or inadequate maintenance; Customer supplied goods or components; unauthorized modification; improper use or operation outside of the Specifications for the Product (e.g., correct voltage, coolant and CO2 supply); misuse or abuse, negligence, accident, loss or damage in transit, improper site preparation; unauthorized maintenance or repair; failure to continually provide a suitable installation or operation environment; or any other cause beyond the range of normal use of the Products.

7.6 Agency Approvals and Regulatory Directives: Unless expressly stated in writing by Seller, the Products do not include any agency approvals (e.g., UL, CE, ASME, CRN, TSSA, CSA, etc.) or meet any regulatory requirements (e.g., RoHS, NEMA, etc.) even if the Product was derived from a standard Product with such agency or regulatory approvals.

7.7 EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 7, ALL PRODUCTS AND SERVICES (INCLUDING ANY PRODUCTS OR SERVICES THAT ARE NOT “COVERED PRODUCTS/SERVICES” AS DEFINED HEREIN) AND ANY OTHER EQUIPMENT, MACHINERY, COMPONENTS, PARTS, OR MATERIALS PROVIDED BY SELLER ARE PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND SELLER AND ITS SUPPLIERS EXPRESSLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES NOT EXPRESSLY SET FORTH IN THIS SECTION 7. Seller makes no warranty expressed or implied as to the suitability of any of its products in or services for Customer’s applications.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 As between the parties, Seller (or its licensors) retains ownership of all patents and other intellectual property rights in the Products, Services and the results thereof, and all related designs, data, and

materials, except to the extent any such items are provided by Buyer, such as proprietary requirements. The Products are offered for sale and sold on the condition in every case that such sale does not convey any license, express or implied, under any patent or other intellectual property right of Seller, and all such rights are reserved.

8.2 Customer will not modify, alter, reproduce, reverse engineer, or disassemble the Products without Seller's prior written consent otherwise the warranties above will be void. Where Customer has other rights under applicable statutes, Customer will provide Seller with reasonably detailed information regarding any intended disassembly.

9. LIMITS ON USE; LIMITATION OF LIABILITY

9.1 PRODUCTS ARE NOT SPECIFICALLY DESIGNED, MANUFACTURED, OR INTENDED FOR SALE AS PARTS, COMPONENTS, OR ASSEMBLIES FOR, AND THE PRODUCTS AND SERVICES ARE NOT WARRANTED FOR, ANY USE THAT IS INTENDED FOR HAZARDOUS OR HIGH-RISK APPLICATIONS IN WHICH ANY DEFECTS OR FAILURES OF THE PRODUCT OR SERVICES COULD CREATE A SITUATION WHERE PERSONAL INJURY, DEATH OR SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE MAY OCCUR (INCLUDING, WITHOUT LIMITATION, SECURITY, LAW ENFORCEMENT OR SAFETY-OF-LIFE APPLICATIONS). CUSTOMER IS SOLELY LIABLE IF PRODUCTS OR SERVICES ACQUIRED BY CUSTOMER ARE USED FOR THESE APPLICATIONS. CUSTOMER WILL INDEMNIFY AND HOLD SELLER HARMLESS FROM ALL LOSS, DAMAGE, EXPENSE, OR LIABILITY IN CONNECTION WITH SUCH USE.

9.2 THE REMEDIES EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. SELLER SHALL NOT BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, NOR FOR ANY LOSS OF BUSINESS, LOSS OF USE OR OF DATA, INTERRUPTION OF BUSINESS, LOST PROFITS OR GOODWILL, OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE PRODUCTS OR SERVICES OR THESE TERMS AND CONDITIONS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SELLER'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE GREATER OF (A) THE PRICE PAID BY CUSTOMER FOR THE PRODUCTS OR SERVICES TO WHICH THE APPLICABLE CLAIM RELATES, OR (B) TEN THOUSAND U.S. DOLLARS (\$10,000). SELLER AND CUSTOMER ACKNOWLEDGE THAT THESE LIMITATIONS ON POTENTIAL LIABILITIES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION HEREIN.

10. GENERAL

10.1 Except for payment obligations, neither party will be liable for performance delays or for non-performance, in case of acts of God, government, police, war, riots, fire, explosion, flood, strike, lockout, injunction, inability to obtain machinery, equipment, fuel, power, raw material, labor, containers, or transportation facilities, accident, breakage of machinery or apparatus, governmental action, customs, requests, priority or distribution orders, national defense requirement or other causes beyond its reasonable control.

10.2 If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.

10.3 Customer may not assign any rights or obligations under these Terms and Conditions without Seller's prior written consent.

10.4 Under no circumstances will Seller be obligated to provide any cost data for the Products or Services to Customer or any third party.

10.5 Customer acknowledges and agrees that the Products, Services, and all technical data or information provided hereunder may be subject to U.S. export control laws and regulations, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such laws and regulations and obtain all required licenses to export, re-export, or import the Products, Services, and technical data and information provided hereunder.

10.6 These Terms and Conditions of Sale will be governed by the laws of the State of California without regard to any conflict of laws principles that would require the application of the laws of a different jurisdiction. Customer and Seller expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms and Conditions or to any transaction hereunder. The parties consent to the exclusive jurisdiction and venue of any court of general jurisdiction in San Mateo County, California, and the United States District Court for the Northern District of California, for any and all actions associated with any dispute arising in connection with these Terms and Conditions.

10.7 If Buyer is located outside the U.S., then the provisions of this Section shall apply. (a) Les parties aux présentes confirment leur volonté que cette convention de même que tous les documents y compris tout avis qui s'y rattache, soient rédigés en langue Anglaise. (translation: "The parties confirm that this Agreement and all related documentation is and will be in the English language.")

10.8 Any documentation, data or technical information supplied by Seller to Customer hereunder and marked "confidential" ("**Confidential Information**") is proprietary and confidential to Seller. Customer agrees to use its best efforts to maintain the confidentiality of any Confidential Information or Quotes (whether marked "confidential" or not) supplied to it and not to disclose or use Confidential Information or Quotes in any manner inconsistent with the purpose for which it was disclosed.

10.9 The failure by either party to enforce at any time any of the provisions in these Terms and Conditions will in no way be construed as a waiver of such provisions. If any provision of these Terms and Conditions is unenforceable as written, the remainder of these Terms and Conditions will remain in effect and the unenforceable provision will be limited or eliminated to the minimum extent necessary so that these Terms and Conditions will otherwise remain in full force and effect and enforceable. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in connection with the construction or interpretation of these Terms and Conditions.

10.10 THESE TERMS AND CONDITIONS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND CUSTOMER, AND SUPERSEDE ANY PREVIOUS COMMUNICATIONS, REPRESENTATIONS OR AGREEMENTS BETWEEN THE PARTIES RELATING TO THE PRODUCTS AND SERVICES, WHETHER ORAL OR WRITTEN, AND APPLY TO ALL QUOTATIONS, PURCHASE ORDERS, AND ACKNOWLEDGEMENTS RELATING TO THE PRODUCTS AND SERVICES. ACCEPTANCE OF ANY ORDER BY SELLER IS MADE ONLY ON THE EXPRESS CONDITION THAT THESE TERMS AND CONDITIONS SHALL GOVERN. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM CUSTOMER WILL NOT BE DEEMED A WAIVER OF ANY PROVISION HEREIN. ANY ADDITIONAL OR DIFFERENT TERM PROPOSED BY CUSTOMER SHALL BE DEEMED MATERIAL, IS OBJECTED TO, AND IS HEREBY REJECTED UNLESS SPECIFICALLY ACCEPTED IN WRITING BY SELLER. ANY CHANGES IN THESE TERMS AND CONDITIONS MUST BE AGREED IN WRITING BY AN OFFICER OF SELLER BEFORE BECOMING BINDING. THESE TERMS AND CONDITIONS SHALL BE APPLICABLE WHETHER OR NOT THEY ARE ENCLOSED WITH THE PRODUCTS SOLD HEREUNDER OR PROVIDED AT THE TIME OF SERVICES. ACCEPTANCE OF THE PRODUCTS OR SERVICES INDICATES CUSTOMER'S ACKNOWLEDGEMENT OF AND ASSENT TO THE TERMS SET FORTH HEREIN, REGARDLESS OF ANY PURCHASE ORDER, CONFIRMATION, OR WRITING OF THE CUSTOMER INDICATING OTHERWISE.