

## Infinity Technical Services Division, Inc. Terms and Conditions for Sale and Lease of Products and Services

**NOTE:** The following Conditions of Sale are subject to change. All transactions for products sold by Infinity Technical Services Division, Inc. Company are subject to the latest published Conditions of Sale of the Infinity Technical Services Division, Inc. Company and to any Special Conditions of Sale which may be contained in applicable Infinity Technical Services Division, Inc. quotations and acknowledgments.

**NOTICE:** Sale or Lease of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any additional or different terms proposed by Buyer are expressly objected to and will not be binding upon Seller unless agreed to in writing by Seller; provided however, that no pre-printed facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Terms and Conditions or the Contract shall not be binding on either party. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation or Contract, any quotation by Seller shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt

### 0. Definitions. Unless Seller otherwise agrees:

"Buyer" means the entity to which Seller is providing Products or Services under the Contract. "Contract" means the documents that comprise the agreement between Buyer and Seller for the sale or lease of Products or Services, including these Terms and Conditions and any other documents incorporated therein by reference, such as, the final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. "Hazardous Materials" means any chemical, substance, material or emission that is or may be regulated, governed, listed or controlled pursuant to any international, national, federal, provincial, state or local statute, ordinance, order, directive, regulation, judicial decision or other legal requirement applicable to the Site as a toxic substance, hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, pesticide, radioactive material, regulated substance or any similar classification, or any other chemical, substance, emission or material, including, without limitation, petroleum or petroleum-derived products or by-products, regulated, governed, listed or controlled or as to which liability is imposed on the basis of potential impact to safety, health or the environment pursuant to any legal authority of the United States or the country of the Site. "Leased Equipment" means all Products Seller has agreed to lease to Buyer under the Contract, as well as all equipment of Seller which will be located at the Site during all or some portion of the term of the Contract without Seller's personnel present, such as remote diagnostic equipment. "Products" means all equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract, including Leased Equipment and Refurbished Parts. "Refurbished Parts" means used Products that have been repaired and/or reconditioned by Seller for resale. "Seller" means the entity providing Products or performing Services under the Contract. "Services" means all services Seller has agreed to perform for Buyer under the Contract. "Site" means the premises where Products are delivered or Services are performed, not including Seller's premises from which it performs remote Services. "Terms and Conditions" means these Terms and Conditions for Sale and Lease of Products and Services.

**1. GOVERNING PROVISIONS AND ACCEPTANCE:** All quotations are subject to these conditions of sale. Acceptance of an order by Infinity Technical Services Division, Inc. shall be expressly conditioned on Purchaser's assent to these conditions. Purchaser's direction to proceed with engineering, manufacture or shipment by Infinity Technical Services Division, Inc. shall be deemed evidence of this assent. No modified or other conditions will be applicable unless those conditions are so stated in Infinity Technical Services Division, Inc.'s proposal or are specifically agreed to in writing and signed by an authorized official of Infinity Technical Services Division, Inc. Failure to object to provisions contained in any Purchase Order or other communication from the Purchaser (including, without limitation, penalty clauses of any kind) shall not be construed as a waiver of these Conditions nor an acceptance of any other provisions. These terms are a complete statement of the parties' agreement and may only be modified in writing signed by both parties. These terms may not be modified by course of dealing, course of performance or usage of trade. These terms supersede all previous written or oral quotations, statements or agreements. Any contract for sale by and between the parties shall be governed by and construed according to the laws of the State of California without regard to its rules on the conflict of laws. The Convention on the International Sale of Goods is expressly excluded.

**2. QUOTATIONS:** Quotations shall be valid for no more than thirty (30) days from their date, unless otherwise stated in the quotation. All quotations are subject to change by Infinity Technical Services Division, Inc. Company at any time upon notice to Purchaser. It is Purchaser's obligation to review the quotation carefully and to immediately advise Infinity Technical Services Division, Inc. of any differing interpretation Purchaser has so any necessary change can be made.

**3. PRICE POLICY:** All prices are subject to change without notice. In the event of a net price change and unless otherwise agreed to in writing, prices for orders scheduled for immediate release shall be those in effect at time of order entry. Prices for orders placed for future shipment without an agreed price and ship date will be billed at the pricing in effect as of the shipment date. All clerical errors are subject to correction.

**4. SUBSTITUTION:** Infinity Technical Services Division, Inc. may furnish suitable substitutes for material unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers, provided such substitutions do not adversely affect the technical soundness of the equipment. Infinity Technical Services Division, Inc. assumes no liability for deviation from published dimensions and descriptive information not essential to proper performance of the product.

**5. TAXES:** Any manufacturer's tax, retailer's tax, occupation tax, use tax, sales tax, excise tax, (except federal excise tax on vehicles), duty, customs, inspecting or testing fee, or other tax, fee or charge of any nature whatsoever, imposed by any governmental authority or measured by any transaction between Infinity Technical Services Division, Inc. and Purchaser, shall be paid by the Purchaser in addition to the prices quoted or invoiced, and such charges will appear as a separate line item on the invoice. In the event Infinity Technical Services Division, Inc. will be required to pay any such tax, fee, or charge, Purchaser shall reimburse Infinity Technical Services Division, Inc. or, in lieu of such payment, Purchaser shall supply Infinity Technical Services Division, Inc. at the time the order is submitted with an exemption certificate or other document acceptable to the tax authority. Purchase Orders must state the existence and amount of any such tax, fee or charge for which Purchaser claims an exemption.

**6. TERMS OF PAYMENT & CREDIT:** Purchaser acknowledges and agrees that Infinity Technical Services Division, Inc. shall have the right to set payment terms and shall have no obligation to grant you credit. By proceeding with the purchase of Infinity Technical Services Division, Inc. product, you agree and consent to Infinity Technical Services Division, Inc. obtaining such credit information on you from third parties as it may require. Unless otherwise agreed to in writing, you agree that you will pay interest on overdue amounts that you may owe to Infinity Technical Services Division, Inc. from time to time at Infinity Technical Services Division, Inc. current commercial interest rate set out on the relevant Infinity Technical Services Division invoice. Terms are subject to change for failure to meet such standards. Terms are net thirty (30) days from date of invoice of each shipment, unless otherwise stated in Infinity Technical Services Division, Inc.'s quotation. Infinity Technical Services Division, Inc. reserves the right at any time to demand full or partial payment before proceeding with a contract of sale if, in its sole judgment, as a result of changes in the financial condition of the Purchaser the terms of payment originally specified are no longer justified.

### 7. PAYMENTS:

**A.** If delivery is delayed or deferred by the Purchaser beyond the scheduled date, payment shall be due in full when Infinity Technical Services Division, Inc. is prepared to ship. The equipment may be stored at the risk and expense of the Purchaser. If the Purchaser defaults when any payment is due, then the whole contract price shall become due and payable upon demand, or Infinity Technical Services Division, Inc. at its option, without prejudice to other lawful remedies, may defer delivery or cancel the contract for sale. If Purchaser becomes insolvent or bankrupt or in the event any proceeding is brought against the Purchaser, voluntarily or involuntarily under the bankruptcy or any insolvency law, Infinity Technical Services Division, Inc. may cancel any order outstanding at any time and recover its applicable cancellation charges from the Purchaser or the Purchaser's estate.

**B. PAYMENT TERMS:** Except as otherwise agreed to by Seller in writing, and upon approved credit, The following payment terms apply:

**B.1** Buyer shall pay Seller all invoiced amounts in U.S. dollars, without right of set-off, within 30 days from date of invoice.

Seller shall be entitled to payment of all charges associated with Seller's performance of Services as the Services are performed. For each Product with a price of U.S. \$25,000 or more, partial payments of the contract price shall be made as invoiced starting upon order placement, such that 80% of the Contract price is received before scheduled shipment. Buyer shall pay a monthly late payment charge computed at the rate of 1.5%, or the maximum interest rate permitted by applicable law, whichever is less, on any past-due amount for each calendar month (or fraction thereof) that the payment is overdue and all costs of Seller's collection efforts including reasonable attorney's fees.

**B.2** Unless otherwise agreed in the Contract, in any transaction in which Buyer and Seller are domiciled in separate countries,

Buyer shall establish an irrevocable, unconditional, sight letter of credit allowing for pro-rata payments for partial deliveries, storage, export shipment, price adjustments, cancellation or termination, and all other payments due from Buyer under the Contract and certification of the charges and grounds for such payment. The letter of credit shall be (a) confirmed by a bank that is acceptable to Seller, (b) payable at the counters of the confirming bank, (c) opened sixty (60) days prior to the earliest scheduled shipment and (d) remain in effect until ninety (90) days after the latest scheduled shipment. Buyer shall pay all banking charges. Seller will not begin performance until the letter of credit becomes operative. Buyer will increase the amounts and/or extend the validity period(s) and make appropriate modifications to any letter of credit within five business days of Seller's notification that such increase or extension is necessary to provide for payments to become due.

**B.3** If at any time Seller reasonably determines that Buyer's financial condition does not justify the continuation of Seller's performance, Seller may require full or partial payment in advance or shall be entitled to suspend or terminate the Contract.

**8. DELIVERY: A. F.O.B. POINT OF SHIPMENT:** When the Infinity Technical Services Division, Inc. quotation is based on delivery F.O.B. point of shipment, freight prepaid and allowed for delivery within the continental United States, product is sold F.O.B. point of shipment, freight prepaid and allowed. A shipping and handling charge of twenty-five dollars (\$125) will be added to all orders having a total net invoice price of less than one thousand dollars (\$1,000). Delivery by Infinity Technical Services Division, Inc. to the point of shipment constitutes delivery to the Purchaser; and title and all risk of loss or damage in transit shall pass to the Purchaser at time of delivery at the F.O.B. point. Infinity Technical Services Division, Inc. is not responsible for breakage after having received "in good order" receipts from the carrier. Purchaser is responsible for pursuing any damage claims with the carrier. No allowance will be made in lieu of transportation if the Purchaser accepts shipment at factory, warehouse or freight station or otherwise supplies its own transportation. Freight prepaid is defined as: A) Shipments to destinations within the continental United States to the accessible common carrier point nearest the first destination. B) Shipments to U.S. destinations outside the continental United States shall be to the common carrier free delivery point in the United States nearest the original port of embarkation. All charges associated with F.A.S., C.I.F., or other charges such as pier transfer, lift, ocean freight, and marine or war insurance shall be paid by the Purchaser, unless otherwise specifically agreed in a specific Purchase Order. In no event will Infinity Technical Services Division, Inc. be responsible for demurrage or detention charges.

**B. DELIVERY: F.O.B. DESTINATION:** When the Infinity Technical Services Division, Inc. quotation is based on delivery F.O.B. Destination, for shipments for delivery within the continental United States, Infinity Technical Services Division, Inc. will retain title and all risk of loss or damage in transit to the common carrier free delivery point in the United States nearest the first destination for a price addition of 2% of the net price. If the Purchaser elects this option, Purchaser's obligations shall be as follows: A) Purchaser shall have the responsibility of inspecting the equipment for apparent loss or damage immediately upon its arrival at the free delivery point. B) In the event of apparent shipping loss or damage, Purchaser shall make written notation of the loss on the carrier's delivery receipt and, within 72 hours of delivery shall notify Infinity Technical Services Division, Inc. Purchaser shall not remove product from the point of examination and shall retain the shipping container and packing material. Purchaser shall request the

carrier to make an inspection and send Infinity Technical Services Division, Inc. a copy of the carrier's inspection report. C) In the event of concealed damage which occurred during transit and is discovered by the Purchaser after delivery, Purchaser shall report such damage immediately, but in no event later than 15 days after delivery, to the delivering carrier, and within 72 hours of discovery, shall notify the local Infinity Technical Services Division, Inc. field office. If such notification is not made, Infinity Technical Services Division, Inc. shall not be liable for loss or damage in transit.

**C. SHIPMENT AND ROUTING:** Infinity Technical Services Division, Inc. shall select the point of origin of shipment, the method of transportation and the routing of the shipment. Purchasers that request expedited or special modes of transportation or routing involving air, premium or any other non-standard Infinity Technical Services Division, Inc. shipping shall be assessed additional charges for shipping, handling, freight and expediting. Any rebates, allowances, discounts or incentives received by Infinity Technical Services Division, Inc. from its carriers shall be retained by Infinity Technical Services Division, Inc. . All prices include domestic packaging only. When other than domestic packaging is required, contact Infinity Technical Services Division, Inc. Purchaser specified packaging and marking may be subject to additional charges.

**9. SHORTAGES:** Claims for shortages or errors must be submitted to Infinity Technical Services Division, Inc. within 30 days after invoice date, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by the Purchaser.

**10. INSTALLMENTS:** Infinity Technical Services Division, Inc. reserves the right to make shipments in installments, unless otherwise expressly stipulated in a specific Purchase Order; and all such installments when separately invoiced shall be paid for when due per invoice without regard to subsequent shipments. Delay in shipment of any installment shall not relieve Purchaser of its obligation to accept remaining shipments.

**11. FORCE MAJEURE: A.** Infinity Technical Services Division, Inc. shall not be liable for any damages as a result of any delays due to any causes beyond Infinity Technical Services Division, Inc. control, including, without limitation, an act of God; act of Purchaser or Infinity Technical Services Division, Inc. supplier; embargo or other governmental act; regulation or request; fire; accident; strike; slowdown; flood; fuel or energy shortage; sabotage; war; riot; delay in transportation and inability to obtain necessary labor, materials or manufacturing facilities from usual sources. In the event of any such delay, the date of delivery shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

**B. Excusable Delays.** Seller shall not be liable nor in breach or default of its obligations under the Contract to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable price and performance adjustment.

**12. Manufactured Products WARRANTY:** Infinity Technical Services Division, Inc. can make no warranty agreements regarding "manufactured products". However, Infinity Technical Services Division, Inc. shall assign to OWNER any transferable manufacturers' warranties covering "manufactured products" sold as part of the WORK. OWNER shall bear the responsibility of completing and returning manufacturers' warranty registration cards. This limited warranty is in lieu of any other warranty, expressed or implied, concerning the scope of work described in the quotation. Infinity Technical Services Division, Inc. specifically excludes all implied warranties of habitability, merchantability and fitness for a particular purpose. The obligation of Infinity Technical Services Division, Inc. is limited solely to the repair or replacement of the defective component and does not extend to any damage, harm, consequential or incidental damages resulting thereby.

**13. Services Warranty:** INFINITY TECHNICAL SERVICES DIVISION, INC. warrants for one year from the date of invoice that all labor shall be free from defects. INFINITY TECHNICAL SERVICES DIVISION, INC.'s sole obligation shall be to remedy any such non-conformance when reported to INFINITY TECHNICAL SERVICES DIVISION, INC. by Client. If it is determined that a failure was caused by defective workmanship and not caused by accident, misuse, neglect, alteration, improper installation, repair or improper testing, the costs of repair will be paid for by INFINITY TECHNICAL SERVICES DIVISION, INC. INFINITY TECHNICAL SERVICES DIVISION, INC. will have a reasonable amount of time to make such repairs. The obligation of Infinity Technical Services Division, Inc. is limited solely to the repair of the defective component and does not extend to any damage, harm, consequential or incidental damages resulting thereby.

**14. RETURN OF EQUIPMENT:** NO EQUIPMENT MAY BE RETURNED WITHOUT FIRST OBTAINING INFINITY TECHNICAL SERVICES DIVISION, INC.'S WRITTEN PERMISSION AND A RETURNED MATERIAL IDENTIFICATION TAG. Returned equipment must be of current manufacture, in the original packaging, unused, undamaged and in saleable condition. Returned equipment must be securely packed to reach Infinity Technical Services Division, Inc. without damage and labeled with the return authorization number. Any cost incurred by Infinity Technical Services Division, Inc. to put equipment in first class condition will be charged to the Purchaser. Returns must originate from the original purchaser account number. Returns will be credited at the original price paid as indicated on the invoice or purchase order associated to the equipment being returned as provided by the Purchaser. If no invoice number or purchase order number is provided, then credit will be issued based on the into stock price in effect 12 months prior to date of return authorization and will also have an additional 25% processing fee applied. Infinity Technical Services Division, Inc. stocked equipment (which is defined as equipment stocked within Infinity Technical Services Division, Inc.'s Distribution Center) and non-stocked equipment, which are listed in the current product list as returnable and which are accepted for credit, not involving a Infinity Technical Services Division, Inc. error, shall be assessed a restocking fee of 25% of the invoice price. NOTE: Special Order and Custom equipment is not returnable. Each line item returned must have an extended line item value of \$25.00 or greater. Infinity Technical Services Division, Inc. shall bear the cost of returns resulting from Infinity Technical Services Division, Inc. error, and method and route of return will be at the discretion of Infinity Technical Services Division, Inc. . Costs incurred by failure to follow Infinity Technical Services Division, Inc. direction will be borne by the Purchaser.

**15. SOFTWARE:** Any software or computer information, in whatever form that is provided by Infinity Technical Services Division, Inc., is licensed to Purchaser solely pursuant to standard licenses of Infinity Technical Services Division, Inc. or its supplier of such software or computer information which licenses are hereby incorporated by reference. Infinity Technical Services Division, Inc. does not warrant that such software or computer information will operate error free or without interruption, and warrants only that during the warranty period applicable to the equipment that the software will perform its essential functions. If such software or computer information fails to conform to such warranty, Infinity Technical Services Division, Inc. will, at its option, provide an update to correct the non-conformance or replace the software or computer information with the latest available version containing a correction. Infinity Technical Services Division, Inc. shall have no other obligation to provide updates or revisions.

**16. LIMITATIONS: A.** These disclaimers and limitations of remedies apply to all warranties offered to Purchaser and to all Purchase Orders. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESSED OR IMPLIED WARRANTIES (EXCEPT WARRANTIES OF TITLE), INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Except as may be expressly provided in an authorized writing by Infinity Technical Services Division, Inc., Infinity Technical Services Division, Inc. shall not be subject to any other obligations or liabilities whatsoever, other than as stated above with respect to equipment sold or services rendered by Infinity Technical Services Division, Inc.. Notwithstanding anything to the contrary herein contained INFINITY TECHNICAL SERVICES DIVISION, INC. COMPANY, ITS CONTRACTORS AND SUPPLIERS OF ANY TIER, SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR LOST TIME, LOST PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER. The remedies of the Purchaser are exclusive and the total cumulative liability of Infinity Technical Services Division, Inc., its contractors and suppliers of any tier, with respect to this contract or anything done in connection therewith, such as the use of any product covered by or furnished under the contract, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the price of the product, part, or service on which such liability is based

**B. Limitation of Liability:** B.1 The total liability of Seller for all claims arising out of or relating to the performance or breach of the Contract or use of any Products or Services or any order shall not exceed (a) the Contract price or (b) if this Contract is in the form of a frame or master agreement under which Buyer places an order with Seller for the Products and Services to be purchased, (i) the final price of the particular order under which the specific Products or Services giving rise to the claim are supplied or performed or (ii) ten thousand US dollars (US\$10,000) if the claim is not part of any particular order. Seller's liability shall terminate upon the expiration of the applicable warranty period, provided that Buyer may enforce a claim that accrued prior to that date by commencing an action or filing an arbitration, as applicable under the dispute resolution clause, before the expiration of the applicable statute of limitations or repose, but not later than one year after the expiration of such warranty period. B.2 Seller shall not be liable for loss of profit or revenues, loss of product, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of cover, downtime costs, increased operating costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages. B.3 If Buyer is supplying Seller's Products or Services

to a third party, Buyer shall require the third party to agree to be bound by this Article. If Buyer does not obtain this agreement for Seller's benefit, Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims made by the third party in excess of the limitations and exclusions of this Article. B.4 Seller shall not be liable for any advice or assistance that is not required under the Contract. B.5 For the purposes of this Article, the term "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their agents and employees, individually or collectively. B.6 The limitations and exclusions in this Article shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra contractual liability (including negligence), and strict liability or otherwise. B.7 Buyer's and Seller's rights, obligations and remedies arising out of or relating to the Products or Services are limited to those rights, obligations and remedies described in this Contract. This Article shall prevail over any conflicting or inconsistent terms in the Contract, except to the extent that such terms further restrict Seller's liability.

**17. TERMINATION:** Any order may be terminated by the Purchaser only upon notice to Infinity Technical Services Division, Inc. and upon payment of reasonable and proper termination charges based on the price of the terminated order and reimbursement of all direct costs and expenses associated with the order caused by such termination and shall include a reasonable profit. Special or custom ordered equipment is not cancelable after final acceptance of approval drawings for the commencement of manufacturing.

**18. CANCELLATION:** Infinity Technical Services Division, Inc. shall have the right to cancel any order or contract at any time by written notice for any material breach of the contract by the Purchaser, including material delays in releasing equipment for manufacture or approval drawings and excessive changes to specifications or drawings.