

## ACURTECH, LLC - Terms and Conditions – ORDER / QUOTATION

Unless otherwise indicated within the details of this quotation/proposal, the following General Terms & Conditions shall apply:

**Pricing Note:** If the material price varies between the date of this quotation and the date the purchase order is placed, Acurtech, LLC reserves the right to adjust pricing to reflect such price changes.

**Quotation:** Although labeled a Quotation, the SELLER intends this document as an offer to sell, Buyer's placement of an order for goods and services quoted shall be deemed acceptance of all terms of this offer. Buyer's acceptance is expressly limited to the specifications, price, quantities, and other terms stated on the front and back of this Quotation. Notice is hereby given that different or additional terms in Buyer's Order shall be considered material alterations of this Quotation and shall not be effective without SELLERS written approval.

**Proposal Acceptance:** This proposal is offered for acceptance within thirty (30) days from date, after which it is subject to confirmation by the SELLER and made with the understanding that if accepted by the Buyer the following conditions are agreed to.

**Acknowledgement:** SELLER acknowledges Buyer's request for services and will undertake work on the express condition that goods and services will be furnished only on the terms stated herein or in any SELLER quotation previously issued in connection with this order. Such terms will control, if in conflict with terms of buyer's purchase order. All orders are subject to SELLER management approval.

**Price and Modification:** Orders are accepted by SELLER subject to delivery when available, at SELLER'S prices in effect on the shipment date. Once accepted by SELLER, orders will not be subject to cancellation, in whole or in part, without SELLER'S written consent and then only upon reimbursement of SELLER for all costs and expenses incurred by it, including, without limitation, costs of handling and processing.

**Termination:** In the event Buyer terminates this order, in whole or in part, Buyer shall pay SELLER all costs incurred by SELLER to the date of termination plus reasonable costs of processing the termination (including settlement expense and the attorney fees, if applicable), together with a reasonable profit thereon, or the full contract price of the order, whichever is less. The buyer may only cancel his order by written notice to the SELLER.

**Subcontracting:** SELLER reserves as its prerogative the option to subcontract all or any portion of work under contract.

**Taxes:** The prices shown do not include any taxes (sales, excise, use, etc.) or any other governmental charges. Any charges or taxes applicable to the order will be paid by the Buyer except where specifically exempt by a certificate.

**Terms of Payment:** Unless specific other terms of payment are specified in this quotation or shown on the order acknowledgement, payment shall become due thirty (30) days from date of invoice. If shipment is delayed by the Buyer, payment shall become due thirty (30) days from date Seller is ready to ship. If manufacturing is delayed by Buyer, partial shipment is to be made based on the acknowledged price and a percentage of completion at time of notification of delay.

If in the judgment of SELLER, the financial condition of the Buyer is changed and a time of construction or shipment does not warrant the terms shown on the acknowledgment, SELLER may require full or partial payment in advance of construction and shipment of the order.

Should the Buyer delay payment beyond limits defined in SELLERS proposals and Buyer's purchase order, then interest will be charged at the rate of 1 1/2% per month on any unpaid portion of the selling price.

**Scope and Nature of Work:** SELLER will perform its work in accordance with the specifications provided by Buyer. The buyer shall be solely responsible for providing technical specifications to the SELLER. In no event shall the SELLER be liable to the Buyer for non-conformity of goods and services where buyer has failed to provide full and explicit technical specification to SELLER in advance of the start of work by SELLER. SELLER assumes no responsibility to anticipate technical or engineering requirements of the Buyer or Buyer's customer and shall not be liable to either except as may otherwise be provided herein.

**Inspection and Claim:** Buyer shall inspect and test the goods delivered hereunder for damage, defect or shortage immediately upon receipt, and shall notify SELLER of any such damage, defect, or shortage within ten (10) days of receipt. Thereafter the goods and services shall be accepted.

**Warranty, Materials & Workmanship:** Unless otherwise stated herein, SELLER will repair or replace, at its option, without charge at FOB point of shipment, any parts of its own manufacture proven under SELLERS examination to be defective in material and workmanship when furnished, provided a claim is made within twelve (12) months after installation or eighteen (18) months after shipment, whichever comes first.

Buyer must provide SELLER with the installation date within sixty (60) days after installation and start up is completed. Deterioration or wear occasioned by chemical, abrasive or excessive heat shall not constitute defects. This warranty is limited to repair or replacement and excludes the cost to remove and re-install such parts or equipment and all transportation cost. Equipment and accessories not manufactured by SELLER are warranted only to the extent they are warranted by their manufacturer.

This warranty does not cover any product which, in the judgment of SELLER, has been subject to misuse, neglect, or improper maintenance; which has been repaired or altered outside SELLERS plant in any way that may have impaired its safety, operation, or efficiency; nor any product which has been subject to accident or operated in excess of design limitations.

This warranty is limited to repair or replacement and does not include consequential damages, loss of production, downtime, expenses and loss of profit.

If any material, as furnished by the SELLER is alleged by the Buyer to be defective or incorrectly manufactured and is rejected by the Buyer, Buyer shall promptly notify SELLER and said SELLER shall have the option of replacing or correcting, within a reasonable time, any defective material or fault in manufacture, at his own expense, or reimbursing the Buyer the agreed cost of such replacement or correction. Buyer shall not furnish any material or do any work for the SELLERS account without specific authorization and a definitive written agreement from SELLER as to the consideration, and in no case shall the SELLER be liable for more than the price charged for such material as may prove defective, and no payments shall be withheld by Buyer pending adjustment of liability or amount of cost of alleged errors.

**THE ABOVE STATED WARRANTY IS THE ONLY WARRANTY MADE BY THE SELLER. THERE ARE NO WARRANTIES, INCLUDING WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, GIVEN IN CONNECTION WITH THE SALE OF THE GOODS SOLD HEREUNDER.**

## ACURTECH, LLC - Terms and Conditions – ORDER / QUOTATION

### Continued

**Responsibilities & Excusable Delays:** SELLER shall not be liable for damages or delays in performance resulting from causes beyond its control. Such causes include, without limitation, acts of God or the public enemy, acts of the United States or other governments, shortages of fuel or raw materials, embargoes, unusually severe weather, fires, floods, labor disputes, insurrection or riot or any other cause which is unavoidable, or beyond the control of Seller or in any event for consequential damages.

Authorization by Buyer to ship the apparatus and equipment shall constitute a waiver of all claims for loss and damage due to delay.

The equipment furnished hereunder is to operate under conditions specified herein, which conditions Buyer is to supply and for which conditions Buyer is to assume full responsibility. SELLER responsibility is limited to that specifically stated herein.

The buyer will assume full responsibility for any loss or damage resulting from the operation of the apparatus. SELLER assumes no responsibility for any auxiliary apparatus or work in connection with the equipment furnished hereunder, notwithstanding that SELLER may have submitted recommendations pertaining hereto.

**Replacement Parts:** If this agreement is for replacement parts, customer warrants that the original components in which these replacement parts will be placed are in satisfactory working condition, and when said replacement parts are installed, the resultant installation will operate in a safe manner, at speeds and temperatures for which the original equipment was purchased.

**Safety Accessories:** Customer understands that SELLER manufactures multifunctional goods that may or may not require safety devices, depending on the use and location of the goods. Customer warrants that it has determined what safety devices, including warning devices and notices of danger, should be placed on the goods sold hereunder, and further warrants that it has either purchased these from SELLER or from another source.

**Access:** Authorized representatives of SELLER acceptable to Buyer shall have access at all reasonable times to the installation for observing and adjusting the operation thereof.

**Patents:** In no case shall the SELLER be liable for any alleged patent infringement.

**Prime Contract:** The SELLER shall not be bound by any provision under any prime or other contract to which the Buyer is a party.

**Shipment and Delivery:** All shipping information transmitted to Buyer, including shipping and delivery date, represents only the best estimates of SELLER. In the event that delays are encountered by SELLER in obtaining equipment, material and/or service, the shipping schedule will be extended as necessary to accommodate such delays. SELLER shall not be liable for direct or consequential loss or damage due to suspension or delay in manufacture, shipment, delivery, etc. attributable to cause beyond the responsible control of SELLER. Risk of loss and risk of delay in transit shall pass to Buyer upon acceptance of goods by carrier at point of shipment, unless the parties otherwise agree in writing.

**Indemnification and Insurance:** (a) Buyer shall indemnify and hold harmless SELLER from claim of misuse of proprietary information, and infringements of patents, trademarks or copyrights based on design, drawings, or specifications which Buyer provides to SELLER or which are developed by SELLER or others in conjunction with Buyer and approved Buyer. (b) SELLER shall indemnify and hold harmless Buyer from claims of misuse of proprietary information and infringements of patents, trademarks, or copyrights for SELLER catalog products. (c) Buyer shall indemnify and hold harmless SELLER from any damages or liabilities claimed by a third party, and attorney fees and costs incurred by SELLER with respect thereto, arising from the design of usage of a product which alone or as a component in an assembly, as alleged or proved to have caused injury or damage. (d) Buyer agrees to obtain product liability insurance coverage, if reasonably available, for products in which parts purchase from SELLER are components.

If SELLER'S employees are required to furnish services away from SELLER'S offices, it is expressly agreed that SELLER shall have no liability for damage or loss to any property of CLIENT, or injury or death to persons on CLIENT'S property (other than SELLER'S own employees) resulting in any manner whatsoever (including negligence) from any acts or omissions of SELLER'S employee while performing such services and CLIENT shall indemnify and hold harmless SELLER and such employees from any claims and damages arising there from.

Buyer will, while any part of the purchase price of said installation remains unpaid, maintain sufficient fire insurance, including extended coverage endorsements on apparatus and equipment shipped to Buyer to SELLER hereunder, to fully reimburse Seller in case of loss or damage by fire.

**Limitation and Liability:** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL SELLER, ITS AGENTS, SUBCONTRACTORS, SUPPLIERS AND THE EMPLOYEES OF EACH BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, (OR EQUIVALENTS THEREOF NO MATTER HOW CLAIMED, COMPUTED OR CHARACTERIZED) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. ITS SUBJECT OR ITS PERFORMANCE OR BREACH OF PERFORMANCE BY SELLER REGARDLESS OF WHETHER ANY SUCH LIABILITY SHALL BE CLAIMED IN CONTRACT, EQUITY, TORT, (INCLUDING NEGLIGENCE) OR OTHERWISE. By way of example of the foregoing limitation of liability, but without limiting in any manner its scope or application, SELLER shall not be liable for all or any part of the following no matter how claimed, computed, or characterized; loss of profit or revenue, loss of return on investment, cost of capital, loss of operating time or production, loss or reduction of use or value of any facilities (including existing facilities) or any portions of facilities, expense of replacement products or power, or increased costs of operations or maintenance. The limitation of liability contained in this Article shall be effective without regard to SELLER'S performance, or failure or delay of performance, under any other terms or condition of this Agreement, including those contained in the Warranty.