General Terms and Conditions of Sale

1. **Scope of Work.** Seller will provide only those materials and equipment ("Goods") and labor and services ("Services") expressly included in Seller's quote or proposal (the "Proposal") (the Goods and Services collectively referred to as the "Work"). Site preparation and installation are excluded unless expressly stated otherwise. No other Goods or Services of any nature are included in the price stated in the Proposal. Buyer acknowledges it has thoroughly reviewed all scope of work documents, plans, specifications, prints, drawings and material lists furnished by Seller and that it has approved the same. For the purpose hereof, except as otherwise provided in the Proposal, Buyer's Scope of Work shall mean all site preparation, utility connections, building permits and other site activities required for the installation of the Goods. The Work will be performed exclusively in accordance with, and subject to, the Proposal, these terms and conditions ("GTC") and any other terms which are stated in or expressly incorporated into the Proposal (collectively, the "Contract").

2. **Proposal Validity; Rejection of other Terms**. Unless otherwise provided, the Proposal is valid for thirty (30) days from the Proposal date. Seller reserves the right to reject any order issued more than 30 days after the Proposal date. Issuance of an order by Buyer constitutes acceptance of the Contract, to the exclusion of all other terms and conditions on any document issued by Buyer. Seller hereby objects to and rejects any Buyer terms that seek to modify this Contract, including any Buyer terms referenced on Buyer's purchase order. Only mutually negotiated terms signed by an officer of Seller may override application of this Contract to Buyer's order.

3. **Delivery**. Unless otherwise provided, all Goods are shipped by Seller Ex-works Origin, pre-pay and add plus 10% handling fee. Import duties, taxes, tariffs and fees shall be paid by Buyer. Title and risk of damage to or loss of goods shall pass to Buyer upon delivery of Goods to carrier. No claim for freight damage will be allowed unless made by Buyer within 7 days from receipt of shipment. Freight costs and estimates are based on freight rates as of the Proposal date and are subject to adjustment if such rates increase. Prices quoted are for furnishing and shipping in accordance with the delivery schedule specified and the quantity(s) listed in the Proposal. Should shipping releases or schedules be changed for any reason beyond Seller's control, Seller reserves the right to invoice according to work performed by Seller through the date of any such change. If Buyer declines or is unable to take delivery at the time(s) specified in the Contract, Seller will have the Goods stored for Buyer at Buyer's risk and account, and the materials shall be considered "delivered." Buyer shall pay storage, additional freight, handling and re-handling charges and continue to make payments according to the payment terms contained herein.

4. **Installation**. If installation work is part of this Contract, the Goods will be installed under the direction of an employee or agent of Seller. Buyer shall furnish sufficient electricity, water, compressed air, light, heat, sanitary facilities, and fire protection as well as adequate all-weather storage space, ingress and egress to the job site and other items as listed under Buyer's responsibilities. The site is to be timely prepared for installation, without undue interferences. Unless otherwise stated, installation shall be performed only during Seller's normal working hours and overtime work required for any reason shall be requested by and paid for by Buyer.

5. **Buyer Site Access and Conditions**.
   a. Site Access. Unless otherwise agreed, or waived in writing by Seller, Buyer must provide the following for the duration of the Services at no cost to Seller: A) A safety buffer zone established nominally fifty (50) feet around the base of Seller's work area, maintained free and clear of all other work, contractors, equipment and personnel; B) An adequate construction staging, lay down and material storage area adjacent to the safety buffer zone, for Seller's exclusive use. Both the safety and storage areas shall be graded, leveled, well drained, even with the top of the foundation and suitable for delivery vehicles and Seller's equipment in all weather conditions; C) All weather access roads shall be made available and maintained by Buyer from a main highway and from the railroad sidings (if applicable) to Seller's area and the location of construction; and Seller's rail siding, (if applicable), shall be available to Seller within 300 feet, by the normal routing, of Seller's area.

   b. Changes and Differing Conditions. If Buyer requests changes in installation requirements, or if changes in site conditions or installation requirements are discovered subsequent to issuance of the Purchase Order, the parties shall negotiate an equitable price adjustment to reflect all expenses caused by the changes. Buyer may make such changes only by written order accepted by Seller, may make reasonable changes in the scope of work subject to equitable adjustments in the Contract price and schedule, including an allowance for increased overhead and profit. Seller is not obligated to incur any expense or do any work in excess of that reasonably anticipated unless Buyer issues a written order for such expense and work with mutually acceptable terms and conditions. C) Seller reserves the right to make changes, subject to Buyer's approval, in design or material, which in Seller's judgment would improve the equipment and/or its operation. D) If Seller is installing equipment and any site conditions or installation requirements at the time of erection differ materially from those evident at the time of Seller's pre-order site visit, Buyer's representations, and/or conditions ordinary to similar projects, then any additional costs caused by the differing site conditions or installation requirements shall be subject to equitable adjustment to the Contract price and schedule. E) If Seller's activities or operations at the site are interrupted by any party other than Seller, an equitable adjustment shall be made to the Contract price and schedule.

6. **Licenses, Permits**. All building, erection or other licenses or permits necessary or related to the work, shall be secured and paid for by the Buyer.

7. **Shipping, Delays, Suspension, Payment Acceleration**. All shipping dates are approximate, based on prompt receipt by Seller of all necessary information and subject to change by reason of conditions beyond Seller's reasonable control as stated in Article 22. If a delay in shipment or installation is caused by Buyer or by any other cause beyond Seller's reasonable control, the portion of the Contract price already performed by Seller shall become due and payable within 30 days of shipment, or if not shipped, 30 days from the date the equipment is ready for shipment. If Buyer requires Seller to delay any portion of the Work, Seller shall be entitled to full reimbursement for all costs incurred because of such delay, including any increase in material or labor costs. If Buyer suspends work on this Contract, Buyer shall reimburse Seller for all costs incurred by Seller as a result of such suspension. If the suspension exceeds 90 days, Seller shall also have the right to cancel the unfinished portion of the Contract without liability to Buyer of any kind and Seller will be paid according to Article 14.

8. **Other Contractors.** Seller has no duty or authority to direct, supervise or oversee any contractors of Buyer or to provide the means, methods or sequence of their work or to stop their work. Seller shall not be liable for the failure of Buyer's contractors or others to fulfill their responsibilities, and Buyer agrees to indemnify, hold harmless and defend Seller against all claims arising out of such failures.

9. **Safety Devices**. Seller will supply safety devices or fire protection equipment only as is specified in the Proposal. If Buyer desires or requires through local, state, or insurance underwriter's specifications or regulations, additional safety devices or equipment, Seller may elect to furnish same at Buyer's cost.

10. **OSHA – Federal, State & Local.** Seller will comply with Federal OSHA requirements in effect as of the date of the Proposal relative to the Work. OSHA requirements with respect to noise are specifically excluded. Where state, local or Buyer's health and safety requirements differ from the Federal OSHA requirements, modifications or changes in design to meet such requirements will be incorporated at Buyer's request. Additional costs arising from such requests and from installation procedures required by state, local or Buyer's health and safety regulations which deviate from Federal OSHA requirements are for Buyer's account.

11. **Seller's Warranty**
    a. **Goods.** Goods furnished by Seller, other than used equipment, will be free from defects in materials and workmanship for a period of twelve (12) months from the date Buyer is able to begin deriving commercial benefit from the work or eighteen (18) months from Seller's initial notification of readiness to ship the Goods, whichever occurs earlier. For equipment whose operation involves burners, commercial benefit is defined as the date of first burner ignition of the equipment. If any Goods or part thereof fail to comply with this warranty, Seller's sole obligation is to repair or replace, at Seller's option, any part or component which, after Seller's inspection, proves to be defective, provided that Seller shall not be obligated for any removal, shipping or reinstallation costs. Seller will make repaired or replacement components available to Buyer in Seller's standard packaging, Ex-works Seller's shipping point. The warranty does not apply to consumable, replaceable parts or components normally subject to wear and replacement.

    b. **Used Equipment**. The warranty applicable to used equipment sold by Seller shall be as stated in Seller's Proposal.

    c. **Services Warranty For Installation, Consulting, Design, and Engineering Orders.** A) Seller warrants that the Services shall be performed in a competent and non-negligent manner and shall be free of defects in workmanship for a period of twelve (12) months from completion of such Services. Seller shall; at its cost, re-perform any non-conforming services or, if such services cannot be re-performed, refund the amount paid for such non-conforming services. B) Seller warrants that any engineering and/or design work that it performs hereunder shall be performed in accordance with generally accepted trade or industry practice and Seller will develop the information to be supplied hereunder in accordance with its standard technical procedures and practices. However, the technical information furnished and the recommendations submitted do not imply or warrant any responsibility on the part of the Seller for Buyer's use of such information. Seller's liability for non-compliance with this warranty shall be limited to revision and resubmission of all incorrect calculations and drawings.

    d. **Preventative Maintenance ("PM"), Routine Service Warranty.** Seller warrants that PM and routine service Work will be free of defects in workmanship and materials for a period of 30 days after completion of such Work. Seller shall; at its cost, promptly correct any nonconforming Work, or, at Seller's discretion, refund an equitable portion of the price paid for such PM or routine service Work.

    e. **Purchased Products.** To the extent that the Goods are manufactured by or for a third party, to such third party's design, such third party manufacturer's warranty, if any, will be assigned to Buyer at Buyer's request, and Seller's responsibility with respect to any such products shall not extend beyond the manufacturer's warranty. It is understood that Seller's warranty with respect to such products is limited to repair or replacement at Seller's option and does not include labor, repair or replacement costs, or travel unless otherwise provided.

f. **Warranty Conditions.** Seller's warranty obligations are subject to all conditions and contingencies set forth in the Proposal and to the following conditions: A) Prompt receipt of Buyer's written notice describing the defect in detail. B) Buyer shall not have attempted to correct the defect without Seller's approval. C) Buyer shall have installed (if applicable), operated and maintained the equipment strictly in accordance with Seller's operating and maintenance instructions, including, but not limited to, Seller's design basis or other design criteria stated in Seller's Proposal. D) The defect is due to faulty materials or workmanship for which Seller is responsible. Buyer acknowledges and agrees that the warranties in this Article 11 are offered by Seller expressly contingent upon Buyer's strict compliance with Article 16.

g. **Warranty Limitations.** The foregoing warranties do not apply to consumable, replaceable parts or components normally subject to wear and replacement nor do they cover the effects of: normal wear & tear; abrasion or corrosion; improper storage, erection, operation or maintenance of the Work by Buyer. Seller shall have no obligation for deterioration resulting from the manner in which the Goods are operated, neglect or misuse of the Work, or exposure to conditions outside the design parameters, environmental power or operating constraints specified by Seller.

h. **No Other Warranties. THE WARRANTIES SET FORTH IN THIS ARTICLE 11 CONSTITUTE SELLER'S SOLE OBLIGATION HEREUNDER AND ARE IN LIEU OF ANY OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED. In consideration of these express warranties, all other warranties, other than title, express or implied, whether arising under law, equity or custom of the trade, including warranties of merchantability and fitness for a particular purpose, are excluded from this Contract.**

12. **Performance Guarantee**. Seller's sole guarantees are those contained in its Proposal to Buyer. These guarantees are contingent upon the correctness and accuracy of the information provided by Buyer and are based upon the operating conditions specified in Seller's Proposal and operation and maintenance by properly trained personnel. These guarantees will be deemed satisfied by successful completion of performance tests in accordance with applicable standard procedures as specified in the Proposal or agreed by the parties. Performance tests shall be conducted by the Buyer, (unless otherwise specified in Seller's Proposal), and witnessed by Seller, at its option, within 90 days of initial operation of the equipment. If the tests are not conducted within 90 days of the initial operation or within 6 months of shipment, whichever is earlier, and through no fault of Seller, the equipment shall be deemed accepted by the Buyer and in compliance with all contractual requirements. Seller makes no warranty whatsoever as to the inclusion of the equipment supplied by Seller into Buyer's manufacturing process, Seller's warranty being limited solely to the performance of its equipment in accordance with the applicable provisions in Seller's proposal. If the equipment fails to meet the Contract performance guarantees, Seller will supply at its sole option, repaired or replacement parts pursuant to the delivery terms of the Proposal subject to the limitations stated in Article 25. **SELLER OFFERS NO OTHER GUARANTEES BEYOND WHAT IS STATED IN THIS ARTICLE 12.**

13. **Patent Warranty.** Seller shall defend, at its expense, any suit or proceeding brought against Buyer based on any claim that the Goods covered herein, except for equipment or material manufactured or designed to Buyer's specifications, infringes any U.S. patent issued as of the date of this Proposal, and pay any court imposed damages and costs finally awarded against Buyer, but not to exceed the amount previously paid to Seller by Buyer hereunder provided: A) Seller is promptly notified by Buyer in writing of such claim; and, B) Seller is given full authority, information, and assistance by Buyer which Seller deems necessary for the conduct of such defense. In order to avoid such claims and/or minimize potential liability, Seller shall have the right and option at any time to: A) procure for the Buyer the right to use the equipment; or B) modify the equipment so that it no longer infringes; or C) replace the equipment with non- infringing equipment.

14. **Cancellations**. If Buyer cancels for any reason at any time after Seller has received a purchase order (or other authorization) for any equipment, parts, or services or any combination thereof, Buyer shall pay to Seller within 30 days of such cancellation, all contract costs and other expenses incurred by Seller prior to receipt of the request for cancellation (including, but not limited to, engineering expenses, overhead, costs of expended materials, direct labor with factory burden, and all commitments to Seller's suppliers, subcontractors and others), plus cancellation charges of 20% of the Contract price to cover general and administrative expenses. If Buyer materially breaches any obligation, then Seller may cancel the unfinished portion of the Contract without liability of any kind to Buyer. In any such case the terms of this Article 14 shall apply.

15. **Bonds.** If Seller agrees in writing to furnish any bond(s) or letter(s) of credit on account of the execution or fulfillment of this Contract, then the cost will be added to the quoted price. The penal sum of any bond or bonds furnished by the Seller in connection with this Contract shall be automatically reduced to 5% of the initial Contract value upon the date Buyer is able to begin deriving benefit from the work or 3 months after the date Seller notifies Buyer of its readiness to ship equipment, whichever occurs earlier. Buyer agrees to execute any acknowledgement or furnish documents required to effect this reduction.

16. **Buyer Credit and Payment**.
    a. Unless otherwise agreed, payment shall be made in USD, as outlined in the Proposal, within 30 days of presentation of an invoice. Payments not received by the due date shall be subject to a monthly interest charge at the rate of 2% per month or the maximum amount allowed by law, whichever is less, due and payable until the payment is received. B) Buyer shall also pay all collection costs of Seller on any delinquent amounts including, but not limited to, court costs and attorney fees. Seller will assess Buyer's financial condition and Seller shall have the absolute right to (i) limit the amount of credit that Seller may extend to Buyer for the purpose of goods hereunder, and delay manufacture or shipment of Buyer's orders based upon those limitations; (ii) require full or partial payment in advance; (iii) ship goods to Buyer C.O.D., (iv) require payment by irrevocable confirmed letter of credit, or require payment to be secured by letters of credit; (v) require written guarantees of payment satisfactory to Seller; or (vi) cancel or refuse to accept or fill any order from Buyer then outstanding or thereafter placed, all on terms satisfactory to Seller, in its sole and absolute discretion.

    b. **Default in Payment.** A) If any payment due Seller is more than 30 days past due, Seller shall have the right at its sole option to accelerate the payment of all outstanding amounts, including, but not limited to, amounts previously retained pursuant to the Contract, by notifying Buyer in writing that all outstanding amounts are immediately due and presenting Buyer with an invoice. Seller shall also have the right in such event to discontinue all work on the project without incurring any liability to Buyer for such action; B) If the total aggregate amount of delinquent payments exceeds 10% of the total Contract price, Buyer shall provide, at Seller's request, additional collateral, including, but not limited to, irrevocable letters of credit, sufficient to secure payment of all Contract amounts; C) The foregoing remedies of Seller are in addition to all other remedies Seller may have at law or in equity, including, but not limited to, the right to obtain liens on Buyer's assets through legal or equitable proceedings.

    c. **Security Agreements**. A) Buyer hereby grants to Seller a security interest in the Goods sold hereunder to secure the purchase price of same. Buyer shall execute any financing or other statements or filings which in Seller's sole judgment are necessary or appropriate to evidence or perfect such security interest, which shall thereafter be filed by Buyer with the appropriate recording officer. This Contract shall constitute the security agreement between the parties and is intended to and shall afford the Seller all rights of a secured party under Article 9 of the Uniform Commercial Code; B) Until Buyer has paid the full amount due for Goods purchased, Buyer shall be prohibited from transferring such Goods to any creditor of Buyer other than Seller, without the prior written consent of Seller, such consent not to be unreasonably withheld; C) If Buyer becomes insolvent, files for Bankruptcy, or goes into receivership or liquidation, Buyer agrees to use its best efforts and to provide all assistance requested by Seller in order to secure Seller's position as a preferred creditor with respect to all amounts due to Seller.

    d. **Payment of Retained Amounts**. A) If this Contract permits Buyer to withhold final payment, and acceptance is not based upon performance tests, such payments shall be due and payable within 30 days after the equipment is ready for operation; B) If such deferred payment is contingent upon tests and such tests are delayed through no fault of Seller for more than 30 days after the equipment is first ready for operation, final payment shall be due and payable upon expiration of the 30 day period; C) If a retention value is required and agreed, it shall accrue interest at the rate of 1% per month on the outstanding balance until exchanged for a letter of credit or paid to Seller. Seller retains the right to provide Buyer with a letter of credit in lieu of retention at any time during the performance of the contract.

    e. **International Project Payment Requirements**. If this Contract involves shipment of Seller's goods outside the U.S.A., Seller may require:

        i. Down Payment - EFT: down payment via EFT within 5 business days of invoice date

        ii. Letter of Credit: Contract price to be paid or secured by an irrevocable letter of credit (L/C) issued in USD by a bank within the USA, on terms and in a format acceptable to Seller. The L/C shall be issued no later than 30 days after Seller's request, shall expire 60 days after Seller's last shipment and will provide for payment via SWIFT/TELEX.

17. **Escalation**. The price and delivery lead time stated in the Proposal are based upon material, labor and freight markets at the time of this Proposal. Due to the general market instability, price and lead time are subject to change until Seller receives and accepts Buyer's Purchase Order. Further, if after Seller accepts Buyer's order, market fluctuations, changes in law or any other change in cost or time to complete the Work that is beyond the control of Seller materially impacts Seller's costs or lead time, Seller shall be entitled to an equitable adjustment to the price and/or delivery schedule. If Buyer requests changes to the Work, delays the Work, or otherwise modifies the assumptions upon which the price and/or schedule in the Proposal were based, Buyer shall pay Seller for costs Seller incurs that were not anticipated by Seller as of the date of the initial Proposal and/or equitably adjust the delivery schedule.

18. **Taxes and Duties.** Unless otherwise provided, any sales or use tax or tariff, import duty or fee imposed by any federal, state, local or municipal authority arising on of the sale, import or installation of the Goods or performance of Services is not included in the price as quoted in the Proposal, and Buyer is responsible for any such amount(s). Sales and/or use tax will be invoiced to Buyer unless a valid exemption certificate is provided to Seller.

19. **Proprietary & Confidential Materials; AI**. All information supplied by Seller as to design, manufacture, erection, operation and maintenance of the equipment, including all drawings, patterns, specifications and information in Seller's Proposal or Contract, shall be the proprietary and confidential property of Seller and shall be returned to Seller at its request. Buyer shall have no rights in Seller's proprietary and confidential property and shall not disclose such to others or allow others to use such property, except as required for the Buyer to obtain service, maintenance, and installation for the Goods. Specifically, Buyer agrees that no drawings, specifications or information included in Seller's Proposal or Contract shall be used by Buyer for competitive bidding or similar purposes without Seller's consent and Buyer shall not itself or via a third party reproduce or build assemblies or process systems per Seller's design drawings without explicit approval of Seller. Buyer shall hold in confidence and shall not disclose, divulge or publish to any person, or use or copy any trade secret, process, record, plan, projection, information pertaining to customers or prospective customers, financial information, marketing strategies, or any other confidential or proprietary information of Seller (including the terms and conditions of this Contract or any other agreement between Buyer or Seller) acquired or in connection herewith, or disclosed or transmitted by Seller or any of its agents, employees, or affiliates, except as authorized in writing by Seller, and Buyer shall keep, and shall require its officers, directors, employees, and agents to keep such information confidential. Buyer further agrees that it will not, and shall not permit any of its representatives to, input, upload, process or analyze any Seller information (or summaries or derivatives thereof) using any artificial intelligence system which is not a Closed AI System. A "Closed AI System" is an artificial intelligence system which is (i) operated solely within the Buyer's internal, non-public information technology environment, (ii) access-controlled and limited to Buyer's personnel with a business need to know (iii) configured so that inputs and outputs are not used to train or otherwise develop any artificial intelligence system or model. Buyer agrees that any to the extent any output is generated by a Closed AI System using or derived from confidential information such output shall itself be deemed confidential. This clause shall survive the termination of this Contract and be in effect as long as Buyer has possession of any of Seller's proprietary or confidential information..

20. **Hazardous Materials**. If the Buyer's facilities contain hazardous materials, including asbestos bearing materials and any such materials are encountered, Seller shall have no obligation to remove or remediate them in the absence of a separate agreement which includes separate consideration to Seller for such work. If Seller or any of its subcontractors is required to perform work within or immediately adjacent to any facilities that are determined to contain hazardous material and/or asbestos, and the said work must be interrupted to allow for the remediation or removal of such materials by others, Seller shall be entitled to any and all costs and other expenses associated with such interruption in work. Buyer shall fully defend, hold harmless and indemnify Seller and its agents from and against any claim arising out of exposure to such hazardous and/or asbestos bearing materials.

21. **Health and Safety**. Seller shall not be responsible for health or safety programs or precautions related to Buyer's activities or operations, Buyer's other contractors, the work of any other person or entity, or Buyer's site conditions. Seller shall not be responsible for inspecting, observing, reporting or correcting health and safety conditions or deficiencies of Buyer or others at Buyer's site, and Buyer agrees to indemnify, hold harmless and defend Seller against any claims arising out of such conditions or deficiencies. So as not to discourage Seller from voluntarily addressing health or safety issues while at Buyer's site, in the event Seller does not address such issues by making observations, reports, suggestions or otherwise, it is understood and agreed that Seller shall nevertheless have no liability or responsibility arising on account thereof.

22. **Delays and Damages – Force Majeure**. A) In the event of delays in the performance of the obligations hereunder or damages due to conditions beyond Seller's reasonable control, including, but not limited to acts of God, acts of Buyer, or Buyer's customer or other contractors employed by Buyer, acts of civil or military authority, governmental restrictions, prohibitions and regulations, priorities, fire, storms, strikes, floods, epidemics, quarantine restrictions, war, riot, delays in transportation, car shortages, or Buyer's inability to obtain necessary labor, materials, or manufacturing facilities, the Contract dates shall be extended by an equitable period of time and Seller shall be entitled to an equitable adjustment in the Contract price. Seller's performance is predicated on certain performance of Buyer and Seller is not responsible for loss or damage arising from delays caused by Buyer's inability to act, failure to perform, or failure to provide complete and/or accurate information. This Section shall in no event be construed to relieve Buyer from the obligation to pay for goods shipped by Seller.

23. **Indemnification by Buyer**. Buyer shall indemnify Seller for, and hold Seller harmless from, all costs and expenses incurred by Seller, including, without limitation, costs of investigation, attorney's fees, and amounts paid in settlement or satisfaction of claims, proceedings or judgments in connection with all claims and proceedings against Seller based upon claimed defects in design in any equipment or material manufactured for Buyer by Seller to Buyer's specifications or design.

24. **Disclaimer of Consequential Damages.** Seller, its subsidiaries, affiliates, agents, and employees shall not be liable to Buyer for loss of profits or revenue, loss of use of equipment, costs of replacement or substitute goods or product, costs of capital, additional expenses incurred in the use of equipment or facilities, claims of third parties or for any incidental, indirect, special or consequential damages of any nature. This disclaimer shall apply to consequential damages based upon any cause of action whatsoever asserted against Seller, including one arising out of any breach of warranty, express or implied; guarantee; products liability; negligence; tort; or any other theory of liability.

25. **Limitation of Liability.** The total aggregate liability of Seller and its subcontractors with respect to this Contract or the Goods and Services furnished hereunder, whether arising out of contract, warranty, indemnity, tort (including negligence), strict liability, or any other cause of or form of action, shall not exceed:

    a. For orders less than USD $250,000 in value: the lesser of 3x order value or $500,000.00
    b. For orders $250,000 - $1,000,000 in value: the lesser of 2x order value or $1,000,000.00
    c. For orders over $1,000,000 in value: the lesser of order value or $5,000,000.00

    This limitation shall not apply to bodily injury or death to the extent caused by the negligence or willful misconduct of Seller or its employees.

26. **Buyer's Negligence and Insurance**. Seller shall not be responsible for losses or damages arising out of the negligence of the Buyer, its employees, agents or architects or those of third parties for whom Seller is not responsible, or losses for which the Buyer has agreed to provide insurance. If both Seller and Buyer are negligent and the negligence of both is the proximate cause of the accident, then each party will be responsible for its portion of the liability or damages (excluding consequential or indirect damages which are disclaimed by Seller) resulting therefrom equal to such party's comparative share of the total negligence.

27. **Severability.** Should any part of this Contract be declared invalid or unenforceable, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in full force and effect, and Seller shall have the right to replace the part declared invalid or unenforceable with a provision which serves as much as validly possible the same commercial purpose as the part determined to be invalid or unenforceable.

28. **Assignment/Subcontracts**. This Contract shall be binding upon and inure to the benefit of the parties, their successors, and assigns provided that Buyer may not assign the Contract without prior written consent of Seller. Seller may subcontract any portion of the work

29. **Governing Law; Disputes.** This Contract shall be construed, governed and enforced in accordance with the laws of the State of Wisconsin, exclusive of the choice of law rules thereof. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Contract. If a dispute arises hereunder, the parties will confer and attempt to amicably resolve the dispute. If after good faith negotiation, the parties cannot reach agreement, then the matter will be finally resolved in any court having jurisdiction and venue located within the Brown County, Wisconsin or the U.S. District Court for the Eastern District of Wisconsin. The parties may mutually agree to refer any dispute to alternative dispute resolution, to be held at a mutually agreed location within 50 miles of the project site or Seller's location.

30. **Entire Agreement, Contract Interpretation.** All communications, written and verbal, between the parties with reference to the subject of this Contract prior to the date of acceptance are merged herein, and this Contract, when duly accepted and approved, shall constitute the sole and entire agreement between the parties as to provision of the Work. No change in or modifications of said Contract shall be binding upon the parties or either of them, unless the changes or modifications shall be duly accepted in writing by both parties. Unless Seller expressly agrees to the contrary in writing, these GTC and the Proposal shall govern any conflict with any of Buyer's documents.