

# STANDARD CONDITIONS OF SALE



**ACCEPTANCE** - All orders are subject to acceptance by Bates Technologies, Inc (Seller) and ARE EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS HEREIN CONTAINED. Any term or condition in any purchase order or other form of acceptance in conflict with the terms or conditions of this document is hereby expressly rejected and shall not be binding on Seller. The quotation may be withdrawn at any time prior to acceptance of each and every term and condition hereof and will expire automatically upon thirty (30) days from the date hereto unless accepted as above provided.

## PRICES ARE

- (a) subject to change without notice prior to acceptance of Buyer's order by Seller;
- (b) exclusive of all Federal, State, Municipal or other Government Excise, Sales, Use, Occupational or like taxes now in force or to be enacted in the future;
- (c) subject to an increase equal in amount to any tax the Seller may be required to collect or pay upon the sale of the items quoted;
- (d) quoted FOB, place of manufacture; and
- (e) subject to change at any time by Seller in the event of any change in the Buyer's requirements or the terms and conditions of this quotation, including but not limited to, expediting of shipment date.

## TERMS

- (a) Invoices will be issued under date of shipment with terms of net 30 days from date of invoice, unless otherwise stated, subject to such changes as Seller's home office may impose because of financial or credit conditions existing at time of shipment. In the event of an order for several units, each unit will be invoiced when shipped.
- (b) All payments are to be made in United States dollars. Buyer shall pay Seller a late penalty on all amounts over 30 days past due computed on an interest rate equal to 18% per annum. Buyer shall also be liable for any and all costs and expenses incurred by Seller arising out of or in connection with efforts by Seller to collect any unpaid amounts hereunder including, without limitation, attorney or collection agency fees and expenses. No forbearance, indulgence, or delay by Seller in taking any action hereunder shall be deemed a waiver of any rights of Seller under this contract.
- (c) Seller reserves the right to modify these terms for export business and special projects.

## SHIPPING ESTIMATES

- (a) The shipping date shown in this document is approximate, and dependent upon prior sales and circumstances beyond Seller's control.
- (b) Shipping date will be computed from the date of receipt of all data required to enable complete engineering or acceptance of Buyer's order as provided in Section 1 above, whichever is later.
- (c) Every effort will be made to effect shipment within the time stated, but Seller will not be liable for any damages resulting from delay in shipment resulting directly or indirectly from fire, embargo, strikes, act of God, civil strife or insurrection, transportation delay, whether at place of manufacture or elsewhere, or from delay by reason of any rule, regulation or order of any governmental authority directly affecting delivery or from other causes beyond Seller's control.
- (d) Any changes in customer's requirements will require confirmation or revision of estimated shipping date.

**DELIVERY** - All goods shall be shipped FOB Sellers facilities. Seller shall have the right to select the carrier unless the carrier is designated by the Buyer and upon delivery of the goods by the Seller to the carrier, the carrier shall be deemed to be the agent of the Buyer and thereafter all risk of loss shall be on the Buyer.

## PRODUCT PERFORMANCE

(a) Any product performance data provided by the Seller, whether orally or in writing, is based on Seller's analysis and test data of typical component parts and units and is subject to standard tolerances of the industry. The product performance is, therefore, an estimate, assuming various production factors, operation under normal working conditions with proper systems and installation, proper maintenance of the product, and competent operation within the published or herein contained specifications.

(b) IT IS EXPRESSLY UNDERSTOOD THAT PRODUCT PERFORMANCE IS AN ESTIMATE AND IS NOT GUARANTEED.

**PACKING** - All prices listed provide for packing in accordance with Seller's standard practice. Special packing and packaging requested by Buyer or deemed appropriate by Seller, shall be billed as a separate charge.

**ERRORS** - Stenographical or clerical errors are subject to correction at any time.

## WARRANTY

(a) Seller warrants that Buyer will receive good title to the products and that the products received by initial Buyer will be free from defects in materials and workmanship consistent with trade practice quality control for a period of six (6) months from date of initial use, or twelve (12) months from date of shipment from Sellers Plant; whichever period shall first expire, provided however that:

- (1) The product has been installed and used within defined specifications.
  - (2) No repair or alteration has been effected by other than Seller's personnel.
  - (3) No misapplication or negligent use has transpired in the judgement of Seller's personnel.
- (b) THERE ARE NO OTHER WARRANTIES THAT EXTEND BEYOND THE WARRANTY HEREIN CONTAINED and no statement, oral or written inconsistent with this warranty is binding on Seller. No agent, employee, or representative of the Seller has any authority to bind the Seller to any confirmation, representation or warranty concerning the product that is the subject of this document beyond that specifically included in the written quotation. Extension of or amendment of this warranty can be made only in writing by a duly authorized officer of the Seller.

(c) This warranty is made IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, including any warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE.

(d) Seller's remedy for breach of any warranty shall be limited as in the next section provided;

## REMEDY FOR BREACH OF WARRANTY AND LIMITATION OF LIABILITY

- (a) Seller agrees to repair or replace, without cost, any part of the product manufactured by the Seller that, for the warranty period as specified above, may prove, upon Seller's inspection, to be defective in material or workmanship and not commercially acceptable.
- (b) Seller shall have the option to inspect any parts claimed to be defective either at Seller's place of business or Buyer's place of manufacture. No return shall be accepted unless Seller has had an opportunity to inspect the product or has expressly authorized the return.
- (c) Under no circumstances shall Seller be liable for consequential or incidental damages resulting from any breach of warranty even though Seller may have been advised of the possibility of such damages, nor will Seller's liability for breach of any warranty exceed the purchase price of the product less the value of the product at time of acceptance.
- (d) Any claim for breach of Seller's warranty herein contained must be made in writing, addressed to the Seller, and set forth in sufficient detail to permit identification of the defect. Any claim for breach of warranty must be made within twelve (12) months after breach of warranty. If not made within said twelve (12) month period, it shall be conclusively deemed to have been waived.
- (e) The remedies for breach of warranty herein contained shall be exclusive.

## OTHER REPAIRS AND SERVICE

All costs associated with Seller's service of products outside Seller's plant will be charged to the Buyer at a per diem rate per man day (standard 8 hr. day), plus transportation and living expenses. Service costs at Seller's facility will be charged to Buyer at existing service charge rates based on Seller's evaluation of necessary service and use circumstances.

## PROPERTY AND PATENT RIGHTS

Seller retains for itself any and all property rights in and to all designs, engineering details and other data pertaining to any product designed in connection herewith and to all rights of discovery, invention or patent rights arising out of the work done in connection herewith. The Buyer expressly agrees that it will not assert any property rights therein except the right for itself and subsequent owners to use the product. Seller will indemnify Buyer from any rightful claim of any third person by way of patent infringement except that to the extent Buyer has furnished specifications to the Seller, the Buyer shall hold the Seller harmless from any such claims which arise out of compliance with the specifications. The foregoing shall be the Buyer's sole and exclusive remedy for any patent infringement by the product or any part thereof.

## RESERVATION OF RIGHTS IN RESPECT TO SELLER'S OTHER PRODUCTS

Seller reserves the right to make improvements and changes in design upon its products without imposing any obligation to make such changes or improvements upon the product that is the subject of this order or on product previously manufactured and sold by it.

## LIMITATION OF ACTIONS

Any action for breach of Seller's warranty must be commenced within twelve (12) months from the time the cause of action accrues unless the period for action shall be extended by the Seller, in writing. In the warranty it is expressly agreed that there are no warranties of future performance of the product that would extend the period of limitation herein contained for bringing an action.

## CANCELLATION

In the event Buyer requests Seller to stop work or cancel the order or any part thereof:

- (a) Any and all work that is complete or can be completed within 30 days from date of notification to stop or to cancel, shall be invoiced and paid for in full.
- (b) For work-in-process and any materials and supplies procured, or for which definite commitments have been made by the Seller in connection with Buyer's order, the Buyer shall pay the actual manufacturing and purchasing costs, overhead and sales and administrative expenses determined in accordance with good accounting practices, plus 15%.
- (c) Buyer shall promptly instruct Seller as to the disposition of the product and the latter shall, if requested, hold the product for Buyer's account. All costs of storage, insurance, handling, boxing or other costs in connection therewith shall be borne by the Buyer.

## COMPLETE AGREEMENT

The quotation, when accepted by the Buyer and acknowledgement of receipt of the Buyer's acceptance is received by the Seller, shall constitute the entire agreement between the Buyer and Seller, supersedes all proposals, oral or written and all other communications between the parties relating to the subject matter of this document and no alteration or addition to the quotation shall bind the Seller unless expressly assented to in writing by a duly authorized officer of the Seller.