

Emerick Associates Inc.
Terms and Conditions

The following terms and conditions, including those on our sales quotation, shall constitute the entire agreement for the purchase and sale of Emerick Associates' products. Any acceptance contained herein is expressly conditional upon the purchaser's assent to the terms, which are different from, in addition to, or vary the terms contained in the purchaser's purchase order or request for quotations. Such assent shall be deemed to have occurred upon the failure of purchaser to object in writing specifically to such term or terms within two (2) days from the receipt hereof. Any terms and conditions contained in the purchaser's purchase order or request for quotation which are different from, in addition to, or vary Emerick Associates' terms and conditions shall not be binding upon Emerick Associates, and Emerick Associates hereby declines and rejects such terms and conditions.

1. Changes

Prior to the date of delivery of any product or products thereunder, the purchaser shall have the right to make changes in the order only if Emerick Associates first accepts written notice of the desired changes in writing and the purchaser accepts any additional charge as determined by Emerick Associates in its sole discretion. Changes which interfere with or alter Emerick Associates' production or delivery schedules will not be acceptable unless the time for performance is extended for such period as deemed necessary by Emerick Associates in its sole discretion. Failure of Emerick Associates to accept a purchaser's request to change its purchase order shall not be cause for purchaser's cancellation of its order.

2. Cancellation

- a. Emerick Associates shall have the absolute right to cancel this agreement, including cancellation based upon breach thereof by the purchaser, failure by the purchaser to make any payment required by this agreement, or the insolvency or bankruptcy of the purchaser. In the event of a cancellation under this Section 2(a), Emerick Associates shall be entitled to any amounts due pursuant to the agreement in addition to its cancellation charges.
- b. Orders are not cancelable by purchaser unless and until all cancellation terms, if any, are agreed to by Emerick Associates in writing and all cancellation charges determined by Emerick Associates in its sole discretion, if any, have been paid by purchaser.

3. Limited Warranties

- a. Except as set forth in the following paragraph, the only warranties on products and systems sold by Emerick Associates are the warranties, if any, provided by the respective manufacturer for such products and systems. Reference should be made by purchaser to the terms of such manufacturer's warranties for the conditions thereof.
- b. If Emerick Associates has modified, altered or fabricated any of the products or systems sold by it, Emerick Associates warrants only that such modification, alteration or fabrication shall be free of defects in material or workmanship for one year from the date of shipment to purchaser. As to such warranties by Emerick Associates, the liability of Emerick Associates is limited exclusively to, at the election of Emerick Associates in its sole discretion (i) replacing or repairing the product, or (ii) refunding the price for such modifications if made by the purchaser, if previously approved in writing by Emerick

Associates. Any alterations or repairs (actual or attempted) by or on behalf of the purchaser to the product or systems supplied by Emerick Associates shall void all warranties of Emerick Associates unless purchaser has obtained prior written approval from Emerick Associates consenting to such modifications or alterations.

- c. EMERICK ASSOCIATES MAKES NO OTHER WARRANTY. ALL OTHER WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, AGAINST INFRINGEMENT, OR FITNESS FOR A SPECIFIC PURPOSE, ARE HEREBY EXCLUDED AND DISCLAIMED. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EMERICK ASSOCIATES BE LIABLE IN CONTRACT, TORT, STRICT LIABILITY, WARRANTY OR OTHERWISE, FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM OR OTHERWISE RELATING TO EMERICK ASSOCIATES' PRODUCTS OR SERVICES.
- d. Emerick Associates employees are not authorized to warrant the suitability of products or systems for any particular application.
- e. Emerick Associates reserves the right to inspect and test products claimed defective under warranty either at the purchaser's location or at the Emerick Associates office. A defective product shall not be returned to Emerick Associates' office unless authorized in writing by Emerick Associates. Products so returned shall be returned to Emerick Associates' office, freight prepaid. Any products which within one year from date of shipment prove defective due to faulty modifications or alterations made by Emerick Associates will be replaced or repaired free of charge. Emerick Associates assumes no liability for labor charges incidental to the adjustment, service, repairing, removal or replacement of the product or other costs, or for the expense of repairs made outside of its premises except when made pursuant to Emerick Associates' prior written consent. Emerick Associates at its option may ship a replacement or replacements immediately under standard billing and make warranty adjustment after inspection of the defective product by means of credit memorandum.

4. Delays

Emerick Associates shall not be liable for damages for delays in performance due to circumstances beyond its reasonable control, including without limiting the generality of the foregoing, any priority system established by any agency of the United States Government, fires, energy shortages, floods, storms, and other acts of God, accidents, strikes, insurrections, weather, civil unrest, riots, acts of terrorism, war (whether declared or not), shortage of materials, nuclear or chemical contamination, labor shortage, labor dispute, financial condition, mechanical, electronic, or other communication failure, failure of public infrastructure, change in law, lack of transportation and failure of performance of subcontractors and/or suppliers for similar reasons. Failure of Emerick Associates to perform for these reasons aforesaid shall not be grounds for purchaser's cancellation of its order; instead the delivery date shall be extended accordingly.

5. Limitation of Liability

To the fullest extent permitted by law, no claim made by the purchaser against Emerick Associates, whether as to goods delivered, for non-delivery, or for any services provided in

connection therewith, shall be greater than the payment actually received by Emerick Associates from purchaser for the goods or any services provided in connection therewith, with respect of which such claim is made.

6. Taxes

All applicable federal, state or local sales, use or excise taxes, licenses, duties, assessments and levies (including fines or penalties thereon), importation costs and taxes or customs bonds that may arise, are the responsibility of the purchaser and shall be in addition to the price or prices stated on the invoice unless otherwise specifically agreed to in writing. Emerick Associates shall have the right to invoice separately any such tax as may be imposed at a later time. Applicable tax exemption certificates must accompany any order to which the same applies.

7. Payment Terms; Delivery

- a. CASH PAYMENT NET 30 DAYS. A FINANCE CHARGE AT THE LESSER OF 18% PER ANNUM OR MAXIMUM RATE ALLOWED BY LAW WILL BE CHARGED ON BALANCES WHICH ARE OVER 30 DAYS. TIME IS OF THE ESSENCE WITH RESPECT TO THIS SECTION 7(a).
- b. F.O.B- SHIPPING POINT UNLESS OTHERWISE STATED. ALL RISK OF LOSS OR DAMAGE SHALL PASS TO PURCHASER UPON DELIVERY OF THE PRODUCT TO THE CARRIER.
- c. Acceptance of less than the full invoice amount by Emerick Associates shall not be construed as a waiver of the right of Emerick Associates to collect the remaining amounts due. The purchaser expressly agrees and understands that Emerick Associates reserves all rights and remedies for nonpayment, breach or default hereunder by the purchaser.

8. Returns

Stock and non-stock items are subject to a re-stocking fee; non-stock items and special buys may have limited return value.

9. Miscellaneous

- a. This agreement may not be assigned or otherwise transferred by purchaser without the prior written consent of Emerick Associates which may be withheld in the sole discretion of Emerick Associates, and any such assignment or transfer without such prior written consent shall be null and void and of no force or effect whatsoever.
- b. Emerick Associates' failure to insist, in one or more instances, upon the performance of any terms of this agreement shall not be construed as a waiver or relinquishment of its right to such performance or the future performance of such term or terms, and purchaser's obligation with respect thereto shall continue in full force and effect.
- c. Any notice or other communication required or permitted hereunder shall be sufficiently given if sent in writing by registered or certified mail, postage prepaid, to the other party thereto at its respective address. Any such notice, if so mailed shall be deemed to have been received on the third business day following such mailing. Either party hereto may change its address for notice purposes by written notice to the other party.
- d. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this agreement. The language in this agreement shall not be interpreted for or against any party.

- e. To the fullest extent permitted by law, the purchaser shall defend, release, protect, indemnify, and hold harmless Emerick Associates and Emerick Associates' employees, officers, directors, shareholders, agents, other contractors and customers against and in respect of any and all claims, actions, liabilities, damages, losses, costs, and expenses, including attorneys' fees and costs of investigation, arising out of, resulting from, or otherwise related to any: (1) actual or alleged death of or bodily injury to any person, damage to property, or any other damage or loss by whomsoever suffered, resulting or claimed to result in whole or in part from any products or services provided by Emerick Associates, actual or alleged negligent or defective products or services provided by Emerick Associates, or defect in goods provided by Emerick Associates, whether latent or patent, including actual or alleged improper construction or design of goods, the failure of goods or services to comply with any specifications, or the warranties provided by Emerick Associates; or (2) actual or alleged violation of any law, statute, ordinance, or any governmental administrative order, rule or regulation governing such goods or services. The purchaser shall maintain commercial general liability insurance, workers compensation and employer's liability insurance, and business auto liability insurance to cover and protect Emerick Associates from any such loss.
- f. The paragraph headings in this agreement are used for the convenience only. They form no part of this agreement and are in no way intended to alter or affect the meaning of this agreement.
- g. This agreement may be amended at any time by mutual agreement of both parties hereto by a written amendment to this agreement signed by each of them.
- h. If any provision of this agreement is determined to be illegal, unenforceable, or invalid for any reason, such illegal, unenforceable, or invalid provision shall be stricken from this agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this agreement. If any provision of this agreement is stricken in accordance with the provisions of this section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.
- i. No claim or action arising from this agreement may be brought more than 12 months after it accrues.
- j. EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT.
- k. This agreement shall be governed by and construed in accordance with the laws of the State of New York. As a material consideration for entering into this agreement, the purchaser specifically agrees that venue and jurisdiction of any action or proceeding arising out of or in connection with this agreement shall lie exclusively in the state courts of competent jurisdiction in and for Albany County, New York, at the discretion of Emerick Associates. The purchaser expressly waives all other venue and jurisdiction.
- l. The purchaser agrees to pay all costs of collection incurred by Emerick Associates (including attorney's fees) in enforcing its rights hereunder.