

ACD AMERICA CORP. | STANDARD TERMS AND CONDITIONS OF SALE

Standard Terms and Conditions Of Sale – Products & Services

1. DEFINITIONS:

In these Terms and Conditions of Sale, "Seller" means ACD America Corp.; "Buyer" means the person, firm, company or corporation by whom the order is given; "Goods" means the goods (including any Software and Documentation, as defined in Clause 9) described in Seller's Acknowledgement of Order form; "Services" means the services described in Seller's Acknowledgement of Order Form; "Contract" means the written agreement (including these Terms and Conditions) made between Buyer and Seller for the supply of the Goods and/or provision of Services; "Contract Price" means the price payable to Seller by Buyer for the Goods and/or Services and "Seller Affiliate" means a Sales Representative, Reseller or Wholesaler partner of ACD America Corp.

2. THE CONTRACT:

2.1 All orders must be in writing (including telefax, e-mail or submission in Seller's e-store) and are accepted subject to these Terms and Conditions of Sale. If Buyer's order is placed via the Seller's e-store Seller will confirm receipt of the order by automatic e-mail without undue delay; confirmation of receipt does not constitute acceptance of the order. Seller will formally accept the order by sending an Order Acknowledgment form to Buyer. No terms or conditions put forward by Buyer and no representations, warranties, guarantees or other statements not contained in Seller's quotation or Acknowledgement of Order nor otherwise expressly agreed in writing by Seller shall be binding on Seller.

2.2 The Contract shall become effective only upon the date of acceptance of Buyer's order on Seller's Acknowledgement of Order Form or upon the date of fulfillment of all conditions precedent stipulated in the Contract, whichever is the later (the "Effective Date"). If the details of the Goods or Services described in Seller's quotation differ from those set out in the Acknowledgement of Order Form the latter shall apply.

2.3 No alteration or variation to the Contract shall apply unless agreed in writing by both parties. However, Seller reserves the right to effect minor modifications and/or improvements to the Goods before delivery provided that the performance of the Goods is not adversely affected and that neither the Contract Price nor the delivery date is affected.

3. VALIDITY OF QUOTATION AND PRICES:

3.1 Unless previously withdrawn, Seller's quotation is open for acceptance within the period stated therein or, when no period is so stated, within thirty days after its date. The presentation of the Seller's goods on its internet home-page or e-store does not constitute a binding quotation.

3.2 Prices are firm for delivery within the period stated in Seller's quotation and are exclusive of (a) Value Added Tax and (b) any similar and other taxes, duties, levies or other like charges arising outside the United Kingdom in connection with the performance of the Contract.

3.3 Prices (a) are for Goods delivered EXW (Ex works) Seller's shipping point, exclusive of freight, insurance, and handling and (b) unless otherwise stated in the Seller's quotation, are exclusive of packing. If the Goods are to be packed, packing materials are non-returnable.

4. PAYMENT:

Payment shall be made: (a) in full without set-off, counterclaim or withholding of any kind (save where and to the extent that this cannot by law be excluded); and (b) in the currency of Seller's quotation within thirty days of date of invoice unless otherwise specified by Seller's Finance Department. Goods will be invoiced at any time after their readiness for despatch has been notified to Buyer. Services will be invoiced monthly in arrears or, if earlier, upon completion. Without prejudice to Seller's other rights, Seller reserves the right to: (i) charge interest on any overdue sums at 4% above the base lending rate of Barclays Bank plc (or such higher rate stipulated by applicable law) during the period of delay; (ii) suspend performance of the Contract (including withholding shipment) in the event that Buyer fails or in Seller's reasonable opinion it appears that Buyer is likely to fail to make payment when due under the Contract or any other contract; and (iii) at any time require such reasonable security for payment as Seller may deem reasonable.

5. DELIVERY PERIOD:

5.1 Unless otherwise stated in Seller's quotation or Acknowledgement of Order, all periods stated for delivery or completion run from the Effective Date and are to be treated as estimates only not involving any contractual obligations.

5.2 If Seller is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer or its agents (including but not limited to failure to provide specifications and/or fully dimensioned working drawings and/or such other information as Seller reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery/completion period and the Contract Price shall both be adjusted accordingly.

5.3 If delivery is delayed due to any act or omission of Buyer, or if having been notified that the Goods are ready for despatch, Buyer fails to take delivery or provide adequate shipping instructions, Seller shall be entitled to place the Goods into a suitable store at Buyer's expense. Upon placing the Goods into the store, delivery shall be deemed to

be complete, risk in the Goods shall pass to Buyer and Buyer shall pay Seller accordingly.

6. FORCE MAJEURE:

6.1 The Contract (other than Buyer's obligation to pay all sums due to Seller in accordance with the Contract) shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage; governmental decisions or actions (including but not limited to prohibition of exports or re-exports or the failure to grant or the revocation of applicable export licenses), or labour trouble, strike, lockout or injunction. Seller shall have no obligation to supply any hardware, software, services or technology unless and until it has received any necessary licences or authorisations or has qualified for general licences or licence exceptions under applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time (including without limitation those of the United States, the European Union and the jurisdiction in which Seller is established or from which the items are supplied). If for any reason any such licenses, authorisations or approvals are denied or revoked, or if there is a change in any such applicable laws, regulations, orders or requirements that would prohibit Seller from fulfilling the Contract, or would in the reasonable judgement of Seller otherwise expose Seller and/or Seller's Affiliate(s) to a risk of liability under applicable laws, regulations, orders or requirements, Seller shall be relieved without liability of all obligations under the Contract.

6.2 If either party is delayed or prevented from performance of its obligations by reason of this Clause for more than 180 consecutive calendar days, either party may terminate the then unperformed portion of the Contract by notice in writing given to the other party, without liability provided that Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered and Services performed as at the date of termination. Seller may deliver by installments and if so each delivery shall constitute a separate contract and failure by Seller to deliver any one or more of the installments in accordance with their terms shall not entitle Buyer to terminate the whole Contract or treat it as repudiated.

7. DELIVERY, RISK & TITLE:

Unless otherwise expressly stated in the Contract, the Goods will be delivered Carriage Paid To (CPT) the destination named in the Contract; freight, packing, and handling will be charged at Seller's standard rates. Risk of loss of or damage to the Goods shall pass to Buyer upon delivery as aforesaid and Buyer shall be responsible for insurance of the Goods after the risk has so passed. Alternatively, if it is expressly stated in the Contract that Seller is responsible for the insurance of the Goods after their delivery to the carrier, such insurance will be charged at Seller's standard rates. "Ex-works", "FCA", "CPT" and any other delivery terms used in the Contract shall be defined in accordance with the latest version of Incoterms.

8. DEFECTS AFTER DELIVERY:

8.1 Seller warrants (i) subject to the other provisions of the Contract, good title to and the unencumbered use of the Goods; (ii) that Goods manufactured by Seller and/or Seller's Affiliates shall conform with Seller's specifications therefor and be free of defects in materials and workmanship and (iii) that Services provided by Seller or Seller Affiliates will be performed with all reasonable skill, care and due diligence and in accordance with good engineering practice. Seller will make good, by repair or at Seller's option by the supply of a replacement part or parts, any defects which, under proper use, care and maintenance, appear in Goods of Seller's Affiliates' manufacture and which are reported to Seller within 12 calendar months from putting such Goods into operation or 18 calendar months after their delivery, whichever period expires the sooner, (90 days after delivery in the case of Consumables and spare parts) (the "Warranty Period") and which arise solely from faulty materials or workmanship: provided always that defective items are returned to Seller at Buyer's cost carriage and insurance prepaid within the Warranty Period. ("Consumables" shall include glass electrodes, membranes, liquid junctions, electrolyte and O-rings). Replaced items shall become the property of ACD America Corporation. Repaired or replacement items will be delivered by Seller at Seller's cost to Buyer's mainland site in the United State or, if Buyer is located outside the United State, FCA in the United State. Seller will correct defects in Services provided by Seller or Seller Affiliates and reported to Seller within ninety days after completion of such Services. Goods or Services repaired, replaced or corrected in accordance with this Clause 10.1 shall be subject to the foregoing warranty for the unexpired portion of the Warranty Period or for ninety days from the date of their return to Buyer (or completion of correction in the case of Services), whichever expires the later.

8.2 Goods or Services sourced by Seller from a third party (not being a Seller Affiliate) for resale to Buyer shall carry only the warranty extended by the original manufacturer.

8.3 Notwithstanding Clauses 8.1 and 8.2, Seller shall not be liable for any defects caused by: fair wear and tear; materials or workmanship made, furnished or specified by Buyer; non-compliance with Seller's storage, installation, operation or environmental requirements; lack of proper maintenance; any modification or repair

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not previously authorised by Seller in writing; nor the use of non-authorised software or spare or replacement parts. Seller's costs incurred in investigating and rectifying such defects shall be paid by Buyer upon demand. Buyer shall at all times remain solely responsible for the adequacy and accuracy of all information supplied by it.

8.4 Subject to Clause 10, the foregoing constitutes Seller's sole warranty and Buyer's exclusive remedy for breach thereof. No representations, warranties or conditions of any kind, express or implied, shall apply as to satisfactory quality, merchantability, fitness for any particular purpose or any other matter with respect to any of the Goods or Services.

9. PATENT, ETC. INFRINGEMENT:

9.1 Subject to the limitations set forth in Clause 10, Seller shall indemnify Buyer in the event of any claim for infringement of Letters Patent, Registered Design, Design Right, Trade Mark or Copyright ("Intellectual Property Rights") existing at the date of formation of the Contract arising from the use or sale of the Goods, against all reasonable costs and damages awarded against Buyer in any action for such infringement, or for which Buyer may become liable in any such action, provided always that Seller shall not be liable to so indemnify Buyer in the event that: (i) such infringement arises as a result of Seller having followed a design or instruction furnished or given by Buyer, or the Goods having been used in a manner or for a purpose or in a country not specified by or disclosed to Seller prior to the date of the Contract or in association or combination with any other equipment or software, or (ii) Seller has at its expense procured for Buyer the right to continue to use the Goods or has modified or replaced the Goods so that the Goods no longer infringe. (iii) Buyer has failed to give Seller the earliest possible notice in writing of any claim made or to be made or of any action threatened or brought against Buyer and/or Buyer has failed to permit Seller, at Seller's expense, to conduct and control any litigation that may ensue and all negotiations for a settlement of the claim, or (iv) Buyer has made without Seller's prior written consent any admission which is or may be prejudicial to Seller in respect of any such claim or action, or (v) the Goods have been modified without Seller's prior written authorization.

9.2 Buyer warrants that any design or instructions furnished or given by it shall not cause Seller to infringe any Intellectual Property Rights in the performance of Seller's obligations under the Contract and shall indemnify Seller against all reasonable costs and damages which Seller may incur as a result of any breach of such warranty.

10. LIMITATION OF LIABILITY:

Supplier's maximum aggregate liability for any and all losses, liabilities, expenses (including legal expenses), damages, claims or actions incurred under or in connection with a specific order or a particular blanket order (CALL-OFF order) issued, arising in or by virtue of breach of contract, tort (including negligence), misrepresentation, breach of statutory duty, strict liability, infringement of intellectual property rights or otherwise, shall in no circumstances exceed a sum equal to the total price of the Call -Off in question.

11. STATUTORY AND OTHER REGULATIONS:

If Seller's obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of Seller's quotation of any law or any order, regulation or bye-law having the force of law that shall affect the performance of Seller's obligations under the Contract, the Contract Price and delivery period shall be adjusted accordingly and/or performance of the Contract suspended or terminated, as appropriate.

12. COMPLIANCE WITH LAWS

Buyer agrees that all applicable import, export control and sanctions laws, regulations, orders and requirements, as they may be amended from time to time, including without limitation those of the United States, the European Union and the jurisdictions in which Seller and Buyer are established or from which items may be supplied, and the requirements of any licenses, authorisations, general licences or licence exceptions relating thereto will apply to its receipt and use of hardware, software, services, and technology. In no event shall Buyer use, transfer, release, export or re-export any such hardware, software or technology in violation of such applicable laws, regulations, orders or requirements or the requirements of any licenses, authorizations or licence exceptions relating thereto. Buyer agrees furthermore that it shall not engage in any activity that would expose the Seller or any of its affiliates to a risk of penalties under laws and regulations of any relevant jurisdiction prohibiting improper payments, including but not limited to bribes, to officials of any government or of any agency, instrumentality or political subdivision thereof, to political parties or political party officials or candidates for public office, or to any employee of any customer or supplier. Buyer agrees to comply with all appropriate legal, ethical and compliance requirements.

13. DEFAULT, INSOLVENCY, AND CANCELLATION:

Seller shall be entitled, without prejudice to any other rights it may have, to cancel the Contract forthwith, wholly or partly, by notice in writing to Buyer, if (a) Buyer is in default of any of its obligations under the Contract and fails, within 30 (thirty) days of the date of Seller's notification in writing of the existence of the default, either to rectify such default if it is reasonably capable of being rectified within such period or, if the default

is not reasonably capable of being rectified within such period, to take action to remedy the default or (b) on the occurrence of an Insolvency Event in relation to Buyer. "Insolvency Event" in relation to Buyer means any of the following: (i) a meeting of creditors of Buyer being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to Buyer; (ii) a chargeholder, receiver, administrative receiver or similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of Buyer; (iii) Buyer ceasing to carry on business or being unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (iv) Buyer or its directors or the holder of a qualifying floating charge giving notice of their intention to appoint, or making an application to the court for the appointment of, an administrator; (v) a petition being presented (and not being discharged within 28 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of Buyer; or (vi) the happening in relation to Buyer of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets. Seller shall be entitled to recover from Buyer or Buyer's representative all costs and damages incurred by Seller as a result of such cancellation, including a reasonable allowance for overheads and profit (including but not limited to loss of prospective profits and overheads).

14. MISCELLANEOUS:

14.1 No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

14.2 If any clause, sub-clause or other provision of the Contract is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Contract.

14.3 Buyer shall not be entitled to assign its rights or obligations hereunder without the prior written consent of Seller.

14.4 Seller enters into the Contract as principal. Buyer agrees to look only to Seller for the due performance of the Contract.

14.5 GOODS PROVIDED HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Buyer (i) accepts Goods in accordance with the foregoing restriction, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Goods in any nuclear or nuclear related applications, whether the cause of action be based on tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

14.6 The Contract shall in all respects be construed in accordance with the laws of Belgium excluding, however, any effect on such laws of the 1980 Vienna Convention on Contracts for the International Sale of Goods and to the fullest extent permitted by law, shall be without regard to any conflict of laws or rules which might apply the laws of any other jurisdiction. All disputes arising out of the Contract shall be subject to the exclusive jurisdiction of the Belgium courts.

14.7 The headings to the Clauses and paragraphs of the Contract are for guidance only and shall not affect the interpretation thereof.

14.8 All notices and claims in connection with the Contract must be in writing.



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