

TERMS AND CONDITIONS OF SALE

These terms and conditions will be applicable to the Buyer's purchase of equipment and/or services from SmartFlow Technologies, Inc ("Seller") unless modified by Seller in an accompanying quotation or in any other document in which these terms are expressly referred to by Seller as forming a part of the Agreement. This constitutes Seller's offer of sale to Buyer. It is expressly conditioned on Buyer's acceptance of all of these terms and conditions, and Seller hereby gives notice that it objects to any additional or different terms in any of the Buyer's documents. This document, together with such additional documents as are expressly made part of Seller's offer to Buyer, constitute the entire Agreement between the Buyer and Seller and may not be modified except in a written amendment signed by a duly authorized representative of the Seller. Issuance of an order and/or the making of a down payment by the Buyer shall constitute acceptance of these terms and conditions.

1. PRICE AND PAYMENT TERMS - Buyer agrees to pay the contract price specified in the Seller's quotation. If no contract price is specified, it shall be the Seller's price(s) in effect at the time of delivery. Where applicable, Seller may add to the contract price, and Buyer agrees to pay for the following additional items unless otherwise stated herein:

- a. The price of additional items of equipment and/or services and other charges may be necessary by incomplete or inaccurate or late information supplied by the Buyer or Buyer's changes or delays;
- b. All sales, use or similar taxes or charges and customs taxes and duties;
- c. Freight, transportation, demurrage, insurance, and extraordinary packaging charges and C.O.D. charges, if any;
- d. As to any invoice not paid within thirty (30) days after shipment, interest on the unpaid portion until paid at the rate of one and one-half percent (1 1/2%) per month, or the legal maximum allowed, if less; and
- e. All reasonable and necessary costs and expenses incurred by Seller in collecting the contract price as may be adjusted hereby, including attorney's fees and litigation expenses. Seller may make and invoice for partial shipments. Seller may invoice each separately listed line item with a separate price upon its substantial completion. Payments shall be made at times specified in the Seller's quotation of which these terms and conditions are hereby incorporated by reference. Seller may, at its option, require additional progress payments if the financial condition of the Buyer does not justify continuation of production or shipment on the specified payment terms. In addition Seller shall have the right, at any time, for credit reasons or because of the Buyer's breach of this or any other agreement with the Seller, to suspend performance on the order, to withhold shipments in whole or in part, to recall goods in transit, retake same, and repossess all goods which may be stored with Seller of Buyer's account, without the necessity of taking any other proceedings, and Buyer consents that all goods so recalled, retaken, or repossessed shall become the absolute property of Seller, provided that the Buyer is promptly notified of such action and is given full credit therefore. Seller reserves a security interest in all equipment until full payment of the purchase price.

2. DELIVERIES - Delivery dates quoted by Seller are approximate unless otherwise stated herein and shall be considered to be achieved upon the warranty commencement date described in section 3 below. Delivery method and route of shipment are at Seller's discretion unless Buyer supplies other instructions. Unless otherwise specifically stated in Seller's quotations, installation is not included in the quoted prices. Deliveries are F.O.B. place of shipment. Therefore, unless otherwise stated, title and risk of loss shall pass to the buyer at the place of shipment. Any claim for loss or damage in transit shall be made only against the carrier. If the Buyer delays delivery and the Seller is required to store the equipment, the Buyer's liability for risk of loss, storage charges, and payment of the contract price shall commence when the equipment is ready for shipment, even though the Seller consents to such delay.

Seller shall not be liable for any loss or damage arising out of delays beyond the Seller's reasonable control, including but not necessarily limited to late receipt of order, down payment, progress payments and agreement upon the final drawings and specifications. Additionally, deliveries are contingent upon strikes, labor difficulties, riot, war, fire, delay or defaults of common carriers, failure or curtailment in Seller's usual sources of supply, government decrees or orders, or Buyer caused delays. Seller further reserves the right, in the event of the happening of any of the foregoing, to equitably delay its time of performance, or to cancel this Agreement and refund any progress payments without any further resulting liability. The Seller shall also have the right to equitably adjust the contract price in the event any of the foregoing are caused by the Buyer or are within its reasonable control. Any delivery accepted by the Buyer, even though made after the scheduled delivery date, shall constitute a good delivery and shall be paid regardless of other controversies relating to other delivered or undelivered equipment.

3. WARRANTY - All equipment (including software) manufactured, sold and/or licensed by Seller hereunder is warranted to free at the time of shipment from defects in material and workmanship under normal use and service and shall conform only to the Seller's standard specifications and such others as may be specifically set forth in this

Agreement. Equipment (including software) which is supplied by other vendors and which is furnished by Seller hereunder without alteration or change shall only have the warranty furnished by said vendor which Seller hereby passes on to Buyer to the extent it is able to so. The warranty of the Seller does not apply to defects not caused by Seller such as acts of God, abuse, and damage in shipment, failure to comply with conditions of operation and maintenance or improper handling. The warranty shall not apply to equipment (including software) installed improperly by other than the Seller, to portions of equipment normally consumed during the warranty period, to equipment which has had serial numbers, manufacture or shipment dates changed or removed, or which has been modified without the Seller's prior written approval, or which has been used in connection with other equipment not authorized by the Seller. To make claim under this warranty, the Buyer must notify the Seller in writing within thirty (30) days from the date the Buyer discovers, or should have discovered, any defect. The sole liability of the Seller shall be to repair or replace the defective item of equipment either at the Seller's plant or in place, at the Seller's option. Seller shall be given reasonable time and opportunity to perform the repair or replacement. Buyer shall not return equipment to the Seller without receiving prior written authorization from the Seller. Service calls for recognized warranty repairs will be free of charge; calls for non-warranty repairs will be at the Buyer's expense and will be on a time and materials basis plus travel expenses.

Equipment sold hereunder shall be deemed to be irrevocably accepted by the Buyer thirty (30) days after commencement of the warranty period. The warranty period shall commence Thirty (30) days after the date of final shipment. Unless otherwise stated on the face side, the warranty period shall be twelve (12) months and, for replacement parts supplied under the warranty, the warranty period shall be the remainder of the original warranty period.

NO EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE (EXCEPT AS TO TITLE), OTHER THAN THOSE SET FORTH ABOVE SHALL APPLY TO PRODUCTS SOLD BY SELLER AND NO WAIVER, ALTERATION OR MODIFICATION OF THE FOREGOING SHALL BE BINDING AGAINST SELLER UNLESS SIGNED BY AN EXECUTIVE OFFICER OF SELLER.

4. LIMITATION OF LIABILITY AND LIMITATION OF ACTIONS - WHETHER OR NOT CAUSED BY SELLER'S NEGLIGENCE, SELLER SHALL NOT BE LIABLE FOR ANY MONEY DAMAGES THAT EXCEED AN AMOUNT EQUAL TO TEN (10%) PERCENT OF THE SALE PRICE OF THE EQUIPMENT, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED. SELLER'S OBLIGATION TO REPAIR OR REPLACE AS SET FORTH ABOVE SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY OR NEGLIGENCE. IF SELLER FAILS TO REPAIR OR REPLACE AS AFORESAID, SELLER'S ENTIRE LIABILITY SHALL NOT EXCEED THE SELLER'S PRICE FOR THE DEFECTIVE ITEM. ANY LEGAL PROCEEDING BROUGHT UNDER OR AS A RESULT OF OR ARISING OUT OF THIS AGREEMENT MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ARISES.

5. SELLER'S PROPRIETARY RIGHTS - Unless specifically stated on the face side, the Seller retains ownership of and the copyright to, and the Buyer will NOT acquire any title to or interest in or the right to possess models, patterns, processes, tools, fixtures, technology, technical documentation or Seller's proprietary data (such as source code, design, engineering, and technical information of equipment and/or software provided by Seller, whether or not patentable), or trade secret information (such as secrets contained in computer software, manufacturing methods, design or processes, treatment and chemical compositions, and plant layout and tooling or equipment sold by Seller). Any proprietary data or trade secret information of Seller disclosed to Buyer will be retained in confidence by Buyer and not disclosed to others unless such data or information was known to Buyer at the time of disclosure by Seller as evidenced by Buyer's business records, or was known or later becomes known to the general public without a breach of this or any similar agreement to which the Seller is a party. Buyer shall not reverse engineer, copy or disclose the design and engineering of the equipment sold by Seller as the design, assembly, engineering and production of such equipment is proprietary to Seller.

6. CHANGES - Any changes requested by the Buyer after agreement upon the original specifications must be made in writing by the Buyer. Thereupon, the impact of the changes on price and delivery will be determined by the Seller and an engineering change order will be submitted to the Buyer for written approval of an authorized representative. Work on the engineering change order will not be commenced until the parties have reached an agreement in writing on price, delivery and other impacted changes. Pending such agreement, Seller may suspend performance on the originally ordered equipment to prevent having to re-perform work and to minimize the ultimate price to the Buyer.

7. SOFTWARE LICENSE - (a) Seller hereby grants to buyer the License to use any software supplied with the equipment only on the equipment. Buyer may not transfer, rent or lease the software to a third party without

securing Seller's prior written consent. Any transfer shall require both Seller's prior written consent and the transferee's written agreement to these terms and conditions, but shall not release Buyer from its obligations hereunder. Buyer may not decompile, disassemble or reverse engineer the software. Buyer may not copy, transfer or otherwise use the software except in connection with its use of the Equipment. The software (and the accompanying materials) is a proprietary product of the Seller and is protected by copyright laws. All patent, copyright and other proprietary rights are retained by the Seller. Buyer may only make one copy of the software only for archival or backup purposes. No other copies may be made for any reason. Buyer may not copy written materials accompanying the software. Buyer recognizes that the Seller retains ownership of the software, and Buyer agrees to hold it in confidence and not disclose it to third parties. These obligations of Buyer shall survive the termination of this agreement for any reason. This license does not include the rights to upgrades, updates or other support service.

(b) U.S. Government Restricted Rights. The Software and accompanying written materials are provided with Restricted Rights. Use, duplication or disclosure by the Government is subject to the restrictions contained in subparagraph (c) (1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252,227-7013 or in subparagraphs (c) (1) and (2) of the Commercial Computer Software Restricted Rights at CFR 52,227-19 as applicable.

8. PATENTS - Seller represents and warrants only that it has no knowledge of any adversely held, potentially enforceable right of any third parties which would be infringed by any hardware or software or any part thereof sold or licensed pursuant hereto. If said item or any part thereof is held to constitute infringement and if the use of said item or part is enjoined, Seller may at its sole option either procure for the Buyer the right to continue using said item or part, or modify it so as to become non-infringing, or replace it with a non-infringing but substantially equivalent item or part, or remove the infringing item or part and refund the contract price, less an allowance for reasonable depreciation. In no event shall the Seller's liability for any infringement relating to the use or sale of the item or part thereof sold pursuant hereto exceed the purchase price therefor. The foregoing states the entire liability of Seller for patent infringement by said item or any part thereof. The preceding agreements by Seller in this paragraph shall not apply to any item or part thereof manufactured to Buyer's specifications, nor to any infringement or claim of infringement relating to the use of said item or part thereof in combination with other hardware or software not furnished by Seller. If any item or part thereof sold or licensed pursuant hereto is supplied in accordance with the Buyer's specifications, the Buyer shall hold the Seller harmless against any claim that the said item infringes any United States patent which arises out of compliance with the specifications.

9. TERMINATION AND CANCELLATION In the event Buyer terminates all or any part of this Agreement (except for Seller's material breach) Buyer agrees to pay all Seller's costs and expenses, direct and indirect and general and administrative, incurred in performing and preparing to perform this Agreement plus a reasonable profit on the entire Agreement and Seller's costs and expenses in preparing the termination claim. If Buyer fails or refuses to pay, then Seller may also seek recovery of and Buyer agrees to pay the costs and expenses of litigation, including attorney fees. Seller may apply any progress payments towards its damages as set forth above.

10. GENERAL PROVISIONS

a. This Agreement shall be governed by the laws of the State of North Carolina, U.S.A. Any dispute shall be resolved exclusively by an appropriate North Carolina State Court or U.S. District Court sitting within Wake County, North Carolina.

b. The Buyer may not assign this Agreement without Seller's prior written consent.

c. Prior to the Buyer's acceptance, Seller's quotation is subject to change or revocation unless a validity period is stated in the Seller's quotation. After acceptance, any change requested by the Buyer will not be effective until the parties reach agreement on price, delivery, and other affected conditions of this Agreement in accordance with section 6 of these terms and conditions.

d. Notices to the Buyer shall be sent to its address shown on the Seller's quotation to the attention of the person placing an order on the Buyer's behalf. Notices to the Seller shall be sent to the address of the Seller shown on the Seller's quotation. A party may change the address to which notices to it shall be sent by giving notice in the manner provided herein. Notices may be sent by first class mail, by facsimile, or by hand delivery. Notice by mail shall be effective five (5) business days after being sent. Notice by facsimile shall be effective on the first business day after sending provided confirmation of transmission to the recipient's facsimile number shall be received and retained by the sending party. Notices by hand delivery shall be deemed given when received.

e. Stenographic and clerical errors are subject to correction. Each party promptly agrees to notify the other when it becomes aware of the same.