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Flowtronex

Terms and Conditions

of ITT Flowtronex ("Seller")

The Terms and Conditions of ITT Flowtronex ("Seller") are to govern any sale. Any offer is made expressly contingent upon Purchaser's acceptance of the terms and conditions included herein. Seller reserves the right to reject the inclusion of any inconsistent, different or additional terms proposed by Purchaser in its purchase order or other response to an offer. Acceptance by Purchaser is limited to Seller's terms and conditions and Purchaser, upon placing an order for any goods quoted by seller, agrees to be bound by the terms and conditions set forth herein. Any additional or different terms and conditions contained in Purchaser's purchase order or Purchaser's response to Seller's quotation shall be construed as a counteroffer and shall not be effective or binding unless specially consented to in writing by an authorized representative of Seller. Neither Seller's commencement of performance nor delivery shall be deemed or construed as acceptance of Purchaser's additional or different terms and conditions.

1. **Pricing Policies.** All prices are subject to change without notice and shall not be binding on Seller until reduced to writing and signed by Seller. All orders are subject to written acceptance and approval by an authorized representative of Seller. Unless otherwise agreed to in writing by seller all prices are F.O.B. Seller's plant, and do not include transportation costs or charges relating to transportation, which costs and charges shall be solely the responsibility of Purchaser. Prices include standard packing according to Seller's specifications. All costs and taxes for special packing requested by Purchaser, including packing for exports, shall be paid by Purchaser as an additional charge. The Price is firm for shipment as shown in the proposal. In the event shipment is delayed for any reason by the Purchaser, Owner, or Consulting Engineer, the price will be subject to escalation to price in effect at time of shipment.
2. **Taxes.** The price for the goods does not include any applicable sales, use, excise, GST, VAT, or similar tax. The purchaser shall have the responsibility for the payment of such taxes if applicable.
3. **Payment Terms.** Unless different payment terms are expressly set forth in Seller's proposal or quotation of the confirmation of sale, goods will be invoiced upon shipment. Payment in full is due within thirty (30) days from the invoice date. In the event payment is not made when due, Purchaser agrees to pay Seller a service or finance charge of one and one-half percent (1.5%) per month (18% per annum) on the unpaid balance of the invoice from and after the invoice due date. Purchaser is responsible for all costs and expenses associated with any checks returned due to insufficient funds. All credit sales are subject to prior approval of Seller's credit department. Export shipments will require payment prior to shipment or an appropriate Letter of Credit.
4. **Effect of Purchaser's Financial Condition.** If, during the performance of the contract with Purchaser, the financial responsibility or condition of Purchaser is such that Seller in good faith deems itself insecure, or if Purchaser becomes insolvent, or if a material change in the ownership of the Purchaser occurs, or if Purchaser fails to make any payments in accordance with the terms of its contract with Seller, then, in any such event, Seller is not obligated to continue performance under the contract and may stop goods in transit and defer or decline to make delivery of goods, except upon receipt of satisfactory security or cash payments in advance, or Seller may terminate the order without further obligation to Purchaser whatsoever. If the Purchaser fails to make payments or fails to furnish security satisfactory to Seller then Seller shall also have the right to enforce payment to the full contract price of the work completed and in process. Upon default by Purchaser in payment when due, Purchaser shall immediately pay to Seller the entire unpaid amounts for any and all shipments made to Purchaser irrespective of the terms of said shipment and whether said shipments are made pursuant to this proposal or any other contract of sale between Seller and Purchaser, and Seller may withhold all subsequent shipments until the full amount is settled. Acceptance by the Seller of less than full payment shall not be a waiver of any of its rights hereunder.
5. **Risk of Loss, Title.** The risk of loss of the goods shall pass to the Purchaser as soon as they are delivered to the Purchaser, but title to the goods shall remain in the Seller until the full purchase price has been paid, unless otherwise agreed by Seller. Security for the delivered goods is the Purchaser's responsibility.
6. **Shipment.** Any stated shipment or delivery dates are approximate only. Seller will use every reasonable effort to meet estimated shipment or delivery dates. Once the equipment is ready to ship, the Purchaser has thirty (30) days to arrange shipment. After this period, the Purchaser will be charged storage fees of \$150 per day. Seller shall have the right to ship all of the goods at one time or in portions from time to time within the shipment period. This contract shall be deemed separable as to the goods sold. Purchaser may not refuse to accept any lot or portion of the goods shipped hereunder on the grounds that there has been a failure to ship any other lot or that goods in any other lot were nonconforming. Any such default by Seller will not substantially impair the value of this contract as a whole and will not constitute a breach of the contract as a whole. Purchaser agrees to execute "bill and hold contract" in the event of Purchaser-caused order delay.
7. **Testing, Inspection, and Acceptance.** Purchaser shall have the right to inspect the goods before shipment or upon their receipt. Purchaser's failure to inspect the goods or failure to notify the Seller in writing that the goods are nonconforming with the packing slip within fourteen (14) days from the arrival date to the port of destination, shall constitute a waiver of Purchaser's right to inspect and/or reject the goods for nonconformity and shall be equivalent to an irrevocable acceptance of the goods by Purchaser.
8. **Seller's Performance.** Seller shall not be responsible or liable for any delay directly or indirectly resulting from or contributed by limitations on Seller's production capabilities beyond its reasonable control, or to delays due to fires, explosions, acts of God, strikes or other differences with workers, shortage of utility, facility, components or labor, delay in transportation, breakdown or accident, war and acts of war, compliance with or actions taken to carry out the intent or purposes of any law or regulation, changes in goods or materials, or any other causes or contingencies not caused by Seller or over which Seller had no reasonable control. In the event that any one or more deliveries hereunder is suspended or delayed by reason of any one or more of the occurrences or contingencies stated above, any and all deliveries so suspended or delayed shall be made after such occurrences or contingencies have ceased to exist, and nothing herein contained shall be construed in any way as lessening the full amount of goods herein being purchased and sold, but only as deferring delivery and payment in the event(s) and to the extent herein provided for. Neither shall any delay in shipment be considered as a default under this contract nor give rise to any liability on the part of Seller for any incidental, special or consequential damage.

9. **Warranty.** Company warrants title to the product(s) and, except as noted below with respect to items not of Company's Manufacturer, also warrants the product(s) on date on shipment to Purchaser, to be of the kind and quality described herein, and free of defects in workmanship and material.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS, AND CONSTITUTES THE ONLY WARRANTY OF COMPANY WITH RESPECT TO THE PRODUCT(S).

If within one year from date of initial operation, but not more than eighteen months from date of shipment by Company of any item of product(s), Purchaser discovers that such item was not as warranted above and promptly notifies Company in writing thereof, Company shall remedy such non-conformance by, at Company affected part of the product(s). Purchaser shall assume all responsibility and expense for removal, reinstallation, and freight in connection with the foregoing remedies. The same obligations and conditions shall extend to replacement parts furnished by Company hereunder. Company shall have the right of disposal of parts replaced by it.

ANY SEPARATELY LISTED ITEM OF THE PRODUCT(S) WHICH IS NOT MANUFACTURED BY THE COMPANY IS NOT WARRANTED BY COMPANY and shall be covered only the express warrant, if any, of the manufacturer thereof.

THIS STATES PURCHASER'S EXCLUSIVE REMEDY AGAINST COMPANY AND ITS SUPPLIERS RELATING TO THE PRODUCT(S), WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY, AND WHETHER ARISING OUT OF WARRANTIES, REPRESENTATIONS, INSTRUCTIONS, INSTALLATIONS OR DEFECTS FROM ANY CAUSE. Company and its suppliers shall have no obligation as to any product which has been improperly stored and handled, or which has not been operated or maintained according to instructions in Company or supplier furnished manuals.

10. **Installation and Start-up.** Unless otherwise agreed to in writing by Seller, installation shall be the sole responsibility of Purchaser. Where start-up service is required with respect to the goods purchased hereunder, it must be performed by Seller's authorized personnel or agents; otherwise, Seller's limited warranty is void. In the event Purchaser has engaged Seller to provide an engineer for start-up supervision, such engineer will function in a supervisory capacity only and Seller shall have no responsibility for the quality of workmanship of the installation. In any event, Purchaser understands and agrees that it shall furnish, at Purchaser's expense, all necessary foundations, supplies, labor

and facilities which might be required to install and operate the equipment.

11. **Cancellation.** No order may be cancelled unless requested in writing by either party and accepted in writing by the other. In the event of cancellation by Purchaser, Purchaser shall, within thirty days of such cancellation, pay Seller a cancellation fee which shall include all costs and expenses incurred by Seller prior to the receipt of the request for cancellation including, but not limited to, all commitments to its suppliers, subcontractors and others, all labor and overhead expended by Seller in the preparation of the Equipment prior to the cancellation, plus an amount equal to 25% of the aggregate of all the foregoing.
12. **Specifications.** Changes in specifications requested by Purchaser are subject to approval in writing by Seller. In the event such changes are approved, the price for the goods and the delivery schedule shall be changed to reflect such changes.
13. **Drawings.** All drawings are the property of Seller. Seller does not supply detailed or shop working drawings of the goods; however, Seller will supply necessary installation drawings. The drawings and bulletin illustrations submitted with Seller's quotation show general type, arrangement and approximate dimensions of the goods to be furnished. Seller reserves the right to alter such details in design or arrangement of its goods which, in its judgment, constitute an improvement in construction, application or operation. All engineering information necessary for installation of the goods shall be supplied by Seller to Purchaser in an appropriate submission. After acceptance of the quotation, any changes in the type of goods, the arrangement of the goods, or application of the goods requested by Purchaser will be made at Purchaser's expense. Instructions necessary for installation, operating and maintenance will be supplied when the goods are shipped.
14. **Patents.** The goods being provided by Seller may be covered by patents pending or issued. Seller grants Purchaser a license and the right to use these goods without further charge. Seller does not grant Purchaser the right to use the goods, or protection against patent infringement claims arising from use of the goods, in any patented processes controlled by others, unless specifically set forth in this quotation.
15. **Assignment.** No right or interest in this contract shall be assigned by Purchaser without the prior written permission and consent of Seller.
16. **Indemnification.** Purchaser hereby agrees to indemnify and save Seller, its directors, officers and employees, harmless from all loss, liability, damages, costs and expenses (including attorney's fees and other expenses of litigation), resulting from any claim or action for personal injury or death or damage to or loss of

property or violation of or failure to comply with any applicable law, regulation, rule or order arising from the use by Purchaser, its employees, agents, customers, invitees or by other third parties of the goods and services to be provided under this contract. Purchaser, at its expense, shall defend any such claim or suit against Seller and/or its directors, officers and employees and shall pay any judgment resulting therefrom. Seller shall have the right, but not the duty, to participate in the defense of any such claim or suit with attorneys of its own selection without relieving Purchaser of any of its obligations hereunder. This indemnity shall survive delivery of the goods or performance of the services under this contract.

17. **Entire Agreement.** The terms and conditions contained herein and in any accompanying quotation or proposal of Seller, shall constitute the entire and complete agreement between Seller and Purchaser and shall supersede all prior oral or written statements or understandings of any kind whatsoever made by the parties or their representatives. No modifications or additions to these terms and conditions shall be binding on Seller unless specifically agreed to in writing and signed by an authorized representative of Seller. Further, no oral or written statement made subsequent to the acceptance of Purchaser's order by Seller which purports to modify in any way these terms and conditions shall be binding upon Seller unless such statement is clearly adopted and agreed to in writing by a duly authorized representative of Seller.
18. **Limited Authority of Sales Agents.** The sales agents and representatives of Seller have no authority to enter into agreements, contracts or understandings, or to bind or incur any liability or obligation on behalf of Seller. Orders and contract proposals taken by the sales agents and representatives of Seller are subject to written approval by an authorized representative of Seller.
19. **Interpretation of Contract.** This offer and any related confirmation or contract of sale shall be governed by and construed in accordance with the laws of State of Florida and is intended also as a complete and exclusive statement of the terms of the contract. No prior course of dealing between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection. Waiver by Seller of a breach by Purchaser of any provision of this contract shall not be deemed a waiver of future compliance therewith, and such provision shall remain in full force and effect. If any portion of these terms and conditions is deemed invalid by a court having jurisdiction over the parties, the remaining provisions shall remain fully effective. Any term used in this contract which is not defined herein shall have the same definition as that contained in the Uniform Commercial Code.