



**PROCESS RESOURCES, INC. AND SUBSIDIARIES
STANDARD TERMS AND CONDITIONS OF SALE**

The equipment, software, materials and services (collectively, the “Equipment”) which are described on the face hereof shall be sold by Process Resources (Seller) only upon the following Standard terms and Conditions of Sale:

1. **CONTRACT TERMS:** These Standard Terms and Conditions of Sale (the “Contract”) are the only terms and conditions applicable to the sale of the Equipment. Contract formation and acceptance by Seller are expressly conditioned upon Customer’s assent to the terms of this Contract. If the terms of this Contract are not acceptable, Customer must notify Seller of its objections at once. Customer shall be deemed to have agreed to this Contract unless notice to the contrary is received by Seller within ten days from the earlier of the date of Seller’s sales confirmation or invoice. The transmittal of a purchase order with regard to a quotation by Seller shall constitute an acceptance of the quotation and the Contract of Sale as set forth therein if the purchase order agrees with such quotation with respect to the description of the Equipment to be furnished by Seller as shown on the face thereof, the quality thereof and purchase price to be charges therefore. **ANY REPRESENTATIONS, PROMISES, WARRANTIES, OR STATEMENTS BY SELLER’S AGENT OR EMPLOYEE THAT DIFFER IN ANY WAY FROM THE TERMS OF THIS CONTRACT SHALL BE GIVEN NO FORCE OR EFFECT.** Any additional or different terms or conditions set forth in any communications, including without limitation a telephone order, a request for quotation or purchase order form, from Customer are objected to by Seller and shall not be effective or binding unless expressly assented to in writing by an office of Seller. All shipments are made pursuant to this Contract. No other terms or additions are acceptable. This Contract is intended as a final and complete expression of the agreement between Seller and Customer.

- a.) A sales confirmation or similar form issued by Seller pursuant to a Customer’s purchase order constitutes an expression of acceptance of such purchase order, but such expression of acceptance is expressly conditioned upon Customer’s assent to the Contract.
- b.) Where Seller does not issue either a quotation or a sales confirmation and ship Equipment pursuant to Customer’s purchase order, telephone request or other form of order, such sale shall be subject to Seller’s Contract as set forth on Seller’s invoice and Customer shall be deemed to have agreed thereto unless the Equipment is returned to Seller at Customer’s expense within ten days of date of invoice, in which event such sale shall be cancelled for all purposes. As set forth above, any additional or different terms or conditions of sale set forth in the purchase order or other communications from Customer are objected to by Seller and shall not be effective or binding unless assented to in writing by an officer of Seller.
- c.) Any typographical or clerical error herein is subject to correction by Seller.

2. **PRICES AND QUOTATIONS:** (a) All prices are F.O.B. Seller’s warehouse in Sugar Land, Texas unless otherwise specified. Except as otherwise provided therein, Seller’s prices for the Equipment shall remain in effect for thirty (30) days from the date of Seller’s quotation.

- b) All prices quoted by Seller are subject to any addition which may be necessary to cover any taxes or charges or any applicable increase in same hereafter becoming effective, such as, for example, the payment of any applicable sales, use, excise or other taxes, or import duties, documentation charges, freight, insurance, packing charges, or similar costs or charges.

3. **PAYMENT TERMS:** (a) Subject to the approval of Seller’s Credit Department, and unless otherwise agreed in writing, terms of payment are net cash thirty (30) days following the date of invoice.

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- b) All payments shall be made in U.S. currency to Seller at its offices in Sugar Land, Texas, or as Seller otherwise directs.
- c) The amount of any invoice shall be deemed to be accurate unless Seller receives written notification from Customer disputing the amount or validity of any such invoice before the payment due date and before payment has been made. Any such notification shall be sent to Seller at P.O. Box 1387, Sugar Land, Texas, 77478-1387, Attn: Accounts Receivable. Any such notice shall include the invoice number and a description of the alleged error.
- d) Seller shall have the right, among all other available legal remedies, to terminate this Contract and/or to suspend further deliveries under this or other agreements with Customer if Customer fails to make any payment to Seller when due.

4. CANCELLATION: prior to acceptance of the Equipment, Customer may terminate its order for any or all of the Equipment covered by this Contract, provided that (a) Seller is given reasonable advance written notice of such termination and (b) Seller is paid termination charges which shall include all costs and expenses already incurred or commitments made by Seller in connection with the processing, purchasing, handling and fabrication of the Equipment, and a reasonable profit thereon plus any losses or damages resulting from such cancellation or termination. Seller's determination of such termination charges shall be conclusive.

5. DELIVERY AND DOCUMENTATION: (a) Customer shall bear the risk of loss for damage to or destruction of the Equipment from the earlier of the time that Seller delivers such Equipment to the carrier or to Customer or Customer's agent. Any claims for loss or damage after risk of loss has passed to a Customer shall be filed with the carrier. Customer shall give written notice to Seller or any claim for shortage, error in Equipment shipped or error in charges within thirty (30) days after receipt of Equipment or such claim shall be deemed waived.

- e) Quoted delivery dates are approximate estimates determined at the time of quotation and are subject to revision at any time.
- f) All shipping dates are approximate and are based upon prompt receipt by Seller of all necessary information from Customer to properly process the order.
- g) Delivery dates are subject to changes caused by additions to or modifications of the original order agreed to by both Seller and Customer.
- h) Under no circumstances shall Seller have any liability whatsoever for loss of use or for any indirect or consequential damages as a result of delayed delivery.
- i) Unless otherwise agreed in writing Seller shall have the option of partial or complete shipment of the Equipment.
- j) Seller shall provide Customer with such data or documentation, if any, as specified in the quotation. If additional copies of such data or documentation are requested by Customer, Seller will provide such additional copies at Customer's expense. If Customer requests different or non-standard data or documentation, Seller, at its sole option, may provide such different or non-standard data or documentation at Customer's expense.

6. RETURNS: Subject to the terms of this Contract regarding cancellation and warranties, all sales are final. Customer may request to return Equipment by contacting its account salesperson to request a return authorization number. No Equipment will be accepted for return without a valid return authorization number clearly noted on the outside of the shipment. Any return shipments must be made freight prepaid unless seller has expressly authorized Customer in writing to ship such Equipment to Seller at Seller's expense. Any returns of Equipment authorized by Seller are subject to Seller's standard restocking charges as such are then effective. Seller's current minimum restocking charges are the greater of 20% of the invoiced price or \$50.00 per item. Special orders or non-stock items are subject to higher restocking charges.

7. INSTALLATION, MAINTENANCE, ETC: All equipment shall be installed by and at the expense of the Customer. Customer shall be responsible for receiving, storing, installing, starting up and maintaining all Equipment. Customer may request the seller to provide a quotation for providing services to assist Customer in all or part of these duties.

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8. SERVICES: (a) Services rendered by Seller, whether with or without charge, are only technical or advisory in nature and are merely incidental to the sale of the Equipment. When any such services are rendered, Customer will retain full responsibility for and full control, custody and supervision of the Equipment and the installation, selection of material therefore, use or operation thereof, and representative of Customer shall be present with full authority to direct operations.

- i. If Seller furnishes technical or other advice to Customer, whether or not at Customer's request, with respect to Customer's process or equipment, such advice shall be made in good faith, and Customer assumes all risk of such advice and the results thereof.

9. LIMITED WARRANTY AND DISCLAIMER: As set forth herein, different warranties may apply to different categories of Equipment. As to all Equipment, except as expressly set forth in this section and Section 11, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE EQUIPMENT. The warranties made in this section are in lieu of any other warranty, express or implied and are expressly subject to Section 12 terms of this Contract. The warranties made in this section and in Section 11 are the only warranties made by Seller and can be amended only by a written instrument signed by an officer of Seller.

- a) "Resale Products" shall mean any portion of the Equipment purchased by Seller from a third party for resale. If the Resale Products are subject to the manufacturer's or other third party warranties. Seller hereby assigns to Customer all of Seller's rights and remedies under such warranties to the extent that such rights and remedies are assignable.
- b) "Process Resources Products" shall mean any portion of the Equipment manufactured or fabricated by Seller. Subject to the terms of this Contract, Seller warrants that all Process Resources Products will be free from defects in materials or workmanship under normal use and service until the expiration of twelve (12) months from the date of shipment by Seller. Process Resources Products are prepared solely as a convenience to Customer according to instructions and specifications provided by Customer.
- c) "Consumables" shall mean that portion of the Equipment which is depleted or expected to rapidly deteriorate in ordinary use of the Equipment including, without limitation, glass parts and electrodes, membranes, liquid junctions, electrolytes and reagents, o-rings, plastic tubing, etc. Subject to the terms of this Contract, Consumables which do not constitute part of Resale Products are warranted by Seller to be free from defects in material and workmanship under normal use and service for a period of ninety (90) days from the date of shipment by Seller.
- d) "UPO Equipment" shall mean unused, previously owned products, which are not covered by a manufacturer's warranty on the date of shipment by Seller. Subject to the terms of this Contract, Seller warrants that UPO Equipment shall be free from defects in material and workmanship under normal use and service for a period of twelve (12) months from the date of shipment by Seller.
- e) "Used Equipment" shall mean previously sold, used products which may or may not have been refurbished, repaired, modified, reconfigured, or cleaned by Seller or a third party. Used Equipment shall include, but not be limited to, Equipment such as that sold through the ENCORE program. If any portion of the Used Equipment is subject to a third party warranty, Seller hereby assigns to Customer all of Seller's rights and remedies under such warranty to the extent that such rights and remedies are assignable. If any portion of the Used Equipment is not subject to any other warranty as of the date of shipment by Seller, and subject to the terms of this Contract, Seller warrants that such portion of the Used Equipment shall be free from defects in material and workmanship under normal use and service for a period of six (6) months from the date of shipment by Seller.
- f) Subject to the terms of this Contract, Seller warrants that any portion of the Equipment consisting of Software will execute the programming instructions provided by Seller. The foregoing warranty shall not apply to any such software which is covered by a third party warranty. If any such portion of the Equipment consisting of Software is subject to the

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manufacturer's or other third party warranties, Seller hereby assigns to Customer all of Seller's rights and remedies under such warranties to the extent that such rights and remedies are assignable.

- g) Subject to the terms of this Contract, Seller guarantees the workmanship in all non-warranty service, including, without limitation, repair and maintenance service, performed by Seller for a period of twelve (12) months from the date of the service in the case of service related to mechanical equipment and for a period of ninety (90) days from the date of the service in the case of service related to electronic equipment.
- h) Subject to the terms of this Contract and unless otherwise expressly provided herein, Seller warrants title to all Equipment sold under this Contract.
- i) Customer must notify Seller in writing of any warranty defects within thirty (30) days after discovery thereof. Failure by Customer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Customer's claim for such defects. If timely written notice of such defects is given to Seller and Seller concluded that such defects are covered by a warranty made by Seller in this Contract, Seller shall, at its option and as Customer's sole and exclusive remedy hereunder, promptly correct any errors that are found by Seller to exist in the Software, or repair or replace F.O.B. point of manufacture, that portion of the Equipment found by Seller to be defective. Customer agrees that Seller shall have no liability for warranty defects alleged to exist in Resale Products; however, Seller agrees to make a reasonably commercial effort, if requested to do so by Customer, to arrange for procurement and shipping of replacement Resale Products, at Customer's express. Equipment repaired and parts replaced by Seller during the warranty period shall be subject to the warranties made by Seller in this Contract for the remainder of the original warranty period.
- j) The warranties made by Seller in this Contract do not apply to replacements or repairs necessitated by inadequate preventative maintenance, or by normal wear or usage, or by fault of Customer, or by unsuitable power sources or by attack or deterioration under unsuitable environmental conditions, or by natural disaster, sabotage, abuse, accident, alteration, misuse, improper installation, modification, repair, storage or handling, or any other cause not the fault of Seller. The warranties made by Seller in this Contract do not apply to (i) any Equipment, which has been modified or subjected to unauthorized repair; or (ii) any item which is a component part of the Equipment where such item is furnished by Customer.
- k) Seller's obligation to repair or replace defective Equipment constitutes agreed and liquidated damages and the sole remedy for any breach of warranty by Seller. Seller shall have the right to inspect any Equipment claimed to be defective and shall have the right to determine the cause of such claimed defect. All Equipment replaced or repaired by Seller under its warranty shall be replaced or repaired F.O.B. Seller's warehouse, Sugar Land, Texas, or such other location as Seller may designate.
- l) For Purposes of this Contract, "date of shipment by Seller" shall mean the earlier of the date that the Equipment is delivered for shipment or the date of delivery to Customer if Customer (or Customer's agent) picks up or otherwise takes delivery of the Equipment without shipment by Seller.

10. CUSTOMER DATA/SPECIFICATIONS: To the extent that Seller has relied upon any specifications, information, representation of operating conditions or any other data supplied in writing by customer to Seller in the selection or design of the Equipment otherwise in connection with this Contract or the preparation of Seller's quotation, and in the event that the actual operating conditions or other conditions differ from those supplied by Customer and relied upon by Seller, ANY WARRANTIES OR OTHER TERMS AND CONDITIONS CONTAINED HEREIN WHICH ARE AFFECTED BY SUCH CONDITIONS SHALL BE NULL AND VOID.

11. PATENTS: Subject to the terms of this Contract, including, without limitation, Sections 9 and 12 hereof, Seller warrants that any Process Resources sold pursuant to this Contract, or the sue thereof as provided below, does not infringe any valid U.S. patent in existence as of the date of delivery. Customer must notify Seller of any claim or suit-involving Customer in which infringement is alleged within thirty (30) days after any such claim is made or suit is filed. Failure by Customer to give such written notice within the applicable time period shall be deemed an absolute and unconditional waiver of Customer's claims under this section. Customer must permit Seller to control completely the

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defense of compromise of any such allegation of infringement. Seller's warranty as to use only applies to infringements arising solely out of the inherent operation (i) of such Process Resources, or (ii) of any combination of Process Resources and Equipment sold hereunder in a manner designed by Seller. Subject to the terms of this Contract, if the Resale Products, UPO Equipment or any other portion of the Equipment are subject to the manufacturer's or other third party warranties relating to patent or copyright infringement, Seller hereby assigns to Customer all of Seller's rights and remedies under such warranties to the extent that such rights and remedies are assignable.

12. LIMITATION OF REMEDY AND LIABILITY: CUSTOMER'S EXCLUSIVE REMEDY SHALL BE FOR DAMAGES, AND SELLER'S TOTAL LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY AND ALL CAUSES WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE) SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE EQUIPMENT IN RESPECT OF WHICH SUCH CAUSE ARISES OR AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT, AND IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES RESULTING FROM ANY SUCH CAUSE. NOTWITHSTANDING THE FOREGOING, SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. The term "Consequential Damages" shall include, but not be limited to, loss of anticipated profits, loss of use, loss of revenue and cost of capital. Seller shall not be liable for, and Customer assumes liability for, all personal injury and property damage connected with the handling, transportation, possession, use, further manufacture, or resale of the Equipment. No costs or charges incurred by Customer will be paid by Seller unless authorized in writing in advance by Seller.

13. EXCUSE OF PERFORMANCE: a) Deliveries may be suspended, delayed, or canceled by Seller, without liability to Customer or any other person, in the event of; Act of God, war, riot, fire, explosion, accident, flood, natural disaster, sabotage, equipment or computer failure; acts, omissions, or failures by Seller's suppliers or other third parties; lack of or delays in obtaining adequate fuel, power, raw materials, components, labor, containers, or manufacturing or transportation facilities; compliance with governmental requests, laws, regulations, order or actions; breakage or failure of machinery or apparatus; force majeure; national defense requirements or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of Seller; or in the event of labor trouble, strike, lockout or injunction (provided that Seller shall not be required to settle a labor dispute against its own best judgment); which event makes impracticable the manufacture or delivery of a shipment of the Equipment or of a material or component upon which the manufacture of the Equipment is dependent.

- ii. If Seller determines that its ability to supply the total demand for the Equipment or obtain any or a sufficient quantity of a material or component used directly or indirectly in the manufacture of the Equipment, is hindered, limited or made impracticable, Seller may allocate its available supply of the Equipment or such material or component (without obligation to acquire other supplies of any such Equipment, material, or component) among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure or delay or performance which may result there from.
- iii. Deliveries suspended or not made by reason of this section shall at Seller's option, either be canceled or the time for delivery shall automatically be extended for a period equal to the suspension period, without liability, but this Contract shall otherwise remain unaffected.

14. WAIVERS AND RELEASES: Except as provided in paragraphs 9 and 11 and except for the willful misconduct or gross negligence of Seller, its employees or agents, Customer hereby releases Seller, its employees, agents and "controlling persons" (within the meaning of Section 20(a) of the Securities Exchange Act of 1934, as amended) from all liabilities, claims, costs, expenses, losses and damages of any and every kind arising out of or resulting, directly or indirectly, from any defect or failure of the Equipment or any act, omission, error or delay in the performance, or nonperformance of Seller's obligations and duties under this Contract. To the extent, if any, that Seller, its employees, agents or "controlling persons" shall have any liability under this Contract, Customer's exclusive remedy shall be as set forth in paragraph 12. CUSTOMER WAIVES ALL CLAIMS FOR CONSEQUENTIAL DAMAGES AND ALL CLAIMS REGARDING LOSS OF REVENUE, INCOME, PROFIT AND USE OR DAMAGES, WHETHER SAME BE DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL.

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15. GOVERNING LAW, VENUE AND LIMITATIONS: (a) This Contract shall be governed by and construed in accordance with the laws of the State of Texas.

- b) Each of the parties hereto submits irrevocably to the non-exclusive jurisdiction of the courts of the State of Texas, in Fort Bend County, as regards any claim or matter arising under this Contract.
- c) No action or claim, regardless of form, arising out of transactions under this Contract may be brought by either party, more than two years after the cause of action or claim has accrued.

16. OTHER TERMS AND CONDITIONS; a) Customer shall not (by operation of law or otherwise) assign its rights or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation by Customer without such consent shall be void.

- iv. Seller reserves the right to modify the design of any Equipment without obligations or notifications, and Seller is not obligated to so modify Equipment previously or subsequently sold.
- v. Should any clause, sentence or part of this Contract be held invalid, such holding shall in no way affect the validity of the remainder, which shall remain in full effect. Failure to enforce any or all of the provisions of this Contract in a particular instance or instances, shall not constitute a waiver or preclude subsequent enforcement thereof.