



## TERMS AND CONDITIONS (Exhibit "A")

1. **Acceptance/Objection to Different or Additional Terms.**

Seller's liability to the Customer is expressly conditioned upon the acceptance by the Customer of all of the terms contained herein, and objection is hereby made to any different or additional terms contained in any of Customer's documents, whether previously or later received by Seller. No covenants or representations with respect to the subject matter of this Proposal and Contract, which are not set forth herein, or in a subsequent written agreement between the parties, shall be binding on Seller. Any modification of the terms of this Proposal and Contract shall only be in writing, duly executed by both parties. The Customer may not assign this Proposal and Contract or any rights hereunder without the written consent of Seller. In the event any term or condition of purchase is inconsistent with or contrary to any provision of the Proposal and Contract, the provisions of the Proposal and Contract shall govern.

2. **Sale.**

Seller will send and deliver to the Customer the equipment and materials and perform the services set forth in the Proposal and Contract.

3. **Delivery.**

Delivery will be made to Seller's plant, FOB Dayton, Ohio, or FOB Seller's supplier's plant. Deliveries are estimated from the date of receipt of Customer's order, or material which the Customer is to furnish, whichever is the latter. Delivery to the carrier shall be considered delivery to the Customer. Shipment from said point shall be at the risk of Customer. If the Customer is not prepared to accept delivery when the equipment or materials are ready for shipment, from time to time Seller may store the same in a warehouse at the expense of the Customer, in the name of the Customer or Seller, and such storage shall constitute shipment and delivery to the Customer. Shipping dates are approximate.

4. **Installation.**

Installation, if any, of all equipment and materials shall be at the expense of the Customer per the terms of this Proposal and Contract.

5. **Taxes.**

The prices contained in this Proposal and Contract do not include the amount of any duty, sales, excise, use or any other tax which may be levied or imposed by any Federal, State, Municipal or other governmental authority upon or in connection with the sale of any of the equipment or services listed herein. In the event Seller is required to collect or pay any such duty or taxes, (except for taxes on Seller's income), the amount thereof shall be charged to and shall be paid by Customer on demand by Seller. Rulings of the taxing authorities with respect to Seller's responsibility for collecting or paying such tax or duty shall be conclusive and binding upon Customer for the purpose of the Contract with Customer.

6. **Limited Warranty.**

Seller warrants the equipment and materials sold hereunder to be free from defects in workmanship or materials which develop under normal and proper use. This warranty is to be in effect for the lesser of a period of twelve (12) months from the date of initial operation following shipment; or thirteen (13) months from the date of shipment; provided the Customer gives Seller prompt written notice upon the discovery of such defects. Customer's sole and exclusive remedy shall be the replacement or repair of defective parts, at the sole option of Seller. Defective parts will be repaired or replaced without charge f.o.b. point of shipment, but expenses incurred in removal, installation, and shipment of parts, including installation of any additional parts furnished are to be at Customer's expense. No charges will be accepted for repairs or alterations made by the Customer, unless previously authorized by Seller's home office at Dayton, Ohio.

This warranty shall not apply to any equipment, apparatus, or materials which have been subjected to misuse, neglect or accident, or has been altered or tampered with, or if corrective work has been done thereon without Seller's specific written consent. No allowances will be made for such corrective work done without such consent. Improper lubrication, deterioration by chemical action, and wear caused by the presence of abrasive materials do not constitute defects. Equipment and materials manufactured by others, and included in Seller's quotation, is not warranted in any way by Seller but carries only the third-party manufacturer's warranty, if any.

All warranty claims must be submitted within ten (10) days of discovery of defects or shall be deemed waived.

### **LIMITATION AND EXCLUSION OR WARRANTIES AND LIABILITIES**

THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER GUARANTEES, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF **MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**. NO REPRESENTATIVE OF SELLER HAS AUTHORITY TO CHANGE OR MODIFY THE FOREGOING WARRANTY IN ANY RESPECT OR TO ASSUME ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF SELLER.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR CONTINGENT DAMAGES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL SELLER'S LIABILITY FOR DAMAGES, REGARDLESS OF THE FORM OF ACTION, EXCEED THE F.O.B. PRICE AT DAYTON, OHIO OR F.O.B. SELLER'S SUPPLIER'S PLANT, WHICHEVER IS APPLICABLE AS TO THE PRODUCTS MATERIALS, EQUIPMENT, AND/OR APPARATUS IN RESPECT OF WHICH DAMAGES ARE CLAIMED. SELLER SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY OTHER PARTY.

**Reduction of Statute of Limitation.**

No action, regardless of form, arising out of the transactions under this Proposal and Contract, may be brought by either Seller or Customer more than one year after the cause of action has accrued, except that an action for non-payment may be brought within one year after the date of that payment's due date.

7. **Delays.**

Seller shall not be responsible to Customer or any third party for delays or non-performance caused by strikes, fires, or other causes beyond Seller's control. Seller shall have the right to stop work at any time and to hold deliveries of any and all of the goods and materials ordered, and property relating to said work, if any payment herein stipulated is not made promptly as agreed or upon proof of Customer's inability to pay as agreed, and thereupon the selling price of the equipment and materials in process at such date shall be due and payable.

8. **Extras.**

The Customer shall be charged and pay extra charges for work done beyond the scope contemplated by this Proposal and Contract.

9. **Copyright Ownership/Drawings/Software.**

Customer acknowledges and agrees that the services and material produced by Seller under the terms of this Proposal and Contract, including, but not limited to any computer software, are not done by Seller as a "work-for-hire" to Customer. All ownership, copyrights, rights to file applications and renewals therefore, including the right to sue for past infringements, shall remain the sole property of Seller. However, Seller hereby licenses Customer a non-exclusive perpetual royalty-free license to use, for Customer in-house purposes only, the software. Such license shall not afford Customer any right to further sub-license, transfer, copy, or sell any such software to any other person, including those transactions of Customer which are in conjunction with any product being distributed or sold by Customer to third parties. Customer agrees to further acknowledge, without charge to Seller, all of Seller's right, title and interest to any software or materials produced under the terms of this Proposal and Contract, including any written assignments to Seller.

If Customer's order consists of designing and building, Seller will work to tool design construction but to part-print dimension wherever possible. Seller shall have the right to scrap without liability therefore patterns, special tools and designs used in the manufacture of materials herein quoted, unless notice is given to ship these items with the completed equipment and materials. The Customer will defend at its own expense, and indemnify Seller against every suit which is brought against the Customer or Seller by reason of the manufacture or sale of special parts made to Customer's specifications. As to any drawings which Seller furnishes, it is expressly agreed and understood that the Customer and its legal successors and assigns will not give, loan, exhibit or sell to any person, such drawings, or any prints furnished by Seller, prints made from them, or copies of them, and that the Customer shall not use them in any way except installation covered by this Proposal and Contract, and for the purposes of maintenance of the materials covered thereby; and at all times, the drawings, prints and copies thereof, shall remain the property of Seller.

All proprietary and third party software libraries are protected by a hardware key(s). Source code for libraries protected in this manner will not be provided to the Customer. Customer will only receive source code specific to their application. In the event Customer wishes to modify the application source code, they must provide Seller with a signed acknowledgment (Exhibit "C" attached), relinquishing Seller of all system liability.

10. **Cancellation.**

Any order may be canceled by the Customer only with the consent of Seller, and on terms that will protect Seller from loss on costs incurred and charges against Seller's commitment pertaining to this Proposal and Contract which might be levied by suppliers to Seller; provided further that Seller shall be entitled to a reasonable profit upon the work performed and expenditures incurred against the Proposal and Contract.

11. **Returned Goods.**

No equipment or materials will be accepted for credit unless such return is first authorized in writing by Seller.

12. **Payments.**

If shipments are delayed by the Customer, payments shall become due from the date Seller is prepared to make shipment. If production is delayed at the request of the Customer, Seller may demand progress payments based upon percentage of completion in relation to the contract price.

13. **Prices.**

The prices contained in this Proposal and Contract automatically expires thirty (30) days from this date, and by notice is subject to change within this period, unless previously accepted by Customer by return to Seller of a properly executed copy of this Proposal and Contract. All quotations are based upon specifications received and do not constitute final prices until approved drawings are accepted and final costs are determined.

14. **Indemnification.**

Customer will defend, indemnify, and hold harmless Seller, its officers, directors, agents and employees from and against any and all claims, demands, actions, and causes of action which are hereafter made or brought against Seller, its officers, directors, agents and/or employees by any person, firm, corporation, or association for the recovery of damages to property or damages for injury, illness and/or death of any person which is caused or alleged to have been caused by the possession, handling, or any use of article, material, equipment, or machine which is the subject of this Proposal and Contract.

15. **Controlling Law and Venue.**

The provisions of this Proposal and Contract, and all dispute arising hereunder, shall be controlled by, and construed under, the laws of Ohio. Any legal or equitable proceeding brought by Customer as a result of this transaction must be filed and litigated in either the Common Pleas Court or Montgomery County, Ohio, or the Municipal Court of the City of Dayton, Ohio.

16. **Acceptance Of Goods/Services.**

Seller shall require the written acceptance by the Customer that the goods/services are completed and operate as agreed upon in this Proposal and Contract (Exhibit "B" attached). This acceptance must be made *prior* to breaking down any system and shipping from DEC's facility.