

# Servomex Company, Inc. Terms and Conditions.

1. **ACCEPTANCE**

For the purposes of these Terms and Conditions, the term "contract" shall mean the agreement between **Servomex Company, Incorporated** ("Supplier") and Buyer arising as a result of Buyer's submission of an order for Supplier's products. Such contract shall be deemed to incorporate and be governed by these Terms and Conditions. **THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN BUYER'S ORDER.** No term or condition of Buyer's order additional to or different from these Terms and Conditions shall become part of the contract unless explicitly agreed to in writing by Supplier. Retention by Buyer of any products delivered by Supplier, or payment by Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Terms and Conditions. Supplier's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions nor as an acceptance of any such provision. This agreement between Supplier and Buyer is not binding unless accepted by Supplier in writing. The acceptance of all orders taken by Supplier's sales representatives or branches is subject to approval by Supplier's main office at Sugar Land, Texas, U.S.A.
2. **QUOTATIONS**

Prices, specifications and dates for delivery referenced in Supplier's quotations are for information purposes only and shall not be binding on Supplier until all technical requirements have been agreed and Supplier has accepted Buyer's order. Unless otherwise specified in writing, all written quotations expire sixty (60) days after issue thereof provided Supplier is allowed to manufacture to normal production schedules and ship immediately upon completion. Quotations may be terminated earlier by notice and constitute only solicitations for offers to purchase. All prices are Ex Works shipping point.
3. **ORDERS**

By submitting an order to Supplier, Buyer agrees to be subject to these Terms and Conditions in their entirety. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. No order, whether or not submitted in response to a quotation by Supplier, shall be binding upon Supplier until accepted in writing by Supplier.
4. **PRICES AND TAXES**

Prices do not include custom duties, federal, state or local taxes, including without limitation sales, use or excise taxes now or hereafter enacted, applicable to the products sold in this transaction, which taxes may, in Supplier's discretion, be added by Supplier to the sales price or billed separately and which taxes shall be paid by Buyer unless Buyer provides Supplier with any necessary tax exemption certificate.
5. **SHIPMENT AND DELIVERY**

Dates are approximate only. Supplier shall attempt to make shipment within the time specified after the receipt of full data from Buyer, including approved certified prints. All products will be shipped Ex Works Supplier's premises and may be so shipped in several lots. In the absence of specific instructions, Supplier will select the carrier and ship "collect", but shall not be deemed thereby to assume any liability in connection with the shipment nor shall the carrier be construed to be the agent of Supplier. Buyer must provide its own insurance. Title and risk of loss or damage to all products sold hereunder shall pass from Supplier to Buyer upon delivery by Supplier to the possession of the carrier, provided that Supplier reserves a purchase money security interest in the products. Any claims for loss, damage or misdelivery thereafter shall be filed with the carrier. All products shall be deemed finally inspected and accepted within ten days after delivery unless notice of rejection is given in writing to Supplier within such period. Acceptance shall constitute acknowledgement of full performance by Supplier of all obligations under the contract except as stated at Section 14 (Limitation of Warranties). If the Buyer requests shipment beyond the scheduled shipping date, Supplier reserves the right to adjust prices as they prevail at the time of the now specified shipping date. Supplier further reserves the right to assess additional handling and storage charges resulting from such delays in shipment.
6. **ERRORS**

Supplier reserves the right to correct stenographic, clerical, or mathematical errors that may be present in pricing or specifications in this quotation and / or order.
7. **INSTALLATION, COMMISSIONING, START-UP**

Buyer shall be responsible for receiving (including removal from carrier at jobsite), storing, installing, commissioning, starting up, and maintaining the equipment Supplier will upon request, provide a quotation for services to assist Buyer in these functions.
8. **PACKING**

Packing material and packaging procedures used by Supplier provide a safe shipping unit and fully conform to all requirements of domestic carriers. Any requirements for special packing or procedures to cover unique circumstances of shipment or storage are not included in this order unless specifically noted.
9. **TERMS OF PAYMENT**

Each shipment shall be a separate transaction and Buyer will be invoiced on date of dispatch. Payment is to be by remittance in U.S. funds only. Unless otherwise stated on Supplier's quotation and / or order, terms of payment shall be net cash thirty (30) days from date of invoice subject to the following:
  - (a) Orders which include one or more of the following elements shall incorporate progress payments: (1) Customer engineering requiring buyer approval of Supplier's engineering specifications, (2) Large buyout content of instruments included in the order, (3) Extended delivery beyond normal production schedules, or (4) Order value in excess of current operating policy minimums for large orders subject to progress payments.
  - (b) When progress payments are included in the order, they shall be appointed as stated in the Supplier's quotation in accordance with the following schedule as appropriated.
    - \* 10% of contract price with purchase order
    - \* 15% of contract price with specification approval
    - \* 25% of contract price thirty(30) days after specifications approval
    - \* 50% of contract price not thirty(30) days from date of shipment and final invoiceDates are approximate only.
10. **SECURITY INTEREST**

Buyer hereby grants to Supplier a security interest in all Supplier products sold to Buyer as security for the due and punctual performance by Buyer of all of its obligations hereunder. Buyer agrees to execute such documents to evidence and perfect said security interest as Supplier may require, including without limitation financing statements on Form UCC-1.
11. **CONTINGENCIES**

Supplier shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond reasonable control of Supplier, including, by way of illustration but not limitation, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, floods, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Supplier has exercised ordinary care in the prevention thereof. If any such contingency occurs, Supplier may allocate production and deliveries among Supplier's customers and the date of delivery or of performance shall be extended for a period equal to the time lost by reason of the delay. As used herein, "performance" shall include fabrication, assembly, shipment, delivery, installation, testing, and warranty repair or replacement as applicable.
12. **EQUIPMENT**

Supplier may modify specifications provided the modifications do not adversely affect the performance of the equipment to be supplied under the contract ("the equipment"). In addition, Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or nonavailability of materials from suppliers.
13. **SOFTWARE**

Supplier shall at all times have and retain title and full ownership of all software, firmware programming routines, and documentation thereof supplied by Supplier, use with the equipment, and of all copies thereof made by Buyer (collectively "software"). Supplier grants Buyer a non-exclusive and non-transferable license to use such software solely for use with the equipment. Buyer shall take all reasonable steps to protect Supplier's proprietary interest in the software and shall not transfer or otherwise provide the software to any third party.
14. **LIMITATIONS OF WARRANTIES**
  - A. Supplier warrants that all equipment shall be free from defects in material and workmanship under normal use for a period of one (1) year from date of shipment to Buyer save that Supplier does not warrant that operation of the software will be completely uninterrupted or error free or that all program errors will be corrected. Buyer shall be responsible for determining that the equipment is suitable for Buyer's use and that such use complies with any applicable local, state or federal law. Provided that Buyer notifies Supplier in writing of any claimed defect in the equipment immediately upon discovery and any such equipment is returned to the original shipping point, transportation charges prepaid, within one year from date of shipment to Buyer and upon examination Supplier determines to its satisfaction that such equipment is defective in material or workmanship, i.e. contains a defect arising out of the manufacture of the equipment and not a defect caused by other circumstances, including, but not limited to accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing, Supplier shall at its option repair or replace the equipment, freight costs from and to Buyer's equipment location to be paid by Buyer. Supplier shall have reasonable time to make such repairs or to replace such equipment. Should the Buyer require on site warranty assistance, all labor and expenses except that time actually spent on site shall be billed by the Supplier and paid by the Buyer at the then prevailing rates and charges. Should Depot warranty apply, all dismantling, freight costs and reinstallation costs shall be borne by the Buyer. Supplier shall not be obligated to repair or replace equipment which has been repaired by others, abused, improperly installed, altered or otherwise misused or damaged in any way. Any repair or replacement of equipment shall not extend the period of warranty. This warranty is limited to a period of one year, without regard to whether any claimed defects were discoverable or latent on the date of shipment.
  - B. If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Supplier under this contract or otherwise, all warranties and remedies granted under this Section 14 may, at Supplier's option, be terminated.
15. **PATENTS**

Supplier shall defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that any equipment manufactured by Supplier infringes or design a United States patent, and shall indemnify Buyer against all costs, damages and expenses finally awarded against Buyer provided that Buyer notifies Supplier promptly in writing of any such claim and gives Supplier full and complete authority, information and assistance for the defense of such claim and provided further that Supplier shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If any such equipment is held in construction or design directly to infringe any United States patent and the use of said equipment is enjoined, or in case any equipment may, in the opinion of Supplier, be held to infringe, Supplier may, at its expense and option, either (a) procure for Buyer the right to continue using said equipment, (b) replace said equipment with a suitable noninfringing product, (c) suitably modify said equipment, or (d) refund the purchase price of said equipment, less depreciation at twenty percent (20%) per year, and accept its return. Supplier shall not be liable for any cost or expense incurred without Supplier's written authorization. Supplier shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification or from a combination with or an addition to equipment not manufactured or developed by Supplier or a modification of the equipment after delivery or the use of equipment beyond that established by Supplier or approved in writing by Supplier. THE FOREGOING STATES THE ENTIRE LIABILITY OF SUPPLIER, AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY THE SAID EQUIPMENT.
16. **LIMITATION OF LIABILITY AND BUYER INDEMNITY**

Supplier, maintains, blanket insurance policies covering Workman's Compensation, general public liability, automobile liability and property damage to cover work on Buyer's premises and will make available to purchaser at his request such certificates of insurance coverage from sureties of Supplier's choice. Buyer agrees to indemnify and save Supplier harmless for all loss, cost or damage incurred by Supplier as a result of Buyer's negligence or misapplication of Supplier's supplied products. IN NO EVENT SHALL SUPPLIER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF THE SALE OF ITS PRODUCTS TO BUYER OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF USE, BUSINESS, GOODWILL, OR PROFITS, AND CLAIMS ARISING OUT OF THIRD PARTY ACTIONS, REGARDLESS OF WHETHER SUCH THIRD PARTY ACTIONS, OR ANY OTHER CLAIMS, LOSSES, OR DAMAGES, WERE REASONABLY FORESEEABLE TO BUYER OR SUPPLIER. BUYER'S EXCLUSIVE REMEDY ARISING OUT OF ITS PURCHASE AND USE OF SUPPLIER'S PRODUCTS, OR ARISING OUT OF ANYTHING DONE IN CONNECTION WITH THE CONTRACT, SHALL BE FOR DAMAGES AND NO CLAIM OR CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WARRANTY AND STRICT LIABILITY), STATUTORY OR REGULATORY PROVISIONS, ANY FINANCIAL CONTRIBUTION, OR OTHERWISE SHALL BE GREATER IN AMOUNT IN AGGREGATE THAN THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT OF WHICH DAMAGES ARE CLAIMED. Buyer shall indemnify and hold harmless Supplier, its officers, agents, employees, subsidiaries, parents, affiliates and insurers from and against any and all liabilities, damages, losses, claims, lawsuits, including costs and expenses in connection therewith, for death or injury to any persons or loss of any property whatsoever, caused in any manner by Buyer's possession, use or operation of equipment.
17. **PROPRIETARY INFORMATION**

Buyer represents that it has adopted reasonable procedures to protect Proprietary Information, as defined hereafter, including binding agreements with employees and consultants to prevent unauthorized publication, disclosure or use of such during or after the term of their employment by or services for Buyer. Buyer shall not use Proprietary Information except as required for the use of the equipment, shall not disclose Proprietary Information to any third party, and shall not transmit any documents or copies thereof containing Proprietary Information to any third party, except as may be authorized in writing by Supplier. This Section shall survive termination of the contract. "Proprietary Information" shall mean information or data of Supplier or a third person to whom Supplier owes obligations of confidentiality, and which is furnished or to be furnished to Buyer in written, graphic or machine-readable form and is marked proprietary or confidential. Where copies or alternative forms of information or data are received from Supplier, such information or data shall be considered Proprietary Information if at least one of said copies or alternative forms is marked proprietary or confidential. This Section shall not apply to information which Buyer demonstrates was in Buyer's possession prior to receipt from Supplier or information which Buyer demonstrates is or has become available to the public or general knowledge in the industry otherwise than through the fault of Buyer.
18. **CHANGES, RESCHEDULING AND CANCELLATION**

Any change in equipment, function, specification, destination or otherwise affecting the scope of work are not binding upon Supplier unless made in writing and accepted by Supplier at its office Sugar Land, Texas, U.S.A. These changes are subject to mutual agreement in writing and to price and/or schedule adjustment based on prevailing prices plus any costs incurred or to be incurred by Supplier as a result of these changes. Orders accepted by Supplier may be cancelled or rescheduled by Buyer only with the written consent of Supplier (which consent Supplier may withhold for any reason) and upon payment of Supplier's cancellation or rescheduling charges. Supplier shall have the right without penalty or payment to cancel any order accepted (a) if Buyer fails to make any payment when due to Supplier under the contract or any other contract (b) if any actor omission of Buyer delays Supplier's performance, (c) if Buyer violates any of these Terms and Conditions, (d) if Buyer's credit becomes impaired; (e) if the Buyer is or becomes insolvent, or, if at any time after the order has been entered, or during the manufacturing period, or at the time the goods are ready for shipment the Supplier may require payment in advance of shipping regardless of original terms, or if after shipment has been made and before actual delivery and acceptance at destination (regardless of F.O.S. point). Supplier may recall the shipment and cancel this and any and all other orders and contracts which may be outstanding, and shall be entitled to receive reimbursements for its reasonable and proper cancellation charges. (f) If the order or contract is for the direct account of Supplier's sales representatives, distributors or dealers, and Supplier terminates or alters such relationship, Supplier shall have at all times a right of set-off as to any and all accounts between Supplier and Buyer. Buyer may cancel order subject to cancellation charges which will be made based on work accomplished at time notice of cancellation is received in writing at Supplier's Sugar Land, Texas, U.S.A. headquarters. Supplier's determination of such charges shall be final and conclusive, and in the event of such cancellation Supplier shall be entitled to receive reimbursement for its reasonable and proper cancellation charges.
19. **Non-Waiver Remedies**

No waiver of any breach of these Terms and Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of the contract. All Supplier rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and nonexclusive and may be exercised singly or concurrently.
20. **Applicable Law and Actions to Recover Damages**

The validity, performance and construction of the contract shall be governed by the laws of the state of Texas. If any provision of these Terms and Conditions is held to be unenforceable, such holding shall not affect the enforceability of any other provision. Prior to commencement of any legal proceedings, Buyer and Supplier shall meet at a senior level to attempt to resolve differences. Notwithstanding any attempts to resolve differences or negotiations regarding such differences, any action brought by Buyer against Supplier arising out of this contract or Buyer's purchase and use of the equipment must be commenced within one year after such action accrues and in no event later than two years after date of shipment of such equipment.
21. **Government Contract**

If the products to be furnished under the contract are to be used in the performance of a U.S. Government contract or subcontract, the Government contract number and a statement to that effect shall appear on Buyer's purchase order. If Buyer's purchase order includes all of said information and if said order is accepted in writing by Supplier, then those clauses of the applicable Government procurement regulations which are mandatorily required by Federal statute or regulation to be included in this contract shall be incorporated herein by reference. In all other events, said clauses shall not be incorporated herein by reference.
22. **Export**

Regardless of any disclosure made by Buyer to Supplier of the ultimate destination of Supplier products, Buyer shall not export either directly or indirectly any Supplier product, or any system incorporating said product either in contravention of statute or regulation or without first obtaining all required licenses and permits from the United States Department of Commerce and any other relevant agencies or departments of the United States government.
23. **Assignment**

The contract shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. The contract is personal to Buyer, and Buyer may not assign any of its rights or delegate any of its obligations thereunder, in whole or in part, without the prior written consent of Supplier which may be withheld for any reason.
24. **Complete Agreement, Modifications**

This contract together with the Supplier's proposal shall constitute the complete and final agreement and understanding between the parties relating to the sale of the equipment and no addition to or modification of any provision of said agreement shall be binding unless agreed in writing by a duly authorized representative of the Buyer and Supplier.
25. **Notices**

All notices given under the contract shall be in writing, mailed by first class mail, certified or registered, or delivered by hand to the address of the other party set forth in the quotation or to such other address as such party may designate from time to time by such notice, and shall take effect when received. Rev. 30 January 2004