**EQUIPMENT PURCHASE AGREEMENT**

THIS AGREEMENT is made this \_\_\_ day of \_\_\_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_\_\_ of \_\_\_\_\_ (hereinafter Seller), and \_\_\_\_\_\_\_ Company, a corporation, having its registered office and principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter Company).

The Seller and Company, for the consideration hereinafter set forth, agree as follows:

1. AGREEMENT

 Seller hereby agrees to design, manufacture, sell to Company, construct and install equipment and train Company personnel as necessary, and Company hereby agrees to purchase the items of equipment as specified within the following Exhibits, attached hereto and incorporated herein by reference:

 Exhibit \_\_\_\_\_\_\_\_

 Exhibit \_\_\_\_\_\_\_\_

 Exhibit \_\_\_\_\_\_\_\_

2. DEFINITIONS

 The words and terms below shall, for the purposes of this Agreement, have the following meanings:

a. Acceptance Date

 Shall be defined to mean the date that the Equipment shall successfully complete the acceptance test as defined herein.

b. Acceptance Test

 Shall be defined to mean the test criteria described within Exhibit \_\_\_\_\_\_.

c. Company Representative

 Shall mean the person so designated in the Agreement, or such other person as the Company may subsequently designate in writing. Whenever approval or authorization from, or communication or submission to the Company is required, such communication or submission shall be directed to the Company Representative and approval or authorization shall be issued only by such Representative. However, in emergency circumstances when the Company Representative is not available, Seller may direct its communications or submission to other appropriate Company personnel and may receive approval or authorization from such person.

d. Defective Equipment Report (DER)

 A Defective Equipment Report (DER) shall be defined to mean a document which the Company shall tender to Seller during the Warranty Period to confirm notice of defects in the Equipment.

e. Delivery Date

 Shall be defined to mean the date that Equipment shall be delivered to Company's facility as identified herein.

f. Drawings

 Shall mean, collectively, all the drawings referenced within the Agreement and made a part hereof, and also such supplementary drawings as the Company Representative(s) may issue from time to time.

g. Equipment

 Shall be defined to mean the items of equipment listed and/or described within the Exhibits included herein, inclusive of any subsequent amendments agreed to by Company and Seller pursuant to this Agreement.

h. Purchase Price

 Shall be defined to mean the price of the Equipment as shown on Exhibit \_\_\_\_\_\_ inclusive of any subsequent amendments agreed to by Company and Seller pursuant to this Agreement.

i. Specifications

 Shall mean, collectively, all the terms, requirements and stipulations presented herein and such written amendments, revisions, deductions or additions as may be made pertaining to the method and manner of performing the work or to the quantities and qualities of the materials to be furnished under this Agreement.

j. Warranty Period

 Shall be defined to mean the period which begins on the Acceptance Date and ends \_\_\_ year(s) later.

3. REPRESENTATIVES

 The Company Representative for purposes of this Agreement shall be \_\_\_\_\_\_\_\_\_\_\_\_; Seller's Representative shall be \_\_\_\_\_\_\_\_\_\_, or such other person as the parties may subsequently designate in writing.

4. SPECIFICATIONS

a. Manufacturing Conformance

 Seller shall design and manufacture the Equipment to conform to the requirements set forth in the Exhibits included herein.

b. Intended Use

 It is understood by Seller that the Company intends to use the Equipment primarily \_\_\_\_\_.

5. CHANGES TO SPECIFICATIONS

a. Change Orders

 By issuance of a written Change Order to the Seller, the Company may, at any time during the term of this Agreement and without invalidating the Agreement, make changes in, additions or deletions to the Specifications of the Agreement.

 Such Change Orders shall be in writing and signed by an authorized representative of the Company. It is understood that any such changes shall be made by Seller.

 Such Change Orders shall be incorporated within the Specifications and the effect of the change shall be acknowledged.

 If such change increases or decreases the cost of or time for performing the work hereunder, an equitable adjustment shall be made in the payment to the Seller and/or the time for performance.

b. Technological Developments

 Seller shall promptly advise the Company of all reasonably available technological advances which are known or become known to Seller during its performance of this Agreement which may result in the Equipment having added value (i.e., better performance, design, material, longer useful life, etc.) to the Company. Should the Company elect to incorporate such advances, it shall do so pursuant to Paragraphs (a) and (b) of this Section.

6. PRICE

 The total Purchase Price of the Equipment is \_\_\_\_\_\_\_\_\_, F.O.B \_\_\_\_\_\_\_\_, as shown on Exhibit \_\_\_\_ and as may be amended as provided herein.

7. PAYMENT TERMS

a. Payment Schedule

 The Purchase Price shall be paid according to the payment schedule outlined on Exhibit \_\_\_\_.

b. Payment

 Progress payments will be made within thirty (30) days from Company's receipt of Seller's invoice (pursuant to the invoicing instructions), provided that Seller has, to Company's reasonable satisfaction, completed the required work outlined on the progress payment schedule. However, should Seller be delinquent or tardy in performance, Company shall have the right to delay the appropriate progress payment commensurately.

c. Invoicing

 Seller shall post all invoices submitted hereunder to:

 Company

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 ATTN: \_\_\_\_\_\_\_\_\_\_

 Said invoices shall be in duplicate and shall reference the Agreement number. Seller understands that its failure to follow this requirement may result in delayed payments by the Company.

d. Disputes

 In the event of a dispute regarding an invoice, the undisputed amount will be paid and the Seller will be notified of the amount(s) in dispute and the basis of the dispute within a thirty (30) day period.

8. DELIVERY DATE

a. On Time Delivery

 Work under this Agreement shall be completed according to the milestone dates presented within Exhibit \_\_\_\_. Time is of the essence.

b. Option to Delay Delivery

 The Seller shall have the right, at no additional charge, to postpone the delivery of the Equipment (or any component thereof) for a period of \_\_\_\_\_\_. In the event of such a postponement, the Company shall have the right to commensurately delay its payment(s) due to the delay of shipment.

c. Use of Carrier

 Seller shall use the carrier designated in Exhibit \_\_\_\_. However, in the event that the designated carrier is unable to meet the delivery date, Seller, with Company's approval, may substitute a carrier of a similar type and reputation.

d. Freight-Prepaid and Add

 Seller shall prepay all freight required for the shipment of the Equipment to Company and reinvoice the Company as provided herein. Freight charges are to be invoiced at Seller's cost with supporting paid carrier invoices attached to Seller's invoice.

e. Delivery Delays -- Premium Transportation

 If shipment of the Equipment is delayed less than fifteen (15) calendar days after the Delivery Date for any reason (Force Majeure delays excluded), Company shall have the option to expedite the shipment of the Equipment by employing a premium transportation mode such as, but not limited to, exclusive-use van or air freight. Seller hereby agrees to bear such premium costs should Company elect to use such premium transportation mode in an effort to recover the time lost due to Seller's late shipment. Furthermore, Seller will use its best efforts to assist Company in the routing or rerouting of the shipment.

f. Delivery Delays -- Irreparable Fifteen (15) Days after Delivery Date

 If shipment of the Equipment is delayed for any reason (excluding Force Majeure delays) in excess of fifteen (15) calendar days after the Delivery Date, the delay shall be considered an irreparable delay and a default of Seller under this Agreement. In the event of such a delay, Company shall have the option to cancel this Agreement. Should the Company choose to excuse the delay, it must do so in a writing which shall identify a new Delivery Date.

g. Delivery Notice

 Seller shall notify the Company by fax of a pending shipment hereunder seven (7) calendar days prior to actual shipment. On the day of actual shipment, Seller shall confirm shipment by fax notification which shall include: the carrier's name, the way bill number, number of pieces, weight (by piece and total), progressive bill number, destination, etc.

h. Packing

 Seller will ship the Equipment in a manner consistent with general industry practice. Should it be necessary to ship the Equipment in a disassembled state, Seller shall ship the Equipment in the largest units possible consistent with expedient transportation of the Equipment.

i. Title

 Unless otherwise specified herein, title to the Equipment furnished by Seller shall vest in the Company when the Equipment has been delivered at the location designated in this Agreement and the additional services after delivery have been completed and accepted by Company's representative.

j. Risk of Loss

 i. Seller shall bear the risk of loss or damage to any Equipment until delivery of the Equipment at the destination specified in this Agreement and acceptance by the Company has occurred.

 ii. After delivery and acceptance, the Company shall bear the risk of loss or damage to the Equipment, except to the extent that loss or damage arises out of or results from the negligence or willful misconduct of Seller, its agents or subcontractors.

9. WARRANTY

a. Quality of Service

 Seller shall perform its services with care, skill and diligence, using that degree of skill and care ordinarily exercised and consistent with generally accepted practices. Seller shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and other items and services furnished under this Agreement.

b. Fabricated Equipment

 Seller warrants that all goods, articles, material and work will conform with applicable drawings, specifications, samples and/or other descriptions given, will be fit for the purposes intended and of first-class quality. Seller agrees to hold the Company harmless from any loss, damage or expense which Company may suffer or incur on account of Seller's breach of warranty.

 Seller shall replace, repair or make good without cost to the Company any defects or faults arising within one (1) year or within such longer period of time as may be prescribed by law or by terms of any applicable warranty provided by Seller after date of acceptance of goods furnished hereunder (acceptance not to be unreasonably delayed), resulting from imperfect or defective work or materials furnished by Seller. Acceptance or use of goods by the Company shall not constitute a waiver of any claim under this warranty. Seller's liability under this Section shall extend to all damages proximately caused by the breach of any of the foregoing warranties or guarantees, but such liability shall in no event include loss of profits or loss of use.

c. Company May Repair

 The Company shall have the right to repair any and all defects if Seller has previously authorized such action or, if in the Company's reasonable commercial judgment, Seller is unable or unwilling to effect the repair. If the Company elects to take this action, it may deduct from any amounts owing to Seller the direct and incidental costs incurred in remedying the breach of warranty.

 Should the Company deduct costs from future payments, upon Seller's request, the Company will furnish documentation of these costs. The Company's action to cure any warranty breach shall not relieve Seller of any obligations hereunder or under provisions of the Uniform Commercial Code except to the extent that the Company's repair effort shall have directly caused further defects in the Equipment.

d. Notice of Defects

 The Company shall give Seller prompt notice of all defects known to either Seller's on-site representative or to Seller's customer service representative. In addition, Company will tender a DER to Seller confirming notice of such defects. Upon receipt of such notice, Seller shall promptly, and without undue delay, notify the Company Representative of its intentions and preferences to effect repair of the Equipment.

10. PATENT INFRINGEMENT WARRANTY

a. Infringement

 Seller warrants that none of the Equipment, the use thereof or any of the applications, processes or designs employed in the manufacture thereof infringes the valid claims of any letter patent, patent application, copyright, trade secret or any other property right of any third party.

b. Indemnity -- Patent Infringement

 In the event of a breach or alleged breach of this warranty, Seller shall, at its own expense, defend any suit or proceeding brought against the Company and shall fully protect and indemnify the Company against any liability, cost, recovery, or other expense resulting from such suit or claim of infringement. The Company shall give prompt notice in writing of any notice or claim of such suit and the Company agrees to cooperate with Seller to enable it to make such defense.

c. Remedies

 If in any such suit or proceeding, said Equipment or any part thereof is held to constitute an infringement and the full or partial use of the Equipment is enjoined, Seller shall, at no cost to the Company

 (1)obtain for the Company a license to use the Equipment; or

 (2)modify the Equipment so as to avoid the infringement without any degradation in performance.

 If Seller cannot obtain such a license, or the Equipment cannot be so modified, or if as a result of any suit of infringement or alleged infringement, Seller may elect or be prevented from delivering the Equipment or any part or component thereof, Seller shall promptly refund to the Company all money paid by the Company for the Equipment.

11. SPARE PARTS

a. Sixty (60) days prior to shipment, Seller agrees to supply to Company a recommended spare parts list for the Equipment. Seller agrees for a period of years to sell to the Company, at the prevailing delivery and payment terms, all necessary spare parts required for maintenance of the Equipment, at published catalog prices.

b. Further, Seller agrees, within the limits of production capability, to provide emergency spare parts within a period after receipt of the emergency order. Should Seller no longer support this Equipment beyond five (5) years, Seller agrees to supply the Company with all manufacturing drawings in order that Company is able to maintain the Equipment.

12. REVIEWS

a. Prior to Manufacture

 Seller shall review the design of the Equipment on the Company site immediately upon execution of this Agreement. The Company shall have the option to review the design on its site during the design period to verify Seller progress and compliance with the Specifications. Prior to the release of the design to manufacturing, Seller shall host a final design review on its own site. It is understood that all designs, layout and detail drawings, etc., necessary for the Company's verification and review will be made available at these times. Upon request, Seller's design engineers, responsible for the design of any particular machine member, will be available to the Company for consultation regarding the Equipment design.

b. Production Schedule

 To enable the Company to evaluate Seller's progress in the design and manufacture of the Equipment, within thirty (30) days after execution of this Agreement, Seller shall supply the Company with a production schedule. At the Company's request, Seller will report on the first day of each month as to production progress. This report will be given in such a manner as to enable the Company to evaluate the progress being made by Seller in the major production steps as outlined in the production schedule.

 Within thirty (30) days from acceptance of any Change Order submitted pursuant to this Agreement, Seller shall also submit for Company review a revised schedule of Equipment production dates as required by the Change Order Specifications.

c. During Manufacture

 During the period Seller is manufacturing the Equipment, the Company shall have the right of access to any of Seller's plants as may be necessary to allow the Company to review Seller's progress, verify that the Equipment is being manufactured according to the Specifications, and verify that a progress payment contingency has been completed. To expedite these reviews and maintain continuity, each party shall designate one person as its representative for information flow between companies. All notices of legal or commercial importance shall be made as provided herein.

13. ACCEPTANCE/PERFORMANCE TESTING

a. Preshipment Trial

 Prior to shipment, Seller shall conduct a trial pursuant to the procedure outlined in the Acceptance Test. The purpose of this trial shall be primarily to identify any mechanical interferences between machine members, improper adjustments made during assembly and generally to determine that the Equipment is in good working order. The Company shall have the option to observe the preshipment trial. It is understood that all defects in materials and workmanship which may be identified as a result of this trial will be corrected by Seller prior to shipment of the Equipment unless specifically directed to the contrary by the Company.

b. Acceptance Test

 Upon completion of installation and adjustment of the Equipment, Seller shall notify the Company on-site representative that the Equipment is installed and ready for acceptance testing. The Company shall promptly commence the acceptance test procedure.

c. Criteria for Acceptance

 On the Acceptance Date, the Company shall certify to Seller (in writing, upon request) its acceptance of the Equipment provided that the Equipment shall have demonstrated during the acceptance procedure its performance to be in accordance with the Specifications. The acceptance of the Equipment shall in no way release Seller of any of its obligations hereunder (warranty or otherwise).

d. Provisional Acceptance

 In the event that the acceptance procedure identifies areas of nonconformance which, in the Company's unilateral commercial judgment, do not materially impair the Company's use of the Equipment in the short term, the Company shall have the option to certify its provisional acceptance of the Equipment. In this case, the Company shall itemize those areas in which the Equipment has failed to perform acceptably. Seller shall acknowledge said list and inform the Company, in writing, as to when the nonconformance shall be corrected. Seller agrees that time is of the essence with regard to such modifications. The Company shall have the right to withhold payment of any funds normally due. The amount of the payment withheld shall be determined by the Company and shall be reasonably commensurate with the reduced value of the Equipment. Upon completion of the corrections by Seller, Seller shall notify the Company of same and the acceptance procedures shall again be commenced in their entirety, should the Company elect to do so. Should Seller fail to meet the corrective modification completion date, the Company may, at its option, revoke its provisional acceptance and use any of its remedies as may be provided herein or under the Uniform Commercial Code.

14. TERMINATION/CANCELLATION

a. The Company shall have the right to terminate this Agreement should the Company determine that the Seller is failing to prosecute the services in a manner which assures timely completion or that the Seller is not performing any of its obligations under this Agreement.

 In such event, the Company shall provide written notice to the Seller stating the nature of the unsatisfactory condition. The Seller shall have ten (10) calendar days after receipt of this written notice to either remedy the unsatisfactory condition or provide evidence, acceptable to the Company, that proper corrective action is being taken to remedy the condition. If the Seller fails to remedy, or to commence and thereafter with due diligence pursue resolution of the unsatisfactory condition, the Company shall have the right to terminate this Agreement without further notice.

 If the Company so terminates this Agreement, then the Company shall pay the Seller for services satisfactorily performed through the date of termination and Company shall not be liable for any further payment to the Seller. The Seller shall be liable for any direct costs incurred by the Company as a result of the termination. The Company's rights herein are in addition to any other remedies it may have under the law.

b. The Company shall also have the right to terminate this Agreement for its convenience upon ten (10) days' written notice. In the event of such termination for convenience, the Seller shall be paid for all services rendered to the termination date and for any direct costs (not including anticipated profits) incurred by Seller as a result of the termination. Such payment shall constitute the Seller's sole right and remedy. The Company shall have the right to terminate for convenience even when a condition of force majeure exists.

c. If, in the specific event that Seller shall fail to comply with the Specifications or Drawings in any material respect, or if it shall fail substantially to comply with any other provision of this Agreement, then the Company may, without prejudice to any other right or remedy and upon giving ten (10) days' prior written notice, cancel this Agreement in whole or in part and/or reject all or part of the Equipment herein whether or not the manufacture thereof has been completed or such machinery has been received for installation.

 Upon notice of cancellation by the Company, Seller will promptly return all monies previously paid to Seller by the Company for the Equipment (if any) and direct damages equal to

 (1)all costs incurred by the Company in preparation for the Equipment including, but not limited to, training, systems programming, site preparation, cost of supplies and facilities excepting only such costs which can be applied to Equipment obtained from any other manufacturer; and,

 (2)the difference in price between the Equipment to be delivered hereunder and the equivalent substitute equipment.

d. In no event shall Seller be liable for any losses of anticipated profits or other consequential damages.

15. NOTICES

a. All notices hereunder must be in writing. These notices shall be deemed delivered on the date delivered by hand or three (3) days after being sent by registered mail, return receipt requested.

 Notices given by the Company shall be sent to

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notices given by Seller shall be sent to

 Company

 ATTN: \_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Or to such other party as may be designated by notice pursuant to this Section.

b. Where appropriate, notice may be sent by fax to the following numbers followed by a timely mailing of the actual document:

 CompanySeller

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

16. COMPLIANCE WITH LAWS

a. Seller agrees to comply fully with all applicable Workers' Compensation requirements and all other applicable state and federal laws, regulations and municipal ordinances.

b. Seller shall also comply with all applicable environmental laws and regulations including, but not limited to, the generation and disposal of hazardous waste.

c. Seller agrees to pay all state, federal, social security, unemployment insurance, and all other taxes, assessments, or contributions due and payable to the State of \_\_\_\_\_\_\_ and/or the United States in connection with the work to be performed under this Agreement. Seller shall hold the Company harmless from any liability on account of any such taxes or assessments.

d. Seller hereby acknowledges that it is aware of its responsibilities and obligations under the Americans with Disabilities Act and, to the extent applicable, shall comply with all Department of Transportation (DOT) regulations governing antidrug and alcohol misuse prevention plans and related testing, and Executive Orders relating to Nondiscrimination, Affirmative Action and Utilization of Minority and Small Business Enterprises.

17. SUBCONTRACTORS

 Seller shall employ subcontractors to perform any work hereunder only with the prior written approval of the Company. Seller shall be as fully responsible for the acts or omissions of any subcontractor as it is for its own acts or omissions.

18. DOCUMENTATION

 Seller shall provide a manual of Equipment operation, maintenance and troubleshooting guidelines.

19. LIENS

 If at any time during the progress of the work, the Seller shall allow any indebtedness to accrue for labor, equipment and/or materials, which indebtedness has become or may become a lien or liens upon said work, equipment and/or materials, or which may become a claim against the Company, the Seller shall immediately pay such claim or indebtedness or cause such lien to be dissolved and discharged by giving a bond, or otherwise, and in case of its failure to do so, the Company may withhold any money due the Seller until such claim or indebtedness is paid; or in such event the Company may, at its absolute discretion, declare this order to be canceled, take possession and control of the work, and complete the same or cause the same to be completed according to the specifications.

20. LIABILITY AND INSURANCE

a. The Seller agrees to indemnify, defend and save harmless the Company, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever, brought or asserted for injuries to or death of any person or persons, damages to property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, resulting from any negligent or willful act or omission of Seller, its employees or subcontractors, or other breach of legal duty arising from performance of the services herein specified.

b. The Seller shall, at its own expense, provide for the payment of Workers' Compensation, including Occupational Disease benefits to its employees employed on or in connection with the work covered by this contract, in accordance with the laws of the State in which the work is to be performed. The Seller shall also carry Commercial General Liability insurance, including but not limited to, Contractual and Automobile Public Liability Insurance with Bodily Injury, Personal Injury and Death Limits of at least $1,000,000 for any one accident and Property Damage limit per accident of $1,000,000. The Company is required to be designated therein as an Additional Insured in connection with work performed by the insured by contract on behalf of the certificate holder.

c. The Seller shall likewise require its subcontractors, if any, to provide for such workers' compensation and insurance. If requested, the Seller shall furnish the Company with a certificate that such workers' compensation and insurance have been provided. Such certificates shall specify the expiration date of the coverages. The Seller agrees that such workers' compensation and insurance shall be maintained until the work is completed and accepted by the Company.

21. SAFETY

a. The Company considers the safety and welfare of all persons, and the preservation of property, paramount in the conduct of business.

b. The Seller shall comply with the Occupational Safety and Health Act of 1970, and all applicable laws, ordinances, rules and regulations bearing on the safety of persons or property or their protection from damage, injury or loss.

c. The Seller shall take all necessary precautions in performing the work hereunder to prevent injury to persons or damage to property.

22. INSTALLATION

a. Seller's Installation

 At the Company's request, Seller shall provide the services of an experienced, qualified installer. The installer shall unpack, install, startup, operate and give instructions in the operation of the Equipment. Upon completion of installation, the installer shall notify the Company Representative that the Equipment is installed and ready for acceptance testing.

b. Installation Charges

 The cost for installation charges are as shown on Exhibit \_\_\_\_.

 Overtime and weekend work premiums shall only be chargeable when expressly authorized by the Company Representative. Overtime and weekend work premiums will not be chargeable when such work is required due to Seller's late delivery of the Equipment.

 Time spent during installation to correct defects and warranty repairs shall not be chargeable.

c. Miscellaneous

 Time spent commuting to and from the Company's facility will not be billable.

d. Living and Travel Expenses

 The Company shall reimburse Seller at actual reasonable cost for installer's living and travel expenses which can be shown to be incurred directly as a result of the installation of the Equipment. Unless otherwise approved in writing, travel expenses shall not exceed one round trip fare including air and/or surface transportation from the installer's domicile to the Company's installation site. All reimbursements are required to be documented by an expense receipt. Living arrangements shall be commensurate with the arrangements made by the Company for its own personnel in the same geographic area. All air travel shall be coach class.

e. Installation Schedule

 The Company shall provide Seller access to the Equipment during normal working hours. Should the installation of the Equipment require the curtailment of any operational production equipment, Seller agrees to coordinate the installation so as to minimize the effect of the required downtime on the Company's schedule. The Company agrees to use its best efforts so as to permit completion of installation as soon as possible after delivery.

f. Tools and Shop Facilities

 Seller's installer shall provide all tools and materials necessary for normal installation of the Equipment. Company's maintenance personnel shall cooperate with Seller's installer to the extent possible. However, Seller understands that Company's shop facilities are intended for the maintenance of a production facility with critical production timing requirements. Therefore, Company shall have the right to deny Seller access to its shop facility should it unilaterally deem such action necessary. In that case, Seller shall arrange for the necessary shop facilities elsewhere on its own behalf and its own expense.

g. Rules of Work

 Seller agrees that while its personnel are on the Company's premises they will abide by the Company's normal rules of work and its standard practice governing behavior of its own employees.

23. TRAINING REQUIREMENTS

 Training will be performed by Seller according to the terms and conditions set forth in Exhibit \_\_\_\_.

24. HAZARD COMMUNICATION

 In complying with the Hazard Communication Standard, 29 C.F.R. Section 1910.1200, Seller agrees to supply a chemical list and the associated material safety data sheets (MSDSs) for any chemicals the Seller's employees may be exposed to while working with Company employees or on Company property. This documentation must be delivered before work may commence.

25. OWNERSHIP OF DOCUMENTS

a. Upon completion or termination (for whatever reason) of any work hereunder, all data, information, work in progress, documents, drawings or reports developed in connection with any work under this Agreement, both in hard copy form and as may be embodied on computer diskettes or similar information recording and storage media, is deemed Company property and, upon request, shall be delivered to the Company.

b. Company, therefore, retains the right to reproduce or make plans, drawings or specifications available for future work which may occur at the site.

26. GENERAL TERMS

a. Promotion Limitation

 Seller agrees that it will not use the Company's name in any oral or written representations to prospective customers without prior written authorization from the Company Representative.

b. Survival beyond Completion

 The terms, provisions, representations and warranties contained in this Agreement shall survive the delivery of the Equipment and the payment of the Purchase Price.

c. Amendments

 No amendment to this Agreement shall be effective unless documented in writing and signed by authorized representatives of both parties.

d. Complete Agreement

 This Agreement represents the entire Agreement between the parties with respect to the purchase and sale of the Equipment. All prior agreements, representations, statements, negotiations and undertakings whether oral or written are superseded hereby.

e. No Third-Party Beneficiary

 This Agreement is for the exclusive benefit of the parties and shall not constitute a third-party beneficiary agreement and shall not be relied upon or enforced by a third party.

f. Confidentiality and Conflicts of Interest

 Seller agrees to hold in strict confidence any proprietary or other data, findings, results, or recommendations deemed to be confidential by Company and obtained or developed by Seller in connection with the work under this Agreement. Seller warrants and agrees that it does not and will not have any conflicts of interest regarding the performance of services hereunder.

g. Dispute Resolution

 Both parties agree to attempt to settle any dispute arising out of this Agreement through good faith consultations and negotiations. If those attempts fail, the parties agree that any disputes arising under, out of, or in relation to this Agreement shall be finally and conclusively determined by binding arbitration under the commercial arbitration rules of the American Arbitration Association (the "Rules").

h. Effect of Waiver

 Any waiver by either party of any provision of this Agreement shall not be construed or deemed to be a waiver of any other provision of this Agreement, nor a waiver of a subsequent breach of the same provision, unless such waiver be so expressed in writing and signed by the party to be bound.

i. Attorneys' Fees

 In any suit arising out of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

j. Most Favored Customer

 All of the prices, terms, warranties and benefits granted by Seller herein are comparable to or better than the equivalent terms being offered by the Seller to any present customer. If Seller shall, during the term of this Agreement, enter into arrangements with any other customer providing greater benefits or more favorable terms, this Agreement shall thereupon be deemed amended to provide same to the Company.

k. Authority

 Each party represents that it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each has been properly authorized and empowered to sign this Agreement.

l. Headings Not Controlling

 The headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

m. Applicable Law

 This Agreement will be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_.

n. Force Majeure

 If either party is prevented in whole or in part from performing its obligations under this Agreement by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is affected by such cause, to the extent the performance is actually affected; provided that such party provides written notice to the other party of such condition within five (5) calendar days from the onset of such condition. Failure on the part of Seller to give Company notice shall constitute a waiver of this paragraph by Seller.

o. Assignment

 Seller shall not assign this Agreement or its obligations hereunder to any third party without prior written consent from the Company. The Company shall not assign this Agreement or its obligations hereunder to any third party except its subsidiaries without prior written consent from Seller. Neither consent will be unreasonably withheld.

p. Integration

 This Agreement constitutes the entire agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding upon the parties.

 Seller and Company have caused this Agreement to be executed, effective on the date written above, and intend to be legally bound thereby.

Company Seller

By:\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_ Title:\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_