

LANDTEC STANDARD TERMS AND CONDITIONS

LANDTEC North America, Inc. ("Vendor") objects to any different or additional terms and conditions other than the terms and conditions set forth herein. Unless different or additional terms and conditions are stated or referred to Vendor's proposal, in which event such different or additional terms and conditions shall be exclusive as to the particular subject covered, and in addition to the terms and conditions stated below, which shall supersede any prior or contemporaneous agreements or correspondence between the parties.

Applicable Law & Definitions - The interpretation of any agreement between the parties shall be construed under and governed by the laws of the State of California. "Vendor" when used herein means LANDTEC North America, Inc. Purchaser when used herein means the firm or corporation to whom this document is addressed and "good" means the equipment, parts, materials or services described on the front side hereof.

Prices - Prices are net to all Purchasers and are firm for sixty (60) days from the date of order. If shipment of repaired equipment or completion of service extends beyond sixty (60) days from the date of order, the prices will be adjusted to those in effect at the time of such shipment or completion.

Taxes - The price does not include any federal, state, or local property, license, privilege, sales, use, excise, gross receipts, value added, or other like taxes which may now or hereafter be applicable to, measured by, or imposed upon, or with respect to the transaction, the property, its sale, its value, or its use, or any services performed in connection therewith. Such taxes are for the account of the Purchaser and the Purchaser agrees to pay or reimburse Vendor for any such taxes which it or its contractors or suppliers are required to pay.

Terms of Payment - Payment is due upon receipt of invoice. If payments are not made when due, a service charge will, without prejudice to the right of Vendor to immediate payment, be added to the account of the Purchaser in an amount equal to the lesser of 1 1/2% per month or fraction thereof or the highest legal rate on the unpaid balance.

Payments - Vendor shall have the right to require full or partial payment in advance at any time, if, in its opinion, the financial condition of the Purchaser does not justify the terms of payment specified. In the event of default on payment of any outstanding valid invoices, Purchaser agrees to reimburse Vendor for all its attorney's fees and/or collection expenses. All payments will be paid in United States (U.S.) Currency.

Should the Purchaser be adjudged bankrupt or insolvent in any legal proceeding, Vendor shall have the right, throughout the period allowed in such proceeding for filing claims against the Purchaser's estate, to cancel the order and to recover its proper cancellation charges from the Purchaser's estate.

If the work is delayed by the Purchaser, Vendor may require payment for all materials accumulated and work performed under the order.

Delivery - Risk of Loss - All transportation costs shall be paid for by the Purchaser. Repaired equipment and other equipment or materials furnished by Vendor shall be delivered to the Purchaser F.O.B. Vendor's facility. Title to and risk of loss of or damage to any material or equipment furnished by Vendor to Purchaser shall pass to the Purchaser F.O.B. Vendor's facility. Risk of loss or damage to the Purchaser's material or equipment shall be with the Purchaser at all times.

Force Majeure - Vendor shall not be liable for failure to perform or for delay in performance due to fire, flood, strike or other labor difficulty, act of God, act of any governmental authority or of the Purchaser, riot embargo, fuel or energy shortage, car shortage, wrecks or delay in transportation, inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or due to any cause beyond its reasonable control. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

Warranty - (a) Products - Vendor warrants to the Purchaser that goods of its manufacture will be free from defects in material and workmanship caused by Vendor for one year from date of delivery, except that equipment, parts or materials furnished on a repair and return, or unit exchange basis shall carry such warranty for six months from date of delivery, and services performed by Vendor shall carry the warranty as specified below. The obligation of Vendor and Purchaser's sole and exclusive remedy hereunder shall be limited at Vendor's option to replacement or repair of any equipment, parts or materials which are returned to Vendor's facility within the warranty period, however should they be determined by Vendor to be so defective as to preclude the remedying of warranted defects by replacement or repair, Purchaser's sole and exclusive remedy shall be a refund of the purchase price, less a reasonable charge for any utilization. (b) Services- Prior to Vendor's leaving Purchaser's premises, all services provided by Vendor hereunder shall assert in writing any claims whatsoever in connection with the services performed by Vendor, other than warranty claims or such claims shall be waived.

Vendor warrants to Purchaser that the services supplied hereunder will be performed in a competent, diligent manner and in accordance with generally accepted standards for such services. All claims for defective service hereunder must be made in writing immediately upon discovery and, in any event, within ninety (90) days from the date of completion of said services. Defective work must be held for Vendor's inspection. Upon submission of a claim and substantiation thereof. Vendor shall at its option either (a) repair or replace the defective work, including repair or replacement F.O.B. Vendor's facility of defective or damaged parts, equipment or materials furnished by Vendor in connection with such services upon return thereof F.O.B. Vendor's facility within the warranty period, or (b) refund an equitable portion of the contract price.

In no event shall Vendor be responsible for working access to the defect, including the removal, disassembly, replacement or reinstallation of any equipment materials or structures to the extent necessary to permit Vendor to perform its warranty obligations or transportation costs to and from the Vendor factory or repair facility, or for damage to equipment components or parts resulting in whole or in part from improper maintenance or operation or from their deteriorated condition. The conditions of any tests shall be mutually agreed upon and Vendor shall be notified of, and may be present at all tests that may be made.

The above warranties do not apply to products which have a life, under normal use, inherently shorter than the one-year period indicated above. With respect to products not manufactured by Vendor, the sole and only warranty shall be the warranty Vendor receives from its supplier.

All warranty work shall be performed in a single shift on a straight time basis, Monday through Friday. In the event that the product requires correction of warranty items on an overtime schedule, the premium portion of such overtime shall be paid for by Purchaser.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE), EXCEPT OF TITLE.

LIMITATION OF LIABILITY - Vendor, its contractors and suppliers of any tier, shall not be liable in contract, in tort (including active and passive negligence) or otherwise for damage or loss of other property or equipment, loss of profits or revenue, loss of use of equipment or power system, cost of capital, cost of purchased or replacement power or temporary equipment (including additional expenses incurred in using existing facilities), claims of customers of the Purchaser, or for any special, indirect, incidental, or consequential damages whatsoever.

The remedies of the Purchaser set forth herein are exclusive and the liability of Vendor with respect to any contract, or anything done in connection therewith such as the performance or breach thereof or from the manufacture, sale, delivery, resale, installation or technical direction of installation, maintenance or technical direction of maintenance, repair or use of any equipment covered by or furnished under the contract (correction of any nonconformity), whether in contract, in tort (including active and passive negligence) or otherwise shall not exceed the price set forth herein for the work.

Any action for breach of contract or otherwise by Purchaser against Vendor hereunder must be commenced within one year after the cause of action has accrued.

VOID WARRANTY No Warranty shall apply and any warranty shall become null and void, and Vendor shall have no liability under any warranty if the equipment:

- Is tampered with;
- Is damaged by Acts of God, power surge, misuse, abuse, negligence, accident, wear and tear, mishandling, misapplication, or other caused unrelated to defective materials or workmanship;
- has its serial number defaced, altered or removed;
- is damaged by programs, data, viruses, or files, or while in transit;
- is used improperly or is not regularly maintained or cleaned; or
- is repaired, modified or altered by other than by a Vendor authorized repair center

PATENT INFRINGEMENT - Subject to the following provisions, Vendor shall, at its own expense, defend or at its option settle any claim, suit or proceeding brought against the Purchaser to the extent it is based on an allegation that any goods, material, equipment, device or article (hereinafter referred to as product) or any part thereof furnished hereunder constitutes a direct or a contributory infringement of any claim of any patent of the United States. This obligation shall be effective only if Purchaser shall have made all payments then due hereunder and if Vendor is notified promptly in writing and given authority, information and assistance for the defense of said claim, suit or proceeding. Vendor shall pay all damages and costs related to the claim so defended. In case the product or any part thereof furnished hereunder becomes the subject of any claim, suit or proceeding for infringement of any United States patent, or in the event of an adjudication that such product or part infringes any United States patent, or if the use or sale of such product or parts is enjoined, then Vendor shall at its option and its own expense, either: (a) procure for the Purchaser the right to continue using said product or part thereof, or (b) replace it with a non-infringing product, or (c) modify it so it becomes non-infringing, or (d) as a last resort refund the purchase price and the transportation and installation costs thereof.

The foregoing indemnity does not apply to the following: (1.) Patented processes performed by the product, or another product produced thereby. (2.) Products supplied according to a design other than that of Vendor and which is required by the Purchaser. (3.) Combination of the product with another product not furnished hereunder unless Vendor is a contributory infringer. (4.) Any settlements of a suit or proceeding made without Vendor's written consent.

The foregoing states the entire liability of Vendor with respect to patent infringement by said product or any part thereof.

If a suit or proceeding is brought against Vendor solely on account of activities enumerated in Paragraphs 1, 2, or 3 above, the Purchaser agrees to indemnify Vendor in the manner and to the extent Vendor indemnified Purchaser in the first paragraph of this provision insofar as the terms thereof are appropriate.

INDEMNIFICATION - Vendor shall, subject to provision entitled **Limitation of Liability**, indemnify and save the Purchaser harmless for, but only for, claims of third parties for physical damage to property and personal injury, including death, occurring during the performance of the services hereunder on the premises of the Purchaser and resulting directly and solely from the negligence of the employees of Vendor while engaged in such work.

Vendor shall with respect to such services comply with the provisions of the Applicable Workmen's (Workers') Compensation Act.