

## TERMS AND CONDITIONS

1. **Terms and Conditions Applicable.** The terms and conditions set forth herein shall apply to any and all orders made by the Purchaser for any or all of the products and/or services described in the Proposal. These terms and conditions comprise all of the terms and conditions of TECHSOLVE and the Purchaser respecting the subject matter of the Proposal, except to the extent that any terms or conditions shall have been changed or modified in the Proposal. Any additional contradictory or different terms contained in any initial or subsequent order or communication from Purchaser pertaining to the goods are hereby objected to and shall be of no effect. All orders are subject to approval by TECHSOLVE. No waiver, change, modification or other or alteration of terms herein shall be binding unless in writing and signed by TECHSOLVE.

2. **Price in Proposal.** The prices quoted in the Proposal are firm for the number of days set forth in the Proposal, except that such price or prices may be adjusted upward or downward without notice in the event of: (i) alterations in specifications, quantities, designs or delivery schedules; (ii) increases in the cost of fuel, power, material, supplies, or labor; and/or (iii) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the goods purchased hereunder.

3. **Taxes and Fees.** Any taxes or fees imposed by any federal, state, municipal or other governmental authority that may be applicable to the sale, use, delivery or transportation of the products or services that may be sold by reason of any contract arising out of this Proposal and any and all duties, tariffs, brokerage charges, shall be added to the price of the order and paid by the Purchaser, except where the Purchaser shall have provided a proper certification of exemption therefrom. The price for the products and/or services purchased is net of sales, use, excise or similar taxes, whether federal, state, or local.

4. **Method of Shipment.** Unless otherwise set forth in the Proposal, all shipments made pursuant to any contract arising out of this Proposal shall be made F.O.B. Cincinnati, Ohio or the nearest stocking point. In the event that Purchaser shall specify a method of shipment other than that specified in this Proposal, TECHSOLVE agrees to ship by that method provided that the price shall be adjusted to reflect any increase or decrease in the price to the extent that the cost of shipment is or will be included therein, and provided further that such shipment method shall not modify the risk of loss as specified in this Proposal.

5. **Rescheduling.** Purchaser may cancel and reschedule a scheduled TECHSOLVE activity by providing TECHSOLVE with notice of its need to cancel and reschedule a minimum of three business days prior to the date when the activity is scheduled to take place. In order to prevent reoccurring cancellations, should Purchaser cancel an activity with less than three business days prior notice, on the third reschedule Purchaser agrees to pay TECHSOLVE a "lost opportunity" fee equal to 50% of the cost of the rescheduled time.

6. **Cancellations.** Orders made pursuant to this Proposal may not be canceled for any reason without the written consent of TECHSOLVE. Cancellation or suspension of orders, if consented to by TECHSOLVE, will be upon terms that indemnify TECHSOLVE for liabilities and expenses incurred and for commitments made by TECHSOLVE and which provide for profit on work-in-process and for the contract value of goods completed and ready for shipment and a cancellation fee equal to ten percent (10%) of the Proposal price. This provision shall not preclude TECHSOLVE from recovering all damages and costs of whatever nature permitted under the Uniform Commercial Code.

7. **Delivery.** Any shipping dates or completion dates set forth in the Proposal or in an agreement that shall result from the Proposal are approximate and time shall not be considered of the essence. Failure to effect shipment or completion by such estimated delivery or completion date will not be considered sufficient cause of cancellation without prior agreement confirmed in writing by an authorized agent of TECHSOLVE.

8. **Risk of Loss.** Notwithstanding title to or ownership of products, risk of loss shall pass to the Purchaser as soon as the products are identified to any contract that shall have arisen from the Proposal.

9. **Non-solicitation.** During the course of the delivery of the services covered by this proposal and for a period of two years after the completion or termination of this work, Purchaser will not directly or indirectly solicit, employ or retain in any capacity, or directly or indirectly offer to employ or retain in any capacity, any personnel of TECHSOLVE who are working or have worked on the Purchasers' project(s).



10. **Terms of Payment.** Unless otherwise specified in this Proposal, any products and/or services ordered pursuant to this Proposal shall be paid upon receipt of invoice. Unless otherwise noted in the Proposal, all contracts involving an amount greater than \$10,000 will be invoiced monthly based upon the time devoted to the engagement in the prior month. If Purchaser defaults with respect to any payment described here and above, it shall pay TECHSOLVE for all costs and expenses, including legal expenses and attorney's fees, incurred by TECHSOLVE in exercising any of its rights or remedies. The unpaid balance after thirty (30) days shall be subject to a late charge of 1 ½% per month, or the maximum rate allowed by law, if less.
11. **Security Interest.** Until full payment of the purchase price for any products and/or services ordered pursuant to this Proposal, TECHSOLVE shall retain a security interest in such products and may, at its option and without further agreement or signature of the Purchaser, file evidence of such security interest pursuant to the Uniform Commercial Code.
12. **Warranties.** TECHSOLVE warrants that it will perform the services in a workmanlike manner. This warranty is given in lieu of any other representation or warranty, express or implied, including the implied warranties of merchantability and fitness for a particular purpose which are hereby disclaimed and excluded by Seller.
13. **Exclusive Remedy.** The sole and exclusive remedies of the Purchaser for a breach of the foregoing warranty shall be, at the option of TECHSOLVE, the return of the products and repayment of the price or the repair, replacement or re-performance of nonconforming products or services. TECHSOLVE will not accept the return of any goods without its prior written consent. Purchaser shall give written notice to TECHSOLVE of any claim for breach of warranty within thirty (30) days after receipt of the goods or completion of the services. Any remedy of the Purchaser against TECHSOLVE shall be barred unless notice is given in accordance with the foregoing provisions.
14. **Limitation on Liability.** TECHSOLVE shall not be liable to buyer for any incidental, indirect, consequential, special or punitive damages of any kind caused or alleged to be caused, directly or indirectly, by the goods or services or by any inadequacies thereof, including, without limitation, any loss of business or profits, whether arising in tort, contract, warranty or strict liability. In no event shall TECHSOLVE'S liability (whether under the theories of breach of contract or warranty, negligence, or strict liability) exceed the contract price paid for the goods or services delivered by TECHSOLVE hereunder.
15. **Proprietary Rights.** Any and all models, drawings, sketches, plans and other information supplied by one party to the other shall remain the property of the party who supplied such. The other party may not use any such material or information except with respect to the products and/or services dealt within this Proposal. Any product or service sold under an agreement resulting from this Proposal shall not constitute a license to use any of the proprietary rights of TECHSOLVE.
16. **Applicable Law.** The terms and conditions of any contract arising out of the Proposal shall be construed in accordance with the laws of the State of Ohio without reference to conflict of laws. Any suit, action or proceeding arising out of the sale hereof shall be instituted by either party in the courts of the State of Ohio, Hamilton County, or United States District Court for the Southern District of Ohio, Western Division and TECHSOLVE and Purchaser irrevocably and unconditionally submit and consent to the jurisdiction and venue of any such court for such purpose, and each waives any obligation it may have as to the venue of any dispute arising out of or in connection with this transaction.
17. **Interpretation.** Any provision requiring the written consent or approval of TECHSOLVE hereunder shall require the written consent or approval of an executive officer of TECHSOLVE. No agent, salesman or other party is authorized to bind TECHSOLVE by an agreement, warranty, statement, promise or understanding not herein expressed.
18. **Force Majeure.** TECHSOLVE shall not be liable for any loss, damage, delay, changes in shipment, schedules or failure to deliver, whether arising in tort, contract or warranty, caused by accident, fires, strikes, riots, civil commotion, embargoes, failure of carriers, inability to obtain transportation facilities, foreign or local governmental requirements, acts of God, prior orders from customers or limitations on TECHSOLVE'S or its suppliers' production or any other causes of contingency beyond TECHSOLVE'S control. In such event, TECHSOLVE shall not be liable for any



consequential, incidental or special damages to Purchaser. TECHSOLVE may, at its option and without liability, cancel all or any portion of this Agreement and/or extend any date upon which performance hereunder is due.

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