

Chemspeed Technologies, Inc.

Terms and Conditions of Sale

(U.S.)



1. GENERAL. Orders are accepted by Chemspeed Technologies, Inc. ("Seller") subject to these terms and conditions. In case of a conflict, inconsistency or addition not expressly accepted in writing by Seller, the terms and conditions of sale provided herein shall be considered as superseding the conflicting, inconsistent or additional terms stated in Buyer's purchase order, order form, contract or otherwise. The acceptance of an order will supersede all prior communications and constitute a complete and binding contract between the party purchasing equipment hereunder ("Buyer") and Seller, which contract cannot be modified or canceled without the written agreement of both parties.

2. SHIPMENT.

(a) Seller shall attempt to comply with, but will not guarantee, shipping date and loading and routing instructions. Any delivery or shipment date stated by Seller is an estimate only unless expressly designated in Seller's written quotation or order confirmation as binding, fixed date. Seller reserves the right to allow or prorate shipments against all orders whenever, in its judgment, an oversold condition exists as to any particular product manufactured or sold by it. In the event of a default by Buyer, Seller may decline to make further shipments without waiving any of its rights under such order. If, despite such default, Seller elects to continue to make shipment, its action shall not constitute a waiver regarding, or otherwise diminish, Seller's legal remedies with respect to such default or any future default.

(b) Delivery and performance dates shall automatically be extended by a reasonable period, and Seller shall not be in default, to the extent the delay is caused directly or indirectly by (i) a Change (as defined in section 9), any act or omission of Buyer, including late approvals, late provision of information, failure to perform Buyer's cooperation obligations, (iii) force majeure events, or (iv) technical issues or dependencies attributable to third-party products, interfaces, utilities, or Buyer-provided materials or requirements.

(c) Any claims of Buyer for compensation due to inability to deliver goods, or due to delays in delivery, shall be limited as set forth in section 15 of these terms and conditions.

3. TITLE AND DELIVERY. All sales are made DAP, Incoterms 2020. Title and risk of loss or damage shall pass from Seller to Buyer upon Seller's putting the material purchased hereunder at the agreed-upon place.

4. PRICES. Irrespective of any prices quoted by Seller or listed on Buyer's order, an order is accepted only at the prices shown on Seller's written quotation (the "Quotation"). Installation of utilities required for equipment is not included in the specified price.

5. PAYMENT TERMS.

(a) Invoices are payable at the place set forth in the Quotation or the invoice no later than thirty (30) days after the date of the invoice. Any exchange charges, any charges for nonpar clearance of checks or collection charges (including reasonable attorneys' fees) will be paid by Buyer. Any amounts not paid when due will bear interest at a rate of 18% per annum or, if lower, the maximum rate permissible by law.

(b) All orders are subject to credit approval by Seller. The amount of any credit extended by Seller to Buyer may be changed, and such credit may be withdrawn by Seller. With respect to an order on which credit is not extended by Seller or, if extended, is subsequently withdrawn, shipment or delivery shall be made, at Seller's election, cash with order (in whole or in part), C.O.D., letter of credit or Sight Draft attached to Bill of Lading or other shipping documents, with all costs of collection (plus 18% interest on Sight Drafts not paid at maturity) for the account of Buyer. If, in the judgment of Seller, the financial condition of Buyer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other remedies at law or in equity,

to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding and/or (iii) receive reimbursement for its cancellation charges.

(c) Each shipment shall be considered a separate independent transaction, and payment therefore shall be made accordingly. If for any reason Buyer is not prepared to accept delivery of goods, Seller may store the goods at Buyer's expense and risk in the name of Buyer, and such storage shall constitute shipment and delivery to Buyer.

(d) Seller shall be entitled to partial performance to the extent that (i) the partial performance can be used by Buyer in the context of the contractually intended purpose, (ii) the performance of the remaining parts is ensured and (iii) Buyer does not incur any additional costs as a result.

(e) Unless otherwise specified in the quotation, the contract price shall become due in milestones, including, as applicable, upon order placement, engineering release, FAT readiness, shipment, installation completion, SAT readiness, or deemed acceptance. Seller may invoice a milestone once achieved or deemed achieved, including where achievement is delayed for reasons attributable to Buyer.

(f) Seller may invoice additional costs and expenses caused by Changes, Buyer delay, rescheduling, waiting time, remobilization, repeated testing, additional engineering, storage, or suspension of work.

6. TAXES. Quoted prices do not include federal, state or local excise, sales, use or similar taxes. Accordingly, in addition to the prices specified on the Quotation, the amount of any applicable excise, sales, use and/or similar taxes will appear as separate items on the invoice and will be paid by Buyer unless prior to shipment Seller receives an appropriate tax exemption certificate from Buyer.

7. FACTORY ACCEPTANCE TEST ("FAT") / SITE ACCEPTANCE TEST ("SAT").

(a) Where it has been expressly agreed that Buyer's acceptance is required, then Buyer will accept the purchased equipment in accordance with the agreed SAT provisions. The parties will give priority to achieving SAT and the purchased equipment shall not be used by Buyer for material production, for development of new processes or for any purposes other than achieving SAT, prior to successful completion or waiver of the SAT provisions. It is the responsibility of the Buyer to ensure that all the required facilities are ready and site preparation is completed for successful commencement of SAT on delivery and installation of the equipment.

(b) Any FAT or SAT, or comparable performance or acceptance test, shall be performed exclusively in accordance with the procedures, tolerances, assumptions, and ambient, site, utility, process, sample, and interface conditions expressly defined in the Quotation, specification, or FAT or SAT protocol. Seller does not guarantee the achievement of performance values outside such agreed conditions or under Buyer-specific production conditions unless expressly agreed in writing as binding performance criteria. Minor deviations, which do not materially impair the contractual use of the equipment, shall not prevent acceptance.

(c) In the event of a delay in acceptance despite readiness for acceptance, the goods shall be deemed accepted if (a) SAT has not been commenced within 30 days after SAT readiness and completed within 60 days after SAT readiness (through no fault of Seller); or b) Buyer has started using the goods and 15 days have elapsed since delivery or (if applicable) any agreed installation; or (c) Buyer refuses acceptance without specifying a material deviation supported by the agreed acceptance criteria; or (d) Buyer fails in due time to provide the test materials, media, personnel, approvals, access, utilities, interfaces, or site conditions for the testing.

8. FORCE MAJEURE. Seller shall not be liable for failure to perform occasioned by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, labor or transportation, fires, storms, floods, earthquakes, explosions, accidents, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion,

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insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the reasonable control of Seller.

9. PROJECT EXECUTION / CHANGE MANAGEMENT / DEVELOPMENT PROJECTS

(a) **Buyer Cooperation Obligations.** Buyer shall, in a timely manner and at its own expense, (a) provide complete, accurate, and sufficiently detailed specifications, requirements, data, samples, and other information, (b) ensure site readiness, utilities, interfaces, infrastructure, environmental conditions, access rights, and any third-party deliverables, (c) provide timely decisions, approvals, feedback, and acceptance participation, and (d) designate competent contact persons with authority to act on Buyer's behalf. Seller shall be entitled to rely on all information and items provided by Buyer.

(b) **Consequences of Buyer Delay or Non-Compliance.** If Buyer fails to comply with its obligations, Seller may extend schedules, resequence work, suspend performance, and invoice any resulting additional costs, including waiting time, idle time, re-testing, storage, remobilization, and third-party costs. Any such failure by Buyer shall not constitute a breach or delay by Seller.

(c) **Changes.** Any change to the scope, specifications, interfaces, performance requirements, documentation, delivery schedule, services, site conditions, or project assumptions (a "Change") shall require a prior written change order. Seller shall be entitled to adjust the price, delivery schedule, milestones, and other contractual terms to reflect the impact of any Change. Seller shall not be obliged to implement a Change before the parties have agreed in writing on the relevant adjustments. In the absence of such written agreement, Seller shall continue to perform only the originally agreed scope.

(d) **Assumptions-Based Contracting.** Seller's offer and performance are based on the assumptions set out in the Quotation, specification, project documentation, and other circumstances reasonably underlying Seller's offer. If any such assumption proves incorrect, incomplete, or changes after contract conclusion, Seller shall be entitled to equitable adjustments in price, schedule, and scope. Seller shall not be liable for any failure to meet delivery dates or specifications to the extent caused by incorrect assumptions not attributable to Seller.

(e) **Development / Custom Projects.** In development, customization, or integration projects, the parties acknowledge that technical feasibility, performance, and timing may depend on factors that cannot be fully determined at the outset. Unless expressly agreed otherwise in writing, Seller does not undertake an unconditional guarantee of technical success or achievement of a specific performance result. Seller may structure such projects in phases with interim reviews and decision gates. If it becomes apparent that agreed objectives cannot be achieved or can only be achieved with materially increased effort, Seller may propose an adjusted scope, specification, timeline, or price. If the parties do not reach agreement on such adjustment within a reasonable period, Seller may terminate the affected part of the project and Buyer shall compensate Seller in accordance with Section 12(c). Where development or custom project services are offered based on estimated effort (hourly basis), the Seller reserves the right to invoice the Buyer upon reaching the maximum agreed effort. The Seller shall notify the Buyer in advance if the estimate is expected to be exceeded, and further work shall require mutual agreement.

(f) **Proofs of Concept.** Where the parties have agreed on one or more proofs of concept, feasibility studies, pilot tests, process trials, or similar preliminary validation activities (each a "POC"), Seller's offer, pricing, specifications, schedule, and performance obligations shall be subject to the outcome, findings, and learnings of the POC. Following completion of the POC, Seller may adjust the price, scope, specifications, schedule, milestones, and other contractual terms as reasonably required to reflect the outcome, findings, technical feasibility, effort, risks, and learnings of the POC. Alternatively, Seller may, without suggesting adjustments, within fifteen (15) days after completion of the POC, terminate the contract in whole or in part without further liability by written notice to Buyer. If Seller communicates a price adjustment after completion of the POC and such adjustment is not

acceptable to Buyer, and the parties are unable to agree on the adjusted price within fifteen (15) days after Seller's communication of the price adjustment, Buyer may terminate the contract without further liability by written notice to Seller; provided, however, unless expressly stated otherwise in the Quotation, that Buyer shall remain obliged to pay Seller for all work performed, services rendered, materials used or procured, and costs incurred by Seller in connection with the POC.

10. PATENTS. If a third party claims that the purchased equipment infringes that party's patent or copyright, Seller will defend Buyer against that claim and will pay all costs, damages and attorneys' fees that a court finally awards, provided that Buyer: (a) promptly notifies Seller in writing of the claim, and (b) allows Seller to control, and cooperates with Seller in, the defense and any related settlement negotiations. If such a claim is made or appears likely, Seller, at its option, may obtain a license to enable Buyer to continue to use the product, may modify the product or may replace it with one that is functionally equivalent. If Seller determines that none of these alternatives is reasonably available, Buyer will return the product to Seller upon Seller's written request, in which case Seller will credit Buyer with an amount equal to the price paid for such product less a reasonable amount for depreciation. Seller's liability is limited to repair, replacement or adjustment as determined by Seller. Seller shall not be liable for any claim based on (i) anything Buyer provides which is incorporated into a product, (ii) Buyer's modification of a product or use thereof other than in its specified operating environment, or (iii) the combination, operation or use of a product with products provided by other manufacturers or other products not provided by Seller as a system. This is the exclusive warranty and liability of Seller with respect to intellectual property matters and is in lieu of all other warranties and remedies, express or implied. Sale of products or parts thereof does not confer on Buyer any license relating to (a) the structure of any devices to which the products or parts may be applied or (b) a process or machine in connection with which they may be used.

11. RESCHEDULING. If Buyer has been granted by Seller any rescheduling rights, any rescheduling requested by Buyer and accepted by Seller shall entitle Seller to adjust the delivery schedule and to recover any costs and losses caused by such rescheduling, including storage, procurement, remobilization, and idle capacity costs.

12. CANCELLATION.

(a) Except as agreed in writing by Seller, Buyer shall have no right to cancel the contract for convenience.

(b) Seller may suspend performance in whole or in part if Buyer breaches any contractual duty, fails to make a due payment, fails to perform its cooperation obligations, or if continued performance is rendered commercially unreasonable by circumstances beyond Seller's reasonable control. Seller may terminate the contract in whole or in part if such event is not cured within a reasonable period set by Seller or, in the case of payment default, immediately, where permitted by law.

(c) Upon suspension or termination under this Section, Buyer shall pay Seller for all work performed, all milestones achieved or deemed achieved, all non-cancellable commitments and procurement costs, and all additional costs and reasonable termination charges incurred by Seller, including costs resulting from demobilization and reallocation of resources. In case Seller terminates the contract because of a breach of contract by Buyer, Seller shall be entitled to full indemnity.

13. ASSIGNMENT. Buyer shall not assign this order or any portion thereof without the prior written consent of Seller.

14. WARRANTY.

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(a) Seller warrants to the Buyer that new equipment will be free of defects in material and workmanship for a period of one year commencing on final acceptance or ninety (90) days from shipping, whichever occurs first. This warranty covers the cost of parts and labor (including, where applicable, field service labor and travel required to restore the equipment to normal operation).

(b) Seller warrants to the Buyer that replacement parts will be new or of equal functional quality and warranted for the remaining portion of the original warranty or 90 days, whichever is longer.

(c) Seller warrants to the Buyer that software will perform in substantial compliance with the written materials accompanying the software. Seller does not warrant uninterrupted or error-free operation.

(d) Seller's obligation under these warranties is limited to repairing or replacing at Seller's option defective non-expendable parts or software. These services will be performed, at Seller's option, at either Seller's facility or Buyer's business location. For repairs performed at Seller's facility, Buyer must contact Seller in advance for authorization to return equipment and must follow Seller's shipping instructions. Freight charges and shipments to Seller are Buyer's responsibility. Seller will return the equipment to Buyer at Seller's expense. All parts used in making warranty repairs will be new or of equal functional quality.

(e) The warranty obligation of Seller shall not extend to defects that do not impair service or to provide warranty service beyond normal business hours, Monday through Friday (excluding Seller holidays). No claim will be allowed for any defect unless Seller shall have received notice of the defect within thirty (30) days following its discovery by Buyer. Also, no claim will be allowed for equipment damaged in shipment. Within thirty (30) days of Buyer's receipt of equipment, Seller must receive notice of any defect which Buyer could have discovered by prompt inspection.

(f) Expendable items, including, but not limited to, filters, lamps, pilot lights, filaments, fuses, mechanical pump belts, probes, V-belts, wafer transport belts, pump fluids, O-rings and seals ARE SPECIFICALLY EXCLUDED FROM THE FOREGOING WARRANTIES AND ARE NOT WARRANTED.

(g) All used equipment, including demo equipment, is sold AS IS, WHERE IS, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. Regular maintenance is excluded from this warranty.

(h) Specifically excluded from this warranty is all standalone computer and data storage equipment not manufactured by Seller (such as computers, monitors, printers and printer buffers). Such equipment will carry only the original manufacturer warranty.

(i) Seller assumes no liability under the above warranties for equipment or system failures resulting from (a) abuse, misuse, modification or mishandling; (b) damage due to forces external to the machine including, but not limited to, acts of God, flooding, power surges, power failures, defective electrical work, transportation, foreign equipment/attachments or Buyer-supplied replacement parts or utilities or services such as gas; (c) improper operation or maintenance; or (d) failure to perform preventive maintenance in accordance with Seller's recommendations (including keeping an accurate log of preventive maintenance). In addition, this warranty does not apply if any equipment or part has been modified without the written permission of Seller or if any Seller serial number has been removed or defaced.

(j) No one is authorized to extend or alter these warranties on Seller's behalf without the written authorization of Seller.

(k) THE ABOVE WARRANTIES ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND OF ANY OTHER OBLIGATION ON THE PART OF SELLER. SELLER DOES NOT WARRANT THAT ANY EQUIPMENT OR SYSTEM CAN BE USED FOR ANY PARTICULAR PURPOSE OR WITH ANY PARTICULAR PROCESS OTHER THAN THAT COVERED BY THE APPLICABLE PUBLISHED SPECIFICATIONS.

15. NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY.

(a) Seller shall not be liable for consequential damages, for anticipated or lost profits, incidental, indirect, special or punitive damages, loss of time, loss of use, or other losses, even if advised of the possibility of such damages, incurred by Buyer or any third party in connection with the equipment or services provided by Seller. In no event will Seller's liability in connection with the equipment or services provided by Seller exceed the amounts paid to Seller by Buyer hereunder.

16. COMPLIANCE WITH LAWS.

(a) The performance of each party hereunder is subject to compliance with all applicable laws.

(b) Buyer understands that exports and re-exports of Seller's products and any related software, service, technical assistance, training and related technical data, and any media in which any of the foregoing is contained (the "Items") are subject to U.S. and foreign trade controls, customs, anti-boycott and economic sanctions laws, regulations, rules and orders (the "Export Laws"). In addition to any other remedy it may have, Seller may suspend or cancel the export, delivery, installation, or any maintenance or repair service of any Item if (a) Seller has not received all export-related documentation requested by Seller, including end-user certificates, (b) Seller has not received the governmental approvals that Seller deems to be required, or (c) Seller believes that such activity may violate any Export Laws or Seller's own compliance policies. Buyer shall only use the Items for non-military, peaceful purposes. Buyer shall not export, re-export or otherwise transfer or provide any Item in contravention of any Export Law or any end-user certificate provided by Buyer, including to an embargoed or otherwise sanctioned country, to anyone listed on any prohibited persons list published by the U.S., the UN, the EU or the OSCE, or for a prohibited end-use (such as research on or development of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities). Buyer must notify Seller before providing any technical data to Seller that is controlled under any Export Law. Seller will not be liable to Buyer for any loss or expense if Buyer fails to comply with any Export Law.

(c) Buyer will comply with all applicable import laws or other restrictions or conditions respecting the import of Items that are now in effect or are hereafter imposed by any government or other applicable jurisdiction. Buyer shall be responsible for obtaining any necessary import permit, license or authorization at its sole cost and expense. Buyer shall immediately notify Seller if an import permit, license or other authorization is required in connection with any such import.

17. APPLICABLE LAW AND JURISDICTION. The contract created hereby shall be interpreted and construed under the laws of the State of Delaware, without regard to the choice of law provisions thereof and not including the U.N. Convention on Contracts for the International Sale of Goods, if otherwise applicable. The exclusive venue for any disputes arising out of or in connection with such contract shall be in the state and federal courts of the State of Delaware.