

VALSPEC is herein referred to as "**Supplier**" and the customer or person or entity purchasing services and/ or goods provided in connection with such services from Supplier is referred to as the "**Customer**." In the event that the customer is a Prime Contractor, or entity other than the ultimate user, the actual end user who will use these goods or services to operate their plant, laboratory or facility is herein referred to as "**End User**".

1. **Acceptance.** These Terms and Conditions, the Service Agreement, any price list or schedule, quotation, acknowledgment or invoice from Supplier relevant to the sale of services or goods provided in connection with such services and all documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of services or goods provided in connection with such services by Supplier to Customer. Execution of the Services Agreement shall constitute Customer's assent to these terms and conditions and any contrary terms in Customer's order or otherwise shall not be binding upon Supplier.
2. **Terms of Payment.** Unless otherwise specified by Supplier, payments are due and payable in U.S. currency. Supplier shall have the right, among other remedies, either to terminate this agreement, or to suspend further performance under this and other agreements with Customer in the event Customer fails to make any payment when due. Customer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Supplier is not paid when due, it shall bear interest, at a rate of 1½% per month for accounts over thirty (30) days or at the maximum rate allowed by law, whichever is less.
3. **Prices.** Prices do not include any sales, use, excise, value-added or similar taxes. Taxes shall be the responsibility of Customer and Supplier shall include them on all invoices, absent receipt of an appropriate exception from Customer agreed to in advance by Supplier.
4. **Limited Warranty.** Supplier warrants to Customer that services provided will be performed by trained personnel using proper equipment and instrumentation, and will follow generally accepted industry and regulatory guidelines for the service provided. Services and consumables are warranted for a period of twelve (12) months from the date of provision or shipment. The only warranty provided by Supplier for equipment, parts or materials furnished by Supplier are those provided by the manufacturers of such equipment, parts or materials, to the extent assignable to Customer. EXCEPT AS SPECIFICALLY PROVIDED FOR ABOVE, SUPPLIER EXTENDS NO WARRANTIES OF ANY KIND TO SERVICES, EQUIPMENT OR MATERIALS AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

These warranties do not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence, unauthorized modification or alteration, use beyond rate capacity, or improper installation, maintenance or application, or due to following improper guidance or procedures provided by the Customer. To the extent that Customer or its agents have supplied specifications, information, representation of operating conditions, guidance, instructions or other data to Supplier in the selection, design, or implementation of the goods and services provided in connection with the preparation of Supplier's quotation, and in the event that they differ from those later desired by Customer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

Subject to this Section 4 and Section 5, if within ten (10) days after Customer's discovery of any warranty defects within the warranty period, Customer notifies Supplier thereof in writing, Supplier shall, at its option, repair, correct or refund the purchase price for, that portion of the services or goods provided in connection with such services found by Supplier to be defective. Failure by Customer to give such written notice within the applicable time period shall be

deemed an absolute and unconditional waiver of Customer's claim for such defects, and remediation shall be at the sole discretion of Supplier while acting in good faith. This limited warranty is the only warranty made by Supplier and can be amended only in a writing signed by an authorized representative of Supplier.

5. **Remedy and Limitation of Damages.** CUSTOMERS EXCLUSIVE REMEDY FOR DELAY IN PERFORMANCE OR DEFECT IN SUPPLIER'S PERFORMANCE OR GOODS PROVIDED IN CONNECTION WITH SUCH PERFORMANCE SHALL BE, AT SUPPLIER'S ELECTION, EITHER SUPPLIER'S PROPER PERFORMANCE OF CONTRACTED SERVICES OR REFUND OF THE PURCHASE PRICE PAID BY CUSTOMER. IN NO EVENT SHALL SUPPLIER'S LIABILITY EXCEED THE TOTAL CHARGES PAID BY CUSTOMER FOR SERVICES PROVIDED. IN NO EVENT SHALL SUPPLIER ASSUME, ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION, OR LOSS OF USE, REVENUE, OR DATA, WHETHER ANY CLAIM IS BASED UPON THEORIES OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SAME. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL.
6. **Indemnification.** Customer shall indemnify and hold Supplier harmless from loss, damage, liability or expense (including reasonable attorney's fees) resulting from damage to property, or injuries, including death, to the extent caused by a negligent act or omission of the Customer, its agents or employees. Such indemnification shall be reduced to the extent attributable to others. The indemnification obligations under this section shall survive the termination or expiration of an order or contract between the parties.
7. **Termination.** Supplier may, at Supplier's sole discretion, terminate the Services Agreement without liability to Customer if Customer (i) fails to meet its obligations identified in the Services Agreement or these terms and conditions, or (ii) becomes insolvent or bankrupt.
8. **Customer Responsibilities.** Customer shall provide Supplier ready access to the site where services are to be performed and adequate workspace and facilities to perform same as provided in these terms and conditions. Customer agrees to allow Supplier to stop and start equipment as necessary to fulfill the terms of the Services Agreement. Customer shall not require Supplier or its employees, as a condition to site access or otherwise, to further agree or enter into any agreement which waives, releases, indemnifies or otherwise limits or expands any rights or obligations whatsoever. Any such agreements shall be null and void. Customer shall inform Supplier, in writing, at the time of order placement, of any known hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos containing materials, and shall provide Supplier with any applicable Material Data Safety Sheets regarding same. Any losses, costs, damages, claims and expenses incurred by Supplier as a result of Customer's failure to so advise Supplier shall be borne by Customer. Customer shall appoint a representative familiar with the site and the nature of the services to be performed by Supplier to be accessible at all times that Supplier personnel are at the site. Supplier shall not be liable for any expenses incurred by Customer in removing, replacing or refurbishing any Customer equipment or any part of Customer's building structure that restricts Supplier access. Customer personnel shall cooperate with and provide all necessary assistance to Supplier. Supplier shall not be liable or responsible for any work performed by Customer.
9. **Delay in Performance of Services.** Supplier shall not be liable or responsible for cost, expense, or damage due to a delay in performance of services or other obligations when such delay is due to causes beyond Supplier's reasonable control, including, but not limited to, acts of God; acts of Customer; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations,

orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances. Performance may be suspended for an appropriate period of time or canceled by Supplier upon notice to Customer in the event of any of the foregoing, but the balance of the agreement shall otherwise remain unaffected as a result of the foregoing.

- 10. Intellectual Property and Work Product.** To the extent that Supplier's Technology, including pre-engineered SOP's and protocols from the Supplier's LOCCK Library, and/or documents from the Supplier's auto generation tools and life cycle management tools, are used or partially used in the creation or development of Supplier Work Product, upon receipt of full payment, Supplier grants the End User a royalty free, non-transferable, right to use that Work Product on this specific Project. Such Work Product is not supplied to any Prime or Subcontractor on the project for its own use, reuse, or modification, and the End User right to use may not be re-assigned, sub-licensed or otherwise transferred. Except as expressly permitted by the terms of the Supplier's Sales Proposal including these Terms and Conditions of Sale, Prime contractor and End User shall take reasonable precautions to cause employees and contractors to not:

(a) sell, sublicense, rent, lease, display, outsource or assign the Supplier's Technology or any related documentation, publish or make any of the same available on a time-sharing basis, or use any of the same to provide similar services;

(b) re-use, reproduce, duplicate, adapt, modify, prepare derivative works of, merge or transfer copies of the Supplier's Technology or otherwise develop, manufacture or execute the Supplier's Technology;

(c) copy any documentation relating to the Supplier's Technology other than for documentation back-up on the specific project for which it was supplied by Supplier.

- 11. Governing Law and Venue.** The validity, performance and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws principles. Customer and Supplier agree that the state courts of Montgomery County, Pennsylvania and the United States District Court for the Eastern District of Pennsylvania shall have exclusive jurisdiction to hear and determine any claims or disputes between the parties hereto pertaining directly or indirectly to this agreement and all documents, instruments and agreements executed pursuant hereto, or to any matter arising there from.
- 12. Severability.** If any Section (or part thereof) of these terms and conditions or the Services Agreement is found to be contrary to, prohibited by or invalid under any applicable law, such court may modify such Section (or part thereof) so, as modified, such Section (or part thereof) will be enforceable and will to the maximum extent possible comply with the apparent intent of the parties in drafting such Section (or part thereof). If no such modification is possible, such Section (or part thereof) shall be deemed omitted, without invalidating the remaining provisions hereof. No such modification or omission of a Section (or part thereof) shall in any way affect or impair such Section (or any part thereof) in any other jurisdiction.
- 13. SOLICITATION OF SUPPLIER'S EMPLOYEES.** Customer agrees not to solicit, hire or otherwise engage any employees of Supplier for a term of six months beginning from the time the last services were performed by Supplier. The parties agree that any resulting damages from a violation of this provision would be difficult to calculate. Thus the parties have agreed that in the event of such a violation, Supplier will be entitled to liquidated damages of twenty six (26) forty (40) hour work weeks at that employee's billing rate to the Customer or \$100,000 US, whichever is less.
- 14. Miscellaneous.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Supplier

unless made in writing and signed on its behalf by a duly authorized representative of Supplier. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by Supplier, and no modification or additional terms shall be applicable to this agreement by Supplier's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Supplier in any quotation, acknowledgment or publication are subject to correction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The Convention for the International Sales of Goods shall not apply to this agreement.