

TERMS AND CONDITIONS FOR CONSULTING CONTRACTS

Section 1. Definitions.

- (A) "Company" means <Company Name> Inc. or any subsidiary or affiliate of <Company Name> Inc. issuing the Contract to which this document is attached.
- (B) "Seller" means the individual, corporation or other entity other than Company who is a party to this Contract.
- (C) "Consulting Services" means the services to be rendered by Seller as specified in the Contract.
- (D) .Contract. means the Contract or purchase order to which this document is attached and such other documents as the Contract incorporates.

Section 2. Independent Contractor Status.

- (A) Seller is an independent contractor and not an employee or agent of Company. Company disclaims any right to control the manner of performance by Seller and Company will not control the manner of performance by Seller.
- (B) Seller has no authority to direct or control the performance of any employee of Company. Seller's role will be that of adviser and not of master to any Company employee.
- (C) Seller does not have any Company title and Seller is not eligible for Company benefits or employee plans.

Section 3. Confidentiality.

- (A) All data and other information of every kind, whether expressed in writing or otherwise, including information of a technical, engineering, operational or economic nature, and including physical embodiments of such data and information, disclosed or revealed at any time to Seller by Company, learned at any time by Seller by observing Company's facilities, or made or developed by Seller in the course of performing Consulting Services for Company under this Contract (all called "Information") will be:
 - (1) received and maintained in strict confidence by Seller and will not be disclosed, directly or indirectly, by Seller to any related or unrelated party whatsoever; and
 - (2) used by Seller only for the performance of Consulting Services for Company.

Any description of Consulting Services, including that set forth in this Contract

will, unless otherwise specified, be considered Information.

(B) The foregoing obligations of confidentiality, limited use and non-disclosure will not apply to the following three exclusions:

(1) Information which was known to Seller and reduced to writing or other document form by Seller prior to the date of this Contract, and which was not first acquired, directly or indirectly, from Company; or

(2) Information which is or becomes available in issued patents, published patent applications or printed publications of general public circulation other than by acts or omissions of Seller; or

(3) Information which Seller after the date of this Contract lawfully obtains without restriction from a third party other than from a third party who obtained such Information from Company.

Notwithstanding the fact that any of the above exclusions apply to any part of Information covered by this Section 3, Seller may not, without the express written approval of Company, directly or indirectly, expressly or impliedly, reveal to any third party, Company's interest in or opinion of any such Information nor reveal Company as a source of such Information. Seller may not reveal to any party whatsoever without Company's express written approval that Seller is performing services for Company or the character of such services.

If Seller believes that any of the exclusions set forth in Subsections 3(B)(1), (2) or (3) apply with respect to certain Information so as to permit disclosure to a third party or use beyond that specified in this Section 3, Seller will first give notice to Company of such belief, specifying the facts upon which such belief is based. Such notice will include specific reference to documents and other writings relied upon by Seller for claiming that an exclusion applies to said Information. Specific Information will not be deemed to be within said exclusions merely because it is embraced by general information within such exclusions nor will a combination of features be deemed within such exclusions merely because the individual features of such combination are separately within such exclusions. Seller will, upon the reasonable request of Company, furnish such available additional information as may be reasonably requested by Company in its evaluation of the validity of the said claim.

(C) Seller will do the following as part of Seller's compliance with the obligations of confidentiality, limited use and non-disclosure:

(1) Seller may reveal Information only to Seller's employees, but only when and to the extent necessary for Seller to perform Consulting Services requested by Company, and Seller will advise all such employees to whom Information is disclosed of the obligations imposed on Seller.

(2) Seller will maintain all documents or other media (including computer programs or software) which contain Information, and all copies of the documents or other media, in a secure location inaccessible to third parties and others not authorized to receive Information.

(3) All writings, drawings, pictures or other documents or other media, including all copies, which contain Information, will be marked by Seller with the legend "Confidential - Property of <Company Name> Inc." or "Confidential - Property of (name of subsidiary or affiliate of <Company Name> Inc.)" as the case may be, if they are not already so marked and Seller will not reproduce, copy or photograph any such document or other medium without the prior written approval of Company. Seller will deliver to Company all documents, media or tangible property made or received by Seller which contain Information upon notice from Company requesting the delivery of such documents, media or other tangible property.

(D) Seller will take the following safeguards for all tangibles as may be provided to Seller, or made by Seller pursuant to this Contract, including all products, compositions, machines, equipment, constructions, apparatus, process embodiments, metal or other work stock, tools, dies or other goods or materials:

(1) maintain and hold such tangibles in a secure area and separate from materials and goods for other parties,

(2) use such tangibles only to render Consulting Services to Company as requested by Company.

(3) prevent observation of such tangibles by visitors to Seller.s premises or by Seller.s employees, officers, agents and directors who do not have a need to observe such in order for Seller to perform Consulting Services for Company.

(4) maintain such tangibles in the exclusive possession of Seller and not permit such or samples of such tangibles to leave its possession at any time, except with the express (and not implied) written approval of Company.

(E) The obligations imposed by this Section 3 will continue in effect for a period of ten years from the date on which the last Consulting Services are performed by Seller for Company, and will survive any termination of this Contract by either party.

(F) Company will have an unlimited right to publish, use, duplicate or disclose Information and all copyrights in Information will be the sole and exclusive property of Company.

Section 4. Export of Information.

Notwithstanding any other provision or understanding between Company and Seller, Seller will not at any time whatsoever or under any circumstances whatsoever disclose or reveal any Information to any person not a United States citizen and resident, or to any person outside the United States, or to any person within the United States for export outside the United States or to any representative of a foreign national or foreign interest or in any manner export any Information from the United States when to do so would be contrary to or in violation of any law or regulation of the United States or any agency of the United States, including laws and regulations concerning export of data and information. Even after expiration of this Contract and the confidentiality term specified in Section 3(E), Seller may not export any Information or disclose any Information to any such above-mentioned person until Seller has procured the licenses, assurances and approvals, if any, necessary under such laws or regulations.

Section 5. Ownership of Materials and Goods.

All products, compositions, constructions, machines, equipment, apparatus, processes or other goods or materials, including metal or other work stock and tools and dies, as may be provided to Seller by Company for performance of Consulting Services or made by Seller pursuant to this Contract, will be the sole and exclusive property of Company and will be used only for performance of Consulting Services, without modification or alteration, except as reasonably necessary or appropriate to the performance of Consulting Services and, upon Company's request, will be delivered by Seller to Company.

Section 6. Data, Information, Inventions, Patents and Copyrights.

(A) Seller will promptly disclose to Company all data, information, discoveries, inventions and improvements, whether or not patentable or copyrightable, including any and all expressions of computer programs, manuals, data bases and all forms of computer hardware, firmware and software, conceived, made, first reduced to practice, or developed by Seller arising out of the performance of Consulting Services, all referred to in this Contract as Contract Developments. All Contract Developments, including patents and copyrights, will be the sole and exclusive property of Company in respect to any and all countries, their territories and possessions.

(B) Seller will perform at the request of Company all lawful acts and execute, acknowledge, and deliver all instruments, including assignments, deemed necessary, useful, or appropriate by Company to vest in Company the entire right, title, and interest in and to such Contract Developments and obtain and record title to such Contract Developments and to enable Company to prepare, file, and prosecute applications for and obtain patents, copyrights and other forms of industrial property protection on such Contract Developments, as well as continuations, divisions, continuations-in-part, additions, reissues, renewals, and extensions of such Contract Developments, as Company at any time deems

useful or desirable to preserve such interests in any and all countries selected by Company, and to obtain and record title to patents, copyrights and other forms of industrial property protection and applications for such Contract Developments so that Company will be the sole and absolute owner of the Contract Developments in any and all countries in which Company may desire such protection. As used in this Contract, "industrial property" includes patents and copyrights as well as any other form of industrial or intellectual property protection which is presently available or applicable, or which may become available or applicable, to Contract Developments, including developments in expressions of data and computer software. Any reasonable additional costs to Seller required to satisfy the obligations of this Subsection 6(B) will be reimbursed by Company.

(C) To the extent permitted by law, any Contract Development, including software, that generates copyrightable material will fall within the enumerated categories of §101 of the 1976 Copyright Act definition of "work for hire" subsection (2) and thus be considered a "work made for hire"; and Seller acknowledges that by so considering any Contract Development as a "work made for hire" that Company will own all right, title and interest in and to any copyright associated with such Contract Development. To the extent under applicable law that such work may not be deemed a "work made for hire", Seller expressly assigns and agrees to assign to Company all right, title and interest in and to Seller's copyright for such work. Seller will execute and deliver to Company such instruments of transfer and take other such action that Company may reasonably request, including, without limitation, such assignments and other documents required to vest in Company the entire right, title and interest in and to any copyright associated with such Contract Developments.

(D) Seller agrees that any Contract Development is the exclusive property of Company and Seller will not sell, trade, give or intentionally make available any Contract Development to any private or public individual, corporation or other entity and will take all reasonable precautions to prevent the illegal use of such Contract Development.

Section 7. Skills, Performance and Conflict of Interest.

(A) Seller warrants to Company that Seller possesses the skills and professional ability requisite to perform Consulting Services.

(B) Before Seller takes any action to retain professional assistance or assign or subcontract any tasks covered by this Contract, Company will be consulted about such proposed action and such action will not be consummated by Seller unless Company has given its prior written consent to Seller. No such retention of assistance, assigning or subcontracting of tasks will relieve Seller of its obligations under this Contract.

(C) Seller will enter into agreements to effectuate the provisions of Sections 3 and 6 with all persons who perform any part of the Consulting Services for Company prior to any such performance, and a copy of said agreements will be provided to Company by Seller if requested by Company.

(D) Seller represents that Seller has the right to enter into this Contract and perform Consulting Services for Company and that there are no restrictions whatsoever imposed on Seller, nor any conflict of interest which would prevent or conflict with Seller's performance of Consulting Services for Company and compliance with all the provisions of this Contract.

(E) Seller will not undertake consulting work or projects, including research or development projects, for or on behalf of, a client other than Company when a conflict of interest may result.

(F) Company has the right to bar or remove from its premises any individual employed or retained by the Seller after notice has been given to Seller.

Section 8. Seller Liability and Indemnity Obligations.

SELLER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, SUBSIDIARIES AND AFFILIATED COMPANIES, (COLLECTIVELY .INDEMNITEES.) FROM AND AGAINST ALL LIABILITIES, COSTS, CLAIMS, PENALTIES, FORFEITURES, CAUSES OF ACTION, SUITS AND THE COSTS AND EXPENSES INCIDENT THERETO (INCLUDING COSTS OF DEFENSE, SETTLEMENT AND ATTORNEYS. FEES, INCLUDING THE COSTS OF ATTORNEYS IN THE EMPLOY OF INDEMNITEES) WHICH INDEMNITEES MAY SUFFER, INCUR, BECOME RESPONSIBLE FOR OR PAY OUT AS A RESULT OF DEATH OR BODILY INJURY TO ANY PERSON, DESTRUCTION, LOSS OR DAMAGE TO ANY PROPERTY, REAL OR PERSONAL, CONTAMINATION OF OR ADVERSE EFFECT ON THE ENVIRONMENT, OR VIOLATION OR ALLEGED VIOLATION OF FEDERAL, STATE, LOCAL OR FOREIGN LAW, RULE, REGULATION, ORDINANCE, ORDER, DECREE, DECISION, RESTRICTION, PERMIT OR LICENSE, CAUSED BY OR RESULTING FROM THE NEGLIGENCE OR ACTS OR OMISSIONS OF SELLER, SUBCONTRACTORS OR MATERIALMEN UNDER THIS CONTRACT, OR THE REPRESENTATIVES, AGENTS, EMPLOYEES OR INVITEES OF ANY OF THEM, AS A CONSEQUENCE OF OR IN ANY MANNER CONNECTED WITH PERFORMANCE OF THE CONTRACT. THIS INDEMNIFICATION PROVISION IS IN ADDITION AND CUMULATIVE TO ANY OTHER RIGHT OF INDEMNIFICATION OR CONTRIBUTION WHICH ANY OF THE INDEMNITEES MAY HAVE AT LAW, IN EQUITY, OR OTHERWISE, AND WILL SURVIVE COMPLETION OF THIS CONTRACT.

Section 9. Insurance.

(A) Unless otherwise specified in this Contract, Seller will, during the progress of the Consulting Services, maintain the following types of insurance coverage:

(1) Worker's Compensation Insurance or qualification as a self-insurer to satisfy the laws of the State in which Consulting Services are being done. Seller's Worker's Compensation Insurer or Seller, if self-insured, agrees to waive rights of subrogation against Company except for claims caused by Company's sole negligence;

(2) Employers. Liability Insurance for Bodily Injury per accident with limits of not less than \$100,000 and Bodily Injury by Disease with limits of not less than \$100,000 per policy;

(3) Commercial General Liability Insurance for personal injury and property damage, including contractual liability insurance, with combined limits of not less than \$1,000,000 per occurrence; and

(4) Automobile Liability Insurance for personal injury and property damage, with combined limits of not less than \$1,000,000 per occurrence.

(B) Seller agrees during the progress of the Consulting Services Company will be an additional insured on Seller's Commercial General Liability and Automobile Liability policies and that all of Seller's insurance identified in Section 9(A) above will specifically indicate that coverage with respect to Company will be primary without right of contribution of any other insurance carried by or on behalf of Company. All of the above mentioned Seller insurance will be occurrence-based coverages.

(C) Upon Company's request, Seller will provide Company with written certification, reasonably acceptable to Company, of Seller's compliance with the requirements listed in Sections 9(A) and (B) above.

(D) The requirements in this Section 9 are separate and distinct from any other obligations of Seller under this Contract.

Section 10. Publicity.

No advertising or publicity matter having or containing any reference to Company or to the subject matter or existence of this Contract or in which the name of Company is mentioned will be made by or for Seller without obtaining written approval from Company.

Section 11. Termination.

Company may terminate this Contract at any time by giving written notice to

Seller. After receiving written notice of termination, Seller will immediately cease the Consulting Services indicated in the notice of termination. In the event of such a termination, payment for costs incurred by Seller will be negotiated by Company and Seller on the basis of Seller's actual costs plus a reasonable profit for Consulting Services completed as of the termination date.

Section 12. Environment, Health, Safety and Security.

Seller and any subcontractors agree to comply with Company's rules and regulations, including its environmental, health, safety and security rules and regulations, when performing any Consulting Services for Company.

Section 13. Records.

Seller will complete daily or weekly time records as may be required by Company. Company has the right to audit Seller's time records upon reasonable notification.

Section 14. Equal Employment Opportunity.

Unless this Contract is exempted by law, Seller will comply with Executive Order 11246, the Rehabilitation Act of 1973, the Vietnam Era Veteran's readjustment Assistance Act of 1974, the Americans with Disabilities Act, as they have been or will be amended from time to time, and regulations implementing such statutes; and any similar state and local laws and ordinances and the regulations implementing such statutes. If requested by Company, upon execution of this Contract, Seller will furnish to Company an executed Certificate of Nonsegregated Facilities.

Section 15. Taxes.

(A) Seller will bear and pay all applicable taxes of the United States and any other country, including any political subdivision of any of them, if the tax is based on or measured by gross receipts or net income, or payment of which is required to maintain a legal existence or a general right to transact business within the taxing jurisdiction.

(B) Seller will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of the United States, any other country or any political subdivision of any of them which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors as required by the United States Internal Revenue Code, the United States Federal Insurance Contribution Act, the United States Federal Unemployment Act, and any laws of any other country or any political subdivision of any of the foregoing which requires withholding of any income or employment taxes as measured by wages, salaries or other remuneration. Seller

will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

(C) Company agrees to pay all value added tax and sales and use tax (including any gross receipts tax imposed similar to a sales and use tax) imposed by any foreign, national, state or local taxing authority on the ultimate purchase price of the Consulting Services provided under this Contract. If Seller is required to collect such value added tax or sales and use tax on behalf of any taxing jurisdiction, Seller will provide to Company invoices which separately state and clearly indicate the amount of tax, and Company will remit any such tax to Seller. Seller will have the responsibility of complying with all applicable foreign, national, state or local laws regarding value added tax and sales and use tax or substitutes therefore including registration, collection of taxes and the filing of returns where applicable. Notwithstanding whether Seller must collect value added tax or sales and use tax from Company, Seller will state on every invoice the taxing jurisdiction (e.g. country, state and local jurisdiction) in which the Consulting Services invoiced, or allocated portion thereof, were provided. If applicable, in lieu of payment for any sales and use tax, Seller will accept a properly executed exemption or direct pay certificate from Company. The determination of whether an exemption or direct pay certificate will be submitted to Seller in lieu of payment for any sales and use tax will be made by Company on a location by location basis.

(D) With the exception of value added tax and sales and use tax as described in Section 15(C) above, all other taxes, however denominated or measured, imposed upon the price or compensation under this Contract, or upon the Consulting Services provided hereunder, will be the responsibility of Seller. In addition, all taxes assessed by any taxing jurisdiction based on Seller property used or consumed in the provision of the Consulting Services such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Seller. The parties will cooperate in good faith to minimize such tax liabilities to the extent legally permissible.

(E) Seller and subcontractors will file such returns, reports or forms necessary for the payment of all taxes which Seller is required by law to file.

(F) Seller will, upon written request, submit to Company written evidence of any filings or payments of all taxes, including government-furnished receipts and detailed documentation of a taxing authority. Company reserves the right to contest, or cause Seller to contest, any tax, fee or assessment, and Seller will use its best efforts in cooperating with Company in any such contest.

Section 16. Miscellaneous Provisions.

(A) This Contract may not be assigned by Seller without the prior written approval of Company. Nothing in this Contract, express or implied, is intended or

may be construed to confer upon any person other than the parties to this Contract any right, remedy or claim under or by reason of this Contract.

(B) This Contract sets forth the entire agreement between the parties as to the subject matter of this Contract, and supersedes all prior agreements, commitments, representations, writings and discussions between them, whether written or oral, with respect to the subject matter of this Contract. It is expressly understood that no representations, promises, warranties or agreements have been made by either party except as the same are set forth in this Contract. Except as otherwise expressly provided in this Contract, this Contract may not be amended or terminated except in writing and signed by the proper and duly authorized representatives of the parties.

(C) No party may be deemed to have waived any right, power or privilege under this Contract or any provision of this Contract unless such waiver is duly executed in writing and acknowledged by the party to be charged with such waiver. The failure of any party to enforce at any time any of the provisions of this Contract may in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Contract or any part of this Contract, or the right of any party to subsequently enforce each and every such provision. No waiver of any breach of this Contract may be held to be a waiver of any other or subsequent breach. All remedies permitted under this Contract will be taken and construed as cumulative.

(D) If any provision of this Contract or its application to any person or circumstance is adjudged invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Contract or the application of such provision to other persons or circumstances will not be affected by such adjudication. If any provision or application of this Contract is invalid or unenforceable, then a suitable and equitable provision will be substituted for such provision in order to carry out, so far as may be valid and enforceable, the intent and purpose of this Contract, including the invalid or unenforceable provision.

(E) This Contract will be governed by and interpreted in accordance with the laws of the Commonwealth of <STATE>, not including, however, the rules relating to the choice or conflict of laws.

(F) Seller warrants that it will comply with all foreign, federal, state and local laws and regulations.

(G) Seller will procure all licenses, permits and other approvals from all applicable government authorities and agencies which are necessary for performance of Consulting Services for Company prior to performing such Consulting Services.