

TERMS AND CONDITIONS OF SALE

1. **APPLICABLE LAW AND TERMS OF SALE:** Any contract resulting from this quotation shall be governed, construed, and interpreted under the laws of the State of Massachusetts, United States of America, and shall be subject to the terms and conditions listed below. Any purchase order issued by the Buyer as a result of this quotation shall be deemed to incorporate the terms and conditions of this quotation. The price and delivery specified are based upon acceptance of this quotation within (30) days from its date. The quotation shall lapse immediately upon the expiration of such period, which shall commence of the date set forth in the quotation, unless previously revoked by ROBATEL INC. ("Seller").

2. **ACCEPTANCE:** This Proposal shall become a binding contract, as accepted by its addressee ("Buyer") only when approved in writing hereon by an officer of Seller at its home office at Pittsfield, Massachusetts (it being expressly agreed that when so executed, such contract shall be considered as being made and entered into at Pittsfield, Massachusetts).

3. **SHIPMENT:**

- a. Shipment of items ordered herein (the "Equipment") shall be completed as set forth in the body of the quotation.
- b. The shipment date has been established on the basis of prompt receipt of Buyer's engineering information, and receipt of Buyer's decisions on any changes within fifteen (15) days after receipt of purchase orders by Seller. If Buyer's approvals and decisions are not received within the period set forth above, Seller may extend the contact completion date accordingly.
- c. Unless special shipping instructions are received from the Buyer substantially before the shipment date, Seller will use its own judgment as to the best means of shipment and routing consistent with the nature of the Equipment shipped and the shipment schedule.
- d. Charges for storage or demurrage after notification by Seller to Buyer that Equipment is ready for shipment will be for the account of the Buyer.
- e. Seller shall not be held responsible for loss or damage resulting from the means of shipment or routing used or for any other losses or damages arising while in transit, and the Buyer agrees to make claim therefore directly against the carrier.
- f. Seller will use all reasonable diligence to meet the scheduled dates for shipment, but shall not be responsible for delays caused by acts of force majeure or other causes over which Seller has no reasonable control. Seller shall not be liable for any loss, damage, expense or charge of any kind resulting from delay in shipment.

4. **TITLE AND RISK OF LOSS:** Delivery of the Equipment to Buyer shall be accomplished by delivering the Equipment to carrier, F.O.B. Pittsfield, Massachusetts or other shipping points, at which time and place title, risk of loss and possession will transfer to Buyer.

5. **TAXES:** Unless otherwise specifically provided herein, Buyer shall reimburse Seller, in addition to the price herein before stated, for all sales, use and other taxes, excises and charges which Seller may pay or be required to pay to any government directly or indirectly in connection with the production, sale, transportation, and/or use by Seller or Buyer, of any of the Equipment, materials or services dealt with hereunder whether the same may be regarded as personal or real property. Buyer agrees to pay all property and other taxes which may be levied, assessed or charged against or upon any of said Equipment on or after the date of actual shipment, or placing into storage for Buyer's account.

6. **TERMS OF PAYMENT:**

- a. An initial payment equal to thirty (30%) percent of the value of this order shall accompany Buyer's acceptance hereof.
- b. The aforementioned terms of payment do not include any allowance for credit terms and shall apply notwithstanding any request for delay in delivery by Buyer.
- c. Buyer will pay interest at a rate of one (1%) percent per month on any past due payments.

7. **CANCELLATION:** This contract is not subject to cancellation unless requested in writing by Buyer and accepted in writing by Seller. In the event of such a cancellation, Buyer agrees to pay Seller, upon presentation of Seller's invoice, all costs and expenses incurred by Seller prior to and as a result of the cancellation. Such costs shall include Seller's costs of labor applied to the contract, overhead, the cost of any material applied to the contract including castings, and the cost of purchased materials and components applicable to the contract including such cancellation charges as may be imposed by Seller's suppliers or subcontractors. To the sum of foregoing costs, there shall be added an amount equal to twenty (20%) percent.

8. **PATENTS:**

- a. Seller shall indemnify and hold harmless Buyer against all claims, demands and suits based on allegations or claims that the Equipment manufactured by Seller, or the design thereof, constitutes an infringement of any patent, trademark or copyright of the United States, if Seller is notified promptly of the assertion of any such allegation or claim and if Seller is given authority to defend the same and reasonable information and assistance for the defense of same. Upon

notification of an infringement claim, Seller reserves the right to do any of the following, at no cost to the Buyer:

- i. Procure for the Buyer the right to continue using the Equipment; or
 - ii. Replace the same with non-infringing Equipment; or
 - iii. Modify the Equipment so it becomes non-infringing.
- b. The foregoing states the entire liability of the Seller for patent infringement of the Equipment or any item thereof.
- c. Seller does not assume liabilities for the use of the Equipment or any liabilities for infringement of any method and/or process patents or liabilities for infringement of any patents covering articles manufactured or produced.
- d. As to any equipment furnished by the Seller to the Buyer manufactured in accordance with designs proposed by the Buyer, the Buyer shall indemnify the Seller against all claims, demands, and suits brought against the Seller for any patent, trademark, or copyright infringement.

9. **DRAWINGS:** Seller does not supply detailed shop working drawings of the Equipment. Only general assembly drawings and parts lists necessary for erection will be furnished with the understanding that such drawings as well as any other specifications and/or technical data are not to be reproduced, transmitted or disclosed to third parties without the prior written consent of Seller.

10. **SAFETY DEVICE CLAUSE:**

- a. Buyer shall inform Seller on a timely basis of the need for specific safety devices consistent with the intended use of the Equipment.
- b. Seller shall have no responsibility for the offering for sale and/or installation of devices on Equipment to protect personnel from injury while the Equipment is in operation. Buyer agrees to indemnify and save Seller harmless from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the installation, maintenance, or operation of the Equipment, because of the lack of devices on the Equipment to protect personnel.

11. **WARRANTY:** Except as hereinafter in this section set forth, the Equipment is warranted for a period of one (1) year from the date of shipment to the Buyer to be free from defects in material and workmanship disclosed under normal use and service. If the Buyer within this period notifies Seller in writing of any claimed defect in the Equipment, and if after appropriate tests and inspections by Seller, the Equipment is found not to be in conformity with this warranty, Seller will at its option and expense either repair the same or provide a replacement therefore, F.O.B. shipping point but Seller's liability on its warranty shall under no circumstances exceed its cost of correcting such defects in the Equipment sold or replacing the same with defective equipment. Such repair or replacement shall be the sole and exclusive remedy of Buyer for any breach of warranty by Seller. All dismantling, installation costs, and return freight costs shall be borne by the Buyer. The foregoing warranty does not cover, and Seller makes no warranty with respect to:

- a. Failures not reported to Seller within the warranty period above specified;
- b. Failure or damage due to negligence, other than that of Seller, accident, abuse, improper installation (other than installation made by Seller), improper operation, or abnormal conditions of temperature, moisture, dirt, or corrosive matter;
- c. The Equipment of any part thereof which has been in any way tampered with, repaired or altered by anyone other than an authorized representative of the Seller;
- d. The Equipment or any part thereof damaged in shipment or otherwise without the fault of the Seller;
- e. Defects in articles purchased by Seller and resold by it or incorporated in the equipment without alteration, and defects in metals or other materials purchased by Seller which can not be discovered by ordinary factory inspection.

As an accommodation to its customers, Seller will assign to the Buyer any rights it may have arising out of the warranties given to it by any manufacturer of materials or standard equipment (such as controls, motors, gear reduction units, etc.) purchased by Seller and resold to the Buyer herein.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

12. **ENTIRE AGREEMENT:** Buyer has notice that no agent or representative of Seller has authority to bind Seller by any agreement, promise, representation or statement relating to the matters covered hereby and which are not herein contained.

This contract is intended by the parties hereto as the final expression of their agreement and is the complete and exclusive statement of the terms thereof, and no amendment or addition to the terms hereof shall be binding upon Seller unless in writing signed by the Seller.