THE MONTALVO CORPORATION TERMS AND CONDITIONS

1. **SELLER’S OFFER.** Notwithstanding any contradictory terms and conditions which may appear on Buyer’s forms, the shipment and/or delivery of the goods and/or services made the subject of this invoice and the mailing and/or delivery of this invoice shall not constitute an acceptance by the Seller of any prior written or oral offer by the Buyer which contains terms and conditions different from or additional to those set forth below. Seller’s acceptance of any such offer is expressly conditioned on Buyer’s assent to the terms and conditions set forth below. If any terms and conditions contained herein are additional to or different from the Buyer’s order, such additional or different terms of the Seller shall be deemed accepted by the Buyer if not objected to in writing by the Buyer within 10 days from date of receipt hereof.
2. **LIMITATION OF WARRANTIES.** Seller warrants that the products sold hereunder shall be free from defects in material and workmanship under normal use and service when correctly installed and maintained, and provided that the products shall not have sustained any accident or injury by whomever or through whatever means inflicted and that the Buyer, its agents or employees, shall not have attempted to make any adjustments, repairs or modifications to the products sold and provided that no replacement parts or components except Montalvo or Montalvo approved parts or components have been used and provided specifically that the products be utilized in strict compliance with the operating data supplied by the Buyer. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED OR STATUTORY. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON FOR INCIDENTAL OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES, DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING OR USE OF THE PRODUCTS OR FROM ANY OTHER CAUSE RELATING THERETO. SELLER’S LIABILITY HEREUNDER WHETHER BASED ON CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE IS LIMITED TO, AT SELLER’S OPTION, THE REPLACEMENT OR REPAIR OF DEFECTIVE PRODUCTS OR THE REPAYMENT OF, OR CREDITING BUYER WITH AN AMOUNT EQUAL TO THE PURCHASE PRICE UPON RETURN

OF THE PRODUCTS. Products may be returned at the cost of Seller only after inspection and approval by Seller at Seller’s Gorham, Maine facility, and upon receipt by Buyer of shipping instructions from Seller. Any claim by Buyer with reference to the products sold hereunder for any cause, shall be deemed waived by the Buyer unless submitted to Seller in writing within three hundred and sixty-five (365) days from the date of shipment of the products to which the claim relates.

**3.** **ENTIRE AGREEMENT.** No agent, employee or representative of the Seller has any authority to bind the Seller to any affirmation, representation or warranty concerning the goods sold under this contract, unless such affirmation, representation or warranty is specifically included

within this agreement. No modification or alteration of the foregoing disclaimer of

warranty and limitation of remedies provisions shall be valid or enforceable unless set

forth in a separate document issued and executed by an officer of the Seller.

1. **INDEMNIFICATION.** In the event the goods are purchased for resale, the Buyer shall limit his warranties in the same way as the warranties are herein limited and if the Buyer fails to so limit any warranty with respect to any articles sold hereunder, Buyer shall indemnify and hold Seller harmless from any and all liability, costs and expenses to which Seller may be subjected as a result of Buyer’s failure to so disclaim its express or implied warranties.
2. **RISK OF LOSS; TITLE; SHIPMENT.** The goods sold hereunder shall be at the risk of the Buyer upon delivery by the Seller to the carrier F.O.B. shipping point. Unless otherwise stated, prices are subject to change without notice. Delivery of the products shall be F.O.B. point of shipment and unless otherwise stated, no freight or other transportation charges will be allowed and Buyer will pay, or reimburse Seller for, all freight. Seller shall not be responsible for storage, transportation or similar charges incurred at destination. No cash discounts or other discounts for prompt payment are offered unless specifically stated on the face hereof.
3. **DELAYS BEYOND SELLER’S CONTROL.** Delivery dates are approximate and estimated based on prompt receipt of all necessary information from the Buyer. Seller may make partial shipments of any one or more items covered by the quotation or acknowledgement and may ship from any location it may select. Seller shall not be responsible for delays in performance caused by delays, at manufacturing plants, or in transportation or due to strikes, fires, floods, storms, war, insurrections, riots, any governmental regulation, order, act or instruction, or any other circumstances beyond the Seller’s reasonable control, and Buyer’s acceptance of goods and/or services shall constitute a waiver of any claims for damages due to delay. Under no circumstances shall the Seller be liable for any loss of use by Buyer or for any indirect or consequential damages arising from such delays. Seller shall have the right to apportion its production among its customers in such manner as it may consider to be equitable.
4. **LATE PAYMENT CHARGE.** Any accounts not adhering to the payment terms on the face of the invoice will be subject to a late charge of 2% per month on unpaid balances. Unless otherwise indicated on the face of the invoice payment terms are net 30 days. Buyer shall pay all Seller’s costs of collection including reasonable attorney’s fees if legal resources are used for collection purposes.
5. **SURVIVAL OF TERMS.** To the extent any provision hereof is held invalid then that provision shall be deemed to be deleted, and the remaining provisions hereof shall remain in full force and effect. Waiver by Seller or Buyer of any breach of these provisions shall not be construed as a waiver of any other breach.
6. **RETURNED GOODS. IMPORTANT.** Goods returned for credit must be returned within thirty (30) days after receipt of goods and with a Montalvo Return Authorization Number and all returned goods subject to Montalvo Inspection. A minimum of 20% restocking charge will be imposed on all returns accepted.
7. **PAYMENT.** Invoices for material delivered are payable only in U.S. funds which are accepted at par by our depositories. Seller may from time-to-time demand different terms of payment from those specified herein whenever it reasonably appears that Buyer’s financial condition requires such changes and may demand assurance of Buyer’s ability to pay whenever it reasonably appears that such ability is in doubt. Seller may suspend production, shipment or delivery until such arrangements are made. All further shipments will be cancelled when payments are 75 days past due. Payment by credit card is accepted only at the time of order. Partial payments are required for orders greater than $20,000. Delivery dates will be scheduled after receipt of first payment if required.
8. **TAXES.** The price does not include any Federal, State, or local property, license, privilege, sales, use, excise, gross receipts, or other like taxes which may be now or hereafter applicable to, measured by, or imposed upon or with respect to this transaction, the equipment, its sale, its value or its use, or any services performed in connection therewith. Such taxes will be itemized separately to Buyer, who shall make prompt payment to Seller. Seller will accept a valid exemption certificate from Buyer, if applicable. If an exemption certificate previously accepted by Seller is not recognized by the governmental taxing authority involved, Buyer agrees to promptly reimburse the Seller for any taxes covered by such exemption certificate which the Seller is required to pay.
9. **NO LICENSE.** No license or other rights are granted or implied by the sale contemplated hereby under any patents, copyrights or trademarks owned or controlled by Seller or under which seller is licensed, but the foregoing shall not be understood to limit in any way the right of Buyer to use and sell merchandise covered by this invoice. If the goods are to be prepared or manufactured according to Buyer’s specifications, the Buyer shall indemnify the Seller against any liability for patent or trademark infringement on account of such preparation or manufacture.
10. **LIMITATION OF ACTIONS.** Buyer agrees that any action of any kind by the Buyer against the Seller must be commenced, if at all, within one (1) year after the date of the receipt of the goods which are the subject of this invoice and shall be governed by the laws of the State of Maine and submits to jurisdiction of the courts of the State of Maine.
11. **NO ASSIGNMENT.** Neither party shall assign or transfer this contract without the prior written consent of the other party. As a condition to any such written consent, such assignment shall be subject to the terms and conditions herein and no greater rights or remedies shall be available to the assignee.
12. **SHIPPING CHARGES.** The price does not include shipping charges. Customer must specify method and carrier at time of order. All collect shipments must include the customer’s carrier account number. Unless otherwise specified, freight charges on all orders shipped without carrier information will be prepaid and added to the invoice along with a small handling fee at Montalvo’s discretion.