



Proposal

Date of Proposal: 9/26/2024

Proposal #: LP19-2214

Revision: 10

Proposal For: JBI

Project: Oceanside, CA

Equipment: (3) VeloBlend Liquid Polymer Activation Systems

Represented By:

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JBI Water and Wastewater
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VeloDyne Contact Information:

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VeloDyne
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PROPOSED SCOPE OF SUPPLY

Bid Type: Per customer's request.

VeloDyne is pleased to offer the following proposal for the liquid polymer blending equipment, including options and accessories as indicated below.

QTY.	DESCRIPTION
2	<u>VeloBlend Model VM-10P-2400-RpSb-1-A-2 Liquid Polymer Blending System</u>

Polymer Flow Range: 0.5 to 10 GPH
Dilution Water Flow: 4 to 40 GPM

Each unit shall include the following unless otherwise indicated:

Polymer Mixing Chamber:

- A. Series: VeloBlend VM
- B. Type: Staged Hydro-Mechanical
- C. Mixer Motor: ½ HP, 90 VDC, 1750 RPM, wash-down duty
- D. Mixer Shaft Seal: Mechanical with seal flushing assembly
- E. VeloCheck™ Neat Polymer Check Valve with Quick Release Pin
- F. Construction:
 - 1. Body: Stainless steel
 - 2. Impeller: Stainless steel
 - 3. Mechanical Seal: Ceramic, Carbon, Stainless steel, Viton
 - 4. Cover: Clear polycarbonate with stainless steel reinforced flange & discharge
- G. Pressure Rating: 100 psi
- H. Pressure Relief Valve: Brass

Neat Polymer Metering Pump Assembly:

- A. PVC FNPT union style polymer inlet
- B. Type: Progressive Cavity type
- C. Motor: ½ HP, 1750 RPM, 90 VDC, Wash-down duty motor with gear reducer
- D. Loss of polymer flow sensor
- E. Metering pump calibration assembly with isolation valves: 1000 ml (16 GPH)
- F. Plumbing: SCH. 80 PVC

Dilution Water Inlet Assembly shall be provided, including the following:

- A. Stainless steel FNPT water inlet connection
- B. Dilution water ON/OFF solenoid valve
- C. Control Valve: Linear Actuated Automatic Flow Control Valve
- D. Primary dilution water flow meter type: Paddle Meter
- E. 0-160 psi inlet water pressure gauge (stainless steel, liquid filled)
- F. Plumbing – SCH. 80 PVC

Solution Discharge Assembly:

- A. Stainless steel FNPT solution discharge connection
- B. 0-160 psi solution discharge pressure gauge (stainless steel, liquid filled)
- C. Plumbing – SCH. 80 PVC

Control Panel:

- A. Enclosure: NEMA 4X (FRP)
- B. Power:
 - 1. Required: 120 VAC, 60 Hz., 1 Ph
 - 2. Disconnect: 10' power cord with 120VAC plug
- C. Controller: VeloDyne Unitronics
- D. Operator Interface: 6" TFT Color Touchscreen
- E. Motor controllers:
 - 1. Mixing Chamber
 - 2. Neat polymer metering pump
- F. Miscellaneous:
 - 1. Control circuit protection
 - 2. Control relays
 - 3. Power supplies
 - 4. Grounding blocks
 - 5. Numbers terminal blocks
 - 6. Wire labels, shrink-tube type
 - 7. Cabling

(RpSB Series)

G. Description:

- 1. The control system shall be designed to precisely control dilution water flow in proportion to polymer flow (polymer master) based on an operator input of desired solution concentration. The controller shall have two (2) modes of operation:
 - a. Manual Mode: Operator sets pump rate and water rate manually by increase and decrease push buttons on controller face.
 - b. Proportional Auto Mode: Operator sets desired solution concentration. Metering pump follows 4-20mA pump pacing input signal. Water rate is controlled to maintained desired solution concentration (i.e. for in-line applications where process flow fluctuates).
- 2. SmartBlend™ Mode: When the system in in SmartBlend™ mode, the mechanical mixing energy shall automatically adjust to maintain constant mixing energy per unit volume as dilution water flow and pressure change.

H. Operator Interface Functions:

- 1. System ON/OFF
- 2. Mode (change mode, select mode):
 - a. Manual Mode
 - b. Proportional Auto Mode
 - c. SmartBlend™ Mode
- 3. Set % Solution (proportional modes only)
- 4. Set Poly Rate (manual mode only)
- 5. Set Water Rate (manual and remote auto modes)
- 6. Polymer Pump Calibrated Value Input

I. Operator Interface Display:

- 1. Pump Rate
- 2. Water Rate
- 3. Solution Concentration
- 4. Inlet water pressure
- 5. Solution discharge pressure
- 6. Status / Alarm Indicators:
 - a. Low Water Flow Alarm
 - b. Low Polymer Flow Alarm
- 7. Mode Select
- 8. Calibration Mode

J. Inputs (signals by others):

- 1. Remote Start / Stop (discrete dry contact)
- 2. Pacing Signal Based on Process Flow (4-20mA)

K. Outputs:

- 1. System Running (discrete dry contact)
- 2. Remote Mode (discrete dry contact)
- 3. Common Alarm (discrete dry contact)

- 4. Polymer Pump Rate (4-20mA)
- L. Communication: Ethernet / IP
- M. Special Functions / Features:
 - 1. Proportional control of water to polymer flow (ratio control) as outlined above
 - 2. Programmable auto flush – keeps water control valve open for programmable amount of time when unit is shut-off.
 - 3. Polymer pump rate input for calibration.
 - 4. SmartBlend™ mixing energy auto control.

System Skid:

- A. Frame: 304 stainless steel, open frame design for access to all components
- B. Fasteners: 304 SS
- C. Designed for bolt-down

QTY.

DESCRIPTION

1 VeloBlend Model VM-10P-2400-D-0-A-1 Liquid Polymer Blending System

Polymer Flow Range: 0.5 to 10 GPH
Dilution Water Flow: 4 to 40 GPM

Each unit shall include the following unless otherwise indicated:

Polymer Mixing Chamber:

- I. Series: VeloBlend VM
- J. Type: Staged Hydro-Mechanical
- K. Mixer Motor: ½ HP, 90 VDC, 1750 RPM, wash-down duty
- L. Mixer Shaft Seal: Mechanical with seal flushing assembly
- M. VeloCheck™ Neat Polymer Check Valve with Quick Release Pin
- N. Construction:
 - 1. Body: Stainless steel
 - 2. Impeller: Stainless steel
 - 3. Mechanical Seal: Ceramic, Carbon, Stainless steel, Viton
 - 4. Cover: Clear polycarbonate with stainless steel reinforced flange & discharge
- O. Pressure Rating: 100 psi
- P. Pressure Relief Valve: Brass

Neat Polymer Metering Pump Assembly:

- G. PVC FNPT union style polymer inlet
- H. Type: Progressive Cavity type
- I. Motor: ½ HP, 1750 RPM, 90 VDC, Wash-down duty motor with gear reducer
- J. Loss of polymer flow sensor
- K. Metering pump calibration assembly with isolation valves: 1000 ml (16 GPH)
- L. Plumbing: SCH. 80 PVC

Dilution Water Inlet Assembly shall be provided, including the following:

- G. Stainless steel FNPT water inlet connection
- H. Dilution water ON/OFF solenoid valve
- I. Control Valve: Manual rate control valve
- J. Primary dilution water flow meter type: Rotameter
- K. Low differential pressure alarm switch
- L. 0-160 psi inlet water pressure gauge (stainless steel, liquid filled)
- M. Plumbing – SCH. 80 PVC

Solution Discharge Assembly:

- D. Stainless steel FNPT solution discharge connection

- E. 0-160 psi solution discharge pressure gauge (stainless steel, liquid filled)
- F. Plumbing – SCH. 80 PVC

Control Panel:

- A. Enclosure: NEMA 4X (FRP)
- B. Power:
 - 1. Required: 120 VAC, 60 Hz., 1 Ph
 - 2. Disconnect: 10' power cord with 120 VAC plug
- C. Motor controllers:
 - 1. Mixing Chamber
 - 2. Neat polymer metering pump
- D. Miscellaneous:
 - 1. Control circuit protection
 - 2. Control relays
 - 3. Power supplies
 - 4. Grounding blocks
 - 5. Numbers terminal blocks
 - 6. Wire labels, shrink-tube type
- E. Operator Interface – Discrete Selector Switch
 - 1. System ON / OFF(reset) / REMOTE
 - 2. Ten-Turn Potentiometer – Metering Pump Control
 - 3. One-Turn Potentiometer – Mixer Speed Control
- F. Status / Alarm Indicators:
 - 1. System Running Indication
 - 2. Main Power ON Indication
 - 3. LED Display Metering Pump Rate
 - 4. Low Water Differential Pressure Alarm
 - 5. Low Polymer Flow Alarm
- G. Inputs (signals by others):
 - 1. Remote Start / Stop (discrete dry contact)
 - 2. Pacing Signal Based on Process Flow (4-20mA)
- H. Outputs:
 - 1. System Running (discrete dry contact)
 - 2. System Remote Mode (discrete dry contact)
 - 3. Common Alarm (discrete dry contact)

System Skid:

- D. Frame: 304 stainless steel, open frame design for access to all components
- E. Fasteners: 304 SS
- F. Designed for bolt-down
- G. Skid Casters

Accessories:

- A. Tote Tilt/Truck
- B. Tote Mixer

Engineering & Documentation:

- A. Submittals for approval (electronic version in PDF & hard copies if requested)
 - 1. Detailed scope of supply
 - 2. Mechanical drawings (solids models in shaded isometric and wire orthogonal views)
 - 3. Mechanical component data sheets annotated for specific models, features, etc.
 - 4. Pump performance curves
 - 5. Electrical schematics with interconnecting layout
 - 6. Process & Instrumentation Drawings
 - 7. Process description
 - 8. Electrical component data sheets annotated for specific models, features, etc.
- B. O&M Manuals for approval (electronic version in PDF & hard copies if requested)

Start-Up / Field Services:

- A. Factory Start-Up & Field Services:
 - 1. Number of Trips: Two (2)
 - 2. Number of Days (total on site): (4) Four

Note: a minimum of four (4) weeks' notice required for domestic orders prior to factory services being scheduled

Clarifications:

1. This proposal shall become part of the final purchase order documents.
2. Any equipment or appurtenances not specifically listed in the scope of supply shall be provided by others.
3. VeloDyne has proposed its standard equipment as detailed above, modified only to the extent to meet the intent of the project requirements.
4. Where there are contradictions between project specifications and drawings or omissions, VeloDyne is providing our best interpretation of the intent of the design as detailed in our scope of supply.
5. Unless otherwise indicated above, standard submittals and O&M manuals are included herein.
6. This proposal is based on equipment delivery within one year of date of customer's purchase order.
7. Unless otherwise indicated above, the following are not included in this proposal: Installation. Chemicals. Interconnecting wiring, conduit, piping and valves. Anchor bolts. Field Painting. Taxes. Tariffs. Duties. Bonds.

Commercial Terms Summary (see complete terms & conditions attached):

1. Price Valid For 90 Days
2. Payment Terms: Net 30
3. Freight: FOB factory, full freight allowed
4. *Submittals: 4-6 weeks after acceptance of order
5. *Shipment: 6-8 weeks after acceptance of order or customer's written approval and release for production

** Note: lead times are estimates based on the current engineering and production work load at the time of bid. Actual lead times may vary based on the workloads at the time of order and release for production – consult factory at time for order and release for production to confirm lead times.*

Equipment Price: \$115,481

Freight: \$2,243

Field Service: \$8,874

Taxable Equipment at 8.25%: \$9,527

Total including tax: \$136,125

Optional Adders

Adder for Tote Mixer with Timer and Wall Mount: \$5,605 (Each)

Adder for Tote Tilt/Truck: \$3,050 (Each)

Adder for upgrade from Unitronics to AB Micrologix with PanelView 10" HMI (For both Rp units): \$22,148

VELODYNE STANDARD TERMS & CONDITIONS OF SALE

All orders placed with Velocity Dynamics, LLC. d/b/a VeloDyne (the "Company" or "Seller"), if accepted, shall be accepted subject to VeloDyne Standard Terms and Conditions of Sale ("Terms and Conditions") as set forth below and incorporated by reference into the Purchase Contract.

1. CONTRACT; OFFER AND ACCEPTANCE. These Terms and Conditions, together with the product descriptions, prices and other terms appearing on the face hereof or in a separate document submitted to you, (collectively, "our Quotation"), as such may result in a final Purchase Contract between us (all such documents collectively referred to as the "Contract"), shall constitute the only terms and conditions of our offer. If our Quotation is submitted in response to an offer made by you, whether your offer is in the form of a request for proposal or otherwise, our Quotation is expressly conditioned on your acceptance of these Terms and Conditions, which are incorporated into any offer, acceptance, response, acknowledgment, invoice, amendment and/or any other document issued by you or the Company in connection with your Order (the "Contract" or "Contract Documents"), and any reference thereto shall include these Terms and Conditions. No waiver, alteration, or modification of these Terms and Conditions shall be valid unless expressly agreed to in writing by the Company. In any event, we object to all additional or conflicting terms and conditions that may appear in your order or other form of acceptance you may submit to us in response to our Quotation. The Company shall supply to Purchaser the equipment and parts (the "Products") in accordance with the design, manufacturing and performance specifications set forth in the Company's Quote and incorporated in the Purchase Contract (including these Terms and Conditions). No representation, promise or warranty of any kind has been made by us except as set forth in the Contract, which conclusively supersedes all prior writings, representations and negotiations with respect thereto. The Company has no obligation to furnish other equipment, materials or services that may be shown in any plans and/or specifications except for those goods actually ordered by you for a project to which the goods ordered herein pertain.

2. PRICES. Unless otherwise noted in the Contract, prices are net Ex-Works our facility and firm for 30 days. **Prices do not include:** freight; permitting, licensing and/or export fees; labor charges; storage fees; or taxes. If you require the Company's assistance for installation or set-up, we will invoice you at standard rates (please contact us for current pricing). Regarding taxes as set forth below, you will either (i) pay to the appropriate authority all applicable taxes and other government charges upon the production, sale, shipment or use of the goods and provide us with proof of payment; or (ii) provide us with a tax exemption certificate from the appropriate taxing authorities. You agree to provide us with written proof of payment of taxes (or exemption therefrom) within ninety (90) calendar days of your receipt of the goods. Time is of the essence.

3. CREDIT AND PAYMENT. Unless otherwise stated in the Contract, payment terms are net 30 days from the date of our invoice(s). Any payment outstanding beyond sixty (60) calendar days from the date of any Company invoice shall be subject to a late payment charge on the overdue balance in the amount of 1.5% per month calculated on the outstanding payment amount (or such lesser amount as is the maximum rate of interest allowed by law). Purchaser shall be responsible for all reasonable costs (including attorney's fees) incurred by the Company while collecting any delinquent balance. For international shipments, payment terms are cash only (unless otherwise approved in writing by us). The Company may decline to deliver except for cash, or stop goods in transit, should we develop any reasonable doubt as to Purchaser's financial responsibility. Pro-rata payments shall become due with partial shipments. If Purchaser is responsible for any delay in shipment: (a) the Company may treat the date of completion of goods as the date of shipment for purposes of invoice and payment, (b) completed goods shall be held at Purchaser's cost and risk; and (c) Purchaser shall be responsible for reasonable storage and insurance expenses, with storage fees accruing at a rate of two percent (2%) of the Purchase Price per month or \$500 per

month, whichever is greater, beginning on the first day of the first calendar month following the date the equipment was scheduled to ship. If retainages are accepted by the Company, the retainage shall be based on an agreed upon percentage of the total invoice amount. Unless otherwise agreed in writing, (a) retainage will not be held for more than 180 calendar days from the date of shipment and (b) no retainage will be imposed for approval of shop drawings, O&M manuals or any other documentation.

4. DELIVERY AND ACCEPTANCE OF PRODUCTS; TRANSFER OF TITLE.

(A) Products to be Used in the United States. Seller will deliver Products manufactured and to be used by Purchaser in the United States Ex-Works at our facility ("Shipping Point") Incoterms 2010, or in such other manner as may be mutually agreed to by us and set forth in separate Shipping Terms under the Contract. On all shipments marked "Ex-Works (or EXW) Shipping Point," the Company shall make the Products available to Purchaser at the Company's facility, which shall constitute delivery, and Purchaser shall bear all costs and risks of moving the Products from our facility to Purchaser's destination. Any claim for loss or damages in transit must be entered with the freight carrier and prosecuted by you.

(B) Products to be Used Outside of the United States. Seller will deliver all Products to be used by Purchaser outside of the United States "FAS (Free Alongside Ship) Named Port of Shipment" ("Shipping Point") Incoterms 2010, which means the Company will deliver the Products to the designated port, origin point or designated freight forwarder, with Purchaser bearing all costs and risk of loss or damage from the origin point to Purchaser's destination point outside of the United States. Purchaser shall be responsible for payment of all sales and use taxes, or to recover such taxes through appropriate procedures and documentation under applicable law.

(C) Shipping. Goods will be boxed or crated as Seller may deem proper for protection against normal handling, and extra charge will be made for preservation, waterproofing or similar added protection of goods. Routing and manner of shipment will be at Seller's discretion, and may be insured at Purchaser's expense, value to be stated at order price.

(D) Delivery, Shipment & Installation Dates. Delivery, shipment and installation dates are estimates only, not guarantees, and unless otherwise specified, are calculated from the date of Seller's receipt of complete technical data and approved drawings as such may be necessary to fulfill the Contract. In estimating such dates, no allowance has been made, nor shall we be liable directly or indirectly, for delays of third-party vendors, carriers or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining materials or manufacturing facilities, acts of government affecting us directly or indirectly, bad weather, or any cause beyond our control or causes designated as Acts of God or forced by any court of law, and the estimated delivery date shall be extended accordingly without penalty to the Company. We will not be liable for any damages or penalties whatsoever, whether direct, indirect, special or consequential, liquidated or otherwise, resulting from our failure to perform or delay in performing. Overtime and other expenses incurred to hasten delivery at Purchaser's request shall be added to the quoted prices and charged to and paid for by Purchaser. Shipment of goods ready for delivery can be deferred beyond the date for delivery on with Seller's written consent.

(E) Delivery Terms. Seller's obligation to deliver the goods shall be fulfilled when we have delivered the same in good condition to a carrier at the designated Shipping Point. Unless otherwise specified in the Contract, Purchaser shall be charged with and pay for the costs of all transportation, freight, insurance, loading, packaging and handling charges, taxes, duties, fees, storage, and all other charges applicable

to the goods. Purchaser shall not be responsible for any taxes based on Seller's income.

(F) **Title / Security.** Title to the goods shall be retained by Seller as a vendor's lien until such goods are paid for in full by the Purchaser, even though risk of loss shall be borne by Purchaser as set forth in paragraphs 4(A) and (B) respectively. Purchaser hereby grants to Seller, and Seller hereby reserves, a purchase money security interest in and to the goods sold to Purchaser, together with all proceeds thereof, to secure Purchaser's payment and performance. Purchaser agrees upon Seller's request to do all acts and execute all documents reasonably necessary to assist Purchaser's perfection and maintenance of any such security title and right of possession including, but not limited to, executing and filing documents with the appropriate governmental agency.

(G) **Cancellation and Returned Equipment.** Orders may be canceled or amended only with our written consent, and must be returned within 30 days of Seller's written authorization at Purchaser's cost. If Purchaser returns the goods in the manner required under the previous sentence, and if the returned goods are (i) in substantially the same condition that existed on the date the Seller delivered the Products to you, undamaged; and (ii) not more than 12 months after the original Invoice date; the returned goods will, subject to the applicable handling charge, be accepted by the Seller for return. Used or discontinued goods or parts or equipment specially manufactured will not be accepted for credit unless specifically agreed to by the Seller in our sole discretion. Purchaser's sole remedy for returns will be a credit for the purchase price less any handling charges. Returned goods are subject to a minimum of 20% restocking and handling charge. Returns found to be free of material and workmanship defects will be held for 30 days and if Purchaser does not provide the Seller with repair or return instructions, then we will scrap or resell the goods. Purchaser will be charged for placing returned goods in saleable condition, any sales expenses then incurred by us, plus a restocking charge and any out-going and in-coming transportation costs which the Company pays.

(H) **Acceptance by Purchaser.** Purchaser shall conduct any incoming inspection tests on delivered Products within 10 days of delivery, and if delivery is made in multiple shipments, then Purchaser shall conduct incoming inspections of Products within 10 days of receipt of each delivery. In the event of a shortage, damage or discrepancy in any shipment, Purchaser shall promptly give notice to Seller in writing (at such address designated by Seller for such purpose) but in no event later than 30 days of the subject delivery, detailing the exact nature of the shortage, damage or discrepancy and provide such supporting documentation as Seller shall deem necessary and appropriate (i.e., photos, insurance reports, etc.). If such evidence indicates, in Seller's reasonable judgment, that such shortage, damage or discrepancy existed at the time of delivery of the goods to the carrier, Seller will promptly deliver additional or substitute goods to Purchaser; provided, however, that Seller may, in its sole and absolute discretion, require Purchaser to return all damaged goods to the Company prior to delivery of substitute goods. If Purchaser shall fail to timely give Seller such written notice, the goods shall be deemed to conform to the requirements of the Contract, and Purchaser shall be deemed to have accepted the goods and shall pay for the goods in accordance therewith.

(I) **Purchaser's Specifications.** Purchaser shall be solely responsible for ensuring that all specifications, drawings, information, advice, recommendations or requests provided to the Company by Purchaser or any of its agents are accurate and suitable for Purchaser's purposes. The Company's examination or consideration of any such specifications, drawings, information, advice, recommendations or requests shall not result in any liability on the part of the Company.

5. **TERMINATION.** The Company shall have the right to cancel for default hereunder all or any part of Purchaser's Order. This right of cancellation is in addition to and not in lieu of any other remedies that the Company may have in law or equity.

6. **TAXES & IMPORT-EXPORT CHARGES.**

(A) **Purchaser's Responsibility for Taxes, Reports and Withholding.** Seller shall be responsible for reporting and paying all state and federal income taxes associated with sales of equipment and products to Purchaser under this Contract. However, Purchaser shall be responsible for all liabilities or claims for taxes that any taxing authority having jurisdiction over this Contract may assess or levy relating to the Products or this Contract. Purchaser shall comply with all applicable tax requirements, file all registrations (including all Transaction and Sales Tax registrations) and reports, and take all actions necessary to make its tax payments (or secure exemptions from or reductions in payments of same). Within 90 days from the date of any payment by Purchaser under Seller's Invoice, Purchaser shall provide Seller with tax receipts (or other proof of payment or written evidence of tax exemption) for all taxes to be paid by Purchaser under this Contract.

(B) **Import and Export Charges.** Purchaser shall be solely responsible for all import and export charges, licenses, permits and any other lawfully payable charge related to the import or export of Products under this Contract.

(C) **Export Controls & Related Regulations.** Purchaser represents and warrants that it is not designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including without limitation, the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List. Purchaser shall comply with all applicable U.S. economic sanctions and export control laws and regulations, including without limitation, the regulations administered by BIS, and the International Traffic in Arms Regulations administered by DDTC. Seller may terminate this Contract and discontinue any ongoing supply to or business with Purchaser immediately, without notice and without liability, upon Seller becoming aware that Purchaser is named on any restricted party list.

7. **WARRANTY; LIMITED REMEDIES.**

(A) **Seller Warranties.** Seller shall provide the standard warranties provided in the form Warranty Agreement (a copy of which is attached and incorporated by reference into our Contract).

(B) **Assignment.** Seller assigns to Purchaser all warranties given by manufacturers and vendors of Seller as such relate to the Products (equipment or components). These warranties are not exclusive.

(C) **Limitation on Damages.** Other than as set forth in Paragraph 9 (Purchaser Indemnification) and any breaches of Paragraph 11 below (Confidentiality), each party's cumulative liability for damages to the other party for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including but not limited to, negligence, shall be limited to the total Contract price of the goods sold hereunder, plus or minus, as applicable, the amounts of all unpaid accounts payable and receivable between the parties. In no event shall Seller's liability exceed the limits of the Company's insurance coverage.

8. **SOLE REMEDY.** The sole and exclusive remedy for breach of any non-warranty obligation of the Company and the sole remedy for the Company's liability of any kind (including negligence) with respect to the goods and services provided to Purchaser shall be to use all commercially reasonable efforts to promptly cure such breach. Purchaser must prosecute any claim for a cause of action arising hereunder with one year from the date on which the facts that gave rise to the cause of action first occurred subject to the terms set forth in Section 14 (Governing Law and Resolution of Disputes).

9. **INDEMNIFICATION.** Purchaser shall hold harmless, indemnify and defend the Company (at the Company's request) for any and all damages, liabilities, costs and expenses (including the costs of any dispute resolution, including but not limited to, attorneys' fees and any other costs and expenses), fines, or losses in connection with any threatened or actual claims, actions, demands, investigations, suits, including but not limited to, claims or suits by third parties, arising out

of any of the following: (a) Purchaser's negligent or willful acts, or those of its employees and/or agents, (b) such goods being repaired or altered by persons other than Seller (unless expressly authorized in writing by the Seller), (c) any claim of patent infringement arising out of the manufacture by Seller of goods created in accordance with a design or specifications furnished to Seller by Purchaser, (d) in the event that Purchaser modifies, or combines with any non-Seller goods, any of the goods purchased from Seller, and such modification or combination results in the actual or alleged infringement of any intellectual property rights of any third party, (e) from goods produced by Seller according to Purchaser's specifications, (f) any violations of export control laws by Purchaser, (g) any violations of state or federal tax laws by Purchaser, or (h) Purchaser's breach of any provisions of these Terms and Conditions.

10. SELLER'S INTELLECTUAL PROPERTY INDEMNIFICATION.

Seller will defend, indemnify and hold harmless Purchaser from and against any and all loss, damage, cost or expense arising as a result of any claim that the goods sold hereunder infringe any third party U.S. patent, copyright, trademark, trade secret or intellectual property right. Otherwise, Seller will not be liable for any claim of infringement. If you notify us promptly of any such claim of infringement and, if we so request, authorize us to defend or settle any suit or controversy involving such claim, we will indemnify you against the reasonable expenses of any such suit and will satisfy any judgment or settlement in which we acquiesce, but only to an amount not exceeding the price paid for the allegedly infringing goods. If an injunction is issued against the further use of allegedly infringing goods, the Company shall have the option of procuring for you the right to use the goods, or replacing them with non-infringing goods, or modifying them so that they become non-infringing or of removing them and refunding the purchase price. The foregoing states the Company's entire and exclusive liability with respect to a claim of infringement, and we will not be liable for any damages whatsoever suffered by reason of any infringement claimed, except as provided herein.

11. CONFIDENTIALITY. "Confidential Information" means any of the Company's business information, specifications and all related writings, drawings, designs, software applications and similar works or any other information disclosed by the Company that are disclosed as "Confidential" or proprietary. All Confidential Information shall be the exclusive property of the Company and we retain all right, title and interest in and to the same. Purchaser agrees to use Confidential Information for the exclusive purpose of performance under the Contract and not to disclose or provide any Confidential Information to any third party and to take all necessary measures to prevent any such disclosure by its employees, agents, contractors or consultants. Upon request of the Company or completion of the Contract, Purchaser shall return all Confidential Information to the Company and provide certification of such return.

12. TOOLING; SPECIAL JIGS, FIXTURES & PATTERNS. Charges made for tools, jigs, fixtures, patterns and equipment made or acquired by the Company in connection with your Order and utilized in manufacturing will be considered the exclusive property of the Company, without credit to Purchaser.

13. INSPECTION, RECORDS, AUDITS & PROPRIETARY DATA. Inspection of goods in our facility by Purchaser and/or its representative will be permitted, provided that (a) Purchaser gives reasonable written notice of its desire to inspect the goods, and (b) the inspection does not unduly interfere with the Company's production

work flow. Neither Purchaser nor any of Purchaser's representatives shall have any right to examine or audit the Company's cost accounts, books or records of any kind, or be entitled to, or have control over, any engineering or production prints, drawings or technical data which the Company, in our sole discretion, may consider in whole or in part to be proprietary to our business.

14. GOVERNING LAW & DISPUTE RESOLUTION.

(A) Governing Law. The Contract and these Terms and Conditions are governed by and interpreted under the laws of the State of Colorado, without regard to its choice of law rules unless the matters in dispute come within the scope of Article 2 of the Uniform Commercial Code (UCC-Sales) prepared under the joint sponsorship of The American Law Institute and the National Conference of Commissioners on Uniform State Laws, in which event the dispute shall be governed by and interpreted under the referenced Code in effect on the date of this Contract.

(B) Dispute Resolution. Except for any action where the sole relief sought is an injunction, any controversy or claim arising out of or relating to the Contract and these Terms and Conditions, or the making, performance or interpretation hereof, and the dispute cannot be settled by direct negotiations, either Party may initiate mediation. If the parties fail to settle the dispute within 30 days of notice of mediation, either party may initiate binding arbitration under this paragraph. The place of arbitration shall be in the Boulder-Denver Metro-Area of Colorado, and shall be conducted by one arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any binding arbitration award may be entered in any court having jurisdiction thereof.

15. GENERAL PROVISIONS.

(A) Prior Agreements. This Contract comprises the complete and exclusive agreement between the parties regarding the subject matter of this Contract, and supersedes all oral and written communications, negotiations, representations or agreements made or entered into before the Effective Date.

(B) Amendments. No amendment to this Contract is effective unless made in writing and signed by authorized representatives of Purchaser and Seller. Specifications, drawings, price lists and documents of a technical nature prepared by Seller and submitted to Purchaser to describe the equipment and parts being purchased hereunder automatically become part of this Contract.

(C) Survival. All provisions set forth herein regarding warranty, confidential information, indemnification, liability and limits thereon, and any other provisions that survive on their terms including all provisions relating to tax, import / export, inspection, dispute resolution and governing laws, and all causes of action which arose prior to completion or termination of this Contract shall survive indefinitely until, by their respective terms, they are no longer operative.

(D) Conflicts. If a conflict exists between these Terms and Conditions and any other writings connected with this Contract, these Terms and Conditions shall prevail with respect to such conflict. In the event that any provisions of these Terms and Conditions is held to be illegal, invalid or unenforceable under the present or future law, rule or regulation, such provision shall be deemed stricken from these Terms and Conditions, but such illegality, invalidity or unenforceability shall not invalidate any of the other provisions of these Terms and Conditions.