



TERMS AND CONDITIONS OF SALE

Oceanariums, LLC., hereinafter referred to as Seller, may offer to modify existing designs to suit particular needs of Buyer's programs and to prove-out changes according to Seller approved plans. During the course of these actions, Seller may provide Buyer with Outline/Interface and/or General Arrangement drawings of sufficient detail for Seller's designs and ideas to be evaluated by Buyer. Furnishing of drawings or data does not grant or imply the granting of any rights to the Buyer (or any third party) in the information contained therein. Seller hereby offers to supply the items and/or services identified in the quotation, proposal, or acknowledgment expressly conditional upon the Buyer's acceptance of the provisions stated below. Seller, by its commencement of performance, shall not prejudice its rights to enforcement of the following conditions:

1. EXPIRATION OF OFFER: All offers of sale by Seller are firm for thirty (30) days from the date of the offer unless otherwise specifically stated in the Seller's offer or as otherwise may be expressly agreed to in writing by the Seller. All such offers of Seller are subject to change without notice after this period unless withdrawn earlier by the Seller.

2. ACCEPTANCE OF ORDER: None of Buyer's Terms and Conditions shall alter Seller's Terms and Conditions in any respect and shall not apply to this transaction unless specifically agreed to in writing by Seller. Any Buyer terms or purchase order shall be considered only as an offer not binding on Seller unless accepted expressly in the manner prescribed in the preceding sentence. Acceptance of Buyer's offer by Seller shall not be construed by a failure of Seller to expressly reject any such offer or by commencement of performance by Seller while such offer is outstanding.

3. BUYER'S OBLIGATION OF ASSISTANCE: Except to the extent Seller has otherwise assumed such responsibility for itself under express provisions of the attachment hereto entitled "Statement of Work" Buyer shall:

- a) Place at Seller's disposal all information necessary for performance of the work including any plans, plant layout, wiring instructions and operational information that may reasonably be expected to affect the performance of the work. This includes to the extent reasonable previous studies or reports and other data relative to the design, installation and selection of equipment for the work to be performed by Seller.
- b) Buyer guarantees access to and to make all reasonable provisions for Seller to enter on its property and other public and private lands as is required for performance of the work including safe storage of equipment, materials and tools during the process of any such off-site work.
- c) Buyer agrees to cooperate in all reasonable ways necessary to Seller's performance of the work.
- d) Buyer covenants that it has disclosed fully and accurately to Seller all general and local conditions that can affect performance of the work prescribed hereunder or the price thereof. Buyer acknowledges that Seller

is entitled to rely on information furnished by Buyer in developing its specifications, equipment selection, price and other terms of this order.

4. FOB POINT AND SHIPMENTS: If this order is shipped within the United States, all supplies and services are sold FOB origin and the point of origin shall be that of Seller's manufacturing facility identified in its quotation or proposal. If this order is shipped outside the United States, all supplies and services shall be sold Ex-Works, Seller's facilities in Ormond Beach, Florida per INCOTERMS 2000. Seller assumes no responsibility for delay, breakage, damage or loss after delivery to the carrier. Seller reserves the right to make partial shipments at its discretion.

5. PAYMENT TERMS: Terms are "net thirty (30) days" calculated from the date of receipt of invoice if credit arrangements have been approved in advance by Seller. Otherwise, payment is required before shipment or delivery in a form and arrangement acceptable to Seller. Payment - excluding any shipping charges - can be discounted by one percent (1%) of the invoice amount if paid within ten (10) days of the invoice date. In addition to any other rights or remedies available to Seller, failure to pay the amount(s) due within the time specified will result in a late charge of \$5.00 or one and one half percent (1.5%) per month, which-ever is the greater to Buyer's account until final payment.

6. DELIVERY: The prices quoted are for the delivery dates provided on the Seller's quotation or proposal on an "After Receipt of Order (ARO)" basis. Firm deliveries will be provided to Buyer within one (1) week of order placement. While the Seller shall have no obligation to comply with unilateral directives to change schedules or temporarily cease work, Seller will endeavor to accommodate Buyer's reasonable written request for acceleration or deceleration made at least sixty/thirty (60/30) days respectively prior to scheduled delivery. Such changes may or may not be accepted by Seller at its sole discretion. In the event Seller accepts such changes, Seller shall be under no obligation to comply therewith until a price adjustment acceptable to Seller is negotiated between the parties and evidenced by a written order amendment authorizing the change.

7. EXPORT REGULATIONS: Buyer acknowledges that if the items purchased hereunder are to be exported, they are subject to the U.S. Commerce and/or State Department Export Regulations. Buyer accepts full responsibility for and agrees to comply fully with such regulations, including obtaining export licenses and re-export permission unless otherwise agreed by Seller.

8. CANCELLATION: In the event of cancellation of this order for breach of the provisions hereof by Buyer, Seller shall have no further liability to Buyer and Seller shall not be liable for any costs of cancellation, special, incidental or consequential damages (including punitive or exemplary damages) for any cause or of any nature whatsoever and such cancellation shall be in addition to any other rights and remedies of Seller under this order or at law. Further, Seller reserves the right to cancel this order or any portion thereof without liability if Buyer fails to make payment as required by the terms of this order or if Buyer is adjudicated bankrupt, files a petition in bankruptcy, makes an assignment for the benefit of creditors or if action under any law for the relief of debtors is taken.

Further, if this order is accepted under a U.S. government contract it may be terminated only for the convenience of the U.S. Government in accordance with applicable federal procurement laws and regulations which shall govern the rights and obligations of the parties in any such termination.

9. PATENT INFRINGEMENT: To the extent that the items ordered are manufactured to designs, drawings, specifications or instructions furnished by Buyer, Buyer guarantees that the manufacture and sale or use of such items will not infringe upon any U.S. or foreign patents. Buyer further agrees to indemnify and hold harmless the Seller from any expense, loss, cost, damage or liability of any kind which may be incurred because of any such infringement or alleged infringement of patent rights with respect to such items and to defend, at its own cost and expense, any action or claim in which such infringement is alleged. Buyer shall promptly notify Seller of any such action and shall provide Seller an opportunity, at Seller's option, to participate in any defense of such action or claim at Seller's own expense.

Seller shall hold Buyer harmless from costs actually incurred arising directly from the defense of any suit for infringement of any domestic or foreign patent by a Seller-manufactured item, provided Seller shall be given timely written notice of such suit and the option to replace the same, obtain a license, make other arrangements to avoid litigation or to defend the suit. No indemnification is offered for alleged infringement arising from the use of Seller's items in combination with other items supplied by Buyer or from compliance with drawings, specifications or instructions furnished by Buyer as described in the paragraph above. Further, no indemnification by Seller applies if this order is accepted under a U.S. government contract containing an Authorization and Consent Clause applicable hereto as prescribed by federal procurement laws and regulations.

10. PROPERTY OF SELLER: All designs, inventions (whether or not patented) processes, technical data, drawings, plans and/or confidential information related to the items or services to be purchased (Hereinafter "Property"), not furnished by Buyer, are exclusively Seller's Property, and all rights, title and interest in and to such Property shall remain exclusively in Seller notwithstanding Seller's disclosure of any part thereof to Buyer or Buyer's payment to Seller for engineering or nonrecurring charges. Buyer shall not use or disclose such Property to any third party or any one not having a need to know, including employees, without the prior written consent of Seller. Title to all tools, test equipment and facilities not furnished by Buyer or specifically paid for by Buyer as a separate line item under any order, shall remain with Seller. Further, Seller does not agree to submit to Buyer as a result of the Consideration paid under this order, any information, technical data or drawings which are proprietary to Seller; nor does Seller agree to grant to Buyer any patent rights, title or license without Seller's expressed prior written consent.

11. EQUIPMENT WARRANTIES AND REMEDY: Seller agrees to supply goods that conform to the design specifications provided by Buyer and warrants that each newly manufactured item (Product) sold hereunder and such portion of a repaired/refurbished Product as has been repaired or replaced by Seller under this warranty, shall be free from defects in material or workmanship at the time of shipment and shall perform during the warranty period in accordance with the design specifications. Buyer acknowledges that Seller did not design the Product and that Buyer is relying on any representations of Seller concerning the design of the Goods or the fitness of the Goods for a particular purpose. For field installable Product, this warranty is only valid where Seller's personnel, or personnel approved by Seller, have performed the installation of the Product.

The warranty period for newly manufactured Products shall extend twelve (12) months from the date of shipment. The warranty period for repaired/refurbished articles shall extend for the unexpired warranty period of the Product repaired or replaced. This warranty shall not extend to any item that upon examination by Seller

is found to have been subject to mishandling, misuse, negligence, tampering, repair or alteration by Buyer without Seller's written approval, improper installation, operation or maintenance not in accordance with Seller's instructions, or accident.

Should any failure to conform to these warranties be discovered and brought to Seller's attention during the warranty period and be substantiated by examination at Seller's factory or by authorized field personnel, then at its own cost Seller shall correct such failure by, at Seller's option, repair or replacement of the non-conforming item or portion thereof or return the unit purchase price of the non-conforming item or component. Failure to promptly notify Seller in writing upon discovery of any non-conforming items during the warranty period shall void the warranty as to such items. Buyer shall describe any such non-conformity in detail, expressing its position as to return of any article under the remedy provided herein.

No returns shall be accepted without prior approval by Seller, who shall issue an authorization for the return. The cost of transportation for articles returned to Seller shall be paid by the Buyer. In the event the item is found to conform to the specifications and requirements of this order, the transportation charges related to the return and re-delivery thereof shall be paid by Buyer.

Buyer agrees that this remedy shall be its sole and exclusive remedy against Seller and that no other remedy shall be available or pursued by Buyer against Seller. In no event shall the Seller be liable for any costs or expenses in excess of those described in this paragraph, any costs associated with the recovery of defective product to the point of delivery, and expressly excluding any liability or damages for special, incidental or consequential damages. In the event that any third party makes any claim or brings any suit arising out of the use of a Product, Buyer agrees to defend, indemnify and hold Seller harmless from all claims, causes of action, liability, expenses and costs (including attorney's fees) except if caused by the sole negligence of Seller. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES, EITHER EXPRESSED OR IMPLIED INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. WARRANTY FOR SERVICES: Seller warrants that all work hereunder shall be performed in accordance with the standards employed by Seller in performing the same or similar services for itself. Seller disclaims any and all other representations or warranties expressed or implied including without limitation any representation or warranty that any particular purpose or standard of care intended or desired or any particular results to be achieved by Buyer through the services or installation and operation of the items to be delivered hereunder. In no event shall the Seller be liable for special, incidental or consequential damages, (excluding personal injury, death or property damage caused solely by Seller) resulting from services provided to Buyer.

13. CONFIGURATION STATUS AND SUBSTITUTION OF MATERIALS: If the purchase order does not specify the revision level of applicable drawings and specifications, then the order will be delivered "same as last build" or to the latest revision in Seller's Engineering files, whichever is the most recent configuration. Seller reserves the right to make substitution of materials without degrading the quality of product. Customer approval will be solicited when changes affect form, fit or function. Seller further reserves the right to discontinue any items without notice and to change or modify specifications at any time without incurring any obligation to incorporate new or modified features in components or products previously sold or shipped.

14. LIMITATION OF LIABILITY: Notwithstanding any other provisions hereof, Seller shall not under any circumstances be liable for any damages greater than the unit price of any item(s) sold hereunder with respect to which any claim is made, including all costs and expenses and attorney fees, special, incidental or consequential damages of any nature whatsoever whether arising from Seller's breach of contract, or breach of expressed or implied warranty, arising in tort, at law or in equity, or any law giving rise to a claim of strict liability or for any other cause.

15. INSURANCE: Buyer shall maintain its usual and customary insurance coverage for automobile, workmen's compensation and third party liability claims during performance of this order and, if requested by Seller, name Seller an insured under its third party liability coverage.

16. NON-WAIVER: The failure of Seller to enforce at any time any of the provisions of this order shall not constitute a waiver of such provisions or a waiver of the right of Seller to enforce any or all provisions. If any term or provisions of this order is held invalid or unenforceable by any court of competent jurisdiction, the remainder of this order shall continue to be valid and binding upon the parties unless performance thereof is rendered legally impractical and no longer fulfills the intention of the parties under this order.

17. APPLICABLE LAW AND CHOICE OF VENUE: The validity, interpretation and performance of these Terms and Conditions and any issue arising out of a purchase made from Oceanariums, LLC. shall be governed by the laws of the state of Florida, U.S.A. that are in force and effect on the date of delivery of the goods purchased by Buyer from Seller ("the Goods") by Oceanariums, LLC. Where not modified by these Terms and Conditions, the provisions of Florida's enactment of article 2 of the Uniform Commercial Code shall apply to this transaction. The parties agree that the exclusive venue for any dispute arising out of this sale or the use of the Good shall be Volusia County, Florida. Notwithstanding this choice of venue provision, however, Buyer agrees that in the event that Seller is sued in some other jurisdiction or venue with regard to a claim arising out of the same or use of the Goods, Buyer may be joined by Seller or others as an additional party in any such lawsuit and any dispute between Buyer and Seller maybe resolved in that jurisdiction and venue as part of any such lawsuit.

18. ASSIGNMENT: Except as otherwise expressly provided herein, no assignment of this order or Buyer's rights under this order shall be made by Buyer without the prior written agreement of the Seller. However, Seller may assign this order and its rights and obligations to any of its affiliates or subsidiaries in its sole discretion at any time and without additional consideration.

19. FORCE MAJEURE: In addition to other liability limitation herein contained neither party shall be responsible to the other for any loss or damage due to failure or delay in performance or delivery of any of the items or services required under this order when such delay or failure is due to causes beyond the failing or delaying parties reasonable control. Such causes shall include without limitation fires, floods, epidemics, quarantines, unusually severe weather, embargoes, wars, political strife, riots, terrorist acts, delays in transportation, compliance with any regulation or directives of any national, state or local municipal government or authority and unforeseeable shortages in fuel, power, materials or labor.

20. ORDER TERMS EXCLUSIVE: This order constitutes the entire agreement between the parties concerning the subject matter of this order and the parties acknowledge and agree that none of them has

made any representation with respect to the subject matter of this order or any representations including the execution and delivery hereof except as specifically set forth herein.

21. MODIFICATION: This order may not be modified except by written instrument executed by the parties with the same formality.