

## MELLEN & ASSOCIATES, INC. GENERAL TERMS AND CONDITIONS

1. **Equipment Sale.** MELLEN & ASSOCIATES offers to sell to Customer the equipment, including installation and/or startup services, if any, described in MELLEN & ASSOCIATES'S Proposal (collectively, the "Equipment"), subject to the terms and conditions set forth herein. This offer is conditioned upon Customer's assent to the exclusive applicability of these terms and conditions. No additional, different, or inconsistent terms set forth in any purchase order or other document of Customer shall be binding on MELLEN & ASSOCIATES, unless otherwise expressly agreed to in a writing signed by MELLEN & ASSOCIATES.
2. **Conflicting Terms.** These General Terms & Conditions, any corresponding quotation ("Quote") constitute the entire Agreement relating to the sale of "Products" (which includes, but is not limited to, all components, controls, equipment, parts, products, materials, and services) by MELLEN & ASSOCIATES to Buyer. Any terms and conditions contained in Buyer's purchase order, request for quotation or any other document generated by Buyer which are different from, in addition to, or vary in any way from this Agreement shall not be binding upon MELLEN & ASSOCIATES unless agreed to in a separate, issue-specific, written Agreement signed by a corporate officer of MELLEN & ASSOCIATES.
3. **Payment.** Customer shall pay to MELLEN & ASSOCIATES the full purchase price for the Equipment in the amount and subject to the payment terms set forth in MELLEN & ASSOCIATES'S Proposal. All amounts referred to herein are denominated and shall be paid in U.S. Dollars. Unless otherwise stated in MELLEN & ASSOCIATES'S Proposal, prices are F.O.B. shipping point and payment terms are net thirty (30) days from date of MELLEN & ASSOCIATES'S invoice. Payments received after the due date shall bear interest at the rate of 1-1/2% (or the highest rate permitted by law, if less) for each month or portion of a month until paid. Customer shall reimburse MELLEN & ASSOCIATES for all costs, including reasonable attorneys' fees, incurred by MELLEN & ASSOCIATES to enforce Customer's payment obligations.
4. **Security Interest.** Customer grants MELLEN & ASSOCIATES a security interest in Customer's interest (if any) in the Equipment (and any attachments, additions or improvements and proceeds) to secure Customer's payment obligations hereunder, whenever arising. Customer shall execute financing statements and take all other acts requested by MELLEN & ASSOCIATES to perfect, maintain and evidence such security interest.
5. **Taxes, Customs and Charges Unless Otherwise Specified in MELLEN & ASSOCIATES'S Proposal.** All applicable federal, state, or local sales, use, or excise taxes, and any tariffs, duties or surcharges which may be assessed are the sole responsibility of the Buyer and shall be in addition to the price or prices stated on the Quote and/or invoice, unless otherwise stated. MELLEN & ASSOCIATES shall have the right to add to the price of the Products invoice separately any such tax, tariff, duty, or surcharge as may be imposed.
6. **Shipment and Delivery.** Delivery of the Equipment shall be made in material compliance with the schedule set forth in MELLEN & ASSOCIATES'S Proposal. Unless otherwise specified in MELLEN & ASSOCIATES'S Proposal, MELLEN & ASSOCIATES shall pack, crate, label and ship the Equipment in accordance with its customary methods. Delivery of each item of equipment included in the Equipment shall be complete upon tender of the Equipment to the carrier, F.O.B. shipping point, whereupon title and risk of loss of the Equipment shall pass to Customer. Unless specified otherwise in MELLEN & ASSOCIATES'S Proposal, Customer shall be solely responsible for unloading, storing, assembling, and installing the Equipment.
7. **Inspection.** Buyer shall notify MELLEN & ASSOCIATES within 48 hours of delivery of any damage to the Products or of any other complaint whatsoever Buyer may have concerning delivery. Buyer shall also note any damage on delivery tickets and shipping receipts at the time of delivery. The failure of Buyer to make such timely complaints and note any damage shall be deemed an acceptance of the Products and a waiver of any claims concerning delivery.
8. **Ownership of Design Materials.** All manufacturing devices, drawings, specifications, designs, plans, computer programs and other documents, information or data prepared by MELLEN & ASSOCIATES in connection with its performance hereunder, and all related intellectual property rights, shall be MELLEN & ASSOCIATES'S property. MELLEN & ASSOCIATES hereby grants to Customer a non-exclusive, non-transferable license for Customer to use any such information for Customer's use, maintenance, or repair of the Equipment. In no case shall Customer provide such information to third parties without MELLEN & ASSOCIATES'S prior written consent.

9. **Changes in the Scope of the Work**. No change in the scope of the work set forth in MELLEN & ASSOCIATES'S Proposal shall be implemented unless Customer and MELLEN & ASSOCIATES agree in a writing signed by both parties as to the nature of the change and its price and schedule impact.
10. **Waiver of Claims**. Notwithstanding anything else herein, MELLEN & ASSOCIATES and Customer waive all claims against each other (and against each other's affiliates, (sub) contractors, vendors, employees, agents, and representatives) for loss or damage to any of their respective property.
11. **Warranty**. MELLEN & ASSOCIATES warrants to Customer that the Equipment will conform to the specifications or description set forth in MELLEN & ASSOCIATES'S Proposal and will be free from defects in material and workmanship for a period of twelve (12) months after installation or eighteen (18) months after final shipment, whichever is shorter (the "Warranty Period"). The foregoing warranties are conditioned upon Customer's (a) giving MELLEN & ASSOCIATES notice of the defect within thirty (30) days after Customer discovers or should have discovered such defect and, in any event, within thirty (30) days after the end of the Warranty Period, and (b) keeping adequate records to establish it has operated and maintained the Equipment in accordance with MELLEN & ASSOCIATES'S instructions and has not undertaken any repair or alteration of the Equipment without MELLEN & ASSOCIATES'S consent, and (c) not being in default of any payment obligation to MELLEN & ASSOCIATES. The foregoing warranties shall not apply to normal wear and tear, decomposition by chemical action, wear caused by the presence of abrasive materials or damages caused in transit or by misuse, neglect, accident, improper installation, negligence, or abuse or by abnormal conditions of temperature, moisture, or dirt. This warranty does not apply to parts or repairs. THE WARRANTIES SET FORTH IN THIS SECTION ARE MELLEN & ASSOCIATES'S SOLE AND EXCLUSIVE WARRANTIES. MELLEN & ASSOCIATES MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION.

Within a reasonable period after receipt of timely notice of a breach of the foregoing warranty, MELLEN & ASSOCIATES shall, at its sole option, either (i) repair or replace such defective Equipment or (ii) refund the amount paid for the defective Equipment (or issue a credit for any such unpaid amount). The foregoing shall be Customer's sole remedy for breach of warranty. If MELLEN & ASSOCIATES determines any claimed defect is not covered by the foregoing warranty, Customer shall pay MELLEN & ASSOCIATES the customary charges of MELLEN & ASSOCIATES then in effect for any repair or replacement effected by MELLEN & ASSOCIATES.

12. **Backcharges**. Without exception, MELLEN & ASSOCIATES will not be responsible for any backcharges unless a written request is submitted to, and approved in writing by, MELLEN & ASSOCIATES prior to work being performed or any cost being incurred. Any such request must be submitted at least three (3) working days before such approval is required to permit MELLEN & ASSOCIATES to conduct a site visit or such other investigation as it may deem appropriate.
13. **Indemnification**. (a) MELLEN & ASSOCIATES shall release, hold harmless, indemnify, and defend Customer from and against any liability, claim or cause of action incurred by Customer as a result of third-party claims for personal injury or damage to tangible property, if caused solely by the negligence of MELLEN & ASSOCIATES or any of its employees, subcontractors, or suppliers in the performance of MELLEN & ASSOCIATES'S obligations hereunder.  
  
(b) MELLEN & ASSOCIATES shall release, hold harmless, indemnify, and defend Customer from and against all judgments, decrees and reasonable costs resulting from any apparatus claims of U.S. patents issued at the time of this offer, provided such infringement is based exclusively on products designed and manufactured by MELLEN & ASSOCIATES. In satisfaction of such obligation, MELLEN & ASSOCIATES may, at its option and expense, (i) modify or replace all of the infringing part of the Equipment so that it is no longer infringing, (ii) procure for the Customer the right to continue using the Equipment, or (iii) remove the Equipment and refund the purchase price to the Customer.  
  
(c) Customer shall release, hold harmless, indemnify, and defend MELLEN & ASSOCIATES from and against any liability, claim or cause of action relating to (i) the design of the Equipment or any containers in which it is shipped, to the extent made pursuant to Customer's design or specifications, (ii) the environmental and other conditions of Customer's premises, or (iii) Customer's negligence or breach of its obligations hereunder.

(d) Any claim for indemnification under this Section 11 shall be subject to the following: (i) claim therefor must be made within thirty (30) days after the end of the Warranty Period; (ii) the claimant must provide reasonable cooperation in the defense thereof; and (iii) the indemnifying party shall have sole authority for the direction of the defense and the negotiation of any compromise or settlement; provided that the claimant may monitor such matters through counsel of its choice at its own expense. The provisions of this Section 11 shall survive termination of this Agreement.

14. **Force Majeure.** A “Force Majeure Event” shall mean any event, condition or circumstance which is beyond MELLEN & ASSOCIATES'S reasonable control, including without limitation, acts of God, casualties, epidemics, civil disturbances, war, riots, sabotage, accidents, thefts, changes in law or other acts of governmental authorities, strikes, or other labor shortages or disturbances, unavailability or excessive cost of materials, discovery of any concealed or unknown physical condition or substance at Customer’s facility or acts or omissions of Customer or its employees, (sub)contractors, or other persons for whom Customer may be liable. MELLEN & ASSOCIATES shall be entitled to a schedule adjustment upon the occurrence of a Force Majeure Event. MELLEN & ASSOCIATES shall be entitled to a purchase price adjustment upon the occurrence of a Force Majeure Event only if its direct costs are increased as a result of such Force Majeure Event, and MELLEN & ASSOCIATES is able to document such increase.
15. **Dispute Resolution.** MELLEN & ASSOCIATES and Customer shall negotiate in good faith to resolve any dispute relating hereto. Failing such efforts, the dispute shall be finally settled by binding arbitration in Minnesota pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The arbitration panel shall consist of three individuals experienced in the discipline that is the subject of the dispute and shall be jointly selected by MELLEN & ASSOCIATES and Customer. If the parties are unable to agree upon the arbitrators within twenty (20) days, then each party shall select one arbitrator and those arbitrators shall select a third arbitrator. The decision of a majority of the arbitrators shall be the decision of the panel. Judgment may be entered upon the arbitrators’ decision in any court of competent jurisdiction. The prevailing party in any arbitration shall be reimbursed by the other party for all costs, expenses, and charges, including without limitation reasonable attorneys’ fees, incurred by the prevailing party in connection with the arbitration.
16. **Responsibility.** It is Buyer’s sole responsibility to ensure that all Products related to this sale are compatible and compliant with Buyer’s systems. MELLEN & ASSOCIATES is not responsible for insuring system compatibility or compliance of any Products unless expressly stated otherwise in the Quote or agreed to in a separate, issue-specific, written Agreement signed by a corporate officer of MELLEN & ASSOCIATES.
17. **Returns.** Buyer may only return Products with the prior written consent of MELLEN & ASSOCIATES, at MELLEN & ASSOCIATES’s sole discretion. MELLEN & ASSOCIATES accepts no responsibility for Products returned without prior written authorization. Products must be returned in saleable condition within 30 days from the date of invoice. Products will not be accepted for return if they are damaged or used, custom manufactured for the Buyer, not in their original packaging (unopened), not purchased from MELLEN & ASSOCIATES or otherwise incapable of being resold by MELLEN & ASSOCIATES. When Products are authorized to be returned for any reason other than Repair Warranty, the amount of credit may be subject to a restocking charge. Returned Products must be sent freight prepaid to the appropriate address indicated by MELLEN & ASSOCIATES. Any unauthorized returned Product will be returned at Buyer’s expense. If a Product is returned without such consent, it shall thereupon become the property of MELLEN & ASSOCIATES.
18. **Confidential Treatment of Information.** All information contained in MELLEN & ASSOCIATES'S Proposal regarding the Equipment, process design and the price thereof are submitted without cost to Customer but with the understanding that such information is for the sole use of Customer and that Customer will not disclose it to anyone outside its own organization and will use its best efforts to see that no one to whom such information is so disclosed shall disclose the same to anyone outside Customer’s organization.
19. **Cancellation.** Buyer may only cancel an order with the written consent of MELLEN & ASSOCIATES and at MELLEN & ASSOCIATES’s sole discretion. If such consent is granted by MELLEN & ASSOCIATES, Buyer shall pay MELLEN & ASSOCIATES for (a) all restocking, reshipping and return charges which may be incurred, (b) the actual cost of any components, equipment, parts or materials, if such components, equipment, parts or materials were made to order or otherwise customized for Buyer for the order, or cannot be returned, and (c) all services and work performed by MELLEN & ASSOCIATES as of the date on which cancellation is approved. MELLEN &

ASSOCIATES shall have the absolute right in its sole discretion to cancel this Agreement without penalty upon a breach thereof by Buyer, Buyer's failure to timely make any payment required by this Agreement, the pending or actual insolvency or bankruptcy of the Buyer, if it determines that any errors in estimating or design have been made, or if any unforeseen hazards or conditions arise or are discovered, or for any other reason whatsoever.

20. **Limitation of Liability.** (a) Notwithstanding anything to the contrary herein, the aggregate liability of MELLEEN & ASSOCIATES, including without limitation for or with respect to MELLEEN & ASSOCIATES'S affiliates, contractors, suppliers, employees, agents or representatives, arising out of or in connection with this Agreement or the sale or use of the Equipment, including without limitation claims for indemnification, and whether based on contract, strict liability, negligence or other tort, pollution, disease or otherwise, shall not exceed an amount equal to the contract amount between Customer and MELLEEN & ASSOCIATES.  
  
(b) Notwithstanding anything to the contrary herein, in no event shall MELLEEN & ASSOCIATES be liable for consequential, incidental, indirect, special, exemplary or punitive damages of any kind, including without limitation for loss of profits, revenues or product, or loss of use of any property (whether by shutdown, operation at less than capacity or otherwise), regardless of whether any of the foregoing damages arise directly or indirectly through an indemnification or contribution obligation and whether arising out of breach of contract or warranty, tort, product liability, strict liability or any other legal theory.
21. **Notices.** All notices regarding this Agreement must be in writing and shall be deemed properly served if delivered in person or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the following addresses: If to MELLEEN & ASSOCIATES: 3404 South 11<sup>th</sup> Street, Council Bluffs, IA 51501. All notices shall be deemed received on the date of delivery, if delivered in person, or if mailed, on the date of the registered or certified mail.
22. **Severability.** In case any provision hereof is held to be invalid, illegal, or unenforceable, (a) such provision shall be limited or excluded only to the extent necessary to make it valid, legal, and enforceable, and (b) the validity, legality and enforceability of the remaining provisions shall not be affected.
23. **General Provisions.** The Agreement contained herein may not be cancelled or amended except by mutual written Agreement of MELLEEN & ASSOCIATES and Customer. No course of dealing or failure to strictly enforce any term shall be construed as a waiver thereof. Waiver of any term shall not constitute a waiver of any other term or a continuing waiver. This Agreement shall be binding on the parties' respective successors and assigns; provided that Customer may not assign, delegate, or permit any other transfer of this Agreement without MELLEEN & ASSOCIATES'S prior written consent. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa, without regard to its conflict of law's provisions. This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof, and supercedes all previous oral and written negotiations, representations, Agreements, or other communications.
24. **Photographs.** MELLEEN & ASSOCIATES may photograph areas where its work is being performed and use same for advertising or promotional purposes.