



Terms and Conditions of Sale

1. Acceptance and Agreement

ESS Technologies, Inc. hereafter is referred to as the "Seller." Proposals not acted upon within thirty (30) days must be reconfirmed as to price, delivery, terms, and specifications. All information in the proposal is confidential and has been prepared for the undersigned Buyer's use solely in considering the purchase of the equipment described. Transmission of all or any part of this information to others by Buyer is unauthorized without Seller's written consent. Three (3) written documents: Seller's proposal accepted and signed by the Buyer, Buyer's purchase order, and Seller's acceptance of the order, constitute the entire contract between the Seller and the Buyer (collectively, the "Contract"), modified by written agreement between Buyer and Seller only. "Acceptance" of the equipment shall take place at Seller's place of business in Blacksburg, Virginia in accordance with Seller's customary business practices.

2. Payment Terms

As specified above. The price quoted is exclusive of any Local, State, Federal, Privilege, Use or other taxes of any kind, which may now be in effect or hereafter apply. The Buyer will be invoiced for applicable taxes or, in lieu thereof, the Buyer shall provide Seller with a tax exemption certificate acceptable to the proper taxing authority. All payments made after thirty (30) days incur a late charge of one and one-half percent (1.5%) per month (eighteen percent (18%) per year) of the unpaid balance of the Contract until such price is paid in full; provided that in no event shall such late charge exceed the maximum amount or rate permitted applicable by law. The foregoing late charge is intended to reimburse Seller for the financial and administrative costs it incurs as a result of Buyer's failure to pay the Contract price when due. Buyer shall be liable to Seller for all costs of collections, including without limitation, attorneys' fees. All payment terms are subject to credit approval by Seller. Seller reserves the right to invoice on finished goods if Buyer holds delivery beyond projected shipping date. Seller reserves the right to invoice on partial shipments.

3. Cancellation and Claims

Orders may not be changed or canceled by the Buyer after acceptance by the Seller for any reason without Seller's prior written consent. Any permitted change may result in additional charges to Buyer. Seller shall consent to cancellation only when the Buyer agrees in writing to indemnify Seller against all losses Seller incurs as a result of or in connection with cancellation, including Seller's Cancellation Costs. No request for cancellation received within a one hundred (100) day period preceding the estimated time of shipment shall be considered by Seller. Buyer hereby expressly agrees that any attempt to cancel the purchase order after acceptance by Seller without Seller's prior written consent shall be deemed an anticipatory repudiation of the Seller's "Terms and Conditions of Sale." Shipping loss or damage claims must be filed by the Buyer with the delivering carrier. All orders are shipped EXW Seller's Plant, Blacksburg, Virginia.

If an order is canceled by Buyer in accordance with these Terms and Conditions of Sale, Buyer shall be responsible to pay Seller's expenses at the time of such cancellation plus, at Seller's sole discretion, an amount up to twenty-five (25%) of the Contract price (collectively, the "Cancellation Costs"). Buyer hereby authorizes Seller to retain the Cancellation Costs from any monies deposited by Buyer with Seller, after which, the balance of such deposit(s), if any, shall be returned to the Buyer. Notwithstanding the foregoing, in the event of any breach of this Agreement by Buyer or failure of Buyer to take possession of the Equipment after acceptance, Seller, in addition to all other legal rights and remedies, shall be permitted to retain all monies paid to Seller as liquidated damages.



4. Sales by Agent

No person acting as an agent of Seller shall have the authority to bind Seller to any contract. All orders must be accepted in writing at Seller's home office.

5. Shipment

EXW shipping point as per Seller's proposal with machinery mounted on skids only, suitable for domestic shipment unless otherwise specified. Shipping dates given are approximate only and are computed from Seller's receipt at Seller's main offices of all details pertaining to the order essential to its proper execution. Risk of loss, injury or destruction of the equipment shall be borne by the Buyer from and after the date the equipment physically leaves the possession and control of the Seller and any such loss, injury or destruction shall not release Buyer from any obligation hereunder.

6. Freight

Unless otherwise provided herein or elsewhere by Seller, Seller will ship freight collect on all items shipped via motor freight. All transportation costs and risks are assumed by the Buyer. In any event, as provided herein, all orders are shipped EXW Seller's Plant, Blacksburg, Virginia.

Claims for loss or damage in transit are the responsibility of the Buyer; however, Seller will lend every possible assistance. Any claims for shortages not covered by the common carrier, in order to receive consideration, must be made within ten (10) days from date of delivery.

7. Material Escalation

The parties agree that a change in contract price is subject to review in the event of a price escalation in material or equipment costs greater than five percent ("Price Adjustment"). It is the responsibility of the Seller to provide the Buyer notice of such change, the Buyer will issue an amendment to the purchase order within five days after notice of the Price Adjustment.

8. Patents

The Buyer agrees not to copy nor permit anyone else to copy any equipment quoted herein or parts thereof without written approval of the Seller and that it will not knowingly, directly, or indirectly, violate or infringe on or contest the validity of any patent or license rights of the Seller pertaining to any of said equipment or their mode of operation or any of the parts thereof.

9. Taxes

The prices do not include sales revenue, excise, occupation, use, or other taxes or customs duties which are applicable now or which may hereafter be levied or assessed. The sole liability of any and all taxes is that of the Buyer. Any tax imposed by any present or future law on the sale of the articles covered hereby shall be added to the amount to be paid by the Buyer.

10. Delivery

Completion dates submitted are approximate. Furthermore, the Seller shall not be liable for any delays in the delivery of orders due in whole or in part, directly or indirectly, to fire, acts of God, acts of war, strike, lack of raw materials, supplies or components, re-tooling, upgrading of technology, delays of carriers, embargo, government order or directive, or any circumstances beyond the Seller's control. The Buyer agrees that the Seller shall not be liable for any damages, including direct, indirect, consequential, or special damages,



which may result from such delays. To the extent delays in delivery are caused by Buyer, Seller reserves the right to charge, and Buyer agrees to pay, any of Seller's reasonable out of pocket expenses caused by the delay plus reasonable storage charges until Buyer takes delivery.

11. Title

Unless otherwise agreed all sales are EXW Seller's Plant. Title and risk of loss or damage transfers to Buyer at time of shipping the goods covered by Contract.

12. Warranty

Seller guarantees the machine to perform the functions as outlined in this proposal, when supplied with correct size and condition cartons, cases or trays, uniform product, well-sealed when applicable, sufficient air and electrical supply, a suitable adhesive or tape and installed under the supervision of one of the Seller's Field Service Technicians. All equipment of the Seller's manufacture is guaranteed against defective materials and workmanship for a period of one (1) year commencing at date of shipment. The Seller shall be released of all obligations under its warranty in the event the machine, as it was sold, has been subject to neglect, improper storage, accident, misuse or improper operation, power surcharges or power insufficiencies, or if repairs or modifications are made by persons other than the Seller unless such repairs are made with the Seller's prior written consent. Seller agrees to replace or repair, free of charge (excluding labor charges) EXW Seller's plant, any part or parts which fail within said period, provided that any such defect occurs under normal operating conditions and provided further that there has been proper maintenance of the machine by Buyer. Equipment purchased by the Seller from vendors will carry the vendor's specific guarantee.

If the Buyer alleges that the equipment does not operate satisfactorily within the warranty period, it shall promptly, and in full written detail, notify the Seller; and the Seller shall be allowed a period of ninety (90) days from the date of receipt of notice in which to conduct such tests as may be required to demonstrate satisfactory performance or make such changes and corrections at the Seller's expense. The Seller's liability shall be limited to accepting return of such equipment EXW the Seller's factory, refunding any amounts paid by the Buyer on account of the purchase price thereof, and canceling any balance still owing on the equipment. Any machine(s) returned to or taken over by the Seller under the terms of this Agreement is to be in the same condition as when shipped to the Buyer.

Seller equipment built for the Buyer as part of a proposed manufacturing line comprised of multiple vendors' equipment is warranted here only for the proposed Seller equipment. Properly functioning (as proposed) Seller equipment requires the Seller invoice to be paid in full regardless of the status of another vendor's equipment.

SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, UNLESS EXPRESSLY INCLUDED IN THESE TERMS AND CONDITIONS OF SALE. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR USE, AND NO PERSON, FIRM OR CORPORATION IS AUTHORIZED TO ASSUME FOR THE SELLER ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF THE MACHINE OR OTHER TERMS OF EQUIPMENT. THE SELLER'S LIABILITY HEREUNDER IS EXPRESSLY LIMITED TO THE REPLACEMENT OF DEFECTIVE PARTS, AND IN NO EVENT SHALL THE SELLER BE LIABLE FOR LOSS OF PRODUCTION OR DAMAGE TO MATERIALS, INJURY TO PERSONS OR OTHER INDIRECT OR CONSEQUENTIAL DAMAGES.

Buyer covenants to inform all subsequent buyers of the goods of the limitation on and exclusion of warranties provided for herein. Buyer hereby indemnifies and agrees to hold Seller harmless from and against all losses, costs and expenses including reasonable attorneys'



fees incurred by Seller as a result of any third-party claim relating to the purchase, safe use, or otherwise relating to, the goods covered by this Agreement.

13. Indemnification

Buyer hereby indemnifies and agrees to defend and hold Seller harmless from and against any and all liabilities, costs, (including attorneys' fees), claims and causes of action in favor of any and all persons arising out of, resulting from or in any way attributable to the use or operation of the Contract goods to which the goods are made a part or to which the goods are attached or within which the goods are enclosed, while in Buyer's possession or subsequent to any transfer to any third party, regardless of whether Seller and/or others may be wholly, concurrently, partially, jointly or solely negligent or otherwise at fault.

14. Limitation of Liability

In no event, as a result of breach of contract, tortious acts or omissions, breach of warranty or negligence, shall Seller be liable for special, indirect, incidental, exemplary or consequential damages including but not limited to loss of profits or revenues, loss of any equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs or claims of purchasers of the Buyer for such damages. Further, Seller will not be liable for any delays or failure to performance of contracts and orders, or in the shipment and delivery of goods, or for any damage suffered by the Buyer by reason of delay, when such delay is, directly or indirectly, caused by or in any manner arise from fires, floods, inclement weather, accidents, riots, war, Government interference, priorities, embargoes, acts of terrorism, strikes, shortage of labor, fuel, materials or supplies, inadequate transportation facilities or any other cause or cause whether or not similar in nature to any of those hereinbefore specified beyond Seller's control. Unless otherwise agreed to in writing by Seller, the equipment manufactured by Seller is not intended for use in connection with any nuclear facility or activity. If so used and any nuclear damage, injury or contamination occurs, Seller disclaims all responsibility and the Buyer shall indemnify Seller from any and all liability for such damage or contamination arising out of such use, including Seller's negligence.

15. Reliance

As more fully set forth in this agreement, Seller and Buyer have reached express agreement with respect to the limitations of liability of Seller in connection with this agreement. Buyer and Seller expressly recognize that (i) the price for which Seller has agreed to perform its obligations under this agreement has been predicated solely on said limitation of liability, and (ii) Seller expressly relied on such limitations of liability and would not have entered into this agreement but for such limitations of liability.

16. Service

For service in nature of installation, demonstration, or repair of any equipment beyond that specifically included in the quoted price, Seller will render such services at its normal charges plus overtime and living and traveling expenses for a Service Technician and/or Engineer. Buyer is responsible for the payment of any and all inspection fees and/or permits required by federal, state, or local authorities.

17. Service Worksite Conditions

All prices and schedules presume (i) the existence of suitable conditions at the Worksite(s) with basic equipment and supplies provided necessary to perform the Services, (ii) the existence of conditions as per Buyer's plan documents and/or specifications, (iii) that access to the Worksite(s) will be granted by Buyer or the applicable owner of the property where the Worksite is located in a method suitable to allow unhindered access to the Worksite to perform the contemplated Services, and (iv) the Buyer will provided written confirmation of



the dates to perform Services at a minimum of 14 days in advance of scheduled work. Any variances in these conditions may require additional payment to be made by Buyer as shall be determined by Seller based upon the conditions encountered and actual and administrative costs incurred as a result of such variances and/or may require delays or changes in the scope of work.

18. Service Access to Worksite

Buyer grants to Seller a right of unhindered entry into the Worksites to deliver or collect materials, tools, or equipment and to perform the Services. This right shall not be terminated by a single use but shall authorize multiple entries as when and where required. Except for instances of gross negligence or willful misconduct, Seller shall not be liable for damage to a Worksite.

19. Performance

When performance of Seller's equipment is based on data furnished by Buyer, it should be understood that Buyer's performance figures are estimates only, based on the best reliable engineering practice. The actual performance obtained by the Buyer may be influenced by any changes in conditions prevailing at the Buyer's plant.

20. Drawings and Manuals/Confidential Information

The price quoted includes one (1) set of applicable drawing prints and one (1) operation and maintenance manual. Additional drawings or manuals will be furnished at a nominal charge. Buyer agrees that at all times during and after the term of this Agreement, it will hold in trust, keep strictly confidential, and not disclose to any third party or use or permit the use of any of the Confidential Information of Seller and its affiliates. For purposes hereof, the term "Confidential Information" means any and all proprietary information disclosed by Seller to Buyer or learned by Buyer as a consequence of this Agreement.

21. Jurisdiction

This agreement shall be construed in accordance with the laws of the State of New York, without reference to its choice of law provisions. Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement, whether in tort or contract or at law or in equity, exclusively in the courts of the State of New York, County of Onondaga, or, if it has or can acquire jurisdiction, in the United States District Court for the Northern District of New York (collectively, the "Chosen Courts"); and (a) irrevocably submits to the exclusive jurisdiction of the Chosen Courts; (b) waives any objection to laying venue in any such action or proceeding in the Chosen Courts; (c) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto; and (d) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with this Agreement. These Terms and Conditions are the only Terms and Conditions that will be binding upon the parties unless additional terms are set forth in writing and agreed between the parties in writing. **EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY LITIGATION IN ANY COURT WITH RESPECT TO, IN CONNECTION WITH, OR ARISING OUT OF THE CONTRACT OR THIS AGREEMENT OR THE VALIDITY, PROTECTION, INTERPRETATION, COLLECTION OR ENFORCEMENT THEREOF.**

22. Form, Formation and Readjustment of Agreement

- a) No other representations, warranties, specifications, oral or written, including any brochures or other published data furnished by Seller, shall modify, or expand the obligations of Seller contained herein; and no sales representative or agent of Seller has any authority to make any additional representations or warranties on behalf of Seller.
- b) The terms and conditions of this Agreement shall not be modified or rescinded except by written instrument executed by an authorized representative of each of Seller and Buyer.

The information contained in this document is the confidential and proprietary property of ESS Technologies, Inc. and may not be used or disclosed without prior written permission.



- c) Seller's acceptance of Buyer's offer to purchase goods is expressly conditional on Buyer's assent to all the terms of this Agreement, notwithstanding any different or additional terms contained in any writing submitted or to be submitted to Seller by or on behalf of Buyer. Buyer's assent will be conclusively established either by Buyer's execution of this Agreement or by Buyer's acceptance of any Goods shipped under this Agreement.

23. Time Limitation on Actions; Waiver

- a) Any action by Buyer for any alleged breach of warranty, breach of contract or tort arising out of or related to this Agreement shall be commenced not later than one (1) year after such cause of action accrues. If Buyer fails to commence any such action within such one (1) year period, the action shall be deemed barred and Seller shall have no liability whatsoever to Buyer with respect thereto.
- b) The rights and remedies available to Seller hereunder shall be cumulative and in addition to any other rights and remedies provided by law. The failure of Seller to insist on strict performance hereof shall not constitute a waiver of, or estoppel against asserting, the right to require such performance in the future, nor shall waiver or estoppel in any one instance constitute a waiver with respect to later breach of similar nature or otherwise.

24. Conditions

Schneider Packaging Equipment Company, Inc. constantly improves our machines. If, during machine engineering, a concept or technological improvement is developed that is superior to the proposed design, we reserve the right to make the necessary changes, without obligation. All such changes would be for furnishing a machine more suitable to meet your production requirements. If we haven't received complete samples, we reserve the right to change specifications, price and design, as stated herein, without incurring obligation. If a proposed size is not available for testing in our plant prior to shipment, then any cost for modifications or tooling will be at Buyer's expense. Every effort will be made to simulate the unavailable sizes(s) to minimize costs.

25. No Strict Construction

The parties to this Agreement have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties to this Agreement, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

26. Proposal Acceptance

Upon receipt of your purchase order, the Buyer agrees to the contents specified herein.