

STANDARD TERMS AND CONDITIONS

WARRANTIES

- A. Futurex offers a standard 1-year warranty at no additional charge to Customer, pursuant to which Futurex warrants that any Futurex product purchased by Customer (the "Product") will be free from defects in material and workmanship under normal use and service. Futurex obligations under this warranty are limited to giving credit for, replacing or repairing, at the option and in the discretion of Futurex, the defect at a Futurex location. The standard warranty period commences on the day the Product is delivered to the customer and runs for 1 year. This warranty shall apply only if (i) Customer returns the Product to Futurex within 1 year after its receipt by Customer, (ii) with transportation charges prepaid, and (iii) the Product is found by Futurex to be defective. Extended warranty packages of 3 and 5 years each are available at an additional charge of 5% and 10% of the MSRP respectively to Customer, but all warranties are subject to all limitations and restrictions set forth herein.
- B.
- C. THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITY ON THE PART OF FUTUREX.
- D. This warranty, as well as any extended warranty, shall not apply to (i) any Product that has been repaired or altered by a party other than Futurex, (ii) any Product that has not been maintained in accordance with any handling or operating instructions supplied by Futurex, (iii) any Product which has been subjected to unusual physical or electrical circumstances or other stress, misuse, abuse, negligence or accidents, or (iv) fulfillment of regulatory compliance requirements and certifications .
- E. Customer may not alter, attempt to alter or otherwise tamper with the Product. If the Product has been tampered with by anyone, no warranties of any kind apply. If the Product is repaired or replaced under warranty, Futurex will pay shipping cost to return the Product to Customer.
- F. This provision does not extend the original warranty period of any Product that has either been repaired or replaced by Futurex.

LIMITATION OF LIABILITY

- A. THE TOTAL LIABILITY OF FUTUREX (INCLUDING ITS SUBCONTRACTORS) ON ANY CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE WHETHER SOLE OR CONCURRENT) OR OTHERWISE, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCT OR THE FURNISHING OF ANY SERVICE SHALL NOT EXCEED THE PRICE ALLOCABLE TO THE PRODUCT OR SERVICE OR PART THEREOF WHICH GIVES RISE TO THE CLAIM AND CUSTOMER WAIVES ANY CLAIMS IN EXCESS OF SUCH AMOUNTS. TO THE

EXTENT ANY SUCH CLAIM MAY NOT BE WAIVED BY CUSTOMER, CUSTOMER HEREBY ASSIGNS SUCH CLAIM TO FUTUREX.

- B. IN NO EVENT SHALL FUTUREX (OR ITS SUBCONTRACTORS) BE LIABLE TO CUSTOMER, OR ANY THIRD PARTY PURCHASING PRODUCT FROM CUSTOMER, FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF REVENUE, LOSS OF USE, COSTS OF CAPITAL, CLAIMS OF CUSTOMERS FOR SERVICE INTERRUPTIONS, AND/OR COSTS AND EXPENSES INCURRED IN CONNECTION WITH LABOR, OVERHEAD, TRANSPORTATION, SUBSTITUTE FACILITIES OR SUPPLY SOURCES; AND CUSTOMER EXPRESSLY WAIVES ANY SUCH CLAIMS. TO THE EXTENT ANY SUCH CLAIM MAY NOT BE WAIVED BY CUSTOMER, CUSTOMER HEREBY ASSIGNS SUCH CLAIM TO FUTUREX.

DELIVERY

Futurex shall deliver the products FOB Futurex facility ("Delivery"). Delivery dates are conditioned on availability of Product and necessary raw materials, parts and supplies; timely satisfaction by Customer of all of its obligations to Futurex; and on prompt receipt by Futurex of all information and documentation necessary to permit Futurex to fulfill its obligations hereunder.

EXPORT SHIPMENT

Upon Customer's request, Futurex may elect, at such price and on such terms as may be subsequently agreed to in writing by Futurex, to arrange for export shipment on behalf of Customer. In the event Futurex so elects, Customer shall pay Futurex for all fees and expenses including, but not limited to, those covering preparation of consular documents, freight, storage and warehouse to warehouse (including war risk) insurance upon submission of Futurex invoices. In performing such service, Futurex will comply with any reasonable instructions of Customer or, in the absence thereof, shall act according to its best judgment. IN ACTING IN CUSTOMER'S BEHALF HEREUNDER, FUTUREX SHALL BE WITHOUT LIABILITY ON ANY CLAIM ASSERTED BY THE CUSTOMER WITH RESPECT TO SUCH EXPORT SHIPMENT OR FUTUREX SERVICES RELATED THERETO.

RISK OF LOSS AND TITLE

Title and risk of loss to all Products will pass to Customer at the time of delivery specified in Invoice. Customer will pay, or reimburse, Futurex for all freight and in transit insurance costs from time of delivery. Customer will pay all freight and insurance costs from the point of delivery in Signed Proposal.

GOVERNMENTAL AUTHORIZATIONS

- A. Customer shall be responsible for timely obtaining any required third party or governmental authorizations, such as an export license, import license, exchange permit or any other governmental authorization required for Customer, even though any such authorization may be applied for by Futurex. FUTUREX SHALL NOT BE LIABLE IF ANY AUTHORIZATION IS DELAYED, DENIED, REVOKED, RESTRICTED OR NOT RENEWED, AND CUSTOMER SHALL NOT BE RELIEVED THEREBY OF ITS OBLIGATIONS TO PAY FUTUREX FOR ITS WORK OR ANY PRODUCT DELIVERED TO CUSTOMER.

- B. All sales hereunder shall at all times be subject to all export control laws and regulation of the United States Government and any amendments thereof. Customer agrees that it shall not make any disposition, by way of transshipment, re-export, diversion or otherwise, except as such laws and regulations may expressly permit, of U.S. origin goods purchased from Futurex, other than to the ultimate country of destination specified on Customer's order and/or declared as the country of ultimate destination on Futurex invoices.

FORCE MAJEURE

- A. The date on which Futurex obligations are to be fulfilled shall be extended for a period equal to the time lost by reason of any delay arising directly or indirectly from (1) acts of God, unforeseeable circumstances, acts (including delay or failure to act) of any governmental authority (de jure or de facto), war (declared or undeclared), riot, revolution, fires, strikes, labor disputes, sabotage or epidemics, (2) inability of Futurex, despite reasonable efforts of Futurex, to timely obtain instruction or information from Customer, or (3) any other cause beyond the reasonable control of Futurex.
- B. If delay resulting from any of the foregoing causes extends for more than ninety (90) calendar days, and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, including adjustment of the price, then either party, upon thirty (30) days written notice to the other party, may terminate the order to the extent of the undelivered Product or unexecuted portion of the work. Upon such termination, Customer shall promptly pay Futurex any amounts owed with respect to delivered Product and/or performed work, along with any expenses incurred by Futurex as a result of Customer's termination.

PAYMENT

- A. As a condition of this contract and the payment terms listed hereunder, Customer must be able to demonstrate creditworthiness sufficient and satisfactory to Futurex in its sole discretion for each individual order of Products to be delivered. Based on verifiable information provided by Customer, Futurex will establish a credit limit, from time to time, for Products to be purchased by Customer from Futurex.
- B. Unless Customer and Futurex otherwise agree in writing, payment shall be made in U.S. Dollars to the main office of Futurex in Bulverde, Texas, in accordance with the following provisions.
1. Futurex shall invoice Customer upon delivery of Products as provided in Signed Proposal, with terms of full payment of net fifteen (15) days. Partial payments by Customer are not allowed without the express written consent of Futurex. If Futurex approves such partial payments, Futurex reserves the right to adjust pricing on the Products involved accordingly.
 2. A monthly interest charge at a rate equal to the lesser of one-and-one-half percent (1.5%) or the maximum legal rate will be assessed on all balances due from Customer if payment in full is not received in accordance with the above terms.

3. If Customer fails to fulfill any condition of this Article, Futurex may suspend performance and any costs incurred by Futurex as a result of Customer's failure to fulfill such condition shall be due and payable by Customer to Futurex upon written notice. Futurex shall be entitled to an extension of time for performance of its obligations equaling the period of Customer's failure to fulfill such condition, whether or not Futurex elects to suspend performance. If such failure is not rectified by Customer promptly upon notice from Futurex, Futurex may terminate performance and Customer shall pay Futurex any and all sums payable to Futurex hereunder upon submission of its invoice.

TAXES

- A. All prices are exclusive of any applicable U.S. federal, state or local sales, use, excise, or other similar taxes. All such taxes shall be billed to Customer's account and paid by Customer.
- B. Any taxes (including income, stamp and turnover taxes), duties, fees, charges, or assessments of any nature levied by any governmental authority other than of the U.S.A. in connection with this transaction, whether levied against Customer, against Futurex or its employees, or against any Futurex subcontractors or their employees, or otherwise, shall be for Customer's account and shall be paid directly by Customer to the governmental authority concerned. If Futurex is required by law or otherwise to pay any such levy and/or fines, penalties, or assessments in the first instance, or as a result of Customer's failure to comply with any applicable laws or regulations governing the payment of such levies by Customer, the amount of any payments so made by Futurex shall be immediately due and payable by Customer to Futurex.

INTELLECTUAL PROPERTY

- A. If Customer receives a claim that any Product or part thereof manufactured by Futurex infringes a patent or other intellectual property right of any third party, Customer shall notify Futurex promptly in writing and give Futurex information, assistance and exclusive authority to evaluate, defend and settle such a claim. Futurex shall then at its own expense and option (1) settle such a claim, or (2) procure for Customer the right to use such product, or (3) replace or modify product to avoid infringement, or (4) remove product and refund the purchase price (including transportation and installation costs) less a reasonable amount for depreciation, or (5) defend against such claim. Provided such timely notice has been given by Customer, should any court of competent jurisdiction hold such product to constitute infringement, Futurex shall pay any costs and damages finally awarded on account of such infringement and, if the use of such products is enjoined, Futurex shall take at its option one or more of the actions under (2), (3) or (4) above. With respect to any product not manufactured by Futurex, the patent indemnity given by the manufacture thereof shall apply in lieu of this provision.
- B. The foregoing indemnity shall not apply to any product made to the specification or design of Customer.
- C. The rights and obligations of the parties with respect to patents or any other intellectual property rights are solely and exclusively as stated herein.

GENERAL

- A. Any sale by Futurex to Customer shall in all respects be construed under and be given legal effect in conformity with the laws of the State of Texas, U.S.A without regard to conflict of law principles.
- B. Equipment can be returned for credit only after receiving written authorization from Futurex and shipping instructions. In the absence of a Product defect giving rise to rights under the Futurex limited warranty described herein, Customer shall be obligated to accept delivery of all Products covered by the Purchase Agreement and shall have no right to return such Products. Futurex has the option, in its sole discretion, to accept a return of a Product; provided, however, that Futurex has the right to condition any such return on Customer's advance payment of a restocking fee and Customer's satisfaction of certain restocking conditions with respect to any returned Product. The amount of such restocking fee and the restocking conditions shall be determined by Futurex in its sole discretion in light of the applicable circumstances.
- C. All quotations of Futurex are subject to change at any time prior to acceptance of an order and expire no later than thirty (30) days thereafter.
- D. The conditions of sale stated herein shall supersede all prior discussions and writings and constitute the entire and only agreement between Customer and Futurex with respect to the terms and conditions governing any order. No waiver or modification of these conditions shall be binding upon Futurex unless made in writing and signed by a duly authorized representative of Futurex.
- E. Any provisions in any purchase order, quotation, acknowledgment or other forms or contract documents applicable to sales of Futurex products which are inconsistent, or in conflict, with any of the provisions above will be deemed inapplicable to such sales.
- F. The parties hereby submit all controversies, claims and matters of difference in any way related to this Agreement or the performance or breach of the whole or any part hereof to arbitration in San Antonio, Texas, according to the rules and practices of the American Arbitration Association from time to time in force. Arbitration of any such controversy, claim or matter of difference shall be a condition precedent to any legal action thereon. This submission and agreement to arbitration shall be specifically enforceable. Awards shall be final and binding on all parties to the extent and in the manner provided by Texas law. All awards may be filed by any party with the Clerk of the District Court in the County of Bexar, and an appropriate judgment entered thereon and execution issued therefore. At the election of any party, said award may also be filed, and judgment entered thereon and execution issued therefore, with the clerk of one or more other courts, state or federal, having jurisdiction over the party against whom such an award is rendered or its property.