

A RESOLUTION EXEMPTING FROM THE COMPETITIVE BID PROCESS, A CONTRACT FOR THE PURCHASE OF TWO BELT FILTER PRESSES FROM ANDRITZ-RUTHNER, INC.

WHEREAS, the City has identified a need to construct biosolids dewatering and storage facilities using belt filter press equipment; and

WHEREAS, the aforesaid project is presently scheduled for construction under the designation of WWTP-99-01; and

WHEREAS, AMC 2.64.060(20) authorizes the City Council, acting as the local contract review board, to exempt certain contracts from the requirements of competitive bidding upon findings that such exemption will not result in favoritism or substantially diminish competition and that the exemption will result in substantial cost savings; and

WHEREAS, the Metropolitan Waste Water Management Commission of Eugene/Springfield recently secured competitive bids for equipment of the exact type required for WWTP-99-01, and the low bidder in that process is willing to sell the City two belt filter presses upon exactly the same terms and conditions as provided in their bid to the Metropolitan Waste Water Management Commission of Eugene/Springfield.


NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Albany, acting as the local contract review board, finds as follows:

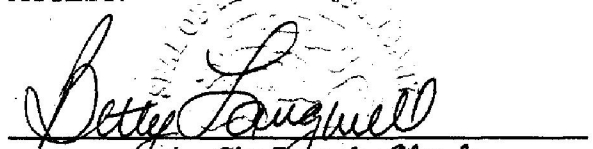
The exemption of this contract from the requirement of direct competitive bidding and the purchase of two belt filter presses from Andritz-Ruthner, Inc., will not result in favoritism or substantially diminish competition because the purchase will be at the same price, and upon the same terms as resulted from a recent competitive bid by another public agency; and

The exemption will result in substantial cost savings by avoiding pre-purchase engineering costs and the costs of preparing engineering designs for more than one type of belt filter press as discussed in the letter dated June 9, 1999, addressed to the City of Albany Public Works Department from Carollo Engineers, attached hereto as Exhibit "A" and by this reference incorporated herein;

BE IT FURTHER RESOLVED that the City Council of the City of Albany, acting as the local contract review board, hereby authorizes the purchase of two belt filter presses from Adnritz-Ruthner, Inc., for the amount of \$396,660.

DATED THIS 14 DAY OF July, 1999.

  
Mayor

ATTEST:  
  
City Recorder Clerk

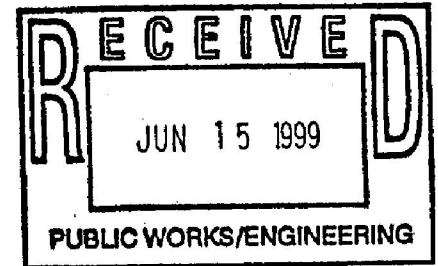


# EXHIBIT 'A'

*Dedicated to creative,  
responsive, quality solutions  
for those we serve.*

June 9, 1999  
WO 4888A.10

City of Albany  
Public Works Department  
333 Broadalbin SW  
PO Box 490  
Albany, OR 97321-0144



Attention: Ted Mikowski, P.E.

Subject: Biosolids Dewatering Project - Wastewater Treatment Plant  
Background Information for Prepurchase of Belt Filter Press Equipment

Dear Ted:

We have been in discussion regarding the use a of "piggy-back" purchase of belt filter press (BFP) equipment for the referenced project, based on a recent bid received by the Metropolitan Wastewater Management Commission (MWMC) of Eugene/Springfield. Following are background and details of the procurement process followed by MWMC, as well as an explanation of the benefits of this approach to Albany.

## **Background of MWMC Purchase**

Working with MWMC and Eugene staff, Carollo Engineers prepared the technical specifications for the project. The specifications were for the supply of three BFPs, along with a separate control system supplied by Alpine Technologies.

The price for the Alpine equipment was negotiated separately, and the price was included in the proposal form. It was essentially a pass-through. The bidders were asked to list the price for the BFPs and add that to the Alpine price for the total proposal. In Albany's case, we won't be including the Alpine system, and we will have two presses rather than three.

Based on Carollo's recommendation and MWMC's concurrence, the bidders on the BFPs were limited to Andritz ("SMX8") and Ashbrook ("Winklepress"). In our judgement, these machines are of equivalent quality and capability, and both companies have very good reputations for equipment quality, experience, and service. Based on the intensity of interest from both companies, we felt that it was a highly competitive bidding situation. This was borne out by the bids that were received, both of which were well below our expectations.

Andritz was the low bidder. There were no irregularities in the proposal, and there were no protests. The bids were processed in the customary fashion, and the contract was awarded to Andritz.

Ted Mikowski, P.E.  
City of Albany  
June 10, 1999  
Page No. 2

The schedule for the bidding process was as follows:

Bid packages made available: July 28, 1998  
Bids received and opened: August 21, 1998  
Contract approved by MWMC: September 9, 1998

Since that time, we have been working with Andritz through the normal submittal process, with no significant problems. There have been some minor changes in the contract amount, relating to slight changes in scope associated primarily with control interface requirements that are specific to the Eugene installation.

The contract for the purchase of the BFPs is to be assigned to a general contractor that will be constructing the new facilities. Bids for the project were opened on June 8, 1999. It is anticipated that the contractor will take delivery of the BFPs sometime towards the end of 1999, once the new dewatering building has been enclosed.

I have enclosed a copy of the bid summary submitted by MWMC staff to the commission for your reference.

We have received a preliminary proposal from Andritz outlining the proposed terms of an agreement for the purchase, which meet the basic elements of the intended arrangement, including honoring the bid price from the MWMC project. They note some terms regarding provision of extended storage, etc., which will need to be finalized. A copy of the proposal is enclosed. We assume that the proposal will need to be resubmitted addressed to the City, after agreement has been reached on the details.

### **Benefits to Albany of Piggy-Back Purchase**

We recommend this purchase approach based on cost savings to the City. The primary savings will come in the form of savings for engineering design services. This is based on the fact that the two brands of BFP (which we would base new specifications around) have minor but significant differences in their configuration. The most significant difference is in the location and orientation of the dewatered cake discharge point. Because of this, the design of the facilities that surround and connect to the presses are substantially different.

Historically, two approaches have been used in this situation. One, which we used with MWMC, is to prepare separate bid documents and go through the prepurchase process. This way, you know which machine will be used, and the engineer can complete the rest of the design around that machine. Bidding them separately from the rest of the equipment on the project also removes opportunities for suppliers to "package" the BFPs with other equipment, which can provide an opportunity to inflate the prices quoted to contractors.

Ted Mikowski, P.E.  
City of Albany  
June 10, 1999  
Page No. 3

The other, more common approach is to actually complete two separate designs for the two possible suppliers, then include the BFPs with the overall bids for the project through general contractors. This approach, besides requiring extra design time and expense, is also more cumbersome for the general contractors because they have to develop detailed cost estimates for two separate systems.

The proposed piggy-back approach has the benefits of the prepurchase process without the expense of having to prepare bid documents and go through the procurement process. It also has a benefit of shortening the overall design schedule, allowing us to bid the project earlier.

To assist in the evaluation, we have prepared cost estimates for our engineering services involved with the two alternative approaches.

*Prepurchase:* The services would include preparation of contract documents, including bidding documents and technical specifications for the equipment; issuance of requests for proposals to bidders; responding to requests for information during bidding; issuance of addenda as required; receipt and analysis of bids; and preparation of a recommendation to the City.

The estimated cost for these services is \$14,000.

*Designing for Both Systems:* This work effort would involve preparation of additional contract drawings to cover both BFPs. This affects the building layout, the conveyor layout, the ventilation system, and the arrangement of the cake storage facility with respect to the dewatering building. Because of all this, it affects a number of drawings.

The estimated cost for this additional effort is \$20,000.

Let me know if we can provide any additional information to assist you in this effort.

Very truly yours,

CAROLLO ENGINEERS, P.C.



Brian W. Hemphill, P.E.  
Project Manager

BWH/ses

cc: Bob Eimstad, P.E.; Carollo Engineers

Enclosures: Proposal from Andritz  
Bid Summary from MWMC



**Metropolitan Wastewater Management Commission**  
*partners in wastewater management*

**MEMORANDUM**

**DATE:** September 9, 1998

**TO:** Metropolitan Wastewater Management Commission (MWMC)

**FROM:** Troy McAllister, Senior Civil Engineer, City of Springfield

**SUBJECT:** Biosolids Dewatering Design - Equipment Bid Award (Project No. 8002)

**ISSUE**

This memo is intended to provide a recommendation on the belt filter press (BFP) equipment bid results, and a status report on the biosolids dewatering design and Class A evaluation projects.

**BACKGROUND AND DISCUSSION**

On July 16, 1998, the Metropolitan Wastewater Management Commission (MWMC) authorized staff to proceed with the bidding process to prepurchase three belt filter presses. The BFP bid opening was on August 21, 1998. Two bids were received as follows:

BFP Equipment Manufacturer:	Andritz-Ruthner, Inc.	Ashbrook Corporation
Base system price without Sludge Expert System (3 BFP's)	\$589,000.00	\$630,000.00
Allowance for Sludge Expert System	\$78,000.00	\$78,000.00
<b>Total System Price</b>	<b>\$667,000.00</b>	<b>\$708,000.00</b>

The Sludge Expert System is an automatic control system that will be installed along with the BFP. This system will help minimize operator attention and polymer consumption. We received feedback during our past field trips that these system

- features will quickly pay for themselves, because they will enable the operators to optimize production rates, polymer consumption and other operational parameters.

The engineer's estimate was \$300,000 for each BFP (totaling \$900,000 for three BFP's). The Andritz-Ruthner, Inc. bid is substantially below the estimate (26% below), and appears to be in compliance with the bidding requirements. Staff is recommending awarding the BFP bid to Andritz-Ruthner, Inc. for \$667,000.

## PROJECT STATUS REPORT

### Dewatering Design Facility

Carollo Engineers and the project staff team have completed the 10% design for the dewatering facility. The 10% design preliminary budget estimate is below eight million dollars, which is within the range originally anticipated in the FY 98/99 budget for the project. Staff will be providing the Commission a copy of the 10% design floor plan at the September 17 meeting. Additional refinements will be incorporated into the project as we continue the design process. The 50% design workshop is scheduled for mid-October.

### Class A Biosolids Evaluation

Brown and Caldwell have submitted a 50% draft Class A evaluation report for staff review. The following technologies are being reviewed for feasibility to produce Class A biosolids:

- Air-Drying with Temporary Storage
- Composting Alternatives
- Class A Digestion with Temperature Phased Anaerobic Digestion (TPAD)
- Pre-pasteurization
- Lime Pasteurization

Preliminary estimates for capital improvement costs range from \$500,000 for Composting only 10% of the annual biosolids to \$3.5 million if Class A Digestion or Pre-pasteurization methods were installed to produce a 100% Class A biosolids. Operation and Maintenance (O&M) costs, and other non-cost issues are being factor into the evaluation of alternatives. Brown and Caldwell, and staff will be presenting additional information to the Commission when the project reaches 80% and 100% completion.

## ACTION REQUESTED

Staff requests Commission approval of Resolution 98-10 authorizing the Executive Officer to execute contract documents to purchase belt filter press equipment from Andritz-Ruthner, Inc. for a lump sum fee of \$667,000 dollars.

**METROPOLITAN WASTEWATER MANAGEMENT COMMISSION**

**RESOLUTION 98-10 ) IN THE MATTER OF BID AWARD FOR  
 ) PROJECT 8002 – BELT FILTER PRESS  
 ) EQUIPMENT**

WHEREAS, the Metropolitan Wastewater Management Commission advertised for bids on Project 8002 (Belt Filter Press Equipment); and

WHEREAS, on August 21, 1998 at 1:00 p.m., a public bid opening was conducted; and

WHEREAS, the apparent low bid was submitted by Andritz-Ruthner, Inc., 1010 Commercial Blvd. South, Arlington, TX 76001 in the amount of \$667,000; and

WHEREAS, the Commission's design consultant has reviewed the technical portion of the proposal from Andritz-Ruthner, Inc. for Project 8002 and found it to be in compliance with the technical requirements of the specifications; and

WHEREAS, legal counsel has performed a review for compliance with applicable law and recommended that Andritz-Ruthner, Inc. is the low responsive bidder; and

WHEREAS, the MWMC has appointed Dan E. Brown as its duly authorized Executive Officer for efficient execution of the day-to-day administration of MWMC business;


**NOW, THEREFORE, BE IT RESOLVED BY THE METROPOLITAN WASTEWATER MANAGEMENT COMMISSION THAT:**

Dan E. Brown, as the duly authorized Executive Officer of the MWMC, is hereby authorized to execute contract documents to purchase Belt Filter Press Equipment from Adritz-Ruthner, Inc. for a lump sum fee of \$667,000; to execute or designate qualified staff to execute all contract and project management functions including, but not limited to, issuance of notices to proceed, contract amendments not to exceed a cumulative total of 15% of the lump sum fee listed above; and to manage the contract to ensure products meet contract specifications.

**ADOPTED BY THE METROPOLITAN WASTEWATER MANAGEMENT COMMISSION OF THE SPRINGFIELD/EUGENE METROPOLITAN AREA ON THE 17TH DAY OF SEPTEMBER, 1998.**

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Approved as to form: 

ENVIRONMENT AND PROCESS TECHNOLOGIES

June 4, 1999

Mr. Rick Shanley, P.E.  
Carollo Engineers  
5100 SW Macadam Ave., Suite 440  
Portland, OR 97201

*Reference:* Albany, OR

*Subject:* Purchase of Andritz Belt Filter Presses  
Andritz Proposal S #3113-99-49

Dear Mr. Shanley:

The purpose of this proposal is to convey our appreciation to Carollo Engineers and the City of Albany, OR for your/their consideration of Andritz for the belt filter press purchase. In response to your request for Andritz to provide two CPF 2.0m SMX<sup>®</sup>-S8 belt filter presses for the same price as the recent Eugene, OR bid, we offer the following terms of sale for your consideration.

Andritz S #3113-99-49 is as follows:

**Section I, Price Proposal**

A) Andritz will supply two CPF 2.0m SMX<sup>®</sup>-S8 belt filter presses with a similar scope as Andritz provided to Eugene, OR for a total of \$392,660. This price does not include local, state, or federal taxes. This price remains valid providing the following terms and conditions can be met. Price includes freight to job site and start-up services.

B) Terms of payment are as follows:

- Invoice 10% with order
- Invoice 80% additional with delivery as defined by the "ship in place" agreement
- Invoice 10% with sign off and acceptance
- Total payment must be received by December 31, 2000. Unpaid balances beyond that time will be accessed at 10% simple interest rate.

**Section II, Terms & Conditions**

**Andritz-Ruthner, Inc.**

1010 Commercial Blvd., South

Arlington, Texas 76001

phone: 817-465-5611

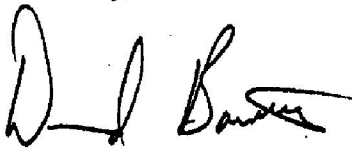
sales fax: 817-468-3961 engineering fax: 817-472-8589



- Upon acceptance Andritz will invoice the owner for a total of 90% of the purchase price prior to December 31, 1999.
  - Andritz will store the Andritz scope locally in Texas until notification for shipment is given to Andritz by the owner or the owner's representative.
  - The monthly storage fee will be \$500.00 per month. The monthly fee includes the cost of relocating the presses from our manufacturing plant to the warehouse and relocating the presses from the warehouse to the trucking company designated to delivery the equipment to jobsite. Andritz estimates the crane requirement costs alone to be \$6,000. This is included in the \$500.00 per month fee.
- C. The Andritz sales price is based on the attached standard terms and conditions, please read them carefully.
- D. Andritz must receive P.O. prior to August 1, 1999 to facilitate the terms of this proposal.

In conclusion we appreciate your continued interest in our technology. Please call me or Ted Cotton if we can be of further assistance.

Sincerely,



David Bartlett  
National Municipal Sales Manager

DB/jg

cc: Ted Cotton, Granich Engineering

## ANDRITZ-RUTHNER, INC. STANDARD TERMS AND CONDITIONS OF SALE

### 1. TERMS APPLICABLE

The Terms and Conditions of Sale listed below are the exclusive terms and conditions applicable to quotations made and orders accepted by Andritz Ruthner, Inc. ("Seller") for the sales of products, equipment and parts relating thereto ("Products"). This quotation or acknowledgment and acceptance is expressly made conditional upon Buyer's assent to such terms and conditions. Any of Buyer's terms and conditions which are in addition to or different from those contained herein, which are not separately agreed to by Seller in writing, are hereby objected to and shall be of no effect. Objections to any terms and conditions contained herein shall be deemed waived if Seller does not receive written notice thereof within 20 days of the date of this acknowledgment. Buyer in any event will be deemed to have assented to the terms and conditions contained herein if Buyer either makes any payment to Seller or accepts any delivery of the Product. The term "this Agreement" as used herein means this quotation or acknowledgment together with any attachment hereto, any documents expressly incorporated by reference and these Standard Terms and Conditions of Sale.

### 2. DELIVERY

- (a) Delivery dates are good faith estimates and do not mean that "time is of the essence". Buyer's failure to promptly make advance or interim payments, supply technical information, drawings and approvals will result in a commensurate delay in delivery. Unless otherwise agreed in writing by Seller, title and risk of loss or damage to the Products shall pass to Buyer upon delivery to the Products F.O.B., Seller's plant (F.O.B., point of manufacture for any Product shipped direct to Buyer from any location other than Seller's plant).
- (b) Seller shall not be liable for any loss or delay due to acts of governmental authority, laws or regulations, strikes, fires, floods, earthquakes, severe weather, epidemics, quarantine restrictions, war, riot, acts of Buyer, wrecks, delays in transportation, inability to obtain necessary labor or materials from usual sources, or other causes beyond the reasonable control of Seller. In the event of any such delay in performance due to such causes, the date of delivery or performance shall be deferred for a period equal to the time lost by the reason of the delay.

### 3. WARRANTY

- (a) Seller warrants to Buyer that the Products will be delivered free from defects in material and workmanship. This warranty shall commence upon delivery of the Products and shall expire on the earlier to occur of 12 months from initial operation of the Products and 18 months from delivery thereof (the "Warranty Period"). If during the Warranty Period Buyer discovers a defect in material or workmanship and gives Seller written notice thereof within 10 days of such discovery, Seller will, at its option, either deliver to Buyer, F.O.B., point of shipment, a replacement part or repair the defect in place. Seller will have no warranty obligations under this paragraph 3(a): (i) if Buyer fails to ensure that the Products are operated and maintained in accordance with generally approved industry practice and with Seller's specific written instructions; (ii) if the Products are used in connection with any mixture or substance or operating condition other than that for which they were designed; (iii) if Buyer fails to give Seller such written 10 day notice; (iv) if the Products are repaired by someone other than Seller or have been intentionally or accidentally damaged, or (v) corrosion, erosion, ordinary wear and tear or in respect of any parts which by their nature are exposed to severe wear and tear or are considered expendable.
- (b) Seller further warrants to Buyer that at delivery, the Products will be free of any liens or encumbrances. If there are any such liens or encumbrances, Seller will cause them to be discharged promptly after notification from Buyer of their existence.
- (c) **THE EXPRESS WARRANTIES SELLER MAKES IN THIS PARAGRAPH 3 ARE THE ONLY WARRANTIES IT WILL MAKE. THERE ARE NO OTHER WARRANTIES, WHETHER STATUTORY, ORAL, EXPRESS OR IMPLIED. IN PARTICULAR, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- (d) The remedies provided in paragraphs 3(a) and 3(b) are Buyer's exclusive remedy for breach of warranty.

### 4. LIMITATION OF LIABILITY

THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE AND THE AGGREGATE LIABILITY OF SELLER FOR ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE RESULTING FROM, ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY PRODUCT, SHALL IN NO EVENT EXCEED THE PRICE ALLOCABLE TO THE PRODUCT WHICH GAVE RISE TO THE CLAIM. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY PARTY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE OR BUSINESS OPPORTUNITY, LOSS BY REASON OF SHUTDOWN OF FACILITIES OR INABILITY TO OPERATE ANY FACILITY AT FULL CAPACITY, OR COST OF OBTAINING REPLACEMENT POWER. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY SET FORTH IN THIS PARAGRAPH SHALL APPLY TO ANY CLAIM, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAULT, STRICT LIABILITY, INDEMNITY, OR OTHERWISE. THE PROVISIONS OF THIS PARAGRAPH 4 SHALL SUPERSEDE ANY INCONSISTENT PROVISIONS IN ANY INSTRUMENT FORMING PART OF THIS AGREEMENT.

### 5. TAXES

Seller's prices do not include any sales, use, excise or other taxes. In addition to the price specified herein, the amount of any present or future sales, use, excise or other tax applicable to the sale or use of the Products shall be billed to and paid by Buyer unless Buyer provides to Seller a tax-exemption certificate acceptable to the relevant taxing authorities.

### 6. SECURITY INTEREST

Seller shall retain a purchase money security interest in the Products until all payments have been made in full. Buyer agrees to do all acts necessary to perfect and maintain such security interest in Seller and to protect Seller's interest in the Products.

### 7. SET OFF

Neither Buyer nor any of its affiliates shall have any right to set off claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise.

### 8. PATENTS

Unless the Products or any part thereof are designed to Buyer's specifications and provided the Product or any part thereof is not used in any manner other than as specified or approved by Seller in writing, (i) Seller shall defend against any suit or proceeding brought against Buyer to the extent based on a claim that any Product, or any part thereof, infringes any United States; provided Seller is notified promptly in writing and given authority, information and assistance for the defense of such suit or proceeding; (ii) Seller shall satisfy any judgment for damages entered against Buyer in such suit; and (iii) if such judgment enjoins Buyer from using any Product or a part thereof, then Seller shall at its option: (a) obtain for Buyer the right to continue using such Product or part; (b) eliminate the infringement by replacing or modifying all or part of the Products; or (c) take back such Product or part and refund to Buyer all payments on the purchase price which Seller has received, in which case neither Buyer nor Seller will have any claim against the other under this Agreement or arising out of the subject matter of this Agreement. The foregoing states Seller's entire liability for patent infringement by any Product or part thereof.

### 9. CANCELLATION

Buyer may only cancel its order upon written notice to Seller and upon payment to Seller of Seller's cancellation charges, which shall be specified to Buyer and shall take into account among other things expenses (direct and indirect) incurred and commitments already made by Seller and an appropriate profit. In the event of the bankruptcy or insolvency of Buyer or in the event of any bankruptcy or insolvency proceeding brought by or against Buyer, Seller shall be entitled to cancel any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

### 10. CHANGES

Seller will not make changes in the Products unless Buyer and Seller have executed a written Change Order for such change. Such Change Order will include an appropriate price adjustment. If the change impairs Seller's ability to satisfy any of its obligations to Buyer, the Change Order will include appropriate modifications to this Agreement. If after the date of this quotation or acknowledgment, new or revised governmental requirements should require a change in the Products, the change will be subject to this paragraph 10.

### 11. CONFIDENTIALITY

Buyer acknowledges that the information which Seller submits to Buyer in connection with this quotation or acknowledgment includes Seller's confidential and proprietary information, both of a technical and commercial nature. Buyer agrees not to disclose such information to third parties without Seller's prior written consent. Buyer further agrees not to permit any third party to fabricate the Products or any parts thereof from Seller's drawings. Buyer will defend and indemnify Seller from any claim, suit, or liability based on personal injury (including death) or property damage related to any Product or part thereof which is fabricated by a third party without Seller's prior written consent and from and against related costs, charges and expenses (including attorneys fees). All copies of Seller's drawings shall remain Seller's property and may be reclaimed by Seller at any time.

### 12. END USER

If Buyer is not the end user of the Products sold hereunder (the "End User"), then Buyer will use its best efforts to obtain the End User's written consent to be bound to Seller by the provisions of paragraphs 3, 4, 5, and 11 hereof. If Buyer does not obtain such End User's consent, Buyer shall defend and indemnify Seller and Seller's agents, employees, subcontractors, and suppliers from any action, liability, cost, loss or expense for which Seller would not have been liable or from which Seller would have been indemnified if Buyer had obtained such End User's consent.

### 13. GENERAL

- (a) Seller represents that any Products or parts thereof manufactured by Seller will be produced in compliance with all applicable Federal, state and local laws applicable to their and in accordance with Seller's engineering standards. Seller shall not be liable for failure of the Products to comply with any other specifications, standards, laws or regulations.
- (b) This Agreement shall inure only to the benefit of Buyer and Seller and their respective successors and assigns. Any assignment of this Agreement or any of the rights or obligations hereunder, by either party without the written consent of the other party shall be void.
- (c) This Agreement contains the entire and only agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written understandings between Buyer and Seller concerning the Products, and any prior course of dealings or usage of the trade not incorporated herein.
- (d) This Agreement (including these standard terms and conditions of sale) may be modified, supplemented or amended only by a writing signed by an authorized representative of Seller. Seller's waiver of any breach by Buyer of any terms of this Agreement must also be in writing and any waiver by Seller or failure by Seller to enforce any of the terms and conditions of this Agreement at any time, shall not affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition thereof.
- (e) This Agreement and the performance thereof will be governed by and construed according to the laws of the State of Texas. The parties hereto irrevocably submit to the jurisdiction of the Federal and State courts sitting in Tarrant County, Texas and waive any claims as to inconvenient forum. In the event this Agreement pertains to the sale of any goods outside the United States, the parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this Agreement.