

DVL GROUP, INC. AFFILIATES - TERMS AND CONDITIONS OF SALE

The Seller under these Terms and Conditions of Sale is DVL Group, Inc., or one of the following divisions: DVL Program Management, DVL, Strategic Account Services, or Total Support Systems, as set forth in the specific quotation (the "Quotation") of which these Terms and Conditions of Sale form a part.

The person or entity purchasing from Seller goods and equipment (collectively, the "Goods"), including software or firmware which is preloaded or to be loaded into Goods (the "Software"), is referred to herein as the "Buyer". Buyer agrees that by purchasing the Goods, as set forth in the Quotation, it also agrees to accept all of the Terms and Conditions of Sale set forth herein.

1. ORDER ACCEPTANCE: No order issued by Buyer to Seller shall be binding on Seller unless Seller manifests its acceptance of such order either in writing or by commencement of performance hereunder. Seller reserves the right, at its sole discretion, to decline orders. Seller's acceptance of Buyer's order shall constitute a binding agreement between Buyer and Seller pursuant to the terms of the applicable Quotation, and the Terms and Conditions of Sale set forth herein which shall accompany the Quotation, as the same may be modified in writing by the parties hereto. No changes, reservations, or varying terms or conditions stated by Buyer in its purchase order or other document, or in any oral direction, shall be binding upon Seller unless expressly agreed to in writing by Seller. Acceptance of Buyer's order is subject to Seller's review and acceptance of Buyer's credit status.

2. ITEMS PURCHASED: Goods provided to Buyer may include equipment and/or Software incorporated in or provided separately for use with the Goods. Software is provided subject to the software provider's, or the software manufacturer's, standard license terms, which reserve title and grant Buyer a non-exclusive, royalty free license solely for (a) Buyer's use with the Goods provided, and (b) Buyer's adaptation for use with the Goods provided.

3. RETURNED GOODS: Advance written permission to return rejected Goods must be obtained from Seller. Except for warranty returns, such Goods must be new, unused, of current manufacture and free of all liens or other claims. Goods must be shipped freight prepaid by Buyer to Seller, and shall be subject to any handling charges which may be imposed by Seller. Goods returned without the prior written permission of Seller will not be accepted by Seller. Seller reserves the right to inspect Goods prior to authorizing their return. If Seller finds returned Goods to be defective, or not to be the Goods that were ordered by Buyer, it either will replace such defective or non-conforming Goods, or issue a credit to Buyer for such Goods in an amount equal to the billing price or current price of the Goods, whichever is lower, from which will be deducted an inspection and repackaging charge, and any reconditioning or restocking charges. No credit or replacement of Goods will be permitted, however, if the alleged defective or non-conforming Goods have been in Buyer's possession for more than thirty (30) days.

4. SHIPMENT/DELIVERY: Buyer acknowledges that Seller's shipping dates are estimates and are subject to change by Seller. Unless otherwise agreed to in writing by Seller, delivery terms shall be F.O.B. Seller's shipping point. Seller and the manufacturer of the Goods reserve the right to make partial shipments. In addition, when Seller's supply of certain Goods is insufficient to meet the current order requirements of Buyer, or upon the occurrence of any of the circumstances described in Section 7 below, Seller reserves the right to keep available a supply of the Goods for its own use or to allocate it among various customers as it, in its sole discretion, deems appropriate, and in such event Seller shall not be required to ship all or any part of Buyer's order. Seller shall have no liability to Buyer for its failure to ship some or all of the Goods ordered by Buyer under such circumstances. Risk of loss or damage and responsibility to insure shall pass from Seller to Buyer upon delivery to a carrier for shipment to Buyer. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be

submitted by Buyer directly to the carrier. Shortages and/or damages must be acknowledged and signed for at the time of delivery. If Goods are held by Seller at Buyer's request, or due to Buyer's failure to supply shipping instructions, Seller may invoice Buyer for the full purchase price of the Goods and Buyer agrees to make payment. Goods held for Buyer by Seller, for whatever reason, are held at Buyer's risk and Buyer shall reimburse Seller for any insurance, storage or other costs incurred by Seller.

5. PRICES: Unless otherwise agreed in writing by Seller, prices for Goods are F.O.B. manufacturer's or Seller's shipping point (as applicable) with no discount. Prices quoted by Seller shall remain in effect for the period stated in Seller's Quotation or, if none stated, thirty (30) days after the date of same. If Seller does not receive, within such time period, an unconditional authorization from Buyer to ship Goods, Seller shall have the option to change the price for such Goods to that prevailing at the time of shipment. Prices and license fees do not include installation, freight, handling, hoisting, rigging, insurance or storage charges, unless otherwise agreed by Seller in writing. Prices and license fees also do not include taxes or duties imposed on the manufacture, sale, delivery or use of the Goods; such assessments are for Buyer's account and Seller will add such assessment to the price stated absent Seller's receipt of Buyer's proper exemption certificate.

6. PAYMENT/SECURITY INTEREST: Terms of payment are subject at all times to prior approval of Seller's credit department. In the absence of any special payment terms, payment is due in U.S. currency net thirty (30) days from the date of Seller's invoice, time being of the essence. Any payment not made when due shall be subject to an interest charge at the lesser of the rate of one and one-half percent (1 ½%) per month or the maximum rate permitted by law. Partial shipment of Goods will be invoiced and shall be payable in accordance with these terms. Buyer grants Seller a security interest in the Goods and products, proceeds and receivables therefrom and agrees to execute a financing statement confirming such interest upon Seller's request. Seller may exercise any applicable mechanics lien rights, or demand different terms of payment including, but not limited to, advance cash payment, whenever it appears to Seller that circumstances, including the financial condition of Buyer, require such measures. Buyer agrees to take all measures necessary to comply with any new payment terms imposed by Seller. If Buyer fails to comply with payment terms, Seller may elect to terminate this Agreement or suspend performance under this or other agreements with Buyer and: (a) with or without legal process and using such force as may be lawful and necessary, enter into or upon the premises where the Goods are located and take possession of them, (b) cancel all warranties herein, and/or (c) pursue any additional remedies provided by law. Buyer shall be liable to Seller for all expenses, including court costs and reasonable attorneys fees, relating to the collection of past due amounts.

7. DELAYS: Seller shall not be liable or responsible for costs, expenses or damages due to non-performance or a delay in performance where such non-performance or delay arises from a delay in approval or disapproval by Seller's credit department, or from one or more causes beyond its reasonable control, including, but not limited to, natural disasters, acts of government, power failure, fire, flood, acts of God, civil disorders, labor disputes, riots, acts of war, acts of terrorism, epidemics, or labor, material, or transportation shortages. Deliveries of Goods or other Seller performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer of the foregoing; but Buyer's and Seller's performance hereunder shall otherwise remain unaffected. If Seller determines that its ability to supply the total amount of Goods ordered, or to obtain material used in the manufacture of Goods, is hindered, limited or made impractical due to causes set forth in this paragraph, Seller may allocate its available supply of Goods or material among its various customers on such basis as Seller determines to be equitable without liability to Buyer for any failure of performance which may result therefrom.

8. MODIFICATIONS/POSTPONEMENTS/CANCELLATIONS: No order of Buyer may be modified, postponed, or cancelled, without the prior written consent of Seller. As a condition to consenting to any such modification, postponement or cancellation, Seller reserves the right to impose special charges for the additional costs it will incur by reason of such action.

9. LIMITED WARRANTY: At the time of Buyer's purchase of the Goods, it shall receive the manufacturer's standard warranty, if any. Such warranty shall be the only warranty applicable to the sale of Seller's Goods and its terms, conditions and limitations are expressly incorporated herein by reference. The manufacturer's warranty may be modified only in writing signed by a duly authorized representative of the manufacturer. Other than as may be provided under the manufacturer's warranty, Buyer assumes all responsibility for any loss, damage or injury to persons or property arising out of, connected with, or resulting from, the use of Goods, either alone or in combination with other goods whether supplied by Seller or otherwise. Buyer acknowledges that any technical advice furnished by Seller with respect to the use of the Goods is given without charge and Seller assumes no obligation or liability to Buyer for the advice given or results obtained; all such advice is given by Seller and accepted by Buyer at Buyer's risk.

THE MANUFACTURER'S WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITATION OF WARRANTY APPLIES WHETHER OR NOT THE INTENDED PURPOSE OR USE OF THE GOODS BY BUYER HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE AND WHETHER OR NOT THE GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED FOR BUYER'S INTENDED USE OR PURPOSE.

The warranty obligations provided herein are conditioned upon timely receipt of all payments in accordance with the payment terms set forth in the Quotation and these Terms and Conditions. During the period any amounts are overdue from Buyer, there shall be no warranty obligations in effect. The warranty expiration date shall not be extended from the date Buyer pays any overdue amount. To the extent that Seller has relied upon any Buyer specifications, information, representations, or other data in the selection or design of Goods for Buyer, or the preparation of the Quotation, and conditions arise which render such specifications, representations, information or other data to be incorrect or invalid, Seller's warranty and other provisions of the Quotation or these Terms and Conditions that are affected by such conditions shall no longer remain effective.

10. INFRINGEMENT: Seller represents that to the best of its knowledge and belief, the Goods provided hereunder do not infringe upon any valid U.S. patent, trademark or copyright in existence on the date of shipment. Seller will defend at its expense any action brought against Buyer to the extent it is based on a claim the Goods supplied by Seller infringe a valid United States patent, trademark or copyright, except as provided below. Seller will pay those costs and damages finally awarded against Buyer in any such claim, but such defense and payments are conditioned upon the following:

- (a) Seller shall be notified promptly in writing by Buyer of the assertion of such a claim or the filing of suit, and Buyer will provide copies of all papers served upon it; (b) Seller shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; and (c) should the Goods or the operation thereof become or, in Seller's opinion be likely to become, the subject of a claim of infringement of a valid United States patent, trademark or copyright, Buyer shall permit Seller, at Seller's option and expense to: (i) procure for Buyer the right to continue using the Goods, (ii) replace or modify the Goods so they become noninfringing, (iii) grant Buyer a credit for such Goods, as depreciated, and accept return of same, or (iv) cancel future deliveries of Goods without liability to Buyer. Depreciation shall be calculated by Seller as an equal amount per year over the life of the Goods.

Seller shall have no liability to Buyer with respect to any claim of patent, trademark, copyright, or other infringement based upon:

- (aa) (i) Combination or utilization by Buyer of Goods furnished under the Quotation with any incompatible equipment or devices, (ii) the modification by Buyer of Goods furnished under the Quotation, or (iii) Seller's compliance with Buyer's design specifications. As to any claim arising

under this paragraph (aa), Buyer will defend, indemnify and hold harmless Seller from all costs, expenses, losses, damages and attorneys fees resulting therefrom.

In addition, Seller shall have no liability to Buyer with respect to any claim of patent, trademark, copyright, or other infringement if Buyer has not made full payment to Seller in accordance with the payment terms set forth in the Quotation and these Terms and Conditions. The foregoing states the entire liability of Seller with respect to infringement of patents, trademarks, copyrights and other proprietary information.

11. LIMITATION OF LIABILITY/CONSEQUENTIAL DAMAGES: IN NO EVENT SHALL SELLER ASSUME ANY LIABILITY FOR (A) DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE GOODS OR (B) INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF USE, DATA, PROFIT, OR REVENUE, OR LOSS OR DAMAGE TO PROPERTY OR EQUIPMENT, THAT ARE INCURRED BY BUYER AS A RESULT OF SELLER'S NON-PERFORMANCE OR CANCELLATION OF ITS AGREEMENT TO FURNISH GOODS HEREUNDER, WHETHER ANY CLAIM IS BASED UPON A THEORY OF INFRINGEMENT, BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT OR OTHERWISE.

12. LIMITATION OF REMEDY: SECTION 9 (LIMITED WARRANTY), SECTION 10 (PATENTS) AND SECTION 11 (LIMITATION OF LIABILITY/CONSEQUENTIAL DAMAGES) PROVIDE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF WARRANTIES OR OTHER CLAIMS AGAINST SELLER IN CONNECTION WITH THE SALE OF THE GOODS.

13. CHANGES: The manufacturer of the Goods reserves the right to make any changes in the model and design of the Goods and/or Software without obligation to alter similar Goods and/or Software previously sold. Buyer may, in writing, within the scope of the accepted order, request changes in the established specifications or delivery schedules. If the manufacturer agrees to such changes and these changes alter the amount due the manufacturer from Seller for the Goods or the time required for performance hereunder, the price of Goods ordered, any license fees, and/or the time for performance, shall be equitably adjusted.

14. CANCELLATION: This Agreement or any part of it is subject to cancellation by Seller if any of the conditions specified in the Quotation, or in these Terms and Conditions, is not met by Buyer or if Buyer becomes insolvent or bankrupt. In the event of cancellation for any such reasons, Seller is under no obligation to pay Buyer for any expenses, costs, claims or liabilities incurred or suffered by Buyer by reason of such cancellation, and Seller may retain any portion of the purchase price pre-paid by Buyer as liquidated damages. Seller retains all rights to any other remedies it may have against Buyer. Buyer may cancel orders herein only upon reasonable advance written notice to Seller and upon payment to Seller of Seller's cancellation charges, which include all costs and expenses incurred by Seller in the course of performance through the date of cancellation, and amounts adequate to cover any commitments made by Seller, losses suffered by Seller, and Seller's anticipated profit on the sale of the Goods.

15. DRAWINGS/DOCUMENTATION: Seller's prints or drawings (and the technology depicted) which are furnished to Buyer in connection with the sale of the Goods are the property of Seller and Seller retains all patents, copyrights, and other intellectual property rights including, without limitation, exclusive rights of use, license or sale. Buyer's possession of such prints or drawings does not grant Buyer any rights or license, express or implied therein and Buyer shall, upon Seller's request, return immediately all copies of such prints or drawings to Seller.

16. EXPORT: Each party hereby agrees to comply with all export laws and restrictions and regulations of the United States Department of Commerce or other domestic or foreign agency or authority. Neither party shall export or allow the export or re-export of Goods to be supplied hereunder

without obtaining any required license or authorization at time of shipment. Buyer agrees that Seller shall not be liable to Buyer if such license or authorization is unavailable. Buyer shall assume the risk and cost of obtaining any such licenses and authorizations.

17. NUCLEAR: If Goods supplied hereunder are to be used in nuclear applications, including without limitation, any power generation facility, Buyer shall fully defend, indemnify and hold harmless Seller pursuant to Seller's Special Nuclear Terms of Sale, a copy of which is available upon request.

18. CONFIDENTIALITY: Buyer acknowledges and agrees that in the course of ordering and receiving the Goods from Seller, Buyer may gain access to private or confidential information of Seller, including but not limited to, technical information, designs, processes, formulas, procedures, and customer information (collectively, the "Confidential Information"). Buyer agrees that (i) all Confidential Information shall remain the exclusive property of Seller, (ii) it shall maintain the confidentiality and secrecy of the Confidential Information, (iii) it shall limit disclosure, and share copies, of the Confidential Information only with those employees or agents who need access thereto, and neither Buyer nor such employees or agents shall disclose or share the confidential information with any other parties, and (iv) it shall return or destroy all copies of Confidential Information upon the request of Seller. In the event of any breach by Buyer of any of its obligations in this paragraph, Seller shall have the right, and is hereby granted the privilege, of obtaining injunctive relief and/or specific enforcement of Buyer's obligations hereunder in any court of competent jurisdiction (and Seller shall be entitled to reimbursement from Buyer for its court costs and legal fees in seeking such relief or enforcement).

19. APPLICABLE LAW: This Agreement shall be governed by and performance construed in accordance with the domestic laws and Uniform Commercial Code as adopted in the Commonwealth of Pennsylvania, without reference to its choice or conflict of laws or principles.

20. SEVERABILITY: If any section or part of this Agreement is or becomes illegal, unenforceable or invalid, then such part or section shall be stricken from this Agreement and shall not affect the remaining parts or sections which shall remain enforceable and valid.

21. ASSIGNMENT/DELEGATION: Buyer shall not assign any rights or delegate any duties pertaining to the sale of the Goods, whether arising under the Quotation, or these Terms and Conditions, without the prior written consent of Seller. Any assignment or delegation without such consent shall be void.

22. MODIFICATIONS: Any agreement which modifies, changes or supplements the Quotation, or these Terms and Conditions, shall only be valid if in writing and signed by a duly authorized officer of Seller. No Seller associate or representative (other than an officer) is authorized to alter the terms governing the sale of the Goods.

23. FINAL AND COMPLETE AGREEMENT: The terms and conditions of the Quotation, and these Terms and Conditions, represent the final and complete agreement between the parties with respect to the sale of the Goods, and supersede all prior or contemporaneous oral or written communications, representations, understandings or agreements relating to this subject matter.

24. ARBITRATION: All claims, disputes, or controversies arising out of or relating to a Quotation or these Terms and Conditions, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules then in effect. The parties agree to be bound by the decision or award of the arbitrator(s),

which shall be final, and the prevailing party may enter judgment pursuant to such decision or award in any court having jurisdiction thereof. The arbitration shall be held in _____, Pennsylvania unless another site is mutually agreed upon by the parties.