

Attn: Brandon Pritchett  
City of Pflugerville  
100 East Main St.  
Pflugerville, TX 78660

Ryan Shanaghan  
R-NAM Environmental - Non-Food Sales  
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September 30, 2020

Re: City of Pflugerville, TX  
CA 501 RA Proposal

Dear Mr. Pritchett,

GEA Westfalia Separator's CA 501 is a proprietary design fabricated to GEA specifications. GEA Westfalia is the original equipment manufacturer of the CA501 units at the WWTP in Pflugerville, TX . Therefore as the exclusive vendor for this plant all the equipment and components are manufactured to GEA specifications. This includes all items in the attached proposal Quotation No. 30260394. (New Rotating Assembly)

Model Number: CA 501

Serial Number: 8004-510

Please find attached the original proposal dated March 23, 2020.

Sincerely,

*Ryan Shanaghan*

Ryan Shanaghan, Southeast Regional Manager  
**GEA MECHANICAL EQUIPMENT US, INC.**  
**GEA WESTFALIA SEPARATOR DIVISION**

**ATTACHMENT**

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SECTION I SUMMARY: SCOPE OF SUPPLY AND PRICING

Item Description

- 1 One (1) New CA 501 rotating assembly including:
  - Scroll
  - Bowl shell
  - Hubs
  - Gearbox
  - Pillow block and bearings
  
- 2 Field Balance if unable to balance in factory due to lack of frame (will advise upon order)

TOTAL PACKAGE PRICE:

FOB: Pflugerville, Texas

\$279,179.00 USD

SECTION II SPECIFIC TERMS AND CONDITIONS:

**DELIVERY:** Five (5) months after mutually accepted purchase order and clarification of all technical and commercial details.

**D.D.P.:** Plant site Pflugerville, Texas

**TERMS:** 50% Down payment at time of order;  
50% Upon delivery  
All invoices are due net thirty (30) days from invoice date.

**START-UP:** Supervision of initial startup and training of operating personnel shall be performed at our normal service rates. Cost of travel and living charged back at cost.

Note: Final balancing will be performed at no cost should GEA be unable to balance in the factory with a CA 501 Frame due to the expediting of the order.

This quotation is subject to the Terms and Conditions of Sale, including the Limited Equipment Warranty and Disclaimer contained therein, a copy of which can be found in Quotation Appendix.

**COVID-19:** “Due to current developments and measures taken globally, nationally and locally in connection with the World Health Organization’s declared public health emergency in respect of the COVID-19 pandemic, GEA’s offered goods and/or services can be negatively affected. Although GEA is taking actions to mitigate potential supply impacts, please be advised that our choice of suppliers / subcontractors, delivery lead-times, engineering and/or site services, quoted prices, etc. may be impacted due to the COVID-19 pandemic.

Such adverse effects may, in particular, be caused by or occur in response to actions taken by a government or public authority (including the imposition of embargoes or import or export restrictions, quarantine orders, travel restrictions or any other restrictions or prohibitions and the compliance by GEA or any of its sub-suppliers of any tier with corresponding laws or governmental orders, rules, regulations, directions, recommendations or precautions). The coronavirus pandemic and these effects may inter alia result in excessive illness rates of personnel, difficulties or increased costs in obtaining workers or goods, inability to transport goods or persons across borders, other travel restrictions or mobility impairments, personnel and/or material shortages, delays or other adverse circumstances affecting the supply of goods or services.

Accordingly, GEA reserves the right to require an extension of any stated time schedule and/or to charge extra reasonable costs in the event GEA’s time schedule is adversely impacted and/or GEA incurs additional costs due to any of the foregoing.”

**VALIDITY:** Prices are firm for acceptance for ninety (90) days from date of quotation and shall remain firm for delivery as quoted.

**WARRANTY:** Equipment quoted bears a warranty against faulty workmanship and material for a period of twelve (12) months from date of acceptance not to exceed eighteen (18) months after delivery.

## APPENDIX A

### **TERMS AND CONDITIONS OF SALE**

#### 1. PROPOSAL RESTRICTION/CONFIDENTIAL INFORMATION.

1.1 Binding Contract. Unless otherwise noted in the Seller's proposal, this proposal shall lapse automatically upon the expiration of a thirty (30) day period after the date of its submission unless it has been previously accepted by Purchaser or revoked in writing by Seller. This proposal does not become a binding contract until Seller confirms the Purchaser's order in writing. Upon Purchaser's acceptance of this proposal all terms and conditions set forth herein are also accepted.

1.2 Plans, Drawing and Illustrations. Proposal pages, catalogue illustrations and preliminary drawings are submitted only to show the general style, arrangement and approximate dimensions of equipment. Seller reserves the right to make such changes of design, construction or arrangement as it deems necessary to achieve the specifications contained herein. Purchaser is to provide the drawings of all foundations, concrete construction and reinforcement and required housings in a timely manner, based upon Seller's equipment drawings.

1.3 Erection; Installation. Unless otherwise specified, prices quoted do not include any erection or installation. If Purchaser shall desire installation or erection, Seller shall, if requested, provide a separate proposal to cover such erection or installation, and if accepted by Purchaser, it shall become a part hereof subject to all of the terms and conditions as if the same had originally been made a part hereof.

1.4 Proprietary and Confidential Information. This proposal and all drawings, notebooks, operating data, specifications, proprietary information, trade secrets, intellectual property and other information, data and material (whether orally disclosed, printed, handwritten, typed, numerically or computer generated, computer stored, or otherwise) furnished to Purchaser by either Seller or any of its subcontractors or sub suppliers shall remain the proprietary and confidential property (herein after "Confidential Information") of Seller or its subcontractor or sub supplier, respectively, and shall be used by Purchaser only with respect to the work covered by this contract and shall not be used by Purchaser in connection with any other project. Such Confidential Information shall not be shown or otherwise made available to any third party at any time without Seller's prior written consent. Neither Purchaser itself shall, nor shall Purchaser permit any third party to, reverse engineer, measure or otherwise technically examine or test Seller's equipment without Seller's prior written consent. Any such Confidential Information which Purchaser determines must be disclosed to its employees shall only be disclosed to its employees on a need-to-know basis for the operation, maintenance, and repair of the equipment provided under this contract. All intellectual property given or made available to Purchaser under this contract or obtained by Purchaser from Seller's equipment based on the design, supply or use of the equipment shall remain the exclusive property of Seller or its subcontractor and/or subsupplier, respectively. Confidential Information shall not include information which (a) is public knowledge, (b) is lawfully acquired by Purchaser from third parties, or (c) Purchaser can demonstrate from its written records was already in Purchaser's possession at the time of initial receipt from Seller or its subcontractors and subsuppliers, as applicable. Purchaser shall return all Confidential Information furnished by Seller to Seller subcontractors and/or subsuppliers, as applicable upon termination of this agreement or otherwise at Seller's request.

## 2. TRAINING; SAFETY.

2.1 Training by Seller. Seller shall furnish, and Purchaser shall accept, the services of a technical representative to perform start-up of the equipment and training of Purchaser's operating and maintenance personnel. Seller shall, if requested by Purchaser, furnish refresher training of Purchaser's operating and maintenance personnel. Purchaser shall be responsible for all travel expenses associated with training and retraining. Purchaser shall be wholly and fully responsible for any and all expenses, loss, cost and damages for bodily injury to personnel and property damage arising from or the failure to have Seller's technical representative to supervise and train Purchaser's operating and maintenance personnel.

2.2 Costs of Start-up; Training. Unless otherwise specified, prices quoted do not include any charges for the cost or expenses of commissioning and start-up of the equipment or the initial or refresher demonstrations of the operation and maintenance of the equipment, which shall be in addition to the quoted price. Such charges shall be in accordance with the established rates of Seller in effect at the time regarding site services.

2.3 Safety Requirements of Purchaser. Purchaser shall use, and shall train and require its employees to use, all safety devices, guards, and proper safe operating and maintenance procedures as prescribed by all applicable laws, rules, regulations, codes and standards and as set forth in operating and maintenance manuals and instruction sheets furnished by Seller. Purchaser shall not remove or modify any safety device, guard or warning sign. If the Purchaser fails to strictly observe any of the obligations set forth in the preceding two sentences with regard to any of Seller's equipment, Purchaser agrees to defend Seller against, and indemnify and save Seller harmless from, any claim, loss, liability or obligation (including the costs and attorneys' fees of any suit or claims directly or indirectly arising therefrom) incurred by Seller as a result of bodily injury or property damage arising from such failure. Purchaser also agrees to defend, indemnify and save Seller harmless from, any claim, loss, liability or obligation incurred by Seller as a result of bodily injury or property damage due to use of Seller's equipment for materials or products not specified in the contract or use of non-original replacement parts not specifically authorized in writing by Seller or due to changes in the Seller's equipment made by Purchaser without Seller's specific written authorization. If the terms of the contract do not require Seller to install and commission Seller's equipment, Purchaser shall permit Seller to have a representative on site during commissioning to perform a health and safety check, and in the absence of such permission, Purchaser assumes full responsibility for operation, training and verification of all aspects of health and safety with respect to Seller's equipment and agrees to fully defend, indemnify and hold harmless Seller from all claims, liability, losses and obligations arising directly or indirectly from the installation or commissioning .



### 3.0 SERVICE/MAINTENANCE OF EQUIPMENT.

3.1 Generally. Upon request by Purchaser, Seller's Original Manufacturer's Service Division will furnish Purchaser a representative to service and assist in the service and/or maintenance of the equipment.

3.2 Cost of Service and Maintenance. Unless otherwise specified, prices quoted do not include any charges for the cost or expenses of service or maintenance of Seller's equipment which shall be in addition to the quoted price. Such charges shall be in accordance with Seller's service rate schedule in effect at the time such service or maintenance is provided or in accordance with any continuing service contract that may be entered into between the Seller and the Purchaser.

### 4.0 COMPLIANCE WITH LAWS.

4.1 Installation Permits; Approval of Plans or Specifications. Where state laws or municipal ordinances require permits for the installation of equipment covered by this proposal, or the approval of the plans and specifications for installation, it shall be Purchaser's responsibility to secure such permit or approval from the proper state or municipal authorities having jurisdiction and to pay any required fees prior to Seller's installation of such equipment. If any changes are required in the equipment covered by this proposal to meet the approval of state or municipal authorities having jurisdiction, Purchaser shall inform Seller in writing of such changes and shall reimburse Seller for changes actually made to comply with the requirements of said authorities and shall pay Seller for any out-of-pocket expense incurred by Seller for inspection by all regulatory officials.

4.2 Laws and Regulations. The equipment or work purchased from Seller shall comply with all applicable laws, rules, regulations, codes and standards of all federal, state, local and municipal governmental agencies having applicable regulatory jurisdiction, as such laws, rules, regulations, codes and standards are in effect on the date of the contract, provided that: (i) the Purchaser will include in its specifications or will bring to the attention of Seller in writing any state, local or municipal laws, rules, regulations, codes or standards which are different from those imposed by the federal governmental agencies and authorities; (ii) if any such federal, state, local or municipal laws, rules, regulations, codes or standards are changed, or if new laws, regulations, codes or standards or interpretations thereof are enacted or adopted subsequent to the date of the contract, which require a change in Seller's equipment or work, an equitable adjustment shall be made to the contract price, delivery schedule and payment terms; and (iii) Seller does not guarantee any compliance with, nor will Seller incur any liability for failure of the equipment or work to comply with, any pollution control, effluent or utility control laws, rules, regulations, codes or standards; provided, however, that Seller will comply with any specific equipment emission guarantees which form part of the contract.

## 5.0 TRANSPORTATION; INSURANCE; RISK OF LOSS.

### 5.1 Transportation; Shipping.

5.1.1 Where transportation costs are prepaid, equipment will be shipped to an unloading point designated by the Purchaser. Unloading, haulage to the erection site from the designated unloading point and further necessary handling shall be at the Purchaser's risk and expense, independent of any erection services that may be requested by the Purchaser.

5.1.2 Shipping instructions are to be supplied by the Purchaser within 30 days after notification by Seller that equipment is ready for shipment. In the event Purchaser fails to supply shipping instructions, it shall be invoiced and Seller at its option may place the equipment in Seller's or any public or private storage facilities at the Purchaser's risk and expense.

5.2 Insurance. Purchaser accepts full responsibility for the safeguarding of all equipment delivered to the Purchaser until it is paid for in full. Until the contract price is paid in full, Purchaser shall provide and maintain insurance to the total value of the equipment delivered hereunder against all risks of fire and explosion in the names of Purchaser and Seller, as their respective interests may appear, and shall also provide and maintain such insurance to the above value against flood, earthquake, windstorm, cyclone, tornado, hurricanes, riot and strike and civil commotion. Purchaser shall provide a Certificate of Insurance reflecting such coverage upon the request of Seller.

5.3 Title; Right of Possession; Security for Payment. The parties mutually agree that the equipment specified herein shall at all times remain personal property regardless of the degree of its annexation to the real property and that the equipment shall not by reason of any annexation to real property become a part thereof or otherwise a fixture. Title and right of possession of such equipment shall remain in Seller at all times. Title shall pass to Purchaser when Purchaser has fully paid for the equipment pursuant to these Terms and Conditions of Sale. Without waiving any rights to elect to proceed under applicable lien laws, Seller reserves a security interest in the equipment and parts furnished by it. By accepting delivery of the equipment or parts, Purchaser grants to Seller a security interest in such equipment and parts to secure the full and prompt payment for such equipment and parts until the agreed price (including any notes therefore) for such equipment and parts has been fully paid in cash. In the event of default in payment, Seller shall have all rights of repossession and other rights available to a secured party under the laws applicable thereto. Any equipment or parts may be separated from real estate for purpose of repossession by Seller or by its agent without liability for such removal if the Purchaser is in default in payment. Seller is authorized to execute, deliver and file with the appropriate filing office or offices all assignments, financing statements and other documents which Seller may require to evidence or perfect such security interest in accordance with applicable laws. If any documents are required to be signed by Purchaser, then Purchaser agrees to execute and deliver to Seller (and Purchaser hereby irrevocably constitutes and appoints Seller as its attorney-in-fact to execute, deliver and file with the appropriate filing office or offices on Purchaser's behalf) all assignments, financing statements and other documents which Seller may require to evidence or perfect such security interest in accordance with applicable laws.

## 6.0 SELLER'S REMEDIES.

6.1 In the event of the insolvency of the Purchaser, Seller reserves the right to cancel the sale as well as the right to stop delivery of the goods and to resell same. Such a right shall not restrict or otherwise impair Seller's remedies for damages in the event of Purchaser's breach.

6.2 Should Purchaser fail to comply with the terms and conditions set forth herein, or if any writ or execution be levied on any of Purchaser's property, or a receiver be appointed, or if a petition in bankruptcy be filed by or against Purchaser, Seller may, upon election, demand the entire purchase price stated herein or may without notice or demand by process of law or otherwise, take possession of all or any of the equipment, wherever located, and retain all monies theretofore paid as compensation for the reasonable use of such equipment. If a contract arising from this proposal is breached and is placed in the hands of an attorney for collection of any balance due or enforcement of any other of Seller's remedies, Purchaser agrees to pay all reasonable attorneys' fees and other expenses involved therein paid or incurred by Seller. Purchaser hereby waives any and all claims, damages and demands against Seller arising out of the repossession, retention and repair as aforesaid. All rights and remedies contained herein are cumulative and not alternative.

6.3 Seller reserves all other rights and remedies available to it in the event of Purchaser's breach.

7.0 ASSIGNMENT. The Purchaser shall not have the right to assign this agreement without the written consent of Seller.

8.0 INCREASE IN COST OR PRICE; INTEREST. All prices quoted are firm for shipment within six months after the receipt of purchase order. If shipment should be delayed by Purchaser beyond said six months, the price may be increased to the price in effect at the time the equipment is shipped. A finance charge computed at the periodic rate of 1.5% simple interest per calendar month (i.e., to produce an approximate effective Annual Percentage Rate of 18% on the unpaid principal balance) may be imposed on Purchaser's account balance that is outstanding after 30 days. However, if such interest is not imposed on Purchaser's account within the previously stated timeframe, Seller reserves the right to retroactively impose such interest on the account balance.

## 9.0 SUSPENSION; TERMINATION; RETURNS.

9.1 Suspension. Suspension can only be instituted upon written request by Purchaser and written acknowledgment thereof by Seller in which event all costs of all work done to the date of suspension, both on equipment and installation, plus reasonable overhead and profit, is payable to Seller immediately. Purchaser agrees that when the contract is resumed, any increased costs in labor or materials then in effect will be added by Seller to the original contract.

9.2 Cancellation. Unless otherwise specified in the Seller's proposal, termination or cancellation may only be instituted upon written request by Purchaser and written consent of an officer of the Seller at which time Seller will estimate the percentage of completion of the order, including installation, purchased items, cancellation costs to Seller from suppliers, plus reasonable profit, etc. Purchaser's obligation will be to pay Seller cancellation charges of 25% of the list price of the equipment included in the canceled order or the cost of the percentage of completion, whichever is greater, plus any cancellation charges which may be charged back by other manufacturers to Seller on items which Seller may have ordered to complete Purchaser's order. If the monies already paid to Seller by Purchaser do not cover the foregoing, Purchaser will be liable for any difference, which shall be immediately payable to Seller upon demand.

### 9.3 Returns.

9.3.1 For Credit. In no case are materials or equipment to be returned without Seller's written permission. Previously obtained materials and/or equipment accepted for credit are subject to minimum service charge of 15% plus all transportation charges. Materials or equipment built to order are not subject to return for credit under any circumstances. Any materials or equipment authorized for return must be securely packed so as to reach Seller without damage. Materials or equipment reaching Seller in damaged condition may be accepted by Seller for credit as such value as shall be reasonable by Seller after determination of the extent of such damage, and Seller assumes no responsibility for damages suffered by such equipment prior to its receipt by Seller in good order and condition at its plant or other designated place of receipt by Seller.

9.3.2 For Service. In the event Purchaser at any time delivers the equipment or any part thereof to Seller for repair, Purchaser agrees that such delivery shall constitute Purchaser's authorization to Seller to destroy or render unusable the equipment or any part thereof in the event it is found to be beyond repair and which in accordance with Seller's safety guidelines is determined by Seller's Safety Officer to be hazardous to operate as a result thereof.

9.4 No Changes to Equipment/Parts Allowed. Purchaser may not make any changes to any equipment or parts as set forth the proposal without Seller's prior written consent. If any such changes are made, by the Purchaser to the required equipment or parts as set forth in the proposal, which incur additional costs, the additional costs shall be paid by Purchaser.

## 10.0 SELLER'S LIABILITY; FORCE MAJEURE.

10.1 Seller shall not be liable for loss or damage of any kind resulting from: (i) Purchaser failing to supply any necessary technical data, as required; (ii) Purchaser failing to supply the apparatus, materials and services required; (iii) any changes in designs or specifications made subsequent to acceptance of this proposal; (iv) failure of suppliers to furnish purchased material or auxiliary equipment within scheduled dates; or (v) by any other reason beyond its control.

10.2 Seller shall attempt to overcome but shall not be liable for any loss or damage from delay in delivery of any equipment or completion of any work as a result of causes of any kind beyond the reasonable control of Seller, such as, but not limited to, strikes or other labor difficulties, war, riots, changes in laws and regulations and other acts of governmental authorities, inclement weather, fire, flood or unavoidable casualties, or any delays in transportation of materials, or inability to obtain timely delivery of materials from suppliers where such transportation or delivery has been properly procured and appropriately expedited. In the event of any such delay, Seller will notify the Purchaser within a reasonable time after Seller becomes aware of such cause of delay and it is agreed that the time for delivery or completion shall be extended for a period of time at least equal to the time lost by reason of the delay.

11.0 MATERIAL AND WORKMANSHIP WARRANTY. Seller warrants to the Purchaser that the equipment purchased from Seller is free from defects in material and workmanship for a period of twelve (12) months from the date of Purchaser's initial operation on production using the equipment but not more than eighteen (18) months from the date of delivery of the equipment provided that: (i) the equipment is installed in accordance with Seller's specifications and instructions and is used and maintained normally and properly in accordance with Seller's instructions as to maintenance and operation, as set forth in written operation and maintenance manuals and instruction sheets furnished by Seller; (ii) the equipment is used for processing product consistent with the feed characteristics set forth in Seller's proposal or if none are stated in the proposal, then consistent with the specifications outlined in the purchase order or contract, but if no feed characteristics or feed specifications are stated in the proposal, purchase order or contract, the equipment is used to process product identical to product provided to Seller for testing prior to the contract being entered into; (iii) the equipment has not been changed without the prior written approval of Seller; (iv) Purchaser gives prompt written notice to Seller before the end of the warranty period specifying all alleged defects in the equipment purchased; and (v) Purchaser preserves and turns over to Seller and permits reasonable inspection by Seller of all allegedly defective equipment, parts or items and access to the equipment to observe its startup, operation and maintenance.

This warranty shall not cover (i) any equipment furnished by Purchaser or any third party (other than a subcontractor of Seller), (ii) any defects arising from corrosion, abrasion, use of unsuitable lubricants, operation outside of prescribed temperature ranges, or negligent attendance or faulty operation, (iii) ordinary wear and tear, or (iv) any defects caused by errors on the part of the Purchaser in not providing suitable premises in which the equipment is to be located, adequate foundation works, or adequate protection against influences within or outside the premises which may affect the equipment or its operation. Notwithstanding the warranty set forth above, Seller shall not warrant any equipment, where the vendor of such equipment (other than Seller) is specified by Purchaser, for a period longer than warranted by the vendor.

UNLESS OTHERWISE EXPRESSLY STATED IN ANY DOCUMENT ATTACHED TO THESE TERMS AND CONDITIONS, THIS WARRANTY OF MATERIAL AND WORKMANSHIP IS THE ONLY WARRANTY MADE BY SELLER AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER DISCLAIMS ON BEHALF OF ITSELF, ITS AFFILIATES, SUBCONTRACTORS AND SUBSUPPLIERS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A SPECIFIC PURPOSE (OTHER THAN THE PURPOSE STATED IN THE PURCHASER'S SPECIFICATIONS SET FORTH IN THE CONTRACT), SUITABILITY OR PERFORMANCE. No other promise or affirmation of fact (including, but not limited to, statements regarding capacity or performance of the equipment) shall constitute a warranty of Seller or give rise to any liability or obligation on the part of Seller.

Seller's obligation under this warranty and any other warranty or guarantee which is part of the contract is strictly and exclusively limited to furnishing repairs or replacements for equipment or parts determined to be defective on inspection by an authorized representative of Seller. Notwithstanding this exclusive remedy, if it is ultimately determined that the remedy fails in its essential purpose, then any action which may be brought against Seller subject to the terms of the contract will be limited to 100% of the contract price for the purchased equipment for which the exclusive remedy has so failed. Seller assumes no responsibility and shall have no liability for any repairs or replacements by Purchaser without Seller's prior written authorization. If Seller did not originally install the equipment, Seller shall have no liability for the costs of removing or segregating any defective equipment so that the repairs or replacements can be made.

12.0 DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT TO THE CONTRARY:

(A) SELLER'S AND ITS SUBCONTRACTORS' AND SUBSUPPLIERS' AGGREGATE RESPONSIBILITY AND LIABILITY, WHETHER ARISING OUT OF CONTRACT OR TORT OR ANY OTHER LEGAL CONTEXT OR THEORY, INCLUDING NEGLIGENCE AND STRICT LIABILITY, UNDER THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, ALL CLAIMS FOR BREACH OF ANY WARRANTY OR GUARANTEE, FAILURE OF PERFORMANCE OR DELAY IN PERFORMANCE BY SELLER OR PERFORMANCE OR NON-PERFORMANCE OF THE PURCHASED EQUIPMENT SHALL NOT EXCEED THE CONTRACT PRICE FOR THE PURCHASED EQUIPMENT; PROVIDED, HOWEVER, THAT THIS LIMITATION WILL NOT APPLY TO ANY LIABILITY OF SELLER FOR DIRECT DAMAGES CLAIMED BY PURCHASER FOR PHYSICAL DAMAGE TO PURCHASER'S PROPERTY (OTHER THAN EQUIPMENT PROVIDED BY SELLER) OR FOR DIRECT DAMAGES CLAIMED BY THIRD PARTIES FOR SUCH THIRD PARTIES' PERSONAL INJURY OR PHYSICAL PROPERTY DAMAGE FOR WHICH SELLER IS LIABLE TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR WILLFUL MISCONDUCT OF THE SELLER, FOR ALL OF WHICH MATTERS SELLER SHALL BE LIABLE UP TO AN AMOUNT OF \$5,000,000 IN THE AGGREGATE, AND

(B) IN NO EVENT SHALL SELLER, ITS SUBCONTRACTORS OR SUBSUPPLIERS BE LIABLE IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL CONTEXT OR THEORY, INCLUDING NEGLIGENCE AND STRICT LIABILITY, FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR CHARACTER, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF PRODUCTIVE FACILITIES OR EQUIPMENT, COSTS OF PRODUCT RECALL, PLANT DOWNTIME, DAMAGE TO OR LOSS OF PRODUCT, CHEMICALS, CATALYSTS, FEEDSTOCK OR OTHER RAW MATERIALS, LOSS OF REVENUES OR PROFITS OR LOSS UNDER PURCHASES OR CONTRACTS MADE IN RELIANCE ON THE PERFORMANCE OR NON-PERFORMANCE OF THE PURCHASED EQUIPMENT, WHETHER SUFFERED BY PURCHASER OR ANY THIRD PARTY, OR FOR ANY LOSS OR DAMAGE ARISING OUT OF THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE PURCHASER, ITS EMPLOYEES OR AGENTS OR ANY THIRD PARTY.

TO THE EXTENT THAT SELLER OR THE PURCHASER MAKES ANY CLAIM UNDER ANY FRAUD OR TORT THEORY FOR THE PURPOSE OF CIRCUMVENTING THE LIMITATIONS AND DISCLAIMERS SET FORTH ABOVE AND IS UNSUCCESSFUL IN PREVAILING ON THOSE CLAIMS, IT HEREBY AGREES TO REIMBURSE AND INDEMNIFY THE OTHER PARTY FOR ALL ATTORNEYS' FEES AND EXPENSES AND COSTS INCURRED BY THE OTHER PARTY IN DEFENDING SUCH CLAIM.

13.0 ALTERATION – MODIFICATION. No waiver, alteration or modification of the foregoing terms and conditions, except as noted in the text of this proposal shall be valid unless made in writing and signed by an authorized representative of Seller.

14.0 PATENTS. Seller shall hold Purchaser harmless against any claim that Seller's equipment or apparatus infringes any U.S. equipment/apparatus patent existing at the time of this agreement. Notwithstanding the foregoing, Seller makes no representation or warranty, and Seller shall have no liability for any infringement or unfair competition resulting from any process/method patent, product-by-process patent or the use of Seller's equipment with Purchaser's process or in combination with other equipment not supplied by Seller, any infringement of a patent claim that covers the product being produced by use of the Seller's equipment or infringement resulting from modification of Seller's equipment or Seller's specified process without Seller's prior written consent.

Seller's agreement to hold harmless is conditioned upon Purchaser's prompt written notice to Seller of any claim of such patent infringement; Seller being given choice of counsel; Purchaser's reasonable cooperation in defense of the claim; Purchaser mitigating damages, refraining from making an admission and not agreeing to any compromise, or settlement without prior written consent; and Seller having full discretion to settle the claim, make modifications or replacements to avoid infringement, or require return of the equipment to Seller.

15.0 INTEGRATION CLAUSE. By acceptance of this proposal, the Purchaser acknowledges (1) that it has not relied on any previous written, oral or implied representation, inducement or understanding of any kind or nature, (2) that Seller's proposal, including these Terms and Conditions of Sale and any drawings incorporated in the proposal by reference, embodies the entire agreement between the Purchase and Seller and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, (3) that the contract entered into by confirmation by Seller of Purchaser's order may not be modified or terminated except in writing signed by a duly authorized representative of Seller making specific reference to the contract, and (4) the Purchaser may not assign the contract without the prior written consent of Seller.

16.0 ALTERNATE DISPUTE RESOLUTION. The Parties shall resolve all controversies, claims or disputes, which the Parties are unable to resolve informally, arising out of or relating to the terms and provisions of this agreement, or the breach, termination, enforcement, interpretation or validity thereof, including the determination if the scope or applicability of this agreement, as follows:

(i) Either Party to this agreement shall notify the other Party in writing of the nature of the claim or dispute with as much detail as possible about the deficient performance (the "Dispute Notice"). Within fourteen (14) days after delivery of a Dispute Notice, a managing executive ( a President or Executive Vice-President level) of each Party shall meet in person or by telephone at a mutually acceptable time and place in an attempt to resolve the dispute ("Resolution Meeting"). They shall consult and negotiate in good faith attempting to reach a resolution satisfactory to both Parties. All such negotiations (including the mediation and arbitration) shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(ii) If the managing executives have not resolved the matter, or agreed upon a written plan of corrective action, within forty-five (45) days of delivery of a Dispute Notice, or if they fail to meet within thirty (30) days after delivery of a Dispute Notice, either party may initiate mediation and, if applicable, arbitration in accordance with the procedures set forth in (iii) and (iv) below. The Resolution Meeting in (i) is voluntary; however it is a condition precedent to any subsequent demand for mediation or for filing for arbitration.

(iii) If such executives are unable to resolve the dispute or have failed to meet, the Parties shall participate in a non-binding mediation procedure as follows: a mediator will be selected by having counsel for each Party agree on a single person to act as mediator. The mediator will keep all information confidential. The time and place of the mediation is to be determined by the mediator, but not more than ninety (90) days after the delivery of the Dispute Notice. Mediation costs will be shared equally by the Parties. The mediation process is voluntary; however, it is a condition precedent to any subsequent filing of a demand for arbitration that the Party demanding arbitration shall have participated in mediation.



(iv) Non-binding Arbitration

a. Generally. If the dispute is not resolved after attempts at mediation as set forth above, or if the Party against who relief is sought refuses to take part in mediation, the Parties hereby agree to submit all disputes to non-binding arbitration in New Jersey according to the commercial rules and practices of the International Institute for Conflict Prevention and Resolution. Arbitration shall be by three independent and impartial arbitrators who shall keep all submitted information confidential.. Each of the Parties shall appoint one arbitrator within fifteen (15) days after initiation of arbitration and the two arbitrators so appointed shall select a third arbitrator within ten (10) days of their appointment, which third arbitrator shall be the panel chair.. If the arbitrators are not timely selected the International Institute for Conflict Prevention and Resolution shall select such arbitrators.

b. Prehearing Procedures/Conduct of Hearing. The arbitration shall be expedited. The hearing shall take place no later than ninety (90) days of the original demand.

c. Arbitration Award. The arbitration award shall be written and shall specify the factual and legal basis .The award shall be non-binding.

d. Injunctive Relief. Notwithstanding the foregoing, either Party may apply at any time to a court for injunctive relief.

17.0 GOVERNING LAW AND WAIVER OF TRIAL BY JURY. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PURCHASER AND SELLER IN CONNECTION WITH THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW JERSEY (WITHOUT GIVING EFFECT TO ITS PRINCIPLES OF CONFLICTS OF LAWS). TO EXPEDITE RESOLUTION OF ANY ACTION, SUIT, OR PROCEEDING WHICH ARISES HEREUNDER, BUYER AND SELLER IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY SUCH ACTION, SUIT, OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT TO WHICH IT MAY BE A PARTY.

18.0 JURISDICTION. WITH RESPECT TO ANY ACTION, SUIT, OR PROCEEDING RELATING TO THIS ORDER OR ARISING IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, BUYER AND

SELLER IRREVOCABLY (A) SUBMIT TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF THE STATE OF NEW JERSEY, (B) AGREE TO FILE AND BRING SUCH ACTION, SUIT, OR PROCEEDING EXCLUSIVELY IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY LOCATED IN NEWARK, NEW JERSEY OR IN THE STATE COURTS OF NEW JERSEY LOCATED IN THE COUNTY OF BERGEN (C) WAIVE ANY OBJECTION WHICH IT OR THEY MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY ACTION, SUIT, OR PROCEEDING IN ANY SUCH COURT, (D) WAIVE ANY CLAIM THAT ANY SUCH ACTION, SUIT, OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (E) WAIVE THE RIGHT TO OBJECT THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER THE PARTIES.

19.0 U.N. CONVENTION. The United Nations Convention on the International Sale of Goods is expressly excluded and shall not apply.