

TERMS AND CONDITIONS OF SALE

1. Entire Agreement. This agreement constitutes the entire agreement between Seller and Purchaser with respect to the purchase and sale of the Equipment and no representation or statement not contained herein shall be binding upon Seller or Purchaser as a warranty or otherwise, unless in writing and executed by both parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Buyer will hold harmless Seller except only the liability in the amount of purchase price of Equipment only.
2. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. This Agreement constitutes the entire understanding between Purchaser and Seller with respect to the purchase and sale of the Equipment. Notwithstanding, anything to the contrary contained herein, this Agreement and Seller's rights hereunder, subject to the obligations incurred by Seller in such Agreement, may be assigned by Seller without the consent of Purchaser. Purchaser hereby expressly consents to the jurisdiction of the Gwinnett County Superior Court and acknowledges that the Gwinnett County Superior Court shall be the sole venue site for any action arising out of this contract. Purchaser consents to service from Gwinnett County Superior Court and hereby expressly waives any defenses related to jurisdiction and venue. Notwithstanding anything to the contrary contained herein, this Agreement and Purchaser's rights hereunder may be assigned by Purchaser without the consent of Seller.
3. Title and Risk of Loss. Title to the Equipment shall be free and clear of all claims, liens, encumbrances or defects of any nature whatsoever and shall pass to Purchaser upon full payment of the Price and applicable taxes, but risk of loss or damage to the Equipment from any cause whatsoever shall pass to Purchaser upon delivery of the Equipment to Purchaser's common, contract or own carrier. Upon receipt of full payment, Seller shall forthwith deliver to Purchaser a duly executed Bill of Sale for the Equipment and any other appropriate documents required to perfect the sale contemplated herein. The Buyer acknowledges that ownership of the Equipment remains with ASR until ASR has received payment for the Equipment in full. This retention of ownership is acknowledged and accepted by the Buyer and supersedes any implied transfer of ownership made by delivery of Equipment.
4. Maintenance, Warranties, Disclaimer. Seller warrants that, at the time the Equipment is delivered to Purchaser (I) Seller will be the lawful owner of the Equipment and will have full right, power and authority to sell same to Purchaser. (II) the Equipment will qualify for a maintenance agreement which the original manufacturer regularly enters into for the type and model of equipment which is the subject of this Agreement and will conform to the then current published engineering standards of the original manufacturer. Other than the foregoing, there are no warranties, expressed or implied, including, without limitation, warranties of merchantability and fitness for a particular purpose, respecting this agreement or the Equipment sold hereunder, in no event will the Seller be liable for any indirect, special or consequential damages in connection with or arising out of the sale of the Equipment hereunder. The Equipment is being sold to Purchaser in the ordinary course of Seller's business.
5. Rights Upon Default. Upon Purchaser's failure to pay any unpaid balance of the total purchase price of the Equipment upon delivery thereon, or upon Purchaser's repudiation of this Agreement, either prior to or subsequent to the delivery, the Seller shall have the right at its sole option, without notice to the Purchaser, and without waiving any other right or remedy available to it under this Agreement or under the law, to demand from the Purchaser and to receive from the Purchaser a late fee equal to one percent (1%) of the total contract price for the Equipment for each day during which payment of such balance remains unpaid, or the Seller may elect, in addition thereto or in substitution thereof, to terminate this Agreement, repossess the Equipment, and receive from the Purchaser as damages, and not as a penalty, an amount equal to twenty percent (20%) of the total purchase price of the Equipment plus all actual costs of the Seller to include shipping and attorneys' fees. If being stipulated by the Seller and Purchaser that because of the difficulty of determining the exact amount of damages due to Seller in the event of termination of this Agreement due to the failure of the Purchaser to pay the total purchase price the amount of twenty percent (20%) of the purchase price plus all actual costs associated with shipping and attorneys' fees is considered by the parties to be reasonable and actual damages to Seller and the parties adopt it as such. Seller may also, in addition thereto or in substitution thereof, command from Purchaser all attorneys' fees and costs of court actually incurred by the Seller in collecting any amount due hereunder or in repossessing the Equipment or exercising any remedy available to the Seller under this Agreement.
6. Substitution. Seller reserves the right to substitute comparable Equipment to that specified in the contract should market conditions make any Equipment unavailable. Seller shall notify Purchaser of any substitutions prior to shipment. Purchaser shall have the right to cancel this contract and receive the return of all monies paid Seller should Purchaser elect not to accept such substitution. Should the Purchaser fail to notify the Seller that the substitution is not acceptable within five (5) days from the date of notice of substitution, then the substitution shall be deemed accepted by the Purchaser.
7. Packing and Transportation. The price shown above is F.O.B. the current location of the Equipment. All transportation, rigging and drayage will be paid by the Purchaser. Seller shall prepare the Equipment for shipment using manufacturer's standard packaging materials or equivalent.
8. Acceptance. Purchaser shall, upon delivery of the Equipment, inspect the Equipment and notify the Seller, in writing, within five days of delivery or on or before the date Purchaser accepts the Equipment for a Maintenance Agreement, whichever occurs first, of any defects or nonconformity's whatsoever in the Equipment. Failure of Purchaser to so notify Seller shall constitute an acceptance of the Equipment and waive of all defects and/or nonconformities in the Equipment.
9. Confidentiality. The terms and conditions of this Agreement are confidential in nature and Purchaser agrees that said terms and conditions would not be disclosed to anyone outside of Purchaser's organization.
10. Transportation. The prices shown are F.O.B. Equipment's present location. All transportation, rigging, draying, and carrying charges while in transit will be the responsibility of and shall be paid by Purchaser. Purchaser assumes the risk of loss or damage to the Equipment while in transit to Purchaser's place of business and by the carrier at the loading dock and thereafter. Seller reserves the right to require proof of insurance before delivery to the carrier. Delivery is subject to conditions beyond Seller's control.
11. Unenforceability. No provision of this Agreement which may be deemed unenforceable shall in any way invalidate any other provision or provisions hereof all of which shall remain in full force and affect.
12. Notice. Any notice provided for herein shall be in writing and sent by certified mail, return receipt requested, postage prepaid, addressed to the party for which it is intended at the address set forth in this Agreement, or to such other address as either party shall from time to time indicate to the other in writing. Said notice shall be effective upon its receipt by the addressee.
13. Taxes. In addition to the Price, any present or future sales, use, or other similar tax imposed upon the purchase or sale of the Equipment shall be paid by Purchaser, unless Purchaser delivers to Seller a duly executed resale exemption certificate and/or tax exemption number to evidence the inapplicability of any such tax to Purchaser. Seller shall remain liable for any personal property taxes assessed or levied on the Equipment or which may be assessed or levied on the Equipment prior to delivery of the Equipment. Purchaser shall indemnify and hold harmless Seller from its failure to pay any sales, use, and excise or personal property taxes on the Equipment.
14. Special Features. (a.) Any Special feature(s) currently installed on the Equipment which are not specified on the face of this Agreement are and shall remain the sole property of the Seller. Such feature(s) may be removed at the Seller's cost and at the convenience of the Purchaser. Purchaser shall allow Seller reasonable access to Equipment for that purpose and shall give Seller prior notice of any resale or lease of the Equipment in order to facilitate removal of such special features. (b) The Equipment may be accompanied by standard cable groups of unspecified lengths. Cable requirements of lengths not connected to or accompanying the Equipment shall be provided, subject to availability, at additional cost to the Purchaser.
15. Returns. No Returns of Equipment will be accepted by ASR without a Return Material Authorization (RMA) which will be issued at the discretion of ASR. Returned Equipment must be in the original shipping cartons, and must be complete with all packing materials, documentation and accessories. All returns must be freight prepaid by Buyer and not use U.S.P.S. Notice of defective products must be made in writing, fax or email within (7) calendar days of receipt. Orders are non-cancelable and non-returnable and may not be rescheduled after delivery to carrier. In the event of allocation of Equipment, orders that are accepted by ASR will be accepted using a fair scheduling method. Special Orders are not normally stocked and are non-cancelable and non-returnable. A complete description regarding the nature of the defect must be included with all returned Equipment. The RMA# must be visible on the outside of the packaging. All items not eligible for credit will be returned to Buyer, transportation collect. Once a RMA has been issued to the Buyer, it will remain open for (14) days to receive shipment, after such time RMA will be cancelled and no longer be valid.
16. Restocking. A 20% maximum Restocking Fee may apply to all Returns.