

The sale of the equipment (the "Equipment") listed in the attached quotation or sale order (the "Order") issued by Nyquist Systems Inc. (the "Vendor") is made on the following terms and conditions, which are deemed to be a part of the Order:

1. **CONTROLLING PROVISIONS.** These terms and conditions shall supercede, and the Vendor hereby objects to, any terms and conditions of any purchase order issued by the Purchaser that are contrary to the terms and conditions contained herein. No waiver, alteration or modification of the Order or these terms and conditions shall be valid unless made in writing and signed by an officer or other authorized representative of the Vendor. No order shall be assignable by the Purchaser without the Vendor's prior written consent, and any such assignment to a leasing company or other third party shall be subject exclusively to these terms and conditions.

2. **PRICE.** Unless changes are made to the Equipment after the date hereof, the prices quoted by the Vendor in the Order will remain firm for the quantities listed, provided the Equipment is scheduled for delivery within the shipping date specified in the Order and delivery is received within that time. For all Orders scheduled for delivery beyond the specified date, or if no date is specified by the Purchaser, the Vendor will invoice and the Purchaser will pay prices in effect at time of shipment. The cost of any special handling caused by the Purchaser's requirements or requests or the cost of complying with the particular requirements of any local electrical or building codes shall be added to the amount of the Order. No cash discounts or other allowances will apply.

3. **SECURITY INTEREST.** the Purchaser hereby grants a security interest to the Vendor in the Equipment. The Vendor and the Purchaser agree not to postpone the time for attachment of such security interest and that the Purchaser is to have rights in the Equipment upon the execution of the Order. Such security interest shall extend to any and all proceeds of the Equipment or any portion thereof. This security interest shall remain in full force and effect until the Vendor has received payment in full of the purchase price of the Equipment. The Purchaser hereby authorizes the Vendor to file a financing statement under the *Personal Property Security Act* (Ontario) or under similar legislation in the jurisdiction where the Equipment may be delivered to the Purchaser to perfect said security interest.

4. **PAYMENT.** The purchase price for the Equipment shall be the purchase price stated in the Order and shall be paid in the manner specified in the Order and if the manner of payment is not so specified in the Order, within 30 days of the date of the Order. Interest at the rate of 18% per annum, calculated monthly, will be charged on any balance unpaid after such time period. If the Purchaser fails to pay any amount when due or shall otherwise default in its obligations hereunder, the Vendor may without notice to the Purchaser peaceably enter any premises in which the Equipment may be found, render it inoperable or remove it and hold and sell it in accordance with applicable law.

5. **INSTALLATION.** The Purchaser agrees to pay for all costs and expenses incurred to install the Equipment and to train employees of the Purchaser to use the Equipment, if training is provided, in the amount stated in the Order. The Vendor agrees to install the Equipment ready for use and to connect same to a safety switch or breaker to be installed by the Purchaser. The Purchaser shall provide all necessary plumbing, carpentry work, conduit wiring and other materials required to attach and install the Equipment ready for use. In the event the Purchaser's local labour conditions make it impossible or undesirable to use the Vendor's regular employees for installation and connection, such work shall be performed by labourers supplied by the Purchaser, or by an independent contractor chosen and engaged by the Purchaser at the Purchaser's expense. In such case, the Vendor agrees to furnish adequate engineering supervision for proper completion of the installation. The Purchaser assumes all responsibility for any damage to the Equipment caused by contractors or labourers supplied by the Purchaser. The Purchaser shall obtain all permits and licenses required by federal, provincial or municipal authorities in connection with the installation and operation of the Equipment and shall bear any expense in obtaining same or in complying with any related rules, regulations, by-laws, ordinances and statutes. Installation of the Equipment shall be deemed to be complete upon the earlier of: (a) when the Equipment is installed to the satisfaction of the Vendor; or (b) when the Purchaser commences to use the Equipment for commercial purposes. If the installation of the Equipment is delayed for any reason for which the Purchaser is responsible, the Equipment shall for payment purposes be

considered to be completely installed thirty (30) days after the shipment date, and any unpaid balance shall then be payable to the Vendor.

6. **TAXES.** The Purchaser shall pay all provincial retail sales tax and federal goods and services tax, excise taxes and customs duties imposed on the sale, export or import of the Equipment, whenever payable and whether levied upon the Purchaser or the Vendor, whether or not such Equipment or portion thereof is in transit, on the premises of the Purchaser or held pursuant to these terms and conditions for delivery to the Purchaser.

7. **RISK OF LOSS.** Except as otherwise stated herein, the liability of the Vendor for the Equipment ceases and the risk of damage or loss of any kind or nature passes to the Purchaser upon delivery to the destination specified in the Order where delivery is specified F.O.B. destination or upon leaving the Vendor's warehouse where the destination is specified F.O.B. warehouse or point of entry. In the later case, the Purchaser is advised to insure the Equipment for its full replacement value. In the event of loss or damage during shipment where shipping is F.O.B. warehouse or port of entry, the Purchaser's claim is against the carrier and the Purchaser releases the Vendor from any and all liability in respect of loss or damage to the Equipment during shipment. For the Purchaser's own protection, it is urged that the Equipment be carefully inspected immediately upon receipt and in the event of damage, notice of claim be filed with the carrier without delay. The Purchaser shall also deliver such notice to the Vendor, so that the Vendor can cooperate with the Purchaser in the protection of the Purchaser's interest.

8. **RETURNS.** All sales are final after an Order is issued and the Equipment shall not be returned without the Vendor's prior written consent. If the Equipment is returned without the consent of the Vendor, the Vendor will notify the Purchaser to make arrangements to make return shipment arrangements. If return shipment has not been completed by the Purchaser within thirty (30) days of such notification, the Vendor may retain the Equipment and shall be at liberty to deal with the Equipment as it chooses without any obligation to the Purchaser. All freight charges for authorized returned products, together with a standard restocking fee, shall be for the account of and paid by the Purchaser.

9. **CUSTOMER SAMPLES.** In the event the Purchaser ships samples or equipment to the Vendor, the Purchaser will be responsible for the cost of return or disposal of such items. The Vendor will notify the Purchaser when such items are ready for return to the Purchaser and the Purchaser will have thirty (30) days to arrange for return, after which the Vendor may dispose of the samples or equipment and charge the Purchaser for all costs incurred.

10. **DELIVERY.** The Equipment shall be delivered to the Purchaser's receiving dock only. Arrangements for internal movement of the Equipment to the final installation location is the responsibility of the Purchaser. When delivery of the Equipment is delayed at the request of the Purchaser beyond the delivery date specified in the Order, the Equipment may be placed in storage by the Vendor at an appropriate warehouse at the Purchaser's expense and the Vendor may immediately invoice the Purchaser for the balance due. Delivery schedules are approximate and are based on conditions prevailing at the time of acceptance. The Vendor will attempt to complete shipments as specified but assumes no responsibility or liability for loss or damage by reasons including, but not limited to, delay or inability to ship or install caused by Acts of God; fire; floods; war embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any governmental act, regulation or request, shortage of labor, materials or manufacturing facilities, or any other cause or causes beyond the Vendor's reasonable control. Should manufacture, delivery or installation be delayed in whole or in part by such causes, the Vendor's time for performance shall be extended by the duration of the delaying cause.

11. **TERMINATION BY PURCHASER.** If the Purchaser, for any reason, terminates any Order in whole or in part, the notice of termination must be given in writing to the Vendor. The Vendor shall thereupon cease work and the Purchaser shall pay the Vendor the following: (a) the purchase price provided in the Order for any portion of the Equipment, the manufacture of which has been completed or ordered by the Purchaser on a noncancellable basis, which portion of the Equipment shall be delivered to the Purchaser; and (b) actual expenditures made by the Vendor in connection with the uncompleted portion of the Order, including reasonable cancellation and restocking charges in accordance with the policies of the Vendor.

12. WARRANTY.

SYSTEM COMPONENTS AND ACCESSORIES. The Vendor represents and warrants that new products, except those specifically referenced below, will be free from defects in material or workmanship for a period of one (1) year from the "warranty commencement date", which will be the earlier of: (a) the date of original installation of the Equipment; (b) thirty (30) days after the date of delivery of the Equipment to the Purchaser; and (c) the date of the first commercial use of the Equipment for a period of four (4) hours or more. The Vendor may, at its option, either repair or replace the defective Equipment. Any repairs performed by the Vendor during the warranty period will not affect the warranty commencement date, warranty duration or expiration date of the warranty period.

The Purchaser is liable for all freight and insurance costs for warranted Equipment returned to the Vendor. The warranted, repaired Equipment will be returned to the Purchaser, freight pre-paid, via standard commercial surface transportation.

THIRD PARTY EQUIPMENT. The Vendor does not make any warranty third party equipment and/or components incorporated into the Equipment. Such items will be covered by the warranty policies of the respective manufacturers unless otherwise stated in writing.

COMPUTER HARDWARE & SOFTWARE. Warranty obligations for repair or reconfiguration of computer hardware and software are void where unauthorized modification has occurred. Similarly, this warranty does not extend to repairs for system malfunctions where unauthorized or third party software has been installed on the system. Protection of the computer system from electrical surges or power interruption as recommended by the Vendor must be provided at all times to validate this warranty.

ELECTRICAL & COMPRESSED AIR SUPPLY. The Vendor's obligation for equipment performance and warranty repair does not extend to those systems which are utilized with electrical or compressed air services of inadequate quality or consistency.

IMPORTANT: VENDOR's sole obligation is to repair or replace the Equipment or any portion thereof determined by the Vendor to be defective. For greater certainty, any warranty given by the Vendor does not extend to: (a) the degradation of consumable items; (b) defects or damage to the Equipment resulting from accident, misuse, exceeding known limitations for use, overheating, neglect, unauthorized modifications, failure to follow an approved preventative maintenance schedule, or improper installation, maintenance, or application. Any warranty given by the Vendor is void if installation, service or repair of the Equipment is performed by service personnel who are not authorized by the Vendor. Any warranty given by the Vendor is extended only to the first end user of the Equipment and is not transferable subsequent owners or users of the Equipment. Any reconditioned or used equipment which form part of the Equipment is sold on an "as is, where is" basis with no warranty whatsoever unless otherwise indicated by the Vendor in the Order.

THE VENDOR DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE VENDOR BE LIABLE OR RESPONSIBLE FOR DIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES. IN ANY EVENT, THE MEASURE OF DAMAGES SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE DEFECTIVE GOODS.

13. INTELLECTUAL PROPERTY. The Purchaser acknowledges that the Equipment and the software incorporated therein contain certain intellectual property rights that are the sole property of the Vendor and which are not being transferred to the Purchaser. The Vendor does not grant to the Purchaser any right to any intellectual property residing in the Equipment, any software incorporated into the Equipment, documentation in respect thereof, or any data furnished hereunder (the "Intellectual Property"). The Vendor grants to the Purchaser the right to use the Intellectual Property subject to the Vendor's standard software license.

14. CONFIDENTIALITY. The Purchaser agrees that the Intellectual Property and other information received by it from the Vendor relating to the Equipment is proprietary information of the Vendor, which the Vendor is entitled to protect. The Purchaser agrees and undertakes to treat all such information confidential using the same standard of care to protect the Vendor's confidential information as it uses to protect its own confidential information and agrees not to disclose such information to any other third party or itself use such confidential information except for the purpose of operating the Equipment. In particular, the Purchaser recognizes that, among other items, computer software necessary for the operation of the Equipment is confidential information belonging to the Vendor or to third

parties to whom the Vendor is under an obligation not to disclose such confidential information except to certain authorized parties, such as the Purchaser. Unless otherwise agreed by the Vendor in writing, the Purchaser is only granted a license to use such software consistent with the purpose by which it is delivered to the Purchaser. The Purchaser agrees not to decompile, reverse engineer or otherwise examine the computer software or its source code. Such license shall be revoked upon any violation of the terms and conditions stated herein. The Purchaser shall have no right to copy, reproduce, or disclose to others in whole or in part any of the confidential information referred to in this paragraph without the prior written permission of the Vendor.

15. CHANGES TO EQUIPMENT. In the event the Purchaser requires changes or alterations to the Equipment after issuance of the Order which will increase the Vendor's costs, the purchase price of the Equipment will be increased and the delivery date will be automatically extended by the amount of time required to make such changes or alterations. The Vendor will notify the Purchaser as soon as practicable of the amount of such increase in price or extension of delivery date, but the Vendor's right to receive such increase in the purchase price or extension of delivery dates will not depend upon the Vendor asserting a claim under this clause within any particular time period.

16. CHANGES IN DESIGN. The Vendor reserves the right to modify, alter or change the Equipment in whole or in part, at any time prior to the delivery thereof to the Purchaser, in order to include therein electrical or mechanical refinements deemed appropriate by the Vendor, but without incurring any liability to modify or change any portion of the Equipment previously delivered to the Purchaser or to supply new Equipment in accordance with earlier specifications.

17. PRODUCT OPERATION. The Purchaser agrees and undertakes to ensure that all Equipment will be operated exclusively by duly qualified personnel in a safe and professional manner in accordance with the Vendor's written instructions, if given, and for the purpose for which the Equipment is intended. The Vendor does not offer and will not be responsible for training any personnel of the Purchaser except as may be agreed in writing.

18. COMPLIANCE WITH LAWS. The Purchaser agrees to observe and comply with all applicable federal, provincial and municipal laws, rules and regulations in its use and operation of the Equipment.

19. INDEMNITY. The Purchaser agrees to indemnify and hold the Vendor, its officers, directors, employees, representatives and agents harmless from and against all demands, claims, actions, causes or actions, liabilities, product liability, damages, judgments and costs, including solicitor's fees on a solicitor and his own client basis arising out of or in connection with any breach by the Purchaser of any these terms and conditions or the operation of the Equipment by the Purchaser, its employees or representatives, unless same is caused by the gross negligence of the Vendor in the production of the Equipment.

20. ENTIRE AGREEMENT. These terms and conditions together with the Order shall constitute the entire agreement between the Vendor and the Purchaser and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.

21. GOVERNING LAW. The Order and these terms and conditions shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the Vendor and the Purchaser agrees that the courts of the province of Ontario will have exclusive jurisdiction to determine all disputes and claims arising between the Vendor and the Purchaser in connection with this matter.