GENERAL SALES TERMS AND CONDITIONS

1. Terms and Conditions; Binding; Entire Agreement. The quotation (the “Quotation”) of GENTECH SCIENTIFIC LLC (“GENTECH”) together with these Terms and Conditions of Sale (these “Terms and Conditions”) and all other attachments to the Quotation (collectively, the “Agreement”) offer to sell Equipment and/or services to Buyer. GENTECH’s acceptance of an Agreement expression or any written or oral order from Buyer, GENTECH’s acceptance of an Agreement expression or any written or oral order from Buyer, GENTECH’s acceptance of the Terms and Conditions. No amendment of these Terms and Conditions (whether such amendment is inconsistent with, different from or in addition to, these Terms and Conditions) will be binding upon GENTECH unless specifically agreed to in a writing signed by GENTECH. Any GENTECH failure to object to any transmission in any purchase order or other communication from Buyer to GENTECH shall not be construed as an acceptance of such provisions unless and until written in full compliance with all terms and conditions of the Agreement. Any reference by GENTECH in any communication with Buyer to any purchase order from Buyer shall be for reference purposes only and will not serve to amend the Agreement in any way. No action, inaction or course of dealing or on behalf of GENTECH shall be deemed an acceptance of, or agreement with, any term in any other document relating to the subject matter herein to the extent same is inconsistent with the terms of the Agreement, and Buyer hereby waives all right to so claim. Buyer may accept the offer contained in the Agreement by executing and delivering to GENTECH a copy of the Quotation. There shall be no agreement between GENTECH and Buyer until the Agreement has been duly executed by both Parties. The Agreement constitutes the entire agreement between GENTECH and Buyer regarding the subject matter herein and supersedes all prior and contemporaneous agreements between such Parties, whether written or oral, with respect to such subject matter.

2. Delivery Terms; Delivery Dates; Title and Risk of Loss; Inspection and Damage. a. Delivery terms will be F.O.R. GENTECH shipping point; identification of the Equipment will occur when it leaves GENTECH’s shipping point at which time title and risk of loss will pass to Buyer. Delivery will be made by GENTECH either by delivering or procuring delivery of the Equipment to the Buyer’s premises or such other address as is notified to GENTECH in advance of delivery. All shipping costs will be paid by Buyer and if prepaid by GENTECH the amount thereof will be reimbursed to GENTECH. GENTECH will make reasonable commercial efforts to ship the Equipment in accordance with the delivery date set forth, GENTECH accepts no liability for any losses or for general, indirect special or consequential damages arising out of delays in delivery.

3. Technical Documentation. Timely performance by GENTECH is contingent upon Buyer’s supplying to GENTECH, when needed, all required technical information, including, without limitation, drawing approval and all required commercial documentation. Any technical documentation, drawings, brochures or catalogs provided to Buyer by GENTECH are intended for guidance only and are not binding unless expressly stated otherwise. GENTECH reserves all rights in all such documentation. Without GENTECH’s prior written consent, any such documentation shall not be: (a) disclosed, in whole or in part, to any other Person; (b) used for any purpose other than those for which they have been provided to Buyer; or (c) used for the manufacture of any duplicate or similar Equipment or parts by Buyer or any other Person.

4. Installation; Commissioning; Acceptance. a. Installation - Upon Buyer’s receipt of the Equipment, Buyer shall complete all its installation responsibilities provided by GENTECH, including, without limitation, electrical and mechanical assembly of all components and connections. Upon Buyer’s request, and at Buyer’s sole cost and expense, GENTECH will provide reasonably requested assistance to Buyer as to its installation responsibilities. Upon Buyer’s completion of all its installation responsibilities, Buyer shall provide notification to GENTECH that all such responsibilities are complete, and that the Equipment is ready for Commissioning (the “Installation Completion Notice”). If upon GENTECH’s arrival at Buyer’s site, GENTECH determines, in its sole discretion, that Buyer has not completed all its installation responsibilities, any subsequent visits to Buyer’s site to complete the Commissioning will be at Buyer’s sole cost and expense in accordance with the Schedule of Charges attached to the Quotation (“Schedule of Charges”).

b. Commissioning - After GENTECH’s receipt of the Installation Completion Notice, a GENTECH representative will perform start-up, final tuning and inspection of the Equipment and will train Buyer’s designated personnel in the safe and proper operation of the Equipment (“the Commissioning”). GENTECH shall promptly notify Buyer in writing of the completion of the Commissioning, including any non-material exclusions thereto (the “Commissioning Notice”). Completion of the Commissioning shall be determined by GENTECH, in its sole discretion. Only upon completion of the Commissioning by GENTECH and delivery of the Commissioning Notice to Buyer, shall Buyer have the right to use the Equipment, and under no circumstances is Buyer authorized to operate the Equipment prior to completion of the Commissioning, except for limited testing purposes. If Buyer operates or otherwise uses the Equipment prior to completion of the Commissioning by GENTECH (except for limited testing purposes), (1) GENTECH shall have no further obligations for Commissioning the Equipment, including training Buyer personnel, and (2) the Warranty shall be null and void of and effect. The Equipment shall be deemed to have been purchased “AS IS, WITH ALL FAULTS”.

c. Acceptance - Unless Buyer provides GENTECH with written notice to the contrary within Thirty (30) days after completion of the Commissioning, Buyer shall be deemed to have acknowledged and agreed to the following: (1) The Equipment has been fully and properly installed, including all necessary safety equipment, devices and guards, and the Commissioning has been completed by GENTECH in full compliance with all terms and conditions of the Agreement; (2) The Equipment has been properly labeled with all appropriate warning/safety labels and notices and any additional warning labels that Buyer or any other Person may have determined necessary for its workforce (including labels in languages other than English) shall be the sole responsibility of Buyer; (3) the Equipment has been fully and properly installed, including all necessary safety equipment, devices and guards, and the Commissioning has been completed by GENTECH in full compliance with all terms and conditions of the Agreement; (4) Buyer has had a reasonable opportunity to inspect, has fully inspected and has approved the Equipment; (5) the Equipment is fully conforming with the terms of the Agreement; (6) GENTECH has provided all instruction and training in the proper and safe operation, use, care, maintenance and repair of the Equipment; and (7) Buyer shall have no further responsibility to provide any further instruction or training with respect to the Equipment, and any such further instruction or training shall be the sole responsibility of Buyer; and (8) GENTECH has fully complied with all other terms of the Agreement.

5. Payment Terms Subject to this Section 5, all payment terms are set forth in the Quotation. Unless otherwise stated, all payments shall be in United States Dollars. Any deposit set forth in the Quotation is payable in consideration of GENTECH’s administrative and other expenses incurred in entering into the Agreement and is nonrefundable. Except as set forth in Section 4, the Commissioning cost is set forth in the Quotation. All attendant services other than the Commissioning will be provided by GENTECH in accordance with the Schedule of Charges. Notwithstanding anything to the contrary contained herein, if Buyer fails to comply with any payment terms, then the Warranty shall be null and void of and no effect, and the Equipment shall be deemed to have been purchased “AS IS, WITH ALL FAULTS”.

6. Cancellations. The Agreement is not subject to change or cancellation by Buyer. If GENTECH cancels a cancellation, Buyer shall pay all of GENTECH’s costs, losses and anticipated profits relating to such cancellation. If Buyer fails to comply at any time with any payment terms in the Agreement and such failure to pay continues for Thirty (30) days (provided GENTECH has given Buyer notice of such failure to pay), then GENTECH shall have the right to cancel the Agreement upon prior notice to Buyer and such cancellation shall have no further duties or obligations to Buyer hereunder.

7. Returns. GENTECH may, in its sole discretion, receive returned Equipment in appropriate circumstances, subject to such conditions as GENTECH may specify. Any such return shall be subject to the express prior authorization of GENTECH and payment by Buyer of a restocking charge of a minimum of 20% of the purchase price of the Equipment. Upon receipt, the returned equipment will be subject to GENTECH evaluation and inspection for damage and/or abuse which may result in an adjustment of the restocking charge. No returns will be authorized after Thirty (30) days following shipment to Buyer. In addition to the restocking charge, Buyer must pay all shipping costs for the prompt and safe return of the Equipment to GENTECH.

8. Termination. TERMINATION will be entertained by GENTECH or, at its discretion, suspend any further deliveries under the Agreement without liability to the Buyer in the event that: (a) Buyer makes any voluntary arrangement with its creditors; (b) Buyer as a company becomes subject to an order by an administrative body; (c) Buyer enters into liquidation or if a trustee, receiver, administrator or similar officer is appointed in respect of all or any part of the business assets of the Buyer; (d) any holder takes possession, or a receiver is appointed, or any of the property or assets of the Buyer; (e) the Buyer passes, or threatens to pass, or carries on business; GENTECH reasonably apprinds that any of the events set out above is about to occur in relation to the Buyer and notifies the Buyer accordingly. In the event of a termination of the Agreement the Equipment or parts which have been delivered but not paid for the price will become immediately due and payable by the Buyer notwithstanding any previous agreement for arrangement to the contrary.

9. Fire & Explosion Protection. Some Equipment may be capable of handling materials that are flammable and/or explosive. Appropriate fire and explosion detection and suppression systems will vary depending on materials processed and handled with the Equipment by Buyer. Buyer is solely responsible selecting and installing all fire and explosion detection and suppression systems utilized in connection with the Equipment, and Buyer represents and warrants to GENTECH that prior to commencement of Commissioning, all such systems that are reasonably necessary to operate the Equipment have been properly installed.

10. No Removal of Safety Devices. Buyer covenants that under no circumstances will Buyer remove any safety equipment, devices or guards or any warning/safety label or notice from the Equipment while the Equipment is in operation.
11. Ownership of Technology/Improvements. GENTECH shall retain exclusive ownership of all right, title and interest in and to, all GENTECH Technology and all improvements. GENTECH’s sale of the Equipment hereunder does not grant or convey to, or confer upon, Buyer or any other Person any license of any kind, express or implied, under any GENTECH intellectual property rights.

12. Confidentiality. At all times after the Effective Date, Buyer shall: (a) maintain the Confidential Information in strict secrecy by utilizing the same degree of care as Buyer utilizes for maintaining the confidentiality of its own most highly confidential or proprietary information (which in no event shall be less than reasonable care); (b) not use the Confidential Information in any way, in whole or in part, except as necessary for Buyer to operate, maintain or repair the Equipment and for no other purpose of any kind; (c) not publish or disclose the Confidential Information in any way, in whole or in part, to any Person; and (d) not revoice engineer, disassemble or decompile the Equipment in any way.

13. Indemnification.

a. By Buyer - (for purposes of the Agreement, “Damage” means the aggregate of any and all claims, losses, costs, judgments, deficiencies, penalties, obligations, liabilities, damages, fines and expenses of any kind (including, without limitation, any special, incidental, consequential, punitive or any other indirect damages, and all reasonable attorneys’ fees and disbursements)) Buyer agrees to indemnify, defend and hold harmless GENTECH and its affiliates, and their respective directors, officers, employees, shareholders and agents (collectively, the “GENTECH indemnitees”) with respect to the aggregate of all Damages incurred or suffered by any GENTECH indemnittees arising out of or relating to: (1) any breach or default in the performance of any of the covenants, agreements or provisions of the Agreement by Buyer; (2) any breach of any of Buyer’s representations or warranties hereunder; (3) any breach of any of Buyer’s covenants or agreements hereunder; (4) any failure or delay by Buyer to comply with or perform any of the covenants, agreements or provisions of the Agreement by Buyer; (5) any act or omission by Buyer in connection with the Equipment; (6) any injury to any property or person caused by Buyer; (7) any act or omission on the part of Buyer; (8) any act or omission on the part of any person or entity other than GENTECH; (9) any act or omission on the part of any Person or any Affiliate of GENTECH; or (10) any act or omission on the part of any Person or any Affiliate of Buyer. Buyer shall reimburse, indemnify and hold GENTECH and its affiliates, and their respective directors, officers, employees, shareholders and agents harmless for any and all Damages which any GENTECH indemnittees may suffer or incur on account of the matters described in this paragraph. Buyer agrees to indemnify, defend and hold harmless each GENTECH indemnittee from and against any and all claims, losses, costs, judgments, deficiencies, penalties, obligations, liabilities, damages, fines and expenses of any kind (including, without limitation, any special, incidental, consequential, punitive or any other indirect damages) incurred or suffered by Buyer arising out of or relating to any breach of any of Buyer’s representations or warranties or any act or omission by Buyer.

b. By GENTECH for Infringement - GENTECH hereby represents and warrants, to Buyer’s actual knowledge, that: (1) neither the Equipment nor any of the Technology utilized in the Equipment infringes any patented, patent application, license, trade secret, know-how, trademark or any other intellectual property right of any kind, of any Person or any Applicable Law; or (2) it constitutes any kind of wrongful use of any confidentiality information or proprietary information of any Person; and (2) such claim is pending or threatened against GENTECH. Subject to Section 12(c), GENTECH agrees to indemnify, defend and hold harmless Buyer with respect to the aggregate of all Damages arising out of or relating to any breach or default in the performance of any of the covenants, agreements or provisions of the Agreement by GENTECH, its affiliates or any Person or any Affiliate of GENTECH, any breach of any of GENTECH’s representations or warranties hereunder; any breach of any of GENTECH’s covenants or agreements hereunder; any act or omission on the part of GENTECH; (1) any injury to any property or person caused by GENTECH; (2) any act or omission on the part of any Person or any Affiliate of GENTECH; or (3) any act or omission on the part of any Person or any Affiliate of Buyer.

Limited Warranty. The GENTECH quote will determine the warranty coverage the Buyer will receive. A separate warranty agreement will be forwarded to the Buyer by GENTECH which will define the terms and conditions of the Buyer’s specific warranty.

15. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL GENTECH HAVE ANY LIABILITY OF ANY KIND TO BUYER OR ANY OTHER PERSON, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE) OR ANY OTHER THEORY OF LAW, FOR (A) INDENMY (OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 13(b)); (B) ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PURGUE OR ANY OTHER INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST TIME AND CONVENIENCE, COST OF A PRODUCT RENTAL, LOST REVENUES, LOSS OF USE, OR INJURY OR CARRYING ON OR DISCRODIERING CLAIMS ARISING OUT OF OR AROSE FROM INJURY TO ANY PERSON, PROPERTY OR TAXABLE PROPERTY, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY TO GENTECH, ITS AFFILIATES, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES, ARISING OUT OF OR AROSE OUT OF, OR IN ANY WAY CONNECTED WITH, ANY BREACH OF THIS AGREEMENT, OR ANY ACT OR OMISION OF ANY END USER HEREUNDER OR BY BUYER OR ANY OTHER PERSON; (2) ANY USE OF THE EQUIPMENT OR ANY IMPROPER HANDLING, INSTALLATION, MAINTENANCE, OR CARE, INCOMPETENT USE, USE FOR ANY PURPOSE OR APPLICATION FOR WHICH IT WAS NOT DESIGNED OR INTENDED; (3) USE OF THE EQUIPMENT AND/OR ANY COMPONENT THEROF FOR THE MANUFACTURE OF PRODUCTS IN RESPECT OF WHICH Buyerฉบ and fail to obtain a third party license, consent or permission (other than any third party license, consent or permission obtained by GENTECH and granted to Buyer in the Agreement); (4) any alteration, modification, connection or repair of the Equipment and/or any component thereof by Buyer or any other Person (other than GENTECH or GENTECH authorized personnel); (5) any aspect of the design, manufacture and/or method of operation of the Equipment and/or any component thereof in accordance with any drawings, specifications, instructions and/or other materials issued by Buyer to GENTECH.

16. Assignment. Buyer may not assign any of its rights in the Agreement without GENTECH’s prior written consent.
32. Waiver. Failure by either Party to insist upon strict performance of any provision herein by the other Party shall not be deemed a waiver by such Party of its rights or remedies or a waiver by it of any subsequent defaults by the other Party, and no waiver by either Party shall be effective unless it is in writing and duly executed by such Party.

33. Counterparts. The Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

34. Survivability. All representations, warranties and agreements herein shall survive and continue to bind the Parties after the execution and delivery of the Agreement and the expiration or earlier termination of the Agreement, to the extent and for as long as may be necessary to give effect to the rights, duties, and obligations of the Parties pursuant to the Agreement, subject to any applicable statute of limitations.

35. Limitation on Action. No action at law or in equity shall be brought by Buyer against GENTECH unless it is commenced within one (1) year from the date of delivery of the Equipment by GENTECH to Buyer or from the date any alleged claim accrued, whichever is earlier.

36. Inconsistencies. If any provision of these Terms and Conditions are inconsistent with any provision of the Quotation, then the provision of the Quotation shall control.