

CONGATEC, INC.

TERMS AND CONDITIONS OF SALES

1. Purchase Orders. The following terms and conditions ("Agreement") apply to the sale of products and or services delivered or provided by CONGATEC, INC. a California corporation, ("CONGATE C") pursuant to (a) any quotation, purchase order acceptance or other writing attaching or incorporating by reference this Agreement or (b) any other purchase order accepted by CONGATEC.

2. Purchase Orders. Buyer shall issue to CONGATEC final purchase orders for each purchase required. All purchase orders are subject to credit approval and confirmation of delivery schedule by CONGATEC prior to acceptance and may require an advanced payment, letter of credit or other guarantee, prior to acceptance. CONGATEC'S acceptance of a purchase order shall only occur upon delivery to Buyer of a written acceptance executed by CONGATEC'S duly authorized representative. In the event of any conflict between this Agreement and any purchase order or other document, the terms of this Agreement are paramount. Cancellations and reschedulings of orders require the prior written consent of CONGATEC in each individual case to be effective.

3. Prices. The prices for Products are set forth in CONGATEC'S quotation which may be changed at any time upon prior written notice to Buyer. The quoted prices are exclusive of all taxes, freight, duties, and other applicable charges which are to be paid by Buyer. All taxes, duties, fees, charges or assessments levied by any governmental authority in connection with a transaction under this Agreement, whether levied against Buyer, or against CONGATEC are required to be paid by Buyer.

4. Changes. Within (30) days of receipt from Buyer of a request for changes within the general scope of work under an accepted purchase order, CONGATEC shall respond in writing stating the consequences of such requested change. If such requested change causes an increase or decrease in the cost of the Products and/or the time required for performance, an adjustment reasonably determined by CONGATEC shall be made in the price and/or time required for performance. Such price adjustment may include, but not be limited to, any rework charges associated with the requested change. CONGATEC shall maintain the right to accept or reject any such requested changes and is not required to

proceed with the change unless the parties agree in writing. All approved change orders shall be considered amendments to the applicable purchase order. If a requested change is not accepted by CONGATEC, the original purchase order shall remain in effect.

5. PAYMENTS.

(a) Domestic. Upon CONGATEC'S approval of Buyer's credit, all payments shall be made in United States Dollars, net thirty (30) days from date of invoice. All payments received after thirty (30) days shall accrue interest at the rate equal to the lesser of one and one-half percent (1.5 %) per month or the maximum legally permissible rate.

(b) International. Open account terms will be considered by CONGATEC, in CONGATEC'S sole discretion, if Buyer possesses a first-class standing in the operating country and can demonstrate favorable trade arrangements with other U.S. suppliers. Buyer agrees, upon request, to provide CONGATEC with financial information acceptable to CONGATEC to assist CONGATEC in determining credit terms, if any that CONGATEC may extend to Buyer. CONGATEC reserves the right to revoke open account terms at CONGATEC'S discretion. In such event Buyer agrees to provide a Letter of Credit or such other credit enhancement, at Buyer's sole expense, to CONGATEC. All payments shall be made in United States

Dollars, net thirty (30) days from date of invoice. Payments received after thirty (30) days shall accrue interest at the rate equal to the lesser of one and one-half percent (1.5%) per month or maximum legally permissible rate.

6. Transportation. All sales and deliveries of Products shall be "FCA CONGATEC's authorized shipping point" as defined in Incoterms 2000, as amended. Buyer is responsible for all transportation, insurance, duties, taxes and other applicable expenses. These expenses shall be paid by Buyer and shall be added to CONGATEC'S invoice to Buyer if prepaid by CONGATEC.

7. Title and Risk of Loss. Title to all Products shall pass to Buyer upon CONGATEC'S delivery of the Products to a common carrier or to the Buyer's designated location. Buyer hereby grants CONGATEC a security interest in the Products until the invoice covering the Products has been paid in full. Buyer also irrevocably appoints CONGATEC as its lawful attorney-in-fact coupled with an interest with full authority to execute and file UCC-1's and any other necessary documents to perfect and enforce its security interest. CONGATEC shall bear the risk of loss or damage until the Products are delivered to a common carrier or to Buyer's designated location. Upon CONGATEC'S delivery to a common carrier or to Buyer's designated location, Buyer shall bear the

entire risk of loss and shall be liable for all loss or damage to products.

8. Inspection. Unless Buyer notifies CONGATEC in writing within thirty (30) days from the date of shipment of any Products that said Products are rejected, they will be deemed to have been accepted by Buyer. In order for the notice of rejection to be effective, Buyer must also specify in detail the reason(s) why said Products are being rejected. Buyer shall only have the right to reject Product for "defects," as defined in Section 10 below. Page 3 of 7

9. Force Majeure. CONGATEC shall not be liable for any failure to perform or other loss due to unforeseen circumstances or causes beyond its control, including without limitation acts of God, strikes, material and/or transportation shortages, natural casualties, governmental regulations, war, fire, flood, disasters and civil unrest.

10. Warranty. CONGATEC agrees to repair or replace Products that fail due to a defect during the established Warranty Period (as defined for each particular order) of each Product unit to Buyer. For purposes of this Agreement the term "defect" shall mean the Product fails to operate or fails to conform to its specifications agreed to in writing by CONGATEC. Any claim made pursuant to this Agreement shall be asserted or made

in writing only by Buyer, not any of Buyer's customers or end users. Buyer shall comply with CONGATEC Standard Return Materials Authorization ("RMA") procedure for all warranty claims set forth in CONGATEC'S operation manual. This limited warranty only covers repairs at CONGATEC'S facilities, it does not include labor, transportation or other expenses to repair or reinstall warranted Products on site or at Buyer's premises. CONGATEC reserves the right to investigate any warranty claims to quickly resolve the problem or to determine whether such claims are proper. In the event that after repeated efforts CONGATEC is unable to repair or replace a defective Product, then Buyer's exclusive remedy and CONGATEC'S entire liability in contract, tort or otherwise shall be the payment by CONGATEC of Buyer's actual damages after mitigation, but shall not exceed the purchase price, tax, freight and insurance actually paid by Buyer for the defective Product. This limited warranty shall not apply to any Product, or parts thereof, that (a) has had the Serial Number, Model Number, or other identification markings altered, removed or rendered illegible; (b) has been damaged by or subject to improper installation or operation, misuse, accident, neglect and/or has been used in any way other than in strict compliance with CONGATEC'S operation and installation manual; (c) has become defective or inoperative due to its integration or assembly with any

equipment or products not supplied by CONGATEC; (d) has been repaired, modified or otherwise altered by anyone other than CONGATEC, and/or has been subject to the opening of any sealed cabinet boxes or covers without CONGATEC'S prior written consent. (e) samples or prototypes provided. If any warranty claim by Buyer falls within any of the above cited exceptions, Buyer shall pay CONGATEC its then current rates and charges for such services. THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS ALL OF WHICH ARE EXPRESSLY DISCLAIMED. PLEASE REFER TO THE WARRANTY POLICY AND PROCEDURES CONTAINED IN CONGATEC'S OPERATION AND INSTALLATION MANUAL.

11. Confidentiality. Most, if not all, aspects of any design, production and operation of the Products, in any form, are proprietary information and trade secrets of CONGATEC ("Proprietary Rights"), and such Proprietary Rights shall not be disclosed or otherwise transferred by Buyer or Buyer's employees to any other person or entity at any time. Buyer shall not modify, reverse engineer, improve or otherwise change any Product or parts thereof, or any of CONGATEC'S

Proprietary Rights related thereto, and shall not use, appropriate or copy any of CONGATEC'S Proprietary Rights, either for itself or for others. Buyer also agrees not to incorporate or in any way use any of CONGATEC'S Proprietary Rights or confidential information (disclosed separately or embodied in any of the Products) in its or any other party's products or businesses.

12. Property Rights. CONGATEC shall solely own and have exclusive worldwide right, title and interest in and to all United States and have foreign patents, trademarks, service marks, copyrights, mask works, trade secrets and all other intellectual and industrial property rights in any way related to the Products, to CONGATEC'S Proprietary Rights, and to all modifications, improvements and derivative works related thereto. Title to all CONGATEC'S Proprietary Rights embodied in the Products shall always remain with CONGATEC, and Buyer's use thereof shall be restricted under a non exclusive license granted by CONGATEC. Subject to Buyer's performance of all obligations hereunder, CONGATEC hereby grants to Buyer a personal, non-exclusive, non-transferable and indivisible license to use CONGATEC'S Proprietary Rights only as they are embodied in the Products and for no other purpose. Buyer shall not remove CONGATEC'S trademark notices, copyright notices, patent markings or

mask work notices on or in the Products or on any other materials supplied by CONGATEC. Paragraphs 11 and 12 shall survive the termination of this Agreement, and are enforceable by injunctive and other relief against Buyer in the event of Buyer's breach since both parties agree that CONGATEC will be irreparably harmed and money damages would be inadequate compensation to CONGATEC for Buyer's breach.

13. Limitation of Liability. CONGATEC SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES SUFFERED BY BUYER AND/OR ANY END USER RELATED TO OR ARISING OUT OF THIS AGREEMENT. THE TRANSACTIONS CONTEMPLATED HEREBY AND/OR THE USE OR INABILITY TO USE THE PRODUCTS, INTEGRATION OF THE PRODUCTS WITH EQUIPMENT NOT PROVIDED BY CONGATEC, LOSS OF GOODWILL OR PROFITS AND/OR FROM ANY CAUSE WHATSOEVER, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL CONGATEC'S LIABILITY FOR ANY CAUSE OF ACTION RELATION TO THIS AGREEMENT EXCEED AMOUNTS RECEIVED BY CONGATEC FROM BUYER FOR THE PRODUCT OR SERVICE THAT IS THE SUBJECT OF SUCH CLAIM OR DISPUTE. CONGATEC AND BUYER FURTHER AGREE THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH

PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS EXPRESSLY INTENDED TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION SINCE THOSE PROVISIONS REPRESENT SEPARATE ELEMENTS OF RISK ALLOCATION BETWEEN THE PARTIES, AND SHALL BE SEPARATELY ENFORCED. BOTH PARTIES ALSO AGREE THAT THE PRICE OF THE PRODUCTS REFLECTS THE ALLOCATION OF RISK, WARRANTY AND LIMITATION OF LIABILITY PROVISIONS HEREIN UNLESS OTHERWISE AGREED IN WRITING BY CONGATEC, THE CONGATEC PRODUCTS SOLD HEREUNDER ARE NOT DESIGNED NOR INTENDED FOR ANY USE IN MILITARY, NUCLEAR, MEDICAL, LIFE SAVING OR LIFE SUSTAINING APPLICATIONS WHICH THE FAILURE OF THE CONGATEC PRODUCT COULD CREATE A SITUATION WHERE PERSONAL INJURY OR DEATH MAY OCCUR. Should Buyer purchase or use CONGATEC'S Products for any such unintended use, Buyer shall indemnify and hold CONGATEC and its directors, officers, subsidiaries, subcontractors and affiliates harmless against all claims, costs, damages and expenses and reasonable attorney fees arising out of, directly or indirectly, any claim of product liability, personal injury or death associated with unintended use, even if such claim alleges that CONGATEC or its sub-contractor was negligent regarding the design or manufacture or

the CONGATEC Product_or any other parts.

14. Waiver. CONGATEC shall not be deemed to waive any default of any provision of this Agreement unless CONGATEC signs a written waiver.

15. Indemnity. Buyer shall indemnify, defend and hold CONGATEC harmless from all claims, damages expenses, liabilities and losses, including without limitation attorney's fees and costs incurred that in any way arise out of or relate to (a) the manner in which Buyer and/or any of its customers or end users use or operate the Products; (b) any personal injuries, property acts or omissions of Buyer its customers or end users; (c) defects o r other problems with other component parts, equipment or materials produced or supplied by anyone other than CONGATEC and that may be used with Products; and/or (d) Buyer's transactions with its customers, end users or other parties regarding the Products.

16. Termination. Buyer shall not terminate or cancel any order, or portion thereof after it is given to CONGATEC without CONGATEC'S prior written consent in its sole discretion and subject to the condition that Buyer pays to CONGATEC the sum of (1) the price of all Products previously delivered to Buyer, (2) CONGATEC actual costs incurred as a result of such termination (e.g., purchase

of raw materials and other obligations), which CONGATEC will attempt to keep Page 6 of 7 as low as possible, and (3) a cancellation fee of twenty percent (20%) of such actual costs.

17. Attorney's Fees. In the event a dispute arises regarding this Agreement or the Products, the prevailing party shall be entitled to recover from the unsuccessful party actual attorney's fees and costs incurred.

18. Entire Agreement. Buyer agrees to all of the provisions of this Agreement by submitting its purchase order for the Products. T his Agreement is the sole and entire agreement between the parties (except for the price or the shipment schedule for the Products contained in CONGATEC'S quotation or Buyer's purchase order accepted by CONGATEC which shall be incorporated herein subject to the terms hereof) and shall supersede all prior or contemporaneous written or oral understandings, representations or communications and/or other terms in any other purchase order or other document, now or hereafter delivered. The provisions of this Agreement shall apply to any and all purchase orders or requests for Products submitted by Buyer to CONGATEC at any time in the future, without the need for either party to exe cute this Agreement. No modification o f this Agreement shall

be valid unless in writing and signed by an authorized representative of CONGATEC.

19. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of California.

20. Arbitration. Any dispute, controversy or claim ("Claim") arising out of or relating to this Agreement, any CONGATEC quotation or any purchase order incorporating this Agreement by reference or to which this Agreement is attached and any other purchase order issued by Buyer and accepted by CONGATEC, or the breach, enforcement, interpretation, validity or termination thereof, including the determination of the scope or applicability of this agreement to arbitrate shall be settled by binding arbitration by JAMS/Endispute ("JAMS") in accordance with JAMS Comprehensive Arbitration Rules and Procedures (the "Rules"). The arbitration shall be heard by the arbitrator selected in San Diego County, California. Judgment upon any award rendered may be entered in any state or federal court in San Diego County having jurisdiction thereof. Within seven (7) calendar days after appointment the arbitrator shall set the hearing date, which shall be within ninety (90) days after the filing date of the demand for arbitration unless a later date is required for good cause shown, and shall order a mutual exchange of what he/she determines to be relevant documents and

the dates thereafter for the taking of up to a maximum of five (5) depositions by each party to last no more than two (2) days in aggregate for each party. Both parties waive the right, if any, to obtain any award for exemplary or punitive damages or any or any other amount for the purpose of imposing a penalty from the other in any arbitration or judicial proceeding or other adjudication arising out of or with respect to this Agreement, or any breach hereof, including any claim that this Agreement, or any part hereof, or invalid, illegal or otherwise voidable or void. The arbitrator Page 7 of 7 shall make his or her award no later than seven (7) calendar days after the close of evidence or the submission of final briefs, whichever occurs later.

21. Export. Buyer shall not directly or indirectly export, transfer or in any way distribute any of the Products, or parts thereof, or any of CONGATEC'S Proprietary Rights or technical data to any country or territory that is prohibited from receiving such materials under any applicable law of the including without limitation, all of the laws and regulations of any applicable agency of the United States government responsible for the administration of Foreign Corrupt Practices Act of 1977, as amended, Buyer shall also be responsible for obtaining all export licenses or other approvals required to export or re-export the Products outside the United States. Buyer

further indemnifies, defends and holds CONGATEC harmless from all damages, claims, expenses, liabilities, and losses including without limitation attorney's fees and costs that in any way arise out of or relate to Buyer's breach of this warranty and/or failure to comply with the provisions of this Section. CONGATEC shall not be liable in the event any authorization of any governmental authority is delayed, denied, revoked, restricted and not renewed, and Buyer shall not be relieved thereby of its obligations to pay CONGATEC for its Products or any other charges which are the obligations of Buyer under this agreement.

22. Integration of Equipment. CONGATEC shall not be liable for any problems, damages, or costs associated with the integration, installation or incorporation of the Products with equipment or materials not provided by CONGATEC.

23. Authority. All persons executing purchase order(s) on behalf of buyer warrant and represent that they have been authorized by their respective board of directors or other governing bodies to bind their respective companies to all of the provisions of the purchase order(s) and this Agreement.

24. Survival. All of the provisions of Section 11, 12, 13, 15, 20 and 21 of this

Agreement shall survive the termination or expiration of this Agreement.

25. Assignment. Buyer shall not assign, transfer or otherwise encumber this Agreement or any part thereof without CONGATEC'S prior written consent.

26. Severability. If any provision of this agreement is held by an arbitrator or a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.