

TERMS AND CONDITIONS OF SALE

GENERAL. These Terms and Conditions of Sale (these “Terms”) are applicable to the sale of those products (the “Products”) and Services (“Services”) described in one or more written or oral Proposals and/or Bid Proposals (each, a “Proposal”) issued by Or-Tec, Inc. (the “Company”) to the purchaser (“Purchaser”) of the Products and Services, and/or one or more written or oral purchase orders or similar forms issued by Purchaser to the Company in respect of such Products or Services (each, a “Purchase Order”). These Terms and the Proposal constitute a complete and exclusive statement of the agreement between the Company and Purchaser with respect to the Products and Services. In the event of a conflict between the terms and conditions contained in any Purchase Order or final order acknowledgement and those contained in these Terms, the terms and conditions contained in these Terms will govern. In the event of a conflict between the express terms and conditions contained in any Proposal and those contained in these Terms, the terms and conditions contained in the Proposal will govern. Purchaser’s acceptance of the Products constitutes its acceptance of these Terms and the other terms set forth in the Proposal. All Proposals and Purchase Orders are subject to the warranties, warranty disclaimer, terms and conditions appearing herein, and Purchaser agrees to be bound thereby. No modifications or additions thereto will be binding upon the Company unless expressly consented to by the Company in writing. Any conflicting warranties, terms and conditions in any Purchase Order or any document other than the Proposal are specifically rejected by the Company. Purchaser’s acceptance of these Terms and the Proposal is limited to acceptance of the express terms contained herein and therein. Any proposal by Purchaser for additional or different terms or any attempt by Purchaser to vary, in any degree, any of the terms herein or in any Proposal will not operate as a rejection of such terms. Purchaser’s proposal for additional terms will be deemed to be a proposal to materially alter the contract between the parties, and Purchaser will be deemed to have accepted such Proposal and these Terms without said additional or different terms, unless Purchaser’s acceptance of the Proposal and these Terms is expressly made conditional on the Company’s assent to such additional terms.

PRICE. All prices quoted in the Proposal are subject to change without notice at any time prior to the Company’s acceptance of Purchaser’s Purchase Order. After the Company has accepted Purchaser’s Purchase Order, prices are subject to change with notice to Purchaser to the extent that the cost of applicable raw materials have substantially deviated from the indexed prices in effect as of the time at which the Company accepted the Purchase Order.

SHIPMENT; TITLE. The Company will arrange for shipment of the Products. Shipping terms for all Products is FOB shipping point, and title to the Products will pass to Purchaser at that point. Purchaser will in all events be responsible for and will bear the risk with respect to any loss or damage to the Products during transportation from the shipping point for the Products. Purchaser must pay all freight, handling, delivery, special packing and insurance charges for shipments of the Products. Choice of carrier and shipping method and route will be at the election of the Company. The Company will have the right to deliver all Products covered hereby at one time or in partial shipments from time to time, within the agreed time for delivery. All delivery dates are approximate, and the Company will not be liable for damages or costs that arise in connection with the delivery of goods after the date stated on any Proposal, Purchase Order or any other document.

DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY. The Company warrants that during the applicable Warranty Period, (i) the Services will be free from material defects in workmanship, and (ii) the Products will be free from defects in material or workmanship. The “Warranty Period” means, as to Services, the 30-day period following the date of performance thereof and, as to any Product, the shorter of the 18-month period following the date of delivery of the Product or the 12-month period following start-up of the Product. The foregoing warranty will not apply as to any Product unless Purchaser notifies the Company in writing of any claimed defect in such Product immediately upon discovery during the Warranty Period and the Company determines to its satisfaction that such Product is defective in material or workmanship (that is, such Product contains a defect arising out of the manufacture of the Products and not a defect caused by other circumstances, including, but not limited to, ordinary wear and tear, accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, or improper testing), in which case the Company will at its option repair or replace the defective Product. Purchaser is responsible for determining that Purchaser’s use of the Products complies with all applicable laws.

EXCEPT FOR THE LIMITED WARRANTIES DESCRIBED IN THE IMMEDIATELY PRECEDING PARAGRAPH, THE COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS OR SERVICES, NOR DOES IT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THAT THE

PRODUCTS ARE FIT FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.

THE COMPANY WILL NOT BE LIABLE TO PURCHASER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES OR LOSS UNDER ANY CIRCUMSTANCES, REGARDLESS OF CAUSE AND REGARDLESS OF THE THEORY OF LIABILITY ASSERTED BY PURCHASER, WHETHER CONTRACT, TORT OR OTHERWISE. PURCHASER ACKNOWLEDGES THAT IT HAS DECIDED TO PURCHASE THE PRODUCTS BASED UPON ITS OWN ASSESSMENT OF THE PRODUCTS. IN NO EVENT WILL THE COMPANY’S LIABILITY ARISING IN CONNECTION WITH THE PRODUCTS OR SERVICES OR UNDER THESE TERMS OR ANY PROPOSAL OR PURCHASE ORDER (REGARDLESS OF CAUSE AND REGARDLESS OF THE THEORY OF LIABILITY ASSERTED BY PURCHASER, WHETHER CONTRACT, TORT OR OTHERWISE) EXCEED THE PURCHASE PRICE FOR THE PRODUCTS AND SERVICES.

PAYMENT TERMS; SECURITY INTEREST. Unless otherwise provided in the Proposal, Purchaser must pay the purchase price for the Products and Services as follows: (i) 10% upon issuance of the Purchase Order, (ii) 40% upon approval of shop drawings and submittals, (iii) 40% upon presentation of shipping documents, and (iv) 10% upon the sooner of start-up of the Products or 60 days after Product delivery. Unless otherwise provided in the Proposal, all invoices are due and payable upon receipt. All payments must be made in U.S. dollars, and all balances that remain unpaid more than 30 days after the date of invoice will be subject to a finance charge of 1.5% per month until paid in full. Purchaser must pay the Company’s costs of collection (including reasonable attorneys’ fees) with respect to any delinquent balance. Purchaser is responsible for any sales or use tax imposed on the sale of Products hereunder. The Company may without liability, and without notice to Purchaser, delay shipment of any Products not yet shipped while any balance owed to the Company hereunder remains unpaid. The system control panel to the Products may (in the Company’s discretion) be equipped with an override feature that must be deactivated by password within 90 days after start-up. Failure to enter the password within such 90-day period will render the Products inoperable. The Company will provide any such password to Purchaser upon payment of all invoices in full, and such password need only be entered once, after which the override feature will be deactivated permanently. As security for the Purchaser’s performance of its obligations hereunder, including payment of the purchase price in full, the Company hereby reserves, and Purchaser hereby grants to the Company, a purchase money security interest in all of Purchaser’s right, title and interest in and to the Products, and in the proceeds thereof. Purchaser hereby authorizes the Company to file one or more financing statements under the Uniform Commercial Code with respect to such security interest with the proper filing and recording agencies in any jurisdiction the Company deems proper.

INDEMNIFICATION. Purchaser will defend, indemnify and hold the Company and its shareholders, directors, officers and agents harmless from and against any and all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys’ fees) arising from or related to (i) the Products from and after the date of shipment, including to the extent arising from or related to Purchaser’s neglect or misuse of the Products, any defect in the Products resulting from Purchaser’s use of the Products, or Purchaser’s action or inaction as related to the Products, or (ii) Purchaser’s breach of any of its representations or covenants contained herein.

DISPUTE RESOLUTION. Any and all legal proceedings filed between the parties relating to these Terms, the Products, the Services, or any Purchase Order must be brought in the Cuyahoga County, Ohio Court of Common Pleas, which court will be the exclusive venue for any dispute, and the parties hereby consent to and submit to the exclusive jurisdiction of such Court.

MISCELLANEOUS. These Terms may not be amended without the prior written consent of the Company. These Terms must be interpreted and enforced in accordance with the laws of the State of Ohio, without regard to the choice or conflict of law rules otherwise applicable. No waiver of any right hereunder will be effective unless in writing, and no such waiver will constitute a waiver of any other right hereunder. No assignment of these Terms or any Proposal or any amount due or to become due hereunder or thereunder will be binding upon the Company without its prior written consent. The Company may assign these Terms and any Proposal. These Terms and all Proposals will be binding upon the parties hereto and their respective successors and permitted assigns.