

Appendix A: Terms and Conditions

THE FOLLOWING STANDARD TERMS AND CONDITIONS ARE INCORPORATED INTO AND FORM A PART OF THE QUOTE AND ANY BILL OF MATERIALS SUBMITTED HERewith BY LECTRUS CORPORATION ("LECTRUS") TO THE PROSPECTIVE PURCHASER OF THE UNIT DESCRIBED HEREIN ("PURCHASER").

1. VALIDITY OF AGREEMENT

Lectrus' quote is effective for a period of sixty (60) days from the date thereof.

2. BUILDING CODES

- (a) Lectrus shall manufacture the equipment center that is the subject of this Agreement (the "Unit") in compliance with the International Building Code (Latest Revision). Lectrus does not represent or warrant that any Unit shall comply with any regional, state or local code or other requirement.
- (b) Unless exempted, state certification is required for Units to be located in the states listed below. The cost for inspection and certification is not included in this Agreement unless such cost is specifically stated in Lectrus' bill of materials. Florida, Oregon, Minnesota, Rhode Island, New Jersey, Tennessee, Ohio, Washington, Maryland, Arizona, New Mexico, Nevada, Kentucky, California, North Carolina

3. SUBSTITUTION OF MATERIALS

Lectrus reserves the right to substitute other parts, components, equipment and materials of comparable quality for the parts, components, equipment and materials specified in this Agreement.

4. SITE ASSEMBLY

Lectrus assumes no responsibility for reassembly of portions of the Unit that are sent in multi-sections, nor does it assume responsibility for installing components of the Unit that are shipped in an uninstalled state for ease of shipment. Such items may include Unit sections, de-terminated cables/wires, air conditioning equipment, pressurization units, fresh air stacks, stairs and platforms, roof bracing, hoods, bus ducts, cable trays, external lights, junction boxes, et cetera. Purchaser shall bear sole responsibility for the reassembly and installation of such items and the costs thereof unless Lectrus expressly undertakes such responsibility elsewhere in this Agreement. Spreader bars, cables, shackles and other lifting equipment are not included in the price of the Unit.

5. INTERNATIONAL EQUIPMENT

Lectrus performs only continuity testing on control wiring installed by Lectrus. If any other testing is required, Purchaser shall bear all costs of such testing, including rental or purchase of any equipment needed to perform such testing (as well as shipping and handling costs related to such equipment).

6. QUALITY STANDARDS

Lectrus builds Units to comply with the International Building Code (Latest Revision) and to standards contained in Lectrus' own quality manual. No other quality standards shall apply to work performed by Lectrus unless such standards are expressly set forth in Lectrus' quote. If no such other quality standards are contained in Lectrus' quote but Purchaser desires Lectrus to meet such standards, Lectrus, at Lectrus' election, may either decline to do so or agree to do so on the condition that Purchaser bear all costs of meeting and verifying compliance with such standards.

7. PAYMENT

- (a) Invoices from Lectrus are payable only in United States dollars 30 days from invoice submittal. Checks are accepted subject to collection and the date of collection shall be deemed the date of payment. No allowance may be taken unless provided in Lectrus' quote. Any check or remittance received from or for the account of Purchaser may be accepted and applied by Lectrus or its factor against any indebtedness or obligation owing by Purchaser, as shown on the books and records of Lectrus or its factor, without prejudice to or the discharge of the remainder of any such indebtedness or obligations, regardless of any condition, proviso, statement, legend or notation appearing on, referring to or accompanying such check or remittance.
- (b) As to any invoice not paid by its due date, Purchaser shall pay a service charge from the maturity date of said invoice to date of payment at the rate of ten percent (10%) per annum.
- (c) Should any dispute arise with respect to any invoice rendered under this Agreement, Purchaser shall nevertheless pay all other invoices, or portions thereof, that are not in dispute, without offset.



- (d) Prices for any undelivered Unit may be increased by Lectrus in the event of any increase in the cost to Lectrus of supplies, energy, labor or services, or any increase in Lectrus' cost resulting from governmental action or any other cause beyond Lectrus' reasonable control. Purchaser agrees to pay Lectrus such increased costs, if any, and the amount of any increased or additional duty, tariff, tax, ocean freight rate increase, or similar surcharge imposed after the date of this Agreement.

8. PROGRESS BILLINGS

For all purchase orders with a total price over \$100,000, both single units and multiple jobs will be subject to progress payments based on a percentage of the project completed. The percentages listed below will be calculated on the total purchase price, including known change orders, and invoiced upon completion of the milestones specified below. All such payments are subject to the provisions of Section 7.

- 20% due upon first submission of approval drawings by Lectrus
- 30% due upon release for fabrication
- 30% due upon completion of structural fabrication and paint
- 20% due upon agreed FOB terms or INCOTERMS or notification of a shipping delay for customer convenience.

9. CREDIT AND DEFAULT

Lectrus or its factor may in its sole discretion at any time and from time to time limit, cancel or change the terms of Purchaser's credit, require payment in cash before shipment of any or all sections of the Unit, or require anticipated payment of any or all amounts due or to become due under this Agreement. If Lectrus believes in good faith that Purchaser's ability to make the payments called for by this Agreement is or may be impaired, Lectrus may suspend or cancel this Agreement or any remaining balance thereof, Purchaser remaining liable to pay for any section of the Unit already shipped. Purchaser represents and warrants to Lectrus that it is solvent at the time this Agreement is made, and Purchaser hereby makes a continuing representation and warranty of its solvency at the time of each tender of delivery or delivery hereunder. Upon failure of Purchaser to make payment to Lectrus or Lectrus' factor when due, or upon failure of Purchaser to assort, specify or accept the Unit, or in the event of any default, breach or repudiation by Purchaser of this or any other contract with Lectrus, or if Purchaser shall become insolvent, call a meeting of its creditors, or make a general assignment for the benefit of its creditors, or if a bankruptcy, insolvency, reorganization or arrangement proceeding shall be commenced by or against Purchaser, Lectrus may, in addition to any other remedies provided by law,:

- (a) cancel this Agreement and any other contracts (or any part thereof) with Purchaser (Purchaser remaining liable for damages);
- (b) defer any shipments of other tenders hereunder;
- (c) declare forthwith due and payable all outstanding invoices to Purchaser under this or any other contract;
- (d) bill at contract price (on a cash before delivery basis if Lectrus so elects) for the Unit covered by this Agreement or any other contract between Lectrus and Purchaser (Lectrus to have the right to assort, specify and/or complete the manufacture of any such Unit) and require Purchaser to specifically perform this Agreement or such other contracts by taking in and paying for such Units; in the case of any Unit not yet completed, Lectrus shall have the additional right to require payment at the contract price prior to tender of such Unit;
- (e) sell all or any part of the Unit covered by this or any other contract, without notice, at public or private sale (Purchaser to be responsible for (i) the costs and expenses of such sale including 15% of the contract price to cover Lectrus' additional overhead, and (ii) any deficiency in the price received by Lectrus as compared to the contract price plus interest hereunder), and Lectrus shall have the right to become the purchaser of such Unit at any such sale;
- (f) obtain damages from Purchaser equal to the difference between the market price of Unit covered by this Agreement or any other contract as of the date of default, breach or repudiation (or the net proceeds of resale, if sold for the account of Purchaser) and the contract price plus 15% of the contract price to cover Lectrus' costs of reselling and additional overhead; and
- (g) sell in the open market, with or without notice to Purchaser or anyone else, at auction or otherwise, any material purchased or supplied for this Agreement, and Purchaser shall be liable for any loss which Lectrus sustains.

10. SECURITY INTEREST; BILL AND HOLD

Purchaser hereby grants Lectrus a continuing security interest in all property, excluding Purchaser supplied equipment, at any time in the possession, custody or control of Lectrus held for Purchaser (meaning also for the purpose of this clause, any parent, subsidiary or affiliate company of Lectrus), including goods covered by bill and hold invoices (whether paid for or not); said security interest shall secure Lectrus for all unpaid invoices or charges relating to any goods (whether or not in the possession, custody or control of Lectrus) and all other existing or future obligations of Purchaser to Lectrus, howsoever arising, and may at Lectrus' option be set-off against any and all obligations of Purchaser. Purchaser agrees that any act on its part, either to sell, hypothecate or otherwise dispose of any interest in any goods described in this or any other contract with Lectrus, which are in the possession, custody or control of Lectrus, or any act on Purchaser's part to buy or acquire any interest in any goods in the possession, custody or control of Lectrus described in any contract of Lectrus with any third party without, in each case, receiving Lectrus' written release, shall constitute a violation of and interference with Lectrus' security interest established by this or any other such contract. The provisions of this section shall survive performance by the parties of all other terms of their agreement.

11. LECTRUS' REMEDIES

Except for expressly set forth in this Agreement, the remedies provided for are cumulative and in addition to any other remedies provided by law or equity. For remedies expressly set forth in the Agreement, Lectrus and Purchaser shall be exclusively limited to the remedy, as provided.

12. DELIVERIES

- (a) Dates set forth in Lectrus' quote for shipment of the Unit by Lectrus are subject to change based upon final release and acceptance of a purchase order and changes in work scope.
- (b) The acceptance of shipment by a common carrier or freight forwarder shall constitute a delivery and performance by Lectrus, subject to (i) Lectrus' rights under Article 2 of the Uniform Commercial Code, including the rights to withhold or refuse delivery, stop in transit and reclaim; and (ii) Lectrus' security interest in property in the possession, custody or control of Lectrus in accordance with Section 10 above until Lectrus' written release thereof. With respect to a Unit for which payment is to be made on or before delivery or tender, title passes only upon receipt of full payment by Lectrus. Where Lectrus has agreed to hold a Unit subject to Purchaser's instructions and no shipping instructions have been supplied by Purchaser, or in the case where Lectrus, in its sole discretion, determines that any part of the Unit purchased by Purchaser should be held for Purchaser's account, Lectrus shall have the right to invoice the Unit on a bill and hold basis, and the mailing of such invoice shall satisfy Lectrus' delivery obligation hereunder. Lectrus shall release the Unit for shipment by Purchaser, provided Purchaser is not then in default under this Agreement or any other contract with Lectrus. Purchaser shall pay such bill and hold invoice in accordance with its terms. Any Unit invoiced and held at any location, for whatever reason, shall be at Purchaser's risk and expense (and Lectrus may charge for storage as specified elsewhere herein).
- (c) Arrangements for the shipping of the Unit to the Purchaser's destination will be indicated in the purchase order. All freight, express and delivery charges are the responsibility of Purchaser. Lectrus may advance the shipping costs for the Unit, and, in such event, Purchaser shall reimburse Lectrus for such costs within ten (10) days of Lectrus' demand therefor unless Lectrus' quote specifies another time for such reimbursement.
- (d) Purchaser bears all risk of loss or damage to the Unit upon Lectrus' tender of the Unit to a common carrier or freight forwarder. The carrier or forwarder shall insure the Unit for loss or damage during transit from Lectrus' facility to the destination specified by Purchaser.
- (e) Purchaser shall pay such reasonable packaging and handling charges for packaging and handling at Lectrus' premises as Lectrus shall charge. Pricing for any special equipment, including cranes, special forklifts, lift jacks, et cetera, required to load the Unit will be added to the handling charge and included and/or specified in the quote.
- (f) Installments of Units shall be accepted by Purchaser and paid for at contract prices and terms. Any defect in quality or delay in performance by Lectrus shall not affect the balance of the Agreement. An invoice for any installments of Units not in dispute shall be paid for on the due date, as provided in this Agreement, without offset, defense or counterclaim and regardless of controversies relating to other Units. Where Purchaser has declared or manifested an intention that it will not accept a Unit in accordance with the provisions of this Agreement, no tender shall be necessary but Lectrus may, at its option, give notice to Purchaser that Lectrus is ready and willing to perform in accordance with this Agreement, and such notice shall constitute valid tender of delivery and performance by Lectrus.
- (g) Purchaser shall be responsible for the following:
 - a. obtaining the equipment necessary to unload the Unit and assemble it at its destination;
 - b. providing suitable routes and maneuvering areas to allow the Unit to be placed at the location at its destination where it is to be used;
 - c. paying any demurrage/standby charges as a result of unloading delays at the shipping destination resulting from no fault of Lectrus that exceed four (4) hours per shipment.

13. TESTING AND INSPECTIONS BY PURCHASER

Lectrus may allow Purchaser, its agents, employees and contractors, to enter Lectrus' premises at times convenient to Lectrus for the purpose of inspecting a Unit while it is in the process of being manufactured. All testing and inspections of the Unit that Purchaser desires to make at Lectrus' premises shall be performed by Purchaser at its sole cost and expense.

14. STATEMENT OF WORK

Upon receipt of Purchaser's purchase order, Lectrus will issue a Statement of Work ("SOW") for the Purchaser's review. The SOW shall describe the Unit to be built by Lectrus in partnership with Purchaser. It shall include the scope of work, schedule, order fulfillment process, terms, communications plan and expectations, roles and responsibilities, changes in scope, critical success factors and deliverables that are to be met by Lectrus and Purchaser. The SOW shall specify how the project will be managed throughout the order fulfillment process. The SOW shall be part of this Agreement.

15. PURCHASER-PROVIDED EQUIPMENT

- (a) Purchaser shall ensure that any equipment to be provided by Purchaser in connection with Lectrus' manufacture of the Unit is delivered to such premises of Lectrus as Lectrus shall designate sufficiently in advance to allow Lectrus to meet its production schedule. Purchaser shall provide Lectrus with sizing and conduit and wiring access information, as applicable, of all Purchaser-provided equipment at the time Purchaser orders the Unit. If Lectrus is to perform any wiring associated with Purchaser-provided equipment, Purchaser shall provide Lectrus with point-to-point wiring diagrams therefor at order placement. Purchaser understands that delays in providing Lectrus with the information described in

this Section may delay Lectrus' completion of the Unit, and Purchaser releases Lectrus from any liability therefor in such event.

- (b) Lectrus reserves the right to refuse to accept delivery of any purchaser-provided equipment in advance of the project timeline for the delivery of such equipment. Purchaser shall pay Lectrus a storage charge for any Purchaser-provided Unit that is stored at Lectrus' premises longer than the period specified in the project timeline and for any Purchaser-provided equipment that is not incorporated into the Unit.

16. SUSPENSION OF PRODUCTION

If Purchaser desires that Lectrus suspend production of a Unit and Lectrus is willing to do so, Purchaser shall pay to Lectrus, upon Lectrus' demand therefor, all costs and expenses incurred by Lectrus as a result of such suspended production. Such costs may include costs to relocate a partially constructed Unit on Lectrus' premises from time to time. If such suspension lasts for more than thirty (30) days, Purchaser shall pay to Lectrus a storage charge equal to one and one-half percent (1.5%) of the total price of the Unit per month if the Unit is not powered while being stored and one and 75/100 percent (1.75%) of the total price of the Unit per month if the Unit is powered while being stored. Such storage charges shall be due and payable to Lectrus not later than the fifth day of each month for storage occurring during the then preceding month. If such suspension lasts for more than three (3) months, Purchaser shall be responsible for any increases in Lectrus' material costs. No suspension of production by Lectrus pursuant to this Section shall constitute a waiver of any claim that Lectrus may have against Purchaser for breach of the Agreement.

17. EXPRESS WARRANTY; EXCLUSION OF OTHER WARRANTIES

- (a) Limited Product Warranty Statements - For the Unit purchased from Lectrus, Lectrus makes the following limited warranties: (i) the Unit is free from defects in material and workmanship, (ii) the Unit materially conforms to Purchaser's specifications that are attached to, or expressly incorporated by reference into, these terms; (iii) at the time of delivery, Lectrus has title to the Unit free and clear of liens and encumbrances; and (iv) for professional services performed by Lectrus hereunder, Lectrus warrants the services will be performed in accordance with generally accepted professional standards (collectively, the "Limited Warranties").
- (b) Conditions to the Limited Warranties - The Limited Warranties are conditioned on (i) the Purchaser storing, installing, operating and maintaining the Unit in accordance with Lectrus' instructions; (ii) no repairs, modifications or alterations being made to the Unit other than by Lectrus or its authorized representatives; (iii) using the Unit within any conditions or in compliance with any parameters set forth in specifications that are attached to, or expressly incorporated by reference into, these terms; (iv) the Purchaser discontinuing use of the Unit after it has, or should have had, knowledge of any defect in the Unit; (v) the Purchaser providing prompt written notice of any warranty claims within the warranty period described below; (vi) the Purchaser granting Lectrus access to the Unit at all reasonable times and locations to assess the warranty claims; and (vii) the Purchaser not being in default of any payment obligation to Lectrus under these terms.
- (c) Exclusions from Limited Warranty Coverage - The Limited Warranties specifically exclude any part of the Unit that is not manufactured by Lectrus or not bearing its nameplate. To the extent permitted, Lectrus hereby assigns any warranties made to Seller for such equipment. Excluded from the Limited Warranties are normal wear and tear, misuse or improper use, violation of maintenance rules, differing operating conditions, etc. and excludes any expendable items that comprise part of the Unit, such as calking, door seals, fuses, light bulbs and lamps, etc
- (d) **THE EXPRESS WARRANTY IN SECTION 17(a), (b) and (c) ABOVE IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WORKMANSHIP, ALL SUCH IMPLIED WARRANTIES BEING DISCLAIMED BY LECTRUS.**

18. CLAIMS OF LATE DELIVERY

Claims of late delivery are barred unless made prior to delivery of the Unit, and the receipt of any the Unit shall constitute a waiver of any claim that it was delivered late.

19. LIMITS OF LECTRUS' LIABILITY

- (a) The express warranty outlined in Section 17 above shall extend for a period equal to one (1) year after acceptance of shipment of the Unit by a common carrier or freight forwarder, except that said warranty shall extend only for the useful life of any part of the Unit whose useful life is reasonably expected to last less than one (1) year. Purchaser must assert any claim that Lectrus has breached its warranty outlined in Section 17 above by so notifying Lectrus in writing within ten (10) days of its discovery of the alleged defect (or within such longer period, if any, as shall be required by law). Such notice shall specify the alleged defect in detail. Purchaser shall reasonably cooperate in any investigation of the alleged defect that Lectrus shall undertake and shall preserve and provide Lectrus access to physical evidence, reports, employees and witnesses. Failure of Purchaser to comply with the terms of this Section 19(a) shall bar Purchaser from any remedy against Lectrus.
- (b) In the event of a breach of this warranty during the warranty period, Seller shall without undue delay replace or replace the defective part or replace or modify the Unit so as to correct such warranty breach, which shall be Purchaser's sole and exclusive remedy and Lectrus' sole liability for breach of its warranty.
- (c) In the event of late delivery or non-delivery of a Unit, Lectrus' liability shall not exceed the fair market value of the Unit in question on the contract date of delivery less the contract price of such Unit. However, Lectrus shall have no liability unless Purchaser actually purchases the same Unit elsewhere at a higher price, which is the fair market value price.

- (d) Notwithstanding any other provision under this agreement, Lectrus' total aggregate liability towards the Purchaser under the Agreement whether, resulting from negligence, statute, tort or otherwise, shall be limited to 50% of the purchase order price.
- (e) **PURCHASER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND LECTRUS SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR, INDIRECT, INCIDENTAL, LIQUIDATED OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING LOSS OF PROFIT ON CONTEMPLATED USE OR LOSS OF PROFIT OF ANY DESCRIPTION, LOSS OF TIME, LOST SAVINGS, INCONVENIENCE, PROMOTIONAL OR MANUFACTURING EXPENSES, INJURY TO REPUTATION OR LOSS OF CUSTOMERS.**

20. PATENTS

Purchaser agrees to indemnify and hold Lectrus harmless against all damages and expenses arising from claims for infringement of patent rights on materials specifically produced upon Purchaser's order and against all damages or expenses, including attorney's fees and expenses, arising from any infringement or from any misuse of any trade name, trademark, symbol, identification of material content or other labeling used by Lectrus at Purchaser's instructions.

Lectrus agrees to indemnify and hold Purchaser harmless against all damages and expenses arising from claims for infringement of patent rights on materials specifically produced upon Purchaser's order and against all damages or expenses, including attorney's fees and expenses, arising from any infringement or from any misuse of any trade name, trademark, symbol, identification of material content or other labeling used by Lectrus.

21. CONFIDENTIAL INFORMATION

Lectrus shall use reasonable efforts to protect the confidentiality of Purchaser's confidential information. No information of Purchaser shall be deemed confidential information for purposes of this Section unless such information is disclosed to Lectrus in a document and such document has been marked conspicuously with the word "Confidential" or similar term to put Lectrus on notice that Purchaser regards the information as its confidential information.

22. INDEMNIFICATION

Purchaser will indemnify and hold harmless Lectrus and will reimburse Lectrus for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) arising from or in connection with any bodily injury (including death), property damage or other damage of or to any individual or entity or any tangible or intangible personal or real property arising or allegedly arising from or in connection with a Unit to the extent caused by Purchaser's gross negligence.

Lectrus will indemnify and hold harmless Purchaser and will reimburse Purchaser for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) arising from or in connection with any bodily injury (including death), property damage or other damage of or to any individual or entity or any tangible or intangible personal or real property arising or allegedly arising from or in connection with a Unit to the extent caused by Lectrus' gross negligence.

23. FORCE MAJEURE

Lectrus shall not be deemed in breach of any covenant or agreement under this Agreement if it is prevented or hindered from performing the same due to war, acts of terrorism, civil unrest, strike, lookout or other labor trouble, promulgation of law or regulation, governmental delays, acts of governmental authorities, unusually inclement weather, inability to timely procure energy, services or materials despite reasonable efforts, transportation delays, failure of any supplier or subcontractor to timely perform, acts of God, or any other cause, whether similar or dissimilar to any of the foregoing, that is beyond the reasonable control of Lectrus.

24. TERMINATION FOR CONVENIENCE

- (a) Purchaser may at any time and for any reason, upon three (3) months advance notice to Lectrus, terminate the Agreement as to all or any portion of a Unit then not shipped. Upon such a termination, Purchaser shall pay to Lectrus: (i) any unpaid amounts for Units shipped prior to the date of termination; (ii) any unpaid amounts for Units completed in accordance with the Agreement but not shipped prior to the date of termination; (iii) the costs incurred by Lectrus in building any Unit that is incomplete prior to the date of termination, including initial costs and preparatory expenses allocable thereto; (iv) the costs incurred by Lectrus in settling and paying claims arising out of the termination of the Agreement; and (v) an amount equal to fifteen percent (15%) of the costs described in clauses (iii) and (iv) of this Section 24.
- (b) This Section sets forth each party's sole remedies, and the other party's entire liability, in the event of a termination of this Agreement by a party for convenience.

25. NOTICES

All communications provided for hereunder shall be in writing, and if to Lectrus, mailed or delivered to Lectrus at the address stated on the face hereof, or to such other address as Lectrus may designate by notice to Purchaser, and if to Purchaser, mailed or delivered to Purchaser at its address designated on the face of Lectrus' quote or at such other address as Purchaser may hereafter designate by notice to Lectrus.

26. DISPUTES

All communications provided for hereunder shall be in writing, and if to Lectrus, mailed or delivered to Lectrus at the address stated on the face hereof, or to such other address as Lectrus may designate by notice to Purchaser, and if to Purchaser, mailed or delivered to Purchaser at its address designated on the face of Lectrus' quote or at such other address as Purchaser may hereafter designate by notice to Lectrus.

27. FUTURE TRANSACTIONS

The provisions of these Standard Terms and Conditions, including the provision for arbitration, are hereby incorporated into all future transactions involving the sale of goods by Lectrus to Purchaser except to the extent they are expressly modified by a writing signed by Lectrus and Purchaser.

28. MISCELLANEOUS

- (a) The article, section and other headings of this Agreement are for convenience of reference only and shall not be construed to affect the meaning of any provision contained herein. Where the context so requires, the use of the singular shall include the plural and vice versa and the use of the masculine, feminine or neuter gender shall include all genders. The words "include" and "including" mean to include without limitation. Words such as "herein," "hereof," "hereby" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The term "person" shall include any individual, partnership, joint venture, corporation, trust, unincorporated association, any other entity and any government or any department or agency thereof, whether acting in an individual, fiduciary or other capacity.
- (b) This Agreement, including the provisions for arbitration, exclusion of warranties, and bill and hold, all of which are accepted by Purchaser, contains the entire agreement between the parties and supersedes any prior or contemporaneous oral or written agreements or communications between them relating to the subject matter hereof, including Purchaser's order form, if any. The terms of this Agreement may not be altered or supplemented by Purchaser's purchase order or other instrument without a written consent signed by Lectrus.
- (c) This Agreement may not be assigned, modified, or cancelled by Purchaser without Lectrus' prior written consent, and any attempt to assign, modify or cancel it without such consent shall be absolutely void. No waiver by Lectrus of any default by Purchaser shall be effective unless such waiver is in writing, and no such waiver shall be considered a waiver of any subsequent default.
- (d) This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule (whether of the State of Tennessee or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Tennessee.
- (e) Should any provision of this Agreement be held void, voidable or unenforceable for any reason, all remaining provisions of this Agreement shall remain in full force and effect. Should any interest rate payable hereunder exceed the applicable maximum lawful interest rate, said interest rate shall be reduced to the applicable maximum lawful interest rate.
- (f) All indemnity obligations of either Party under this Agreement shall survive beyond the sale of a Unit or, if the sale is not consummated, beyond the termination of this Agreement.
- (g) Commencement of manufacture of a Unit or other performance by Lectrus does not mean acceptance of Purchaser's order, and Lectrus reserves all of its rights, including the right to withhold shipment, notwithstanding the commencement of Lectrus' performance.
- (h) Any contract between Lectrus and Purchaser formed as a result of an exchange of documents between Lectrus and Purchaser must consist of all the terms set forth in these Terms and Conditions. Any terms contained in any documents sent at any time by Purchaser to Lectrus (including purchase orders sent by Purchaser to Lectrus) that are in addition to or are different from the terms set forth in these Terms and Conditions shall be treated as proposals for addition to the contract between Lectrus and Purchaser or for modification of the terms set forth in these Terms and Conditions, which proposals Lectrus expressly rejects. Lectrus' acceptance of any order submitted by Purchaser is expressly conditional on Purchaser's assent to the terms set forth in these Terms and Conditions.
- (i) By signing this Agreement and any other document delivered to Lectrus, the individual signing the document represents and warrants to Lectrus, both in his individual capacity and as a representative of Purchaser, that he has been duly authorized to execute and deliver it on behalf of Purchaser, that its execution and delivery and the consummation of the transactions contemplated by it have been duly and validly authorized by all necessary action on the part of Purchaser, and that it constitutes, and all other documents contemplated by it will be, valid and legally binding obligations of Purchaser, enforceable in accordance with their terms, subject to bankruptcy, insolvency and other statutes affecting creditors' rights generally.
- (j) Purchaser shall not, under any circumstances, discuss or extend any offer of employment to any Lectrus employee(s) without first providing prior written notification to Lectrus of Purchaser's intent to do so. Purchaser agrees not to hire the employee without prior written consent from Lectrus for a period of one year from the later of (1) the date the employee was removed from the Lectrus payroll or (2) the date the employee last provided services to Purchaser.