



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor  
MANDY COHEN, MD, MPH • Secretary  
MARK PAYNE • Director, Division of Health Service Regulation

August 24, 2018

Denise M. Gunter  
380 Knollwood Street, Suite 530  
Winston-Salem, NC 27103

**Exempt from Review – Physician Office**

**Record #:** 2687  
**Business Name:** Novant Health, Inc.  
**Business #:** 1341  
**Project Description:** Develop a physician office building  
**County:** Mecklenburg

Dear Ms. Gunter:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that based on your letter of August 20, 2018, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(a)(9). Therefore, you may proceed to offer, develop, or establish the above referenced project without a certificate of need.

However, you need to contact the Agency's Construction and the Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed physician office.

It should be noted that this Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by the Agency and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Julie M. Faenza  
Project Analyst

Martha J. Frisone  
Chief, Healthcare Planning and  
Certificate of Need Section

cc: Construction Section, DHSR  
Acute and Home Care Licensure and Certification Section, DHSR  
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603  
MAILING ADDRESS: 2701 Mail Service Center, Raleigh, NC 27699-2701  
www.ncdhhs.gov/dhsr/ • TEL: 919-855-3750 • FAX: 919-733-2757

Denise M. Gunter  
T 336.774.3322 F 336.774.3372  
denise.gunter@nelsonmullins.com

380 Knollwood Street | Suite 530  
Winston-Salem, NC 27103  
T 336.774.3300 F 336.774.3299  
nelsonmullins.com

August 20, 2018



**Hand Delivered**

Martha J. Frisone, Chief  
Healthcare Planning and Certificate of Need Section  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
809 Ruggles Drive  
Raleigh, North Carolina 27603

Re: Notice of Exemption for Medical Office Building in Mecklenburg County,  
North Carolina (HSA III)

Dear Ms. Frisone:

Pursuant to N.C. Gen. Stat. § 131E-184(a)(9), this letter serves as prior written notice of Novant Health, Inc.'s ("Novant") intention to build a 7,400 square foot medical office building ("MOB") located at 3149 Freedom Drive, Charlotte, North Carolina 28208. The MOB will house Novant Health Medical Group physician offices. No new institutional health services as defined in N.C. Gen. Stat. § 131E-176(16)a.-v. will be constructed, developed, established or offered in the MOB. Novant plans to acquire one x-ray machine at a cost of \$104,950, which is well below the \$500,000 threshold for a diagnostic center pursuant to N.C. Gen. Stat. § 131E-176(7a). See equipment quote attached as **Exhibit A**.<sup>1</sup> Novant plans to begin construction on the MOB later this year and expects to open the MOB in 2019.

We would appreciate the CON Section's written confirmation that the MOB is exempt from CON review pursuant to N.C. Gen. Stat. § 131E-184(a)(9). If you should need any additional information, please let me know.

<sup>1</sup> Since Novant is a tax-exempt organization, the sales tax for the x-ray machine (\$7,608.88) will be refunded to Novant. Therefore, we have not included the sales tax in the purchase price.

Martha J. Frisone  
August 20, 2018  
Page 2

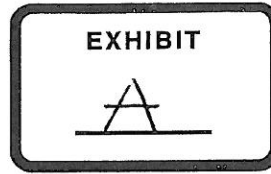
Thank you for your time and attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Denise M. Gunter". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Denise M. Gunter

Enclosure



Merry X-Ray Corporation  
 8020 TYLER BLVD.  
 MENTOR, OHIO 44060-4825  
 Phone: 800-635-9729  
 Fax: 866-842-9089

## Sales Quotation

<b>Sold To Party</b> NOVANT HEALTH MICHAEL JORDAN FAMILY MEDICAL CLINIC 3149 FREEDOM DRIVE CHARLOTTE NC 28202 USA	<b>Information</b> Sales Quotation: 20025626 Date: 08/13/2018 Quotation Valid Until: 10/12/2018 MXR Sales Representative: Matt Pooley Phone: 919-524-3411 Prepared by: TPORTER
<b>Ship To Party</b> NOVANT HEALTH MICHAEL JORDAN FAMILY MEDICAL CLINIC 3149 FREEDOM DRIVE CHARLOTTE NC 28202 USA	<b>Customer Information</b> Account Number: 10000 Contact: Angie Kelley Title: Integration Project Manager Phone: 704-384-9131 Email: azkelley@novanthealth.org

Merry X-Ray Corporation is pleased to submit the following quotation and offers to sell the products described at the prices below, subject to your acceptance of the terms and conditions.

Item #	Item Description	Qty.	Unit Price	Extended Price
XRAY	X-RAY SOLUTION	1	\$104,950.00	\$104,950.00
116905	<b>KONICA FLOOR MOUNTED 50KW SYSTEM</b> Floor Mount Tube Stand with Standard Floor Mounted Rail  Our Floor Mounted DR is an integrated system for all conventional radiographic applications in combination with a Floor Mount Tube stand, 660 Pound Dead Lift Four Way Float Top Elevating Table and a Wall Bucky  Medical Floor Mounted Tube Stand with Digital SID Display: 9ft.(305cm) Floor Plate Platform tube mount standard (Trunnion Rings Optional) Focal spot travel: Transverse travel range, 11" (28cm) Vertical travel range, 64.5" (164cm) Minimum ceiling height, 87" (221cm) Pressure activated 180° column rotation ± 180° tube rotation about the horizontal axis Angulation display of: Focal spot-to-tabletop SID distance (for table or wall studies) Focal spot-to-bucky SID distance (for table or wall studies) Tube angulation	1	Included	Included



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Item #	Item Description	Qty.	Unit Price	Extended Price
	<p>Control buttons for the following actions: (located on the control handle)            Longitudinal lock, transverse lock, vertical lock, column rotation roll lock, all locks and automatic detent stops (both horizontal and vertical)            Centering detent aligns focal spot to image receptor</p> <p>Manual collimator with 6 pair of blades            Accessory rails (cones, filters, etc)            Field light lamp (light of the lamp 160 lux)            Light indicator for alignment with the bucky            Lamp timing            Retractable measuring tape</p> <p>(2) 9 meters Ultra Flexible High Tension Cables</p> <p>Low Speed 50KW Generator with 300kHU Low Speed Tube            Three Phase High Frequency Generator SHF525            50kW/150kV Anatomical Program Microprocessor Controlled            High Frequency 25KHz, 1 tube operation            Three Phase 208/240 VAC (specify prior to order)            Microprocessor controlled with auto diagnostic and error code indication for easy maintenance            Output power:            640mA @ 78kVp, 500mA @ 100kVp, 400mA @ 125kVp,            320mA @ 125kVp            Automatic line compensation +/-10%            X-ray tube overload protection            X-ray tube H.U. available indication and continuous monitoring for x-ray tube protection            Control of x-ray tube number of exposures            Hand switch for preparation and exposure control            Light and sound indication for x-ray exposure            kVp Radiographic range, from 40 to 125kVp in 1kVp step            mA Radiographic range from 10 to 640mA in 19 step Renard scale 10, 12.5, 16, 20, 25, 32, 40, 50, 64, 80, 100, 125, 160, 200, 250, 320, 400, 500, 640 mA            mAs range from 0.1 to 500mAs in 38 steps, Renard scale            Exposure time range from 0.001 to 10 seconds</p> <p>Low Speed Starter(3000 RPM)for one X-Ray tube:            Starter for anode rotation of one x-ray tube of equal or different impedance            Rotation control of the anode at low speed:3.000 R.P.M.(60Hz)            10.000 R.P.M(180Hz) in function of the selected power</p>			



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Item #	Item Description	Qty.	Unit Price	Extended Price
	<p>Anode Rotation Brake control            Time delay of the brake in function of the sequence of exposure selected</p> <p>X-Ray Tube, Toshiba Model E7884X            Maximum Tension, 150kVp            Focus sizes: Small focus 0.6mm (0.023) Large focus 1.2mm (0.047)            Maximum power: Small focus 20KW Large focus 50KW            Maximum Current: Small focus 290mA Large focus 800mA            Anode degree target angle 12 degrees            Anode heat capacity 300,000 HU            Anode rotation 2,700/3,200 RPM            Anode composition Rhenium, Tungsten and face Molybdenum            Anode diameter 2.9            Filtration equivalent 0.7AL</p> <p>Radiographic Elevating Table            Heavy-duty table with a four-way floating tabletop, designed to increase patient comfort and to facilitate the operator's work in cases of general radiography and/or special applications.            The variable height feature makes patient positioning very easy and it is particularly well suited for environments with a large number of trauma, geriatric, pediatric and orthopedic cases.</p> <p>Simple, ergonomic and robust design to withstand intensive hospital use; hands-free operation with foot pedal control.            Smooth and extra optimized elevating mechanism for outstanding patient comfort. "Superlift" capability feature to handle 660 lbs.</p> <p>Table Specifications:            Four-ways floating table top with electromagnetic brakes            Table top dimensions 86.6" length by 30.9" wide            Flat composite Carbon Fiber table top to increase patient comfort and reduce x-ray dose (0.026" Al at 100Kvp)            Patient loading capacity 660 lbs.            Table top movement:            Longitudinal 43.1" (+ 23.6", -19.5")            Transversal 9.8"            Vertical 13.8"            Minimum floor-table distance 21.6"            Maximum floor-table distance 35.4"            Longitudinal detector travel 24"            Prepared for Flat Panel Detector</p>			





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Item #	Item Description	Qty.	Unit Price	Extended Price
	<p>Rotating Table Enclosure</p> <p>17 1/4" x 18 7/8"; 8:1, 215 LPI; 34-44" Grid</p> <p>Otterbox for wireless panel</p> <p>Right Hand Load Rotating Non Tilting Wall Stand            Heavy duty vertical bucky stand providing full flexibility for radiographic examinations:            Non-Tilting Wall Stand            Motorized vertical travel 59"            Minimum floor distance 15.7"            Maximum floor distance 74.8"            Fully counterbalanced for manual positioning            Adaptations for Digital Flat Panel instead of standard bucky.</p> <p>Rotating Right Hand Claymount Enclosure</p> <p>17 1/4" x 18 7/8"; 8:1, 215 LPI; 40-72" Grid</p> <p>Konica Minolta Aero Performance Single Panel Configuration            Panel Specs:            AeroDR Performance 14"x17" cassette sized wireless Digital Flat Panel Detector, the most Versatile, Durable and Reliable solution for all general x-ray exams. Only AeroDR Performance provides the power, speed and simplicity of operation (versatile) needed for general radiology with a reliable lightweight detector that can handle the loads, bumps and liquids found in the normal day of a busy radiology department (durable).            AeroDR Performance combines the lightest FPD (5.35 lbs.) with a ruggedized and liquid resistant enclosure to deliver the only solution versatile and tough enough for the general radiology in and outside of the radiology department.</p> <p>AeroDR Power Cell- Lithium Ion Capacitor-Konica            Exclusive-superior power technology.            Provides 4.1 hours of use on a 13 minute charge. The Lithium Ion capacitor has an exclusive 7 year Warranty against replacement providing reduced operational expense.            Lightweight Cesium Wireless DR Panel-5.35lbs-easy to use            Maximum configurability, Can be configured as a desktop or laptop system            4-6 Second Panel Refresh Time (Cycle Time)            Meets International Specifications for true 14"x17" cassette size</p>			



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Item #	Item Description	Qty.	Unit Price	Extended Price
	<p>Software/ Hardware Specifications:</p> <p>System Computer            Dell compatible tower workstation(T3420) or better            Intel Core I3-4130 Processor (Dual Core, 3.40GHz), 4 GB RAM or better            1TB Standard Hard Drive or better</p> <p>Display Monitor            19" Touch Screen Monitor            Resolution 1280 X 1024 or better</p> <p>Ultra Software</p> <p>Acquisition workflow management            Automatic setting of acquisition parameters according to body part and system specific programmable APRs (Anatomically Programmed Radiography)            One console operation - generator parameters setting by the workstation as part of APR            Patient data entry, manually or automatically from the DICOM worklist (MWL optional)            Urgent patient registration            Preview image typically within 4-5 seconds after exposure            Exam specific image processing for optimized image quality            Automatic backup of operator accepted images</p> <p>Review and Processing            Patient review            CD Burning            Exam foldering            Ability to add body part or view during an exam            Touch screen post processing            Assign single or multiple technologist(s) to an exam            Add additional views and/or studies to a completed exam            Ability to suspend an exam            Built-in technique and positioning chart            Variable image rotation            Window/Level, Reverse Black/White (Window polarity inversion)            Electronic zoom with pan and scroll capabilities            Touchscreen zoom, pan, window/level and contrast capability            Magnifying glass            Multi-scale contrast enhancement and Dynamic Range            Electronic shutter for masking of image (cropping)            Multi-format display (for printing)</p>			





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Item #	Item Description	Qty.	Unit Price	Extended Price
116474	<b>AUTOMATIC EXPOSURE CONTROL</b> Control of the Automatic Exposure Control for quantity one, 3-field Ion Chamber, and AEC Generator Control Board Operating mode: 0, 2 or 4 points Zero point with anatomical program APR. Automatic selection of the programmed radiographic parameters (kVp, mAs, working station, AEC, Focal Spot, according with patient size and anatomical area selected) Two Points: kVp and mAs Three Points: kVp, mA and time	2	Included	Included
115210	<b>APPLICATIONS TRAINING, (3) DAYS</b> Onsite DR Applications Training (includes travel). Please Note: If site is booked for applications and cancelled, Konica Minolta reserves the right to bill for all change fees and related costs for changed dates. Max charge will be \$2,000.00.	1	Included	Included
			<b>Sub Total</b>	\$104,950.00
			<b>Tax</b>	\$7,608.88
			<b>Total Price</b>	\$112,558.88

### Options

Please select all options you wish to purchase

Select	Item No.	Item Description	Qty.	Unit Price	Extended Price
<input type="checkbox"/>	116338	WEIGHT DISTRIBUTION CAP	1	\$1,238.00	\$1,238.00
<input type="checkbox"/>	116340	KONICA WIRELESS GRID CAP Contains one of each: Protect-A-Grid DRP Encasement 14x17 8:1/103/40-72 Grid	1	\$1,563.00	\$1,563.00

**Funding Source:** Please select one of the following methods of payment

<input type="checkbox"/>	Check/ACH/Wire		
<input type="checkbox"/>	Credit Card: Please be advised that all credit card purchases are subject to a 3% convenience fee.		
<input type="checkbox"/>	Capital Funds		
<input type="checkbox"/>	Operating Funds		
<input type="checkbox"/>	Line of Credit		
<input type="checkbox"/>	Lease: If order is being leased, a Leasing Company's Purchase Order is required.	Lessor:	
<input type="checkbox"/>	Bank Loan	Name of Bank	



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<b>Payment Terms: Payable Due Immediately</b>	
<b>20%</b>	<b>Down Payment</b>
<b>80%</b>	<b>Due Upon Delivery</b>

**UCC:** UCC Lien may be filed.  
**Freight:** FOB Origin, freight charges are prepaid by Merry X-Ray Corporation and will be added to your invoice for payment.  
**Est. Delivery:** 4-6 weeks from receipt of order.  
**Installation:** Included in price above, performed by Merry X-Ray Corporation M-F 8-5PM.

<b>Warranty:</b>	
<b>KONICA FLOOR MOUNTED 50KW SYSTEM</b>	One year labor warranty; M-F 8-5PM One year parts warranty.

**Note:**

Note: A dedicated phone line or Secure VPN access is mandatory on all products that are capable of remote diagnostics. It is the customers responsibility both physically and financially to install or have installed and maintain such access. The customer understands that such access is secured by means of login ids and passwords and that all Merry X-Ray Corporation personnel with such access have signed a letter of HIPAA compliance ensuring patient confidentiality.

**Site Readiness Requirements:**

The following general conditions are required prior to the delivery of equipment. The conditions will insure the best possible environment for the installation, and protection of computers, electronics, x-ray tubes, image intensifiers, cameras, monitors, and mechanical equipment. Please note if these conditions are not met at the time of delivery the Merry X-Ray Corporation Project Manager should reschedule the installation start date.

All necessary approvals, permitting, shielding reviews, required by either state or local governing agencies will be the customer's responsibility.

Power available at the designated power cabinet, with phase rotation checked (where three phase power is specified).  
 Walls to be sanded and primed, floor covering installed, ceiling completed, doors hung with finish applied, and lead barriers installed.

HVAC complete, functioning properly, and tested two days prior to equipment delivery.

All vendor base plates, reinforcement plates, and overhead grid installed as designated. It will be the responsibility of the customers design engineer to furnish recommended methods of anchoring and attachment for all applicable Merry X-Ray Corporation equipment.

All cable trays, conduits, and raceways correctly sized and installed according to the provided installation drawings. All lighting installed and functioning at the time of delivery.

Room and immediate vicinity to be dust free, and remain so during the duration of the installation.

Customer supplied processors, laser imagers, cameras, computers, printers (and peripherals), routers, networks and network drops are to be installed and verified operational prior to Merry X-Ray Corporation



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Sales Quotation: 20025626

installing image acquisition and processing hardware and software. Additionally, firewalls, backup power sources, virus software and other security software and hardware are the Customer's responsibility to acquire, install and maintain current. (Unless prior arrangements have been made for Merry X-Ray Corporation to provide this equipment.) Merry X-Ray Corporation will connect to customer installed network drops but assumes no responsibility for proper operation of Customer's network and associated hardware. It is strongly suggested that the Customer retain an IT person to be available for network related issues that may arise with the system over its useful life. Merry X-Ray Corporation is not responsible for computer malfunctions due to Customer or patient's unauthorized use or installation of computer programs for their personal use.

Merry X-Ray Corporation supplied servers are not allowed to have updates installed without Merry X-Ray Corporation prior consent.

Telephone service installed and operational as designated.

It will be the customer's responsibility to provide a clear and unobstructed pathway for delivery of diagnostic devices, to include room entry.

Means to dispose of packing materials, crating, etc., shall be provided.

Removal of old equipment must be quoted by service. Merry X-Ray Corporation does not dispose of transformers or tubes. Third party disposal service name and number available upon request.

Thank you for giving Merry X-Ray Corporation an opportunity to quote these products. Please visit our Website at www.merryxray.com. If you have any questions, please feel free to contact me.

Customer Acceptance:

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Requested Delivery Date: \_\_\_\_\_



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### TERMS AND CONDITION OF SALE

#### EXCLUSIVE TERMS OF SALE

The equipment and all other goods ("Equipment or "Product(s)") described in the quotation ("Quotation") to which these terms and conditions ("Terms and Conditions") are attached or to which they apply are offered to you ("Customer") by Merry X-Ray Corporation and/or SourceOne Healthcare Technologies, Inc. (individually or collectively, "Seller") exclusively on the terms and conditions set forth on the face of the Quotation and supersede all other prior agreements. No addition of modification will be binding unless mutually agreed to in writing. Unless otherwise stated, prices quoted are valid for thirty (30) days from the date of the Quotation.

#### CHANGES, CANCELLATIONS.

Quotations provided by or orders accepted by Seller are not subject to changes or cancellation by Customer except with Seller's written consent. Cancellation charges may apply at Seller's discretion.

#### PRICES AND PAYMENT TERMS.

The price for the Products shall be as set forth in the Quotation ("Price"). Prices do not include sales, use or excise taxes, duties or transportation unless otherwise noted in the Quotation. Payment terms are Net 30 days upon receipt by Customer of an invoice from Seller. Any progress or different type payments will be addressed in the Quotation attached herein.

#### DELIVERY.

Delivery terms for all purchases are understood to be FOB destination, unless otherwise specified in the accepted Quotation. Except for warranty obligations specifically identified herein, risk of loss passes to Customer upon delivery. Buyer shall have risk of loss in transit only in cases where shipment is made FOB Seller's or manufacturer's shipping point. Title to Equipment (excluding licensed intellectual property) will pass to Buyer upon Seller's receipt of payment in full.

#### INSURANCE

Both parties shall maintain the adequate amount of insurance during the course of this Agreement.

#### INSTALLATION.

The installation price quoted includes only those services specifically described in the Quotation or herein, and does not include any additional time required or delay(s) experienced in installing the Equipment resulting from the condition or location of the Premises, or any other cause(s) which are not within the scope of Seller's installation responsibilities. Any labor and/or material costs in excess of standard installation services and any overtime incurred by Seller employees in respect to such additional time required or delay(s) experienced (as well as any extra labor or overtime work performed at the request of Customer) will be invoiced to Customer and paid at then-prevailing Seller demand service rates.

Seller offers no warranty and assumes no liability for the fitness or adequacy of the premises (or the utilities available at the premises) on or into which the equipment is to be installed, used, or stored. Customer agrees to indemnify, defend, and hold seller harmless against any loss, damage, or claim arising out of the condition of such premises (or utilities).

#### CUSTOMER DEFAULT

Default. If Customer does not pay any amount when due or does not meet any of its other obligations hereunder, then (in addition to any other remedies available at law or in equity) Seller may accelerate any balance due and require immediate payment thereof, may cease any and all work under this or any other contract with Customer (including without limitation providing service for the Equipment), may enter Customer's premises peacefully and render any Equipment purchased hereunder inoperable, may repossess the Equipment, and may charge Customer for all costs incurred by Seller in repossessing, removing, transporting, reconditioning, storing, and reselling the Equipment. In any action initiated to enforce the terms of this Agreement following Customer's default, Seller shall recover as part of its damages, all costs, expenses, and attorney fees incurred in connection with such action.

Until Customer has paid in full for the Equipment, Customer will keep the Equipment free and clear of all claims, liens, security interests or other encumbrances. Customer will not in any other manner attempt to dispose of the Equipment or, without Seller's written consent, remove the Equipment from the installation site until Customer has paid in full for the Equipment.

#### WARRANTY.

(a) Seller warrants that it shall have good and marketable title to the Equipment and that the same shall be transferred to Customer free and clear of any and all mortgages, liens, and encumbrances.

(b) Seller provides specific warranties with respect to Equipment it manufactures. Other Equipment is covered by warranty terms extended by the



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Sales Quotation: 20025626

manufacturers or suppliers of such Equipment, copies of which are either attached hereto or are available from Seller upon written request. Customer's sole source of warranty for Equipment manufactured by persons other than Seller or its affiliates, if any, is the original manufacturer's warranty.

(c) No warranty extended by Seller shall apply to any Equipment that has been modified, altered, or repaired by persons other than those authorized or approved by Seller, or to Equipment sold as "used". Seller's obligation under this warranty is limited to labor hour costs only, and does not cover costs of parts or travel and lodging costs.

(d) Seller warrants that services provided hereunder shall be free from defects in workmanship under normal use and service for the warranty period specified on the Quotation. Seller will provide warranty services on third party hardware and software.

(e) Seller's warranty does not apply to consumable materials, unless specifically stated in writing, nor to products or parts thereof manufactured by Customer. Preventative or routine maintenance is specifically excluded for the Equipment sold under this Agreement, and is not included under the Equipment warranty.

(f) The warranties referenced in this section are given expressly in lieu of any other warranties, express or implied, and all other warranties are hereby disclaimed, including without limitation any warranty of merchantability or fitness for a particular purpose or use, on the part of seller. Seller neither gives nor assumes (nor has seller authorized any person to give or assume for it) any other warranty or liability in connection with the equipment. In the event of any breach of the manufacturer's or supplier's warranty, seller's sole obligation shall be to provide the warranty service described above.

DISCLAIMERS AND LIMITATIONS ON LIABILITY.

Seller shall have no liability for any consequential, incidental, punitive or special damages of any kind by reason of any act or omission or arising out of or in connection with the equipment or its (or their) sale, delivery, installation, maintenance, operation, performance, or use. If customer transfers title to or lease the products sold under this agreement to any third party, customer agrees to obtain from such third party a commitment affording seller the protections enumerated herein. in no event shall seller's liability exceed the purchase price of the equipment with respect to which a claim is made (or the installation price if a claim is made with respect to installation work), regardless of whether such claim is brought at law or in equity and regardless of whether such claim is brought under contract, breach of warranty, tort or any other theory of law or equity.

FORCE MAJEURE/SHORTAGE

(a) Seller shall not be liable for any delay or default caused by events beyond its control, including but not limited to any acts of God, acts of third parties, acts of Customer (or any of the Customer's employees, agents or representatives), acts of civil or military authorities, fire, floods, and other similar or dissimilar natural causes, riots, wars, sabotage, vandalism, embargoes, labor disputes, strikes, lockouts, unavailability of water, transportation, labor, materials, supplies, fuel, or power, delays in receiving any permits or licenses, delays caused by any laws, regulations, proclamations, ordinances, or any government action or inaction, delays caused by contractors and subcontractors, and any other cause or condition beyond Seller's control. The time for performance of Seller's obligations hereunder shall be extended for a commercially reasonable period of time in the event of any delay or default for such cause(s).

MISCELLANEOUS.

These Terms and Conditions are to be interpreted and enforced under the laws of the State of Ohio without regard to principles of choice of law. The invalidity or unenforceability of any provision hereof will not affect any other provision, and all Terms and Conditions will be construed in all respects as if any such invalid or unenforceable provision(s) were omitted. Any drawings, data, designs, workflow processes, implementation strategies, or other technical information supplied by Seller to Customer in connection with the sale of the Products are confidential ("Confidential Information") and will be held in strict confidence by Customer. Confidential Information will not be reproduced or disclosed to others without Seller's prior written consent. Customer agrees to abide by any Software License Agreement provided by said third parties. The Quotation and these Terms and Conditions may not be assigned by Customer, in whole or in part, without the prior written consent of Seller. In the event of conflict between these Terms and Conditions and the Quotation, the terms of the Quotation will control.

Customer Initials \_\_\_\_\_