



Brett Hobson
MBARI

Quote Number: 84933

All standard Benthos terms & conditions of sale apply to this quote.



BENTHOS, INC.

TERMS AND CONDITIONS OF SALE

1. **GENERAL.** Benthos, Inc., a Massachusetts corporation ("Benthos") and the purchaser of products or services of Benthos ("Purchaser") agree that the within terms and conditions shall constitute a part of any contract for the sale of products or services by Benthos to Purchaser and shall take precedence over other terms and conditions. No contrary, additional or different provisions or conditions shall be binding on Benthos unless accepted in writing by the home office of Benthos. Conditions not specifically stated herein shall be governed by established trade customs. These terms and conditions shall apply to and govern Purchaser's order, and in the event of any inconsistency between these terms and conditions and Purchaser's order, these terms and conditions shall prevail. These terms and conditions are subject to change without prior written notice at any time, in the sole discretion of Benthos.
2. **PERIOD.** Unless otherwise stipulated, proposals and quotations of Benthos become void unless accepted by Purchaser, or extended by Benthos in writing, within thirty (30) days from the date of submission to Purchaser by Benthos.
3. **PRICING.** All pricing is F.O.B. North Falmouth, Massachusetts, U.S.A. unless otherwise agreed to in writing by Benthos. Prices are based on costs and conditions existing on the date of quotation and are subject to change by Benthos before final acceptance. All quotations and agreements are contingent upon and are subject to change because of strikes, accidents, fires, availability of materials and all other causes beyond the control of Benthos. Benthos reserves the right to correct all typographical errors which may occur in its prices or specifications.
4. **TAXES.** All prices are exclusive of federal, state, and local use, sales, property, excise or similar taxes however designated. Unless Purchaser provides Benthos with a valid and correct tax exemption certificate applicable to the product ship-to location prior to Benthos's acceptance of the order, Purchaser is responsible for any of the foregoing taxes, or amounts in lieu thereof paid or payable by Benthos. In case of new taxes or increased rates or the repeal of taxes or the reduction of rates, the contract price shall be adjusted accordingly.
5. **SHIPPING.** All orders will be shipped freight collect. Separate charges for shipping and handling will be shown on Purchaser's invoice. Where it is deemed impractical by Purchaser or not possible to ship freight collect, if Benthos elects, Benthos may prepay and invoice all freight charges plus ten percent (10%) for documentation and handling. All risk of loss shall pass to Purchaser when the goods are delivered to the carrier.
6. **DELIVERY.** Benthos will make a reasonable effort to meet the proposed delivery schedule, but shall not be liable for loss or damage resulting from delay and non-delivery or default in shipment, in whole or in part, delivery or other failure of performance due to events beyond the control of Benthos and without the fault or negligence of Benthos, including without limitation, contingencies of transportation, procurement of materials or parts, labor difficulties, governmental, action or acts of God.
7. **INSPECTION.** Purchaser must examine the Product upon receipt. If any item is damaged or missing, Purchaser must notify Benthos within ten (10) days from the date of delivery. Purchaser's failure to present a written claim respecting any shipment, within ten (10) days after receipt thereof, shall constitute a waiver of all claims with respect thereto.
8. **PAYMENT.** For orders invoiced and shipped in the United States, the terms are thirty (30) days net from the date of invoice, subject to approval of credit by Benthos. For orders invoiced or shipped outside of the United States, Benthos will require a confirmed, irrevocable letter of credit, payable at sight in United States funds, advised, confirmed and payable on a United States bank acceptable to Benthos. If, in the judgment of Benthos, the financial condition of Purchaser at any time does not justify shipment or the continuation of production on the aforesaid terms of payment, Benthos may require payment in advance, alternative payment terms in form and substance satisfactory to Benthos or terminate the purchase order or any agreement related thereto without liability and without waiving any other remedies. Purchaser shall pay interest on all past due sums at the rate of 1.0% per month.
9. **LIMITED WARRANTY.** Benthos warrants that the products sold hereunder shall be free from defects in materials and workmanship under normal use and service when correctly installed, used and maintained for a period of one (1) year from date of shipment from Benthos. Purchaser's receipt of any product delivered hereunder shall be an unqualified acceptance of and a waiver by Purchaser of the right of Purchaser to make a claim with respect to such product unless Purchaser gives Benthos notice of any claim within one (1) year after the receipt of such product. This warranty is limited to repair or replacement of the said product at Benthos' option, F.O.B. the Benthos plant in North Falmouth, Massachusetts, providing the product was not abused or operated other than in accordance with the Benthos instruction manuals. With respect to the sale of Benthos oceanographic instruments which are pressure tested to rated depth prior to shipment, Benthos does not assume responsibility for any damage due to leakage or implosion. Benthos reserves the right to modify its warranty at any time, in its sole discretion. **THIS LIMITED WARRANTY IS NOT TRANSFERABLE.**
10. **REPAIRS.** Prior to returning any product to Benthos for warranty repair, the Purchaser must first contact Benthos and obtain a return material authorization number (the "RMA Number"). Purchaser will clearly label each product returned with the appropriate RMA Number. All products requiring warranty repairs must be returned by Purchaser to Benthos in North Falmouth, Massachusetts, or to such other location designated by Benthos, with a letter stating the problem and probable cause, with a date and time of failure, together with freight, handling, customs duties (if any) and proper documentation. Return freight must also be prepaid.
11. **EXCHANGES.** From time to time, Benthos may, in its sole discretion, exchange products or portions of a product. Any exchanges will be made in accordance with Benthos' exchange policies in effect on the date of the exchange.

12. **U.S. GOVERNMENT CONTRACTS.** If the goods or services being purchased are to be used in the performance of a U.S. Government contract or subcontract and a U.S. Government contract number appears on Purchaser's purchase order, those clauses of the applicable U.S. Government procurement regulations which are mandatory under federal statute to be included in U.S. Government subcontracts shall be incorporated herein by reference.

13. **INTELLECTUAL PROPERTY RIGHTS.** No rights in intellectual property, including but not limited to, license or other rights under any patents, copyrights, trade secrets, or trademarks owned or controlled by Benthos or under which Benthos is licensed, are granted to Purchaser or implied by the sale of products or services hereunder. Purchaser shall not identify as genuine products of Benthos any Benthos products purchased hereunder which Purchaser has treated, modified, or altered in any way. Purchaser shall not use the trademarks of Benthos to identify such products provided, however, that Purchaser may identify such products as utilizing, containing, or having been manufactured from genuine products of Benthos as treated, modified, or altered by Purchaser or a representative of Purchaser. If products or services sold hereunder are manufactured according to the specifications of Purchaser, Purchaser shall indemnify Benthos against any liability for patent, copyright, or trademark infringement on account of such manufacture or performance.

14. **MATERIALS FURNISHED BY PURCHASER.** Purchaser shall assume liability for patent and copyright infringement when products are made to Purchaser's specifications. When the quotation specifies material to be furnished by Purchaser, ample allowance must be made for reasonable waste, and material must be of suitable quality to facilitate efficient production. All materials to be supplied by Purchaser must be of first quality and must be timely delivered to Benthos.

15. **LIMITATION OF LIABILITY.** BENTHOS MAKES NO OTHER WARRANTY REGARDING ITS PRODUCTS OR THE PRODUCTS OF OTHERS EITHER EXPRESS OR IMPLIED, AND, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WHICH EXCEEDS THE FORGOING WARRANTIES IS HEREBY DISCLAIMED BY BENTHOS AND EXCLUDED FROM ANY AGREEMENT MADE BY ACCEPTANCE OF ANY ORDER.

BENTHOS DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN INCLUDING ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT PRODUCT, FACILITIES OR SERVICES, DOWN-TIME, CHARGES FOR PURCHASER'S TIME AND EFFORT, THE CLAIMS OF THIRD PARTIES, INJURY TO PROPERTY, OR ANY OTHER DIRECT, INDIRECT, SPECIAL, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM AND WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT BASED ON BREACH OF WARRANTY, CONTRACT OR TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, EVEN IF BENTHOS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. THIS LIMITATION OF LIABILITY APPLIES BOTH TO PRODUCTS AND SERVICES AND SUPPORT PROVIDED TO PURCHASER UNDER THIS AGREEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY BENTHOS, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE LIMITED WARRANTY PROVIDED IN SECTION 9 ABOVE. ANY AND ALL LIABILITY OF BENTHOS IS EXPRESSLY LIMITED TO THE PRICE PURCHASER HAS PAID FOR THE PRODUCTS. PURCHASER'S SOLE REMEDY AGAINST BENTHOS IN ANY DISPUTE UNDER THIS AGREEMENT SHALL BE TO SEEK RECOVERY OF THE AMOUNTS PURCHASER PAID, PURSUANT TO SECTION 8 ABOVE, UPON THE PAYMENT OF WHICH BENTHOS, ITS AGENTS AND EMPLOYEES, AND AFFILIATES, WILL BE RELEASED FROM AND DISCHARGED OF ALL FURTHER OBLIGATIONS AND LIABILITY TO PURCHASER.

THE LIMITED WARRANTY OF BENTHOS GIVES PURCHASER SPECIFIC LEGAL RIGHTS, AND PURCHASER MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO PURCHASER.

16. **APPLICABLE LAW; NOT FOR RESALE.** Purchaser agrees to comply with all applicable laws and regulations of the various states and of the United States or any foreign country, as applicable. Purchaser agrees and represents that it is buying the product for its own internal use only, and not for resale. Benthos has separate terms and conditions governing resale.

17. **HEADINGS.** The section headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference shall be derived therefrom.

18. **ASSIGNMENTS.** The rights and duties of Purchaser hereunder shall not be assignable by Purchaser without the prior written consent of Benthos, and any purported assignment or assumption without such consent shall be void.

19. **SEVERABILITY.** The terms and conditions contained herein are separate and severable and the invalidity or unenforceability of one or more of such terms and conditions shall not affect the validity or enforceability of any other term or condition.

20. **GOVERNING LAW.** The U.N. Convention on Contracts for the International Sale of Goods, 1980 will not apply to this transaction. This Agreement is to be construed under, and the respective rights of Benthos and Purchaser are to be determined according to the laws of the Commonwealth of Massachusetts.

21. **WAIVER.** The failure of Benthos to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions nor the right of Benthos thereafter to enforce each and every such provision.