



Quotation

Baxter, MN – 3 Year Service Contract
Tonka Jobs: 83188, 83027, 772123, 01141, 05239, 20088

Addressee:

Scott Shelito

Water & Sewer Lead Operator
P.O. Box 2626
6070 Mapleton Road
Baxter, MN 56425
Phone: (218) 316-9694
Email: sshelito@baxtermn.gov



We are represented on this project by:

Matt Fritze
Great Northern Environmental LLC
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Quotation #: KATW03182026-3JAS

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Kurita America Contact:

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USA
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ABOUT KURITA AMERICA

Kurita America is a designer and manufacturer with 70 years of experience in providing customized water and wastewater systems to municipal and industrial customers with more than 2300 installations. Engineering cost-effective solutions for the most challenging surface water and ground water problems.

Key packaged solutions

- Clarification
- Membrane systems
- Filtration
- Ion Exchange
- Metals removal

Service packages and parts

- Filter media replacement
- Original equipment manufacturer parts
- Full array of water related parts
- Troubleshooting
- Upgrades and refurbishment

Kurita America Aftermarket Service and Sales is continually offering new products and services to extend equipment life, reduce water and energy usage, and replace end of life equipment.

Refurbishments

- Turn-key services matching original specifications
- Simul-Wash™ – simultaneous air & water backwash system
- BLEU™ –low profile SS dual underdrain
- Uni-Cast™ Underdrain – pour in place
- Site-based services
- Underdrain nozzles and replacement
- System enhancements
- Design-Build-Operate-Maintain solutions for industrial water/wastewater facilities

Media Replacement and Analysis

- Turn-key removal and installation
- Inventoried anthracite, Sand, garnet, gravel and greensand
- Disinfection services and media treatment services
- Meets AWWA and NSF standards

Parts

- Full line of OEM parts
- Chemical feed equipment
- Valves and valve rebuild parts
- Stocked sealing and control components
- Aerator packing materials

Automation and Controls

- Factory remote support and monitoring
- SCADA compliant and control
- Allen Bradley control upgrades, PLC & HMI and obsolete replacement
- Compliance reporting and trending
- Custom functional modification for ease of use like screens, tablets, PCs
- Security – firmware, smart switch



Service Visit Quote Summary

While on site the Field Service Technician will inspect, review the system, train and advise on best practices of backwash blower and (2) aerators operations and maintenance. During the time allowed, the Technician will balance time to make best use it while onsite. They are there to work for you.

A report will follow the trip that will detail findings, recommendations and precede a follow up parts or repairs quote.

Customer specific review items and trip purpose:

- Inspect both aerators and backwash

Below is an outline of typical areas that can be reviewed. The actual review depends on the age of the plant, configuration, time allotted.

Maintenance airwash blower

- Change oil on airwash blower
- Check belt tension (replace if needed) on airwash blower
- Check motor alignment on airwash blower
- Check safety blow by device on airwash blower
- Change oil on compressor on airwash blower
- Change out air filter elements
- Grease blower

Review maintenance logs and procedures with city staff.

Maintenance aerators (2)

- Top to bottom inspection of aerators 1 and 2
- Full inspection of aerator blowers 1 and 2
- Check belt tension on both blowers
- Add any grease or oil that is needed
- Customer to provide access
- Inspect gaskets
- Open all 3 doors
- Check laterals
- Spinners





Pricing Options

1-day trip (standard rates to Baxter, MN – <1 travel days and 1 day on site)

Kurita America will perform a one day (10 hours per day) on site, service visit.

PRICING TABLE -STANDARD RATES	
Trip pricing including travel (lump sum)	\$3,850
Consumables – Food Grade Blower Oil (4 Qts)	\$300.00
Total 1-day trip price	\$4,150.00

Pricing Option 1 –3 year – 1-day trip service contract

Kurita America will provide a discount and hold pricing for a three-year term. Kurita to perform a one day (10 hours per day) onsite service trip per year for three consecutive years.

PRICING TABLE – SERVICE CONTRACT	
Three-year Pricing (Three (3) 1-day trips to be used over 3 years)	\$12,450.00
Multiyear discount of 15%	\$-1,870.00
Total multiyear price (SERVICE CONTRACT)**	\$10,580.00

***Approximately \$3,525 will be invoiced per trip*

Delivery:

1. Shipment of any equipment will be made in approximately 1-2 weeks after receipt of Purchase Order.
2. This quote is valid for 30 days.





The attached **CONDITIONS OF SALE AND WARRANTIES** that are incorporated herein.
For your convenience, this sheet may be used as your order for this equipment.

Items Ordered	_____
P.O. Number	_____
Total Net Price	_____
Firm Name and Address	_____
By (Print)	_____
Signature	_____
Date	_____

Kurita America Inc.
Purchase orders should be addressed to: Kurita America 6600 94th Ave. North Minneapolis, MN 55445

We do not include the following:

1. Mechanical or electrical installation

Notes:

2. Equipment is quoted f.o.b. factory with full freight allowed to the jobsite.
3. Our proposal does not include any sales or use taxes.
4. Travel expenses included.
5. When ordering please include a signed copy of your Sales Tax Exemption certificate.
6. The attached Kurita America standard Terms and Conditions are incorporated by reference into this quotation, will be a part of any binding agreement between you and Kurita America and cannot be modified by you whether by the terms of your purchase order or otherwise, except to the extent expressly accepted by Kurita America in writing. You agree to abide by the terms of Section 1 ("General"), Section 3 ("Quotations") and Section 17 ("Confidential Information") of the Kurita America standard terms and conditions with respect to the information contained in this quotation and any other information provided to you by Kurita America, regardless of whether you submit an order or whether you and Kurita America enter into a binding agreement regarding the purchase of the products described herein.
7. Please note that a copy of the contractor's payment and performance bond is required to be forwarded to us as a part of normal credit approval procedures.
8. Kurita America requires partial payments based on shipped material and purchaser's account being current prior to scheduling a field technician for equipment start-up.
9. Kurita America will provide field services as outlined above in this quotation. Kurita America's field service rate is \$1200.00 per day plus travel and per diem expenses. If Kurita America's field service personnel arrive on-site after a schedule is established and the project is not ready for the intended services to be performed, Kurita America will invoice for additional days, if required. If the time





required is greater than listed in this quotation, Kurita America will invoice purchaser at the above field service rate plus travel and per diem expenses.



NATIONAL SERVICE RATES		
DAY	TIME	RATE
M-F	Per 8-hour day (travel included)	\$1,200.00
Sat	Per 8-hour day (travel included)	\$1,800.00
Sun	Per 8-hour day (travel included)	\$2,400.00
	Airfare & Car Rental RT	\$1,100.00
	Airfare & Car Rental < 1 Week Notice	\$1,500.00
	Per Diem	\$200.00

LOCAL SERVICE RATES < 400 MILE RADIUS - MINNEAPOLIS, MN		
DAY	TIME	RATE
M-F	Per hour (travel included)	\$150.00
Sat	Per hour (travel included)	\$225.00
Sun	Per hour (travel included)	\$300.00
	Per Diem	\$200.00

*** NSR & Local Service scheduling requires a minimum of 2 weeks notice.**
**** Cancellation and/or date changes to existing trip schedules are subject to travel arrangement change fees.**

FREIGHT SUMMARY: INCOTERMS® 2010	Rules for any mode or modes of transport							Rules for sea and inland waterway transport			
	EXW	FCA	CPT	CIP	DAT	DAP	DDP	FAS	FOB	CFR	CIF
	Ex Works	Free Carrier	Carriage Paid To	Carriage & Ins. Paid To	Delivered at Terminal	Delivered at Place	Delivered Duty Paid	Free Alongside Ship	Free on Board	Cost & Freight	Cost Ins. & Freight
Services	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Export Packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Marking & Labeling	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Block & Brace	1	1	1	1	1	1	1	1	1	1	1
Export Clearance (License, EEVAES)	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Freight Forwarder Documentation Feed	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Inland Freight to Main Carrier	Buyer	2	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Vessel Loading Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Ocean Freight/Air Freight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Nominate Export Forwarder	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Marine Insurance	3	3	3	Seller	3	3	3	3	3	3	Seller
Unload Main Carrier Charges	Buyer	Buyer	4	4	Seller	Seller	Seller	Buyer	Buyer	4	4
Destination Terminal Charges	Buyer	Buyer	4	4	4	Seller	Seller	Buyer	Buyer	4	4
Nominate On-Carrier	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Security Information Requirements	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
Customers Broker Clearance Fees	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Dury, Custom Fees, Taxes	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Delivery to Buyer Destination	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Delivering Carrier Unloading	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

Notes:

- 1) Incoterms® 2010 do not deal with the parties' obligations for stowage within a container and therefore, where relevant, the parties should deal with this in the sales contract.
- 2) FCA Seller's Facility - Buyer pays inland freight; other FCA qualifiers. Seller arranges and loads pre-carriage carrier and pays inland freight to the "F" delivery place
- 3) Incoterms® 2010 does not obligate the buyer nor must the seller to insure the goods, therefore this issue be addressed elsewhere in the sales contract.
- 4) Charges paid by Buyer or Seller depending on contract of carriage.
- 5) Charges paid by Seller if through Bill of Lading or door-to-door rate to Buyer's destination

INCOTERMS® IS A REGISTERED TRADEMARK OF THE INTERNATIONAL CHAMBER OF COMMERCE. THIS DOCUMENT IS NOT INTENDED AS LEGAL ADVICE BUT IS BEING PROVIDED FOR REFERENCE PURPOSES ONLY. USERS SHOULD SEEK SPECIFIC GUIDANCE FROM INCOTERMS® 2010 AVAILABLE THROUGH THE INTERNATIONAL CHAMBER OF COMMERCE AT WWW.ICCBKBOOKS.COM



**KURITA AMERICAS STANDARD WARRANTY POLICY &
PROCEDURES**

Kurita America Inc. will cover under warranty all parts sold to be free of defects in material or workmanship. Liability under this policy extends for 15 months from ship date or one year from the installation, whichever occurs first. Kurita America's liability is limited to replace and/or repair the failed equipment or part which has been proven defective in material or workmanship upon Kurita America's and/or the manufacturer 's examination. This warranty does not include removal, installation, labor costs or freight charges incurred and in no event shall Kurita America's liability exceed the selling price of such equipment or part.

EXCEPTIONS:

Parts that have not been installed by Kurita America's technicians and were not installed per the manufacturer specifications. Parts that were not used, operated and/or maintained per the manufacturer specifications or use instructions.

OEM parts and accessories are subject to the terms and conditions of each manufacturer.

Analytical sensors (conductivity, pH, ORP, etc.) are all considered consumable parts not covered under warranty. Pump tube assemblies and rubber components are considered perishable and not covered under warranty.

Gaskets, seals, pump seals, O-rings, etc. are considered perishable and not covered under warranty. Used and/or refurbished parts purchased will have a 90-day warranty from ship date.

Damage to circuit boards is not warranted if caused by failure to seal the controller door after servicing, (if service was not performed by a Kurita America's technician) and/or if the top of enclosure conduit entries are not sealed.

Only new, unused and undamaged parts/equipment will be accepted for return. Any part returned to Kurita America's for evaluation, repair or replacement must have a Return Material Authorization number assigned before it is returned, Kurita Americas is not responsible for parts returned without an RMA number. Contact your sales or customer service representative to obtain an RMA number.

A 25% re-stocking/evaluation fee will be applied to all non-warranty returned parts. Returned parts covered under warranty will not be credited to the customer until Kurita America's has received credit from the part supplier.

The RMA number must be clearly noted on the outside of the return package. Kurita America's will not provide replacement parts for use during the warranty evaluation/repair process. Replacement parts will require a PO for order processing and will be invoiced accordingly.

****NOTE****

OEM evaluation processes can take up to 6 weeks to determine if a part is covered under warranty. Kurita America's strongly recommends purchasing spare parts for critical applications.





Conditions of Sale and Warranties

1. Exclusive Terms and Conditions

Together with any other terms the parties agree to in writing, these terms and conditions of sale form the exclusive terms ("Agreement") whereby Buyer agrees to purchase, and Seller agrees to sell goods and provide advice, instruction and other services in connection with the sale of those goods ("Services"). Notwithstanding any provisions communicated in any way by Buyer to Seller prior to this agreement including any terms contained in any request for quote by Buyer, Buyer agrees that this agreement will control the relationship by accepting goods and services from Seller, even if Buyer sends to Seller other terms and conditions to which Seller may not respond.

2. Buyer Obligations

Seller will not control the actual operation of either Buyer's systems or goods at the site, and unless otherwise specifically agreed in writing, installation of goods shall be the responsibility of Buyer. Goods and services provided hereunder are based upon the information Buyer makes available to Seller, and Seller reserves the right to utilize the most compact and feasible design compatible with sound engineering practices, and to make changes in details of design, construction and arrangement of goods unless precluded by limitations (including, but not limited to actual space and feed water/substance quality specifications) specified by Buyer in writing at the time an order is placed. If no such limitations are specified, Seller shall not be held responsible for incompatibility of the goods and services due to changes in feed water/substance quality specifications or site conditions nor for incompatibility with actual space or design limitations, which were not initially disclosed by Buyer and become apparent at a later date. For services to be accurate and goods to work as intended, Buyer must fulfill the following obligations ("Obligations"):

- (a) provide Seller complete and accurate information and data relevant to the scope of work to be provided, such as information related to Buyer's site conditions, systems, related equipment and processes, feed water or other substances to be treated or measured with the Goods, including any hidden, unapparent, or changing conditions that may affect the effectiveness of the Goods;
- (b) operate all related systems and the goods within the agreed to control parameters or, if none, within industry customary operating conditions;
- (c) maintain all related systems and Goods in good operating condition and repair; and
- (d) maintain and handle goods in a proper and safe manner. If Buyer fails to fulfill the foregoing obligations, Seller shall be relieved of any obligations with respect to warranties or any other commitments made to Buyer in writing, and

Seller shall have no liability for any loss, damage or injury which Buyer may sustain or for which Buyer may be liable.

3. Payment and Prices

Unless otherwise specified in writing in section 10 of this proposal document, payment is due net thirty (30) days from the date of Seller's invoice. If Seller shall have any doubt at any time as to Buyer's ability to pay, Seller may decline to make deliveries except on receipt of satisfactory security. The prices quoted herein do not include taxes. Buyer shall be directly responsible, and reimburse Seller, for the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale of delivery of any products or services furnished hereunder. Buyer shall furnish Seller with evidence of exemption acceptable to the taxing authorities if applicable. [For multi-year agreements, pricing stated shall remain firm for 12 months, after which Seller shall be entitled to adjust pricing upward on an annual basis according to the designated formula used by Seller in Buyer's country and which shall be notified to Buyer.] Unless otherwise specified, all prices are ExWorks Seller's facility. Buyer agrees to reimburse Seller for collection costs, including 2% interest per month, should Buyer fail to timely pay. Buyer shall have no rights to any setoffs of any nature relating to any payments due under the agreement.

4. Payment for Excessive Usage; Lost and Damaged Goods

If payment for goods is based on some factor other than the actual amount of goods delivered (e.g., payment is for a fixed amount, or based on usage or production), then Buyer agrees to pay for all Goods (a) consumed as a result of Buyer's failure to comply with obligations as set forth in Section 2; or (b) lost or damaged after delivery to Buyer. Buyer shall provide Seller all information necessary to calculate amounts due and enable Seller to audit those records.

5. Deliveries

Unless stated otherwise in the proposal, Seller shall deliver all products to Buyer EXW Seller's facility, place of manufacture, or warehouse, according to INCOTERMS 2000. Shipment dates, if applicable, noted in this proposal represent Seller's best estimate of probable delivery time considering conditions known at the time this Proposal was prepared. Upon acceptance of Buyer's purchase order or, where specified in the purchase order, upon receipt of Buyer's notification to proceed with fabrication of equipment that satisfies Seller's requirements for meeting the delivery schedule, Seller shall commence fabrication of equipment. The place of delivery specified therein shall be firm and fixed, provided that Buyer may notify Seller no





later than 45 days prior to the scheduled shipment date of the products of an alternate point of delivery. Provided the parties agree a variation to take into account any additional cost [or delay] incurred by Seller in implementing this change, the alternate place of delivery shall become the agreed place of delivery for all purposes under this agreement.

6. Consigned Goods

Buyer shall bear all risk of loss and damage to all consigned goods in Buyer's possession or control, notwithstanding Buyer's exercise of reasonable care. Seller shall have the right to enter Buyer's premises at all reasonable times to inspect such Goods and related records. Upon request, Buyer agrees to return such goods to Seller pursuant to Seller's shipping instructions.

7. Limited Warranties

Seller warrants that the goods shall conform to published specifications and shall be free from defects in material and workmanship when at all times operated in accordance with Seller's written instructions; and that the services will be performed with the degree of skill which can reasonably be expected from a seller engaged in a comparable business and providing comparable services under comparable circumstances. Unless otherwise provided in any warranty schedule that may be attached hereto, the foregoing warranties are valid: (a) for chemicals and services, for 6 months from their date of delivery or the provision of Services; (b) for consumables, including filters and membranes, 12 months from their date of delivery, (c) for goods other than chemicals and consumables, the earlier of, 15 months from receipt, or 12 months from start-up/first use. Unless expressly agreed in a "performance warranty document" signed between the parties on a separate basis, there is no performance warranty on goods and services or warranty on process results. For goods not manufactured by Seller, the warranty shall be the manufacturer's transferable warranty only. Any claim for breach of these warranties must be promptly notified in writing or the claim will be void. Seller's sole responsibility and Buyer's exclusive remedy arising out of or relating to the goods or services or any breach of these warranties is limited to, at Seller's option: (a) replacement of non-conforming goods or refund of purchase price of the non-conforming Goods; and (b) re-performance of the services at issue, or a refund of the amount paid for the Services at

issue. No allowance will be made for repairs or alterations made by Buyer without Seller's written consent or approval. Goods may not be returned to Seller without Seller's written permission. Seller will provide Buyer with a "return material authorization" number to use for returned goods. Buyer, as the original purchaser, is not entitled to extend or transfer this warranty to any other party. The foregoing warranties are in lieu of and exclude all other warranties, statutory, express or implied, including any warranty of merchantability or of fitness for a particular purpose.

8. Use of Equipment, Tanks, and Containers

Tanks and SBC's owned by Seller shall be used only for the storage of goods approved by Seller and, at Seller's request, shall be returned to Seller within thirty (30) days.

9. Compliance with Laws; Permits

Buyer is responsible for compliance with all laws and regulations applicable to the storage, use, handling, installation, maintenance, removal, registration and labeling of all goods from and after Buyer's receipt of the goods, as well as for the proper management and disposal of all wastes and residues (including containers) resulting from Buyer's use of the Goods. Buyer agrees to ensure that all Goods and Services provided to Buyer for export are exported only in compliance with applicable export control laws and regulations. Permits and licenses of a permanent nature, or which are required to operate apparatus or equipment or to use the Goods, shall be procured by Buyer at Buyer's sole expense.

10. Installation

For equipment purchase if applicable, installation costs of the equipment and materials supplied shall be the responsibility of the Buyer, unless otherwise provided within the Seller's proposal. Otherwise, unless stipulated in the Seller's proposal, Buyer agrees to pay for start-up supervision and operator instruction, at the Seller's prevailing rate per day. Buyer also agrees to pay reasonable expenses for transportation room and board for Seller's personnel. Standard terms of sale include two sets of operating instructions. If additional sets are required, they are available at an additional charge. Upon receipt of request for additional sets, a price quotation will be forwarded.

11. Differing Site Conditions And Hazardous Materials

In the event that Seller encounters any Hazardous Materials (shall mean toxic substances, hazardous substances, pollutants, contaminants, regulated wastes, or hazardous





wastes as such terms may be defined or classified in any law, statute, directive, ordinance or regulations promulgated by any applicable governmental entity) at the Buyer's site, other than Hazardous Materials introduced by Seller or that are otherwise the express responsibility of Seller under this Agreement, Buyer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions so that the Seller's work under this Agreement may safely proceed.



12. Emergencies

In the event an emergency condition should occur where the protection of either the plant equipment, employees at site, or the surrounding community are threatened, Seller may procure the required and necessary equipment, personnel, or subcontract support. Seller must provide immediate notice to Buyer regarding the emergency and then provide a report after reviewing the events and itemizing all expenditures. Buyer will reimburse Seller for all emergency related expenses.

13. Excusable Delay/Non-Performance

Seller shall not be liable nor in breach or default of its obligations under this Agreement to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond the reasonable control of Seller, including, but not limited to: acts of God, fire, terrorism, war (declared or undeclared) epidemics, material shortages, insurrection, act (or omissions) of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay or non-performance, plus such additional time as may be necessary to overcome the effect of the delay or non-performance. If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, Seller shall be entitled to an equitable price and performance adjustment as applicable.

14. Confidentiality and Intellectual Property

Both parties agree to keep confidential the other party's proprietary non-public information, if any, which may be acquired in connection with this Agreement. Buyer will not, without Seller's advance written consent, subject Goods to testing, analysis, or any type of reverse engineering. Seller retains all intellectual property rights including copyright which it has in all drawings and data or other deliverables supplied or developed under this Agreement, subject to Buyer's right to use such drawings and data for its own use without additional cost. Buyer acknowledges that Seller is in the business of selling the Goods subject to this Agreement and agrees that it will not file patent applications on the Goods, or processes and methods of using the Goods, without Seller's express written permission. Buyer further agrees that in any event any such patents will not be asserted against Seller or its customers based upon purchase and use of such Goods. Buyer shall be fully liable for any infringement of patent rights of third parties arising out of the products supplied hereunder where the construction, and other characteristics of such products including modification of the Goods and Services,

is prescribed to the Seller, or completed independently, by the Buyer or agent(s). Buyer shall fully defend and indemnify the Seller in case of such claim(s). Any software Seller owns and provides pursuant to this Agreement shall remain Seller's property. Seller provides to Buyer a limited, non-exclusive and terminable license to such software for the term of this Agreement. Buyer agrees not to copy, sublicense, translate, transfer, reverse engineer, or decode the software. Unless otherwise expressly agreed by Seller, this license shall terminate and the software shall be returned to Seller upon termination of this Agreement, or the material breach of the terms in this section.

15. Limitation on Liability

To the extent permitted by law, the total liability of the Seller for all claims arising out of or relating to the performance or breach of this Agreement or use of any Goods or Services shall not exceed the annual contract value of this Agreement. Seller shall not be liable for any advice, instruction, assistance or any services that are not required under this Agreement or for which Seller does not charge Buyer. In no event will either party be liable to the other for lost profits or revenues, cost of capital or replacement or increased operating costs, lost or decreased production, claims of Buyer's customers for such damages or any similar or comparable damages, or for any incidental, special, consequential or indirect damages of any type or kind, irrespective of whether arising from actual or alleged breach of warranty, indemnification, product liability or strict liability, or any other legal theory. If Buyer is supplying Seller's Goods or Services to a third party, Buyer shall require the third party to agree to be bound by this clause. If Buyer does not obtain this agreement for Seller's benefit for any reason, Buyer shall indemnify and hold Seller harmless from all liability arising out of claims made by the third party in excess of the limitations and exclusion of this clause.

16. Conflicts; Survival, Assignment

If there is any conflict between this Agreement and any written proposal or quotation provided by Seller, then the terms and conditions set forth in the proposal or quotation shall prevail. If any term or condition of this Agreement or any accompanying terms and conditions are held invalid or illegal, then such terms and conditions shall be reformed to be made legal or valid, or deleted, but the remaining terms and conditions shall remain in full force and effect, and the Agreement shall be interpreted and implemented in a manner which best fulfills our intended agreement. This Agreement may only be assigned by Seller to any affiliate.

17. Termination and Cancellation



This Agreement and any performance pursuant to it may be terminated or suspended by either party if the other party (a) is the subject of bankruptcy or insolvency proceedings; or (b) defaults in its material obligations under this Agreement, and such default is not cured within thirty (30) days. Upon the termination of this Agreement: (a) Buyer agrees to pay for all Goods in Buyer's possession or for which title has passed to Buyer, at current prices or at such other prices as have been agreed to in writing; and (b) all amounts owing, if any, for the equipment or tanks relating to those Goods shall immediately become due and shall be paid within thirty (30) days of receipt of an invoice. In the event of cancellation of an order by Buyer, a cancellation charge will be made against the Buyer, in proportion to the work completed by Seller, or obligated against the order, plus any cancellation charges assessed against Seller by Seller's suppliers.

18. Governing Law and Dispute Resolution

This Agreement shall be governed by the substantive laws of the State of Minnesota. The UN Convention on the International Sale of Goods shall not apply. In the event of a dispute concerning this Agreement, the complaining party shall notify the other party in writing thereof. Management level representatives of both parties shall meet at an agreed location to attempt to resolve the dispute in good faith. Should the dispute not be resolved within thirty (30) days after such notice, the complaining party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court in Minneapolis, MN, and the rules of the arbitration will be the Commercial Arbitration Rules of the American Arbitration Association, which are incorporated by reference into this clause.

