



**Summary for Arrowhead Regional Medical Center**

**Project:**

**Quotation: QCA62897.20A**

**Mopec Representative**  
Marcy Westland  
marcy@appliedinst.com  
949-661-9900

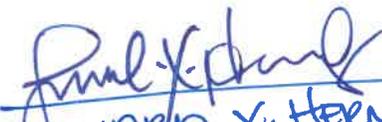
At the request of our sales representative, we are pleased to present our quotation.

Qty	Product No.	Description	Price	Discount	Disc Amt	Unit Price	Ext Price
1	JD5000	CAD LIFT END ACCESS/SIDE ACCESS 23"25"27"30" (5 TIER)	\$11,995.00	6%	\$719.70	\$11,275.30	\$11,275.30
1	FRT01	FREIGHT -	\$913.60	0%	\$0.00	\$913.60	\$913.60

Subtotal: **\$12,188.90**

All prices are in currency USD (\$)

Total	
Subtotal	\$12,188.90
Freight	\$0.00
<b>Grand Total</b>	<b>\$12,188.90</b>

APPROVED:   
LEONARDO X. HERNANDEZ  
CHIEF EXECUTIVE OFFICER



## Details of Quotation: QCA62897.20A

**Date:** Wednesday, January 06, 2021

**Mopec Representative**

Marcy Westland  
marcy@appliedinst.com  
949-661-9900

**Quotation Prepared For**

Rob Hanley  
Arrowhead Regional Medical Center  
400 N. Pepper Ave.  
Colton, CA 92324 USA  
Phone: (909) 580-0034  
Fax:  
Email: hanleyrob@armc.sbcounty.gov

**Customer Facility**

Rob Hanley  
Arrowhead Regional Medical Center  
400 N. Pepper Ave.  
Colton, CA 92324 USA  
Phone: (909) 580-0034  
Fax:  
Email: hanleyrob@armc.sbcounty.gov



Qty	Product No.	Description	Price	Discount	Disc Amt	Unit Price	Ext Price
1	JD5000	<b>CAD LIFT END ACCESS/SIDE ACCESS 23"25"27"30" (5 TIER)</b>	\$11,995.00	6%	\$719.70	\$11,275.30	\$11,275.30

- \* For use with Mopec JC023 23" or Mopec JC027 27" Body tray
- \* Dimensions: Length 95.15" x Width 29.16"-33.24"(depending on what tray is being used)
- \* Elevating range: 13.30" to 76.74"
- \* All Four wheels (4) Swivel/Brake
- \* Includes (2) Steering casters (end and side)
- \* Steering wheels have a black "Steer" assist caster tab
- \* When the tab is pressed caster will lock to allow better control of the cart
- \* Fixed handle with control console
- \* Integrated digital scale with display and control included
- \* Rugged frame structure, white powder-coated finish
- \* Integrated 12vdc hydraulic unit for vertical adjustment
- \* Vertical adjustment is operated via push button elevation controls on fixed handle control console handle
- \* Updated roller ball top with adjustable tray guides to accommodate different tray sizes 23"- 30"
- \* Dual end access allows pass through loading
- \* Dual side access allows pass through loading for side load applications
- \* Additional Push handle can be located on either side of unit (Removable handle sold separately)
- \* On board single cord battery charger with status indicator
- \* Maintenance free sealed deep cycle batteries to ensure constant power supply
- \* Key activated switch prevents unauthorized operation and serves as an emergency off switch simultaneously.
- \* Weight capacity 750 Lbs.



Qty	Product No.	Description	Price	Discount	Disc Amt	Unit Price	Ext Price
1	FRT01	<u>FREIGHT -</u>	\$913.60	0%	\$0.00	\$913.60	\$913.60

Mopec will ship equipment on standard 53' tractor trailer (Semi / LTL)\  
 Freight estimate valid for 30 days

SHIPMENT WILL INCLUDE:

- \* Lift gate (if specified prior to shipping).
- \* 24/48 hour call ahead notice to a single contact person (if specified before shipping).
- \* Tractor trailer is fully enclosed and not exposed to outdoor elements.
- \* Freight includes one shipment.
- \* Additional or phased shipments are not included.

CUSTOMER RESPONSIBILITIES

- \* Loading dock is required.
- \* Unloading of equipment.
- \* Uncrating of equipment.
- \* Setting equipment in place.

Qty	Product No.	Description	Price	Discount	Disc Amt	Unit Price	Ext Price
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Subtotal: **\$12,188.90**

All prices are in currency USD (\$)

Total	
Subtotal	\$12,188.90
Freight	\$0.00
<b>Grand Total</b>	<b>\$12,188.90</b>

All customers may be subject to applicable sales tax unless certificate of tax exemption is provided.

Quotation & Discount Valid for 90 Days Unless Superseded By Another Quotation.

Major credit cards accepted with a 3% surcharge for orders exceeding \$10,000.00

Terms: Net 30 Days Upon Credit Approval

Transportation: FOB Madison Heights, MI

Freight: Pre-Paid and Added to Invoice

Warranty: One-Year

Delivery: INSTRUMENTS

7-10 Days After Receipt of Purchase Order.

STANDARD EQUIPMENT

Our products will ship 90-120 days after receipt of order.

CUSTOM/MODIFIED EQUIPMENT

Our products will ship 120-150 days after receipt of signed approval drawings.



Payment in full is required with all Mass Fatality Refrigerated Trailer orders  
A 50% Deposit is required prior to production for all MERC orders  
A 30% Deposit is required prior to production for all other capital orders exceeding \$20,000.00

Price as quoted DOES NOT INCLUDE freight costs, unless a freight line item is included in the quote. Freight will be pre-paid and added to the invoice after product shipment

Price as quoted DOES NOT INCLUDE installation. Please advise your sales representative or Mopec estimator if you would like to receive pricing for equipment installation.

Price as quoted DOES NOT INCLUDE any applicable sales and use taxes, which will be in addition to price quoted unless customer provides certificate of sales tax exemption.

Equipment to be manufactured per the specifications provided in the proposal presented by Mopec, if approval drawings have been completed these shall govern.

Please note that any request for a change in equipment design, or services to be provided, may result in additional charges. These changes and the monetary value associated with them (if any) will be executed through Mopec\'s Change Directive Form.

**PLEASE REFERENCE QUOTE NUMBER WHEN PLACING YOUR ORDER.**

Thank You,  
Mopec

Christine Beausoleil  
Project Manager  
E-mail: [cbeausoleil@mopec.com](mailto:cbeausoleil@mopec.com)  
(248) 284-0880

**ALL QUOTATIONS ARE SUBJECT TO MOPEC TERMS AND CONDITIONS AS PER ATTACHED**



*The Heart of a  
Healthy Community*

## NON-STANDARD TERMS FOR MOPEC TERMS AND CONDITIONS

The Mopec Terms and Conditions are its standard terms and conditions, which includes terms that differ from the standard County contract and omits certain County standard contract terms. County Counsel reviewed the terms and conditions on January 7, 2021, and identified the following non-standard and missing terms:

1. **Payment Terms:** Mopec's payment terms are 30 days from date of shipment and there is a late fee of 1.5% of month on overdue accounts.

Potential Impact: County standard processing time is 60 days or more. Failing to pay within 30 days would result in a late fee.

2. **Insurance:** The terms and conditions do not include the County's standard insurance provisions, which set forth minimum coverages and limits normally required of vendors. They also do not require Mopec to add the County as an additional insured, or require Mopec or its insurers to waive the right of subrogation against the County.

Potential Impact: The terms and conditions do not include the County standard insurance requirements. This means that the County has no assurance of an insurance company that Mopec will be financially responsible for claims that may arise under the agreement, which could result in the County being financially liable. No waiver of subrogation may allow Mopec's insurers, if any, to bring suit against the County. Not being added as an insured to Mopec's insurance policies means that the County cannot directly turn to Mopec's insurers in pursuing a claim.

3. **Limitations of Liability:** Mopec disclaims liability for loss of use or downtime, or any indirect, special, incidental, or consequential damages, and caps its liability to the price paid for the product that resulted in the damages.

Potential Impact: Claims and damages incurred by the County against Mopec could exceed the price of the product paid, leaving the County financially liable for the excess.

4. **Indemnification:** The terms and conditions do not include the County standard intellectual property and general indemnity clauses, and requires the County to defend and indemnify Mopec for claims due to (1) County's modification of the

### BOARD OF SUPERVISORS

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Fifth District

LEONARD X. HERNANDEZ  
Chief Executive Officer

product or failure to purchase or install any part or software that is part of the product, (2) any claims that occur on County property that allegedly resulted from Mopec's negligent acts, breach of contract, or acts or omission relating to its installation or delivery of the products, except where the claim arises from Mopec's sole negligence, (3) a product that is designed by Mopec based on the County's directions, or (4) County's negligence, breach of contract, or fault.

Potential Impact: County Counsel cannot advise on whether Michigan law would impose an obligation on Mopec to defend or indemnify the County for general liability and intellectual property claims where there is no contractual obligation. If Michigan law does not provide for such duty, the County may bear financial responsibility for defending itself and paying any claims. Additionally, by agreeing to defend and indemnify Mopec, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Mopec without such limitations and the County would be responsible to defend and reimburse Mopec for costs, expenses, and damages, which could exceed the total contract amount.

5. **Governing Law and Venue:** Michigan governing law and Mopec may bring an action to enforce the terms and conditions in the courts of Michigan.

Potential Impact: The terms and conditions will be interpreted under Michigan law. In the event Mopec seeks to bring a lawsuit against the County arising under the terms and conditions, the County consents to the lawsuit being brought in Michigan. If that occurs, the County may need to retain outside counsel licensed to practice law in Michigan, which may result in fees and costs that exceed the total contract amount. As further discussed below, the County does not have the ability to bring a lawsuit against Mopec.

6. **Arbitration:** If the County seeks to assert any claims or disputes against Mopec, it must do so through binding arbitration in Oakland County, Michigan.

Potential Impact: The County cannot pursue any of its claims against Mopec in court, and waives its right to resolve disputes through a lawsuit and trial. All disputes that the County has against Mopec must be resolved through binding arbitration in Michigan, and will require the County to retain outside counsel licensed in Michigan, which may result in fees and costs to the County that exceed the total contract amount.

7. **Shortened Limitations Period:** Any claim by the County against Mopec must be brought by arbitration within one year after the act, omission, or alleged breach that gave rise to the claim.

Potential Impact: Generally, the period by which a claim must be pursued is based on state or federal law, depending on the theory of liability. By agreeing to this provision, the County is waiving those statutory limitations period, and agrees to a

one year limitations period by which to pursue any claims, or those claims will be waived.

8. **Assignment:** The agreement is silent on Mopec's ability to assign the agreement.

Potential Impact: County counsel cannot advise on whether Michigan law permits parties the ability to assign the contract where there is no express provision in the contract addressing the issue.

9. **Attorney's Fees:** Mopec is entitled to attorney's fees and costs in any action it brings to enforce its rights under the terms and conditions, or for the County's breach thereof.

Potential Impact: If Mopec files a lawsuit against the County for claims arising under the terms and conditions, and prevails, the County will be liable for Mopec's attorney's fees and costs. County Counsel cannot advise whether Michigan law would permit the County to recover attorney's fees if it prevailed in the lawsuit where there is no contractual provision addressing the issue as it relates to the County.

CEO Approval:

  
Leonard X. Hernandez, Chief Executive Officer

1/12/21

County Counsel:

  
Charles Phan, Deputy County Counsel

## MOPEC'S TERMS AND CONDITIONS

### 1. DEFINITIONS:

(a) "Mopec" refers to MP Acquisition, LLC, a Delaware limited liability company, d/b/a Mopec or any division, subsidiary or affiliate thereof, and "Buyer" means the customer (user or reseller) purchasing Products from Mopec.

(b) Unless the context otherwise requires, "Product(s)" means pathology, histology and morgue equipment and specifically includes all machinery and equipment sold to Buyer by Mopec under the Purchase Order.

(c) Other capitalized terms are as defined throughout these terms and conditions of sale ("T&C's").

**2. AGREEMENT OF THE PARTIES:** Mopec's purchase order or quotation ("Proposal") and the T&C's may be modified only in writing by Mopec and in no event will Mopec's performance be deemed an acceptance of any terms in Buyer's request for proposal or in Buyer's purchase order confirmation which in any way vary from these T&C's. Mopec objects to terms or conditions additional to or different from the T&C's and its Proposal, whether or not material. If it is determined that Buyer's order is an offer, then any acceptance by Mopec is expressly conditioned on Buyer's assent to these T&C's. Mopec's Proposal, the T&C's and any other provisions which are otherwise agreed to in writing by Mopec constitute the complete and exclusive statement of the agreement superseding any differing statements, oral or written. All purchase orders are subject to acceptance by Mopec.

### 3. PRICES:

(a) Prices are Mopec's dock, and do not include sales, use or excise taxes, custom duties, or similar taxes and fees, which are the responsibility of Buyer. Where applicable, the Buyer will provide Mopec with an effective tax-exemption certificate. Mopec is entitled to retain any export duty drawbacks if Mopec is the exporter of record.

(b) Mopec reserves the right to change its prices prior to formation of a binding agreement or as per the Proposal. Proposals are subject to revision in case of clerical error.

**4. PAYMENT TERMS:** Payment terms are subject to credit approval, in Mopec's sole discretion. Interest of 1 1/2% per month is assessed on all overdue accounts. Mopec will not ship to accounts which have overdue payments. Buyer agrees to pay reasonable attorney's fees or other costs of collection.

#### **Shipment in the U.S. or Canada:**

Cash deposit equal to 30% of order value on all orders over \$20,000.00 due upon order acknowledgment. Net cash due thirty (30) days from date of shipment. Mopec is not obligated to manufacture equipment without receipt of the deposit for applicable orders.

#### **Shipment outside the U.S. or Canada:**

(a) All payments must be in U.S. dollars.

(b) Payment for Products must be made by wire transfer before shipment or an irrevocable Letter of Credit ("LC") confirmed by a U.S. bank acceptable to Mopec.

(c) The LC must:

(i) Cover the full amount of the purchase price, less the amount of advance payment;

(ii) Accompany the order and carry an expiration date at least ninety (90) days beyond the scheduled shipping date; and

(iii) Allow partial draws upon invoice coinciding with progress payments, and be otherwise payable upon presentation of bill of lading, commercial invoice, and packing list. If, however, Mopec is unable to ship for any cause beyond Mopec's reasonable control, Mopec has the right to draw upon the LC by furnishing a certificate of manufacture. Storage will be at Buyer's expense.

**5. SHIPMENT/DELIVERY:** The shipping schedule and delivery dates are computed from date of Mopec's acknowledgment, the receipt of the down payment and the information and approvals necessary to proceed with design and manufacture, including receipt from Buyer of signed approval drawings. Shipment and delivery are further subject to delays caused by specification changes. All risk of loss and damage passes to Buyer when Mopec delivers the Product into the custody of carrier, consigned to Buyer. In the absence of specific instructions from Buyer, Mopec may select the carrier and shipping route. The Products will be shipped by Mopec no earlier than 90 days from the date of receipt by Mopec of signed approval drawings, unless an earlier date is agreed to in writing by Mopec. In the event of a discrepancy between the approval drawings and any other drawings and specifications, the approval drawings shall govern. Mopec has no obligation to verify that job site conditions will support the delivery and installation of Products without building changes.

(a) Mopec will invoice upon completing the manufacturing of the ordered equipment. If Buyer wishes to delay delivery, Mopec will arrange for storage of the equipment. Mopec charges 2.5 percent per of the invoice price of the stored equipment per month after 30 days from the scheduled equipment completion date. Alternatively, Buyer may arrange for storage at Buyer's expense. All risk of loss and damage passes to Buyer when Mopec delivers the Product into the custody of the storage facility.

### 6. LIMITED WARRANTY/LIMITED REMEDIES:

**For Shipments in the U.S. or Canada,** except as otherwise provided in this Section 6, Products manufactured by Mopec will be free from defects in material and workmanship and conform to Mopec's description or

specifications. If a warranty claim is made within one (1) year from the date of shipment or the date of installation (if installation is provided by Mopec), the defective or nonconforming Product or Part thereof will be repaired or (at Mopec's option) replaced free of charge, FCA Mopec's dock.

- (a) Parts manufactured and furnished by Mopec that prove defective or nonconforming under this limited warranty will be replaced with a new or (at Mopec's option) like-new part free of charge, FCA Mopec's dock within ninety (90) days from acceptance or, in the case of Parts supplied under warranty, until the expiration of the Product warranty, whichever is later.
- (b) To the extent that Mopec is acting as a supplier of Products manufactured by a third party, the Products will be warranted only to the extent that they are warranted by their manufacturers and Buyer agrees to look solely to the Product manufacturer for all warranty claims.
- (c) All warranty claims must be made promptly after discovery of defect or nonconformity. In no event will any warranty claim be made or honored when made after the expiration of the applicable warranty period.
- (d) The warranties set forth in this Section 6: (i) are not transferable; (ii) will not apply unless the Product has been properly installed, maintained and operated in accordance with all instructions and within the limits of rated and normal operating conditions; and (iii) do not apply to defects nonconformities or other failure due to Product misuse or abuse or other causes outside Mopec's control.
- (e) If, after a reasonable number of repeated efforts, Mopec is unable to repair or replace a defective nonconforming Product, Mopec shall have the option to accept return of the Product (or Part thereof, if such does not substantially impair its value) and return the purchase price as Buyer's entire and exclusive remedy. Under no circumstances will Mopec have any liability whatsoever for loss of use or downtime, lost production, revenue or profits, or for any other indirect, special, incidental or consequential damages, whether such liability is based on contract (including breach of warranty or representation) or tort (including negligence or strict liability) or other legal theory whatsoever, even if Mopec had notice of the possibility of such damages and even if any warranty or remedy is held to have failed its essential purpose.
- (f) **THE WARRANTIES SET FORTH IN THIS SECTION 6 ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- (g) In the event that the foregoing disclaimer of additional warranties is not given full force and effect, any resulting additional warranty shall be limited in duration to the express warranties and be otherwise subject to and limited by these T&C's.
- (h) This warranty does not in any way extend to any Product that has a life, under rated and normal usage, inherently shorter than the applicable warranty period, consumables, or recommended spare Parts. This warranty does not cover normal adjustments or calibration, or the failures arising from Buyer's failure to perform adjustments or calibrations, or recommended maintenance or repair.
- (i) Mopec may condition warranty replacement upon return of any defective or nonconforming Product or Part.
- (j) It shall be Mopec's determination as to whether a Product, part or component is defective or nonconforming. If Buyer disagrees with Mopec's determination, Buyer's sole remedy is to pursue a determination under Section 20.

**For Shipments outside the U.S. or Canada,** Products manufactured by Mopec will be free from defects in material and workmanship and conform to Mopec's description or specifications. If a warranty claim is made within one (1) year from the date of shipment, the defective or nonconforming Product thereof will be repaired or (at Mopec's option) replaced free of charge, FCA Mopec's dock. As to any defective or non-conforming Part, the Part will be replaced upon return of the defective Part to Mopec. Mopec will owe no obligation to perform any repair or to install any replacement Part.

**7. PROPRIETARY INFORMATION:** Mopec retains all rights and title in and to Mopec's inventions, discoveries, concepts and ideas embodied in its Products, related documentation and other technical data, delivered or disclosed to Buyer verbally or in drawings, written or printed matter, electronic storage media, or other form whatsoever. Buyer shall keep confidential and not disclose, reproduce, excerpt or distribute any portion thereof. Buyer acknowledges and agrees that the CADD files/drawings ("Drawings") prepared by Mopec are the sole property of Mopec. Except for use as CADD files for the Drawings on this project, CADD files/drawings may not be duplicated. Buyer may not use them as CADD files/drawings on any other project or allow them to be used by other persons. Use of CADD files/drawings is granted only for the preparation of drawing submittals by Buyer on the subject project. Mopec is acknowledged as the Author of the Drawings, retaining all common law, statutory and other reserved rights, including copyright.

**8. INFRINGEMENT:**

- (a) If it is claimed that any Product in the condition manufactured by and received from Mopec infringes a claim (other than a claim covering a process or the product thereof) of any patent or copyright existing at time of shipment, Mopec shall, at its option,

- (i) Procure for Buyer the right to use the Product;
- (ii) Modify or replace the Product so as to avoid infringement; or
- (iii) Accept return of the Product and reimburse Buyer for the Buyer's net book value thereof and any transportation expenses incurred. Mopec will defend Buyer against infringement claim and pay any damages and costs awarded against Buyer, provided Mopec is given prompt written notice and copies of all demands, process and pleadings and Buyer cooperates fully in giving Mopec authority, control, information and assistance at Mopec's expense for such defense or any settlement.

(b) The foregoing states Mopec's entire liability with respect to patent or copyright infringement. Mopec's indemnity does not extend to any infringement based, directly or indirectly, upon the manufacture, use, or sale of any Product sold to Buyer which is not designed and manufactured by Mopec. To the extent that any Product is supplied according to Buyer's design or instructions, Buyer agrees to defend and indemnify Mopec in the manner and to the extent set forth in subsection above.

**9. ORDER TERMINATION/CHANGES:**

- (a) Upon an agreed-upon work termination, Mopec will be compensated as follows:
- (i) Any work that can be completed within thirty (30) days from notification will be completed and shipped and be paid for in full.
  - (ii) For work in process and any materials and supplies procured or for which commitments have been made, Buyer will pay Mopec its actual costs and overhead expenses determined in accordance with generally accepted accounting practice, plus 25%.
  - (iii) For all special tooling or other Products for which commitments have been made by Mopec in connection with the order, Buyer will pay Mopec the full price and such Products will become the property of Buyer.
- (b) Buyer-ordered or caused changes, including work stoppages, that affect price, schedule or Mopec's performance, will result in a reasonable adjustment in price or time of performance. Mopec may suspend its performance or perform under the original agreement until mutual agreement is reached on such adjustment.
- (c) No Products are to be returned without prior written permission from Mopec. Upon approved return, Buyer pays shipping charges and a restocking charge of 25% of the Product's current price and bears risk of loss or damage in transit.

**10. OCCUPATIONAL SAFETY AND HEALTH:** It is Buyer's or the user's responsibility to install and use any Product in a safe manner in its facility and to provide all proper dies, devices, tools and means that may be necessary to protect all personnel from bodily injury that may result from Buyer's particular use, operation, set-up or service of the Products. Buyer is advised to consult the operator, machine and programming manuals, ANSI Safety Standards and state and federal OSHA regulations. BUYER SHALL INSTALL AND USE THE PRODUCTS AT ALL TIMES IN COMPLIANCE WITH THE FOREGOING MANUALS, SAFETY STANDARDS, APPLICABLE CODES, ORDINANCES, REGULATIONS AND LAWS AND GENERAL STANDARDS OF CARE.

**11. HOLD HARMLESS/INDEMNITY:** Buyer hereby releases and agrees to defend, indemnify and hold Mopec harmless from and against all claims, demands, suits and causes of action ("liability") for property damage, personal injury or death, and all loss, cost, damage and expense (including reasonable attorneys' fees) relating to the Products, arising out of:

- (i) Buyer's modification to, or change of the Product or the failure to purchase, install, provide or implement any Part (including, but not limited to, mechanical, electrical or software interlock or other safety device) or Software Materials offered to Buyer or existing in a Product as originally delivered;
- (ii) Any claim arising in, on or about Buyer's premises and allegedly resulting from Mopec's negligent acts, breach of contract or alleged act, error or omission in connection with installation, testing, operation or delivery of the Products, including, but not limited to, claims made by employees or agents of buyer, except where such claims arise from the sole negligence of Mopec.
- (iii) Product designed by Mopec under any simultaneous engineering order which is manufactured by Buyer or third parties on Buyer's behalf; or
- (iv) Buyer's negligence, breach of contract, violation of law, or other fault.

**12. LIMITATION OF LIABILITY:** MOPEC AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY LOSS OF USE OR DOWNTIME OR LOST PRODUCTION, REVENUE OR PROFIT, OR FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WITH RESPECT TO THE PURCHASE, SALE, USE OR NON-USE OF PRODUCTS, WHETHER SUCH LIABILITY IS BASED UPON CONTRACT (INCLUDING BREACH OF A REPRESENTATION OR WARRANTY), TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHER LEGAL THEORY WHATSOEVER, EVEN IF MOPEC HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY WARRANTY OR REMEDY IS HELD TO HAVE FAILED ITS ESSENTIAL PURPOSE. IN THE EVENT THAT THE FOREGOING LIMITATION IS NOT GIVEN FULL FORCE AND EFFECT, MOPEC'S LIABILITY FOR SUCH DAMAGES SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR PART UPON WHICH THE CLAIM IS BASED.

Mopec owes no obligation to protect its work or the Products during or upon installation where the damage is caused by vandalism, theft, casualty or other cause beyond Mopec's control. Mopec shall have no responsibility to repair or replace its work or the Products where the same is lost or damaged due to the acts, errors or omissions of third parties.

**13. BUYER'S DEFAULT:** The happening of any of the following shall constitute a default by Buyer:

(a) Any warranty or representation made or furnished by Buyer in connection with inducing the Proposal or any payment terms, which proves to have been false in any material respect when made or furnished;

(b) Breach or failure by Buyer to keep or perform any of its covenants in or to observe any of the terms of the parties' agreement;

(c) Failure by Buyer in the payment when due of amounts due Mopec;

(d) The levy of any attachment, execution or other process against Buyer or against the Products or any part thereof and the failure of removal of such process within thirty (30) days;

(e) After delivery and prior to full payment, the loss, theft, damage, destruction, sale or encumbrance to or of the Products, or any substantial part thereof, unless substantially covered by insurance;

(f) The failure by Buyer to pay any taxes or trade creditors when due; the suspension of the business of Buyer or commencement of proceedings for its dissolution or liquidation or the making of a general assignment for the benefit of creditors or the commencement of proceedings against Buyer under any bankruptcy, insolvency, readjustment of debt or liquidation law or statute of the federal government or any state government; or the appointment of a trustee or receiver or the whole or any substantial portion of its assets, or if a trustee or receiver (other than an *ex parte* trustee or receiver) is appointed for the whole or any substantial portion of its assets;

(g) There shall be no change in ownership of the shares of stock affecting control of the Buyer, a reorganization or merger, or other transaction involving the assets of Buyer (other than sales of inventory in the ordinary course of business) without the express written consent of Mopec.

**14. MOPEC'S REMEDIES:** Upon, or at any time after an event of default as set forth above, there shall be available to Mopec at Mopec's option, any or all of the following remedies:

(a) Acceleration. Notwithstanding any time or credit allowed by this Agreement or any other instrument, any and all liability of Buyer owing to Mopec; the entire contracted for amount shall immediately be due and payable without notice or demand.

(b) Rights under U.C.C. - Assembling Collateral. Mopec shall have all the rights and remedies of a secured party under the Uniform Commercial Code as enacted and in force in the State Michigan or under any other applicable statutory or common law of the jurisdiction where the Products will be installed. Specifically, Mopec shall have the immediate right in the event of a default to access to the Products with full right and authority to immediate possession of the same and Buyer shall assemble the same and make the same available for Mopec to take possession.

(c) Fees and Costs. Mopec shall be entitled to recover all costs and charges including reasonable attorney fees for advice, counsel or other legal services in connection with the exercise of its rights under these T&Cs in the event of a breach or threatened breach by Buyer.

(d) Cumulative Remedies. Any declaration or exercise by Mopec of its rights pursuant to this Section shall be cumulative to and shall not in any manner effect, abrogate or preclude any other rights or remedies of Mopec. Any forbearance or failure by Mopec to pursue any remedy in the event of a default shall not constitute a waiver by Mopec of its right to pursue its full remedies at any time in the future.

(e) Power of Attorney. Buyer hereby appoints Mopec its attorney-in-fact to execute such documents with respect to the resale and transfer of the Products by Mopec after repossession of the same by Mopec pursuant to the provisions of this Section.

**15. GOVERNMENT RESTRICTIONS:** Mopec's performance under any contract is subject to the issuance of any required export license or other necessary government authorization. Mopec has the right to terminate without liability any Proposal, order or contract if Mopec determines such sale, export or delivery violates applicable law. Termination will not affect the right of Mopec to recover the contract price for any unpaid goods already delivered. Buyer shall not export or re-export any Product in violation of applicable law.

**16. FORCE MAJEURE:** Mopec is not liable to Buyer for any delay in a scheduled delivery or a failure in performance caused by acts beyond Mopec's reasonable control, including, without limitation, acts of God, war, terrorism, insurrection, vandalism, sabotage, accidents, fires, floods, strikes, labor disputes, mechanical breakdown, shortages or delays in obtaining suitable parts or equipment, material, labor or transportation, acts of subcontractors, interruption of utility services, acts of any unit of government or governmental agency, or any similar or dissimilar cause.

**17. COURSE OF PERFORMANCE AND DEALING/ USAGE OF TRADE:** Mopec shall have the benefit of and be entitled to rely on course of performance, course of dealing and trade usage in its performance under any contract.

**18. NO WAIVER:** Mopec shall have the benefit of all rights and remedies provided by law or equity. Failure of Mopec to exercise or reserve any right or remedy, or term or condition of any contract, shall not be construed as a waiver or relinquishment of any of the other right, remedy, term or condition of any contract or the future

performance or exercise of any such term, condition, right or remedy.

**19. SEVERABILITY:** If any of these T&C's or any provision of the contract between Mopec and Buyer is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule, and the remaining provisions (or part thereof) shall remain in full force and effect.

**20. RESOLUTION OF DISPUTES:**

(a) Except as provided in subsection (d) below, any and all claims or disputes asserted by Buyer arising out of the purchase, sale, license, use or nonuse of Products or the rendering or provision of services, the Proposal, Buyer's purchase order, or the application, validity, interpretation or claimed breach of these T&C's by Mopec, will be determined and settled solely and exclusively by arbitration in Oakland County, Michigan under Title 9 United States Code "Arbitration" (the "US Federal Arbitration Act"), in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association, except that arbitration shall not be administered by the American Arbitration Association. Rather, upon a written request for arbitration under this Section, the parties shall mutually agree upon a single arbitrator. If the parties cannot agree, either party may petition a Court of competent jurisdiction within the State of Michigan to appoint a single arbitrator. The parties shall initially bare equally the arbitrator's fees though the arbitrator may apportion the same in accordance with these T&Cs. Any request by Buyer for arbitration will be filed in writing within one (1) year after the act, omission, or alleged breach that gave rise to the claim or dispute; otherwise, the right to any remedy will be deemed forever waived. Nothing herein will be deemed to extend the warranty provided in Section 7.

(b) This agreement to arbitrate will be specifically enforceable. Any award or decision rendered by the arbitrator will be final and conclusive and the arbitrator's award may be entered as a judgment in any court having jurisdiction.

(c) The arbitrator will not have the authority or power to amend or modify these T&C's, nor to fashion any relief or remedy that would have the effect of modifying or amending these T&C's or of creating additional rights or obligations. The arbitrator will have no power or authority to award punitive or exemplary damages.

(d) Mopec may seek injunctive relief from a court to prevent the unauthorized use or transfer of proprietary information including, without limitation, drawings. Mopec may seek legal, equitable or injunctive relief from a court to the extent that Mopec's interest in the Products is at risk or in the event of a failure by Buyer to perform and where Mopec's remedy at law may be inadequate.

**21. CHOICE OF LAW/JURISDICTION:** This contract between the parties is being delivered and is intended by the parties to be performed, at least in part, in the State of Michigan and shall be governed by and construed exclusively in accordance with the internal laws of the State of Michigan, without giving effect to any principles of conflict of laws thereof that would require application of the law of any other jurisdiction. Buyer consents that any action brought by Mopec to enforce the terms of the parties contract shall be brought in a court of competent jurisdiction in the State of Michigan and Buyer consents to that jurisdiction. Buyer consents that service of process may be made by certified mail, with a copy sent regular mail, addressed to Buyer at Buyer's last known address furnished to Mopec.

**22. NON UNION LABOR:** Mopec's Proposal assumes the use of non-union labor for all work in connection with fabrication and installation. If Buyer requests and Mopec consents to use labor in performing the work other than its own employees or sub-contractors selected by Mopec, Buyer will responsible for any increased costs to Mopec. No labor agreements or prevailing wage rates shall be applicable to Mopec.

**23. GENERAL:** Mopec will have no responsibility for any building, plumbing or electrical permits unless the same is specifically set forth in its Proposal.

**24. ACCEPTANCE:** Mopec's Proposal must be accepted in writing within ninety (90) days or it is withdrawn. Credit is subject to approval. COD or prepayment may be required.



## Terms of Sale | Returns & Refunds | Billing Terms & Conditions

### **Payment Terms**

Mopec payment terms are net 30 Days, subject to approval by Mopec's credit department. Major credit cards are accepted; however, a 3% surcharge will be added for credit card purchases exceeding \$10,000.00.

Your company may be subject to applicable sales tax unless a certificate of tax exemption is provided.

International shipments require payment in advance by wire transfer or letter of credit.

### **Freight and Installation**

All items are FOB Oak Park, Michigan. Freight is prepaid and added to our invoice unless your company freight account number is provided.

Our pricing does not include freight costs, unless a freight line item is included in your Mopec quote.

Our pricing does not include installation. Please advise your sales representative or Mopec estimator if you would like to receive pricing for equipment installation.

### **Production Lead Time**

Instruments and Consumables merchandise will ship 1-5 days after Mopec receives your purchase order.

Standard equipment will ship 75-90 days after Mopec receives your purchase order.

Custom/Modified equipment will ship 90-120 days after Mopec receives your signed approval drawings.



Equipment will be manufactured according to the specifications described in the proposal and spec sheet presented by Mopec; if approval drawings have been completed, they will supersede our standard product specifications.

Please note that any request for a change in equipment or services may result in additional charges. These changes and any associated pricing updates will be implemented through Mopec's change-order process.

### **Shipments**

Mopec products ship FOB Oak Park, Michigan via small package delivery, LTL carrier or contracted carrier at the discretion of Mopec Logistics. As an option, you can arrange product pickup from our facility or specify a freight account for equipment transport. International shipments can be prepared by Mopec Logistics or arranged through your selected freight forwarder.

Please note that inside delivery, uncrating and debris removal is not available for all products unless equipment is being installed by Mopec. Mopec Customer Service will send you a brief shipping questionnaire when you are ready to place your order, which will aid us in providing the type of service your site can accommodate.

When your products have been delivered, please make sure to inspect the shipment and note any damage on the bill of lading before signing for the delivery. If the carrier was contracted by Mopec, we will replace the damaged product and file a freight claim with our carrier. If your freight account was used for the shipment, it will be your responsibility to file the claim with your contracted carrier.

### **Warranty and Returns**

Mopec replaces or repairs products under warranty and will cover the cost to return off-quality items to our warehouse, as needed.

We also accept non-warranty returns of unused, undamaged instruments and equipment if the product was not customized for your order. You will be responsible for the cost of the return shipment and credit will be issued when the products are received by our warehouse. A 25% restocking fee will apply to non-warranty returns.

### **Order and Delivery Changes**



We understand that requirements and schedules can change. If you need to make a change to your order, please let us know and we will advise you of any change in pricing. If your delivery date needs to change, please let us know as soon as possible, as storage fees may apply if the equipment has been fabricated.

### **Order Cancellations**

Mopec begins investing resources and material in your order as soon as it is released to our production schedule. If you find that you must cancel your order, a cancellation fee may apply, contingent upon the costs that Mopec has incurred. Please contact your Mopec Sales Representative as soon as possible if you need to cancel your order.