

INPHENIX

TERMS AND CONDITIONS

1. **ACCEPTANCE.** This quotation must be accepted by the Buyer in writing by counter-signature of this quotation, only.
2. **TAXES, DUTIES AND FEES EXCLUDED.** This quotation does not include sales, use or similar state or local taxes, import fees or duties, all of which are to be paid by the Buyer in addition to the price quoted herein.
3. **PAYMENT TERMS.** 30 day net credit terms are available upon request but subject to review and acceptance or modification.
4. **NO MODIFICATION.** This quotation is complete as written, and no changes, amendment or modification shall be made to this quotation without a separate written quotation from INPHENIX and a written acceptance by the Buyer.
5. **WARRANTY.** INPHENIX warrants all goods manufactured by INPHENIX and described in this quotation against any failure or defect in manufacture or workmanship for 360 days from the date of delivery of the goods to the original purchase thereof, only. The exclusive remedy of the buyer in the event of such a defect or failure shall be to return the goods to INPHENIX in that case, INPHENIX further agrees that, at its sole option, it may repair or replace such failed or defective goods described in this quotation which may fail during use under normal conditions by the Buyer during the period of this warranty, at no cost to the Buyer, except as stated below.

SHIPPING COST, INSURANCE AND RISK. In order to have such goods repaired or replaced, the Buyer must return the failed goods to INPHENIX by US Mail or express service, at the option of the Original Purchaser, shipping paid, insured; the goods must be shipped to INPHENIX prior to the end of the period of this warranty; Return shipping from INPHENIX to the Buyer will be by express service, insured, at the responsible party's expense.

LIMITATION OF LIABILITY; COVENANT NOT TO SUE. Nothing in this quotation shall create any right, cause of action or claim of, for, or on behalf of the Buyer, its, heirs, successors or assigns, or any third party under any theory, whether in contract, tort, negligence, strict liability or otherwise, other than the rights expressly set forth and created herein; this Agreement does not modify or extend any other express or implied warranties that may exist by and between INPHENIX and the Buyer, or any limitations of those warranties that may exist; this quotation does not give the Buyer any rights to claim any direct or indirect damages of any nature, including but not limited to any incidental or consequential damages that may arise out of the use of any of the goods described in this quotation or any parts thereof, or any replacement parts provided by INPHENIX; as a part of the consideration for the goods, the Buyer agrees not to sue INPHENIX in respect of this quotation or the goods described herein (unless INPHENIX has breached one of the duties expressly created hereunder), and the Buyer further agrees to indemnify INPHENIX from any and all claims, costs, fees and expenses, including reasonable attorneys fees, that may be required to be spent incident to any such claim by any party (unless INPHENIX has breached one of the duties expressly created hereunder, and then limited only to that claim alone).

DISCLAIMER OF IMPLIED WARRANTIES; EXCLUSION OF WARRANTIES. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, EXCEPT AS EXPRESSLY CREATED HEREIN, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO THE GOODS, THE PARTS THEREOF, OR ANY REPLACEMENT PART SOLD OR PROVIDED UNDER THE TERMS OF THIS QUOTATION.

FURTHER CONDITIONS. Any use of the goods, or any part thereof by the Buyer, or by any party or person acting with its consent or on its behalf that constitutes intentional misuse or abuse of the goods shall void this warranty; any attempt to remove the warranty void sticker or any parts from the goods that causes any damage to the part that has been removed, or to the goods shall void this warranty; any illegal use of the goods by the Buyer or by any party or person acting with its consent or on its behalf shall void this warranty.
6. **NO ASSIGNMENT.** This quotation may not be assigned, either in whole or in part, by the Buyer without the express written consent of INPHENIX, which consent INPHENIX may grant or deny at its sole option and at its sole discretion.
7. **CHOICE OF LAW; JURISDICTION AND VENUE.** The parties hereto agree that this quotation shall be interpreted and construed according to the laws of the State of California, and that the courts of Alameda County, California shall have the sole, exclusive jurisdiction and have venue to hear any complaints or disputes that may arise in connection with this quotation, and the parties hereto agree that such courts shall not be an inconvenient forum to hear the disputes; the parties further agree that no other court, whether state or federal, may hear any such complaint or dispute; further, any and all claims or disputes arising under the terms of this quotation, including but not limited to the warranty provisions hereof, must be brought before the said court, if at all, within six (6) months of the end of the period of the warranty described herein.
8. **WARRANTY OF REPLACEMENT PARTS.** Any replacement part provided by INPHENIX will be warranted against any failure or defect in workmanship for a period of 360 days from the date it is shipped to the Buyer, or to the end of the Period of Coverage, whichever may be longer.
9. **SHIPPING; RISK OF LOSS.** All goods to be sold hereunder shall be shipped FOB INPHENIX's dock and all risk of loss shall pass to the Buyer at that point unless INPHENIX has quoted delivery, in which case risk of loss shall pass to the Buyer upon receipt.
10. **CANCELLATION, RESCHEDULES AND QUANTITY CHANGES.** If Buyer deems it necessary to reschedule, increase, decrease and/or cancel product on an open purchase order(s), Buyer shall notify INPHENIX in writing of requested changes. INPHENIX shall communicate to Buyer in writing within five (5) business days of receipt of such request either the acceptance or rejection of such changes. If INPHENIX accepts the changes, Buyer will revise the open purchase order with the accepted terms and provide INPHENIX with a written revised purchase order. If INPHENIX rejects or modifies the requested changes, Buyer shall within five (5) business days of receipt of rejection or modification, to either confirm the purchase order with INPHENIX's proposed changes or withdraw the purchase order change. If Buyer cancels a purchase order after receiving INPHENIX's order acknowledgement, Buyer shall pay INPHENIX 50% of the total purchase price stated in the purchase order. With thirty (30) days prior written notice, Buyer shall be able to push out any release one time to a maximum of thirty (30) days from the original committed delivery date.
11. **NONCONFORMING TERMS AND CONDITIONS.** The parties hereto agree that the terms and conditions set out in this quotation are and shall be the exclusive controlling terms and conditions of the sale of goods contemplated hereby; any terms and conditions that might hereafter be proposed expressly or by implication by the Buyer in any form, including any terms or conditions contained in, or part of, any purchase order sent to INPHENIX shall be invalid and of no force or effect to the extent that they are inconsistent with the terms and conditions of this quotation.
12. **CAPTIONS.** The captions used in this quotation are for convenience only and are not part of this document; further, they may not be used as part of any interpretation or construction of this quotation or any of its terms or conditions.
13. **SEVERABILITY.** In the event that any provision, term or condition of this quotation shall be deemed to be invalid or unenforceable by a court of competent jurisdiction, each and every remaining provision, term and condition shall be separate from that provision and shall remain in full force and effect.