

## STANDARD TERMS AND CONDITIONS FOR GOODS

### ARTICLE I - SCOPE OF TERMS

**1.1 Purpose.** These standard terms and conditions (“**Terms**”) apply to all quotes, orders, acknowledgements and written agreements and are the only terms and conditions that apply to the sale of Goods herein (except for conditions relating to prices, quantities, delivery schedules, part number, specifications and other conditions mutually agreed to by the parties in writing), regardless of whether the sale occurs under the terms of a written agreement or pursuant to a purchase order. The Terms must be accepted in their entirety by Purchaser. Seller considers these Terms to be material and has priced the Goods in reliance hereon. Any inconsistent terms in Purchaser’s purchase order or any other document provided by Purchaser to Seller or published on Purchaser’s website, including any terms and conditions referenced therein, are hereby rejected by Seller. Seller will not be deemed to have waived these Terms if it fails to object to any terms or conditions appearing in, incorporated by reference in, or attached to a purchase order or other document provided by Purchaser. All purchases and requests for the purchase of the Goods are governed by these Terms except as otherwise agreed in writing signed by the Parties. If there is any inconsistency between such agreement and these Terms, and the parties wish for such agreement to control, the agreement shall specify which of these Terms the agreement is intended to amend, otherwise, these Terms shall control. If the foregoing statements of the governing terms are not acceptable to Purchaser, Purchaser must notify Seller thereof within two (2) business days of Purchaser’s receipt of these Terms from Seller or Purchaser shall be deemed to have accepted and agreed to the foregoing statement of the governing terms and conditions, and these Terms shall be legally binding on Purchaser.

**1.2 No Minimum Purchase or Sale Requirement.** Seller is not obligated to accept any purchase order or other request to purchase goods. Seller is not obligated to maintain manufacturing capacity to accommodate any purchase order. Purchaser is not obligated to purchase any minimum amount of Goods.

**1.3 Geographical Scope of Terms.** The provisions of these Terms apply to the United States of America (“USA”).

**1.4 Services.** These Terms do not cover any services by Seller. If Purchaser requests that any services be provided by Seller, and if Seller wishes to provide services to Purchaser, the parties shall attempt to negotiate a separate written agreement that will govern the providing of services.

### ARTICLE II - DEFINITIONS

For purposes of these Terms, the following terms have the meanings specified or referred to below:

**2.1 Applicable Law.** The term “Applicable Law” shall mean, without limitation, any law, statute, rule, regulation, order, or ordinance of the United States, or any state, municipality or political subdivision thereof, or common law, where any Goods are held or used by Purchaser including, without limitation, laws and regulations pertaining to the environment, anti-corruption

labor, wages, hours, equal opportunity, occupational safety and health, right-to-know, and other conditions of employment, specifically applicable to the Goods.

**2.2 Background Intellectual Property.** The term “Background Intellectual Property” shall mean all Intellectual Property owned by or licensed to a party prior to the performance of these Terms and/or that was later developed or otherwise acquired by a party other than through performance of these Terms. Each party shall retain all ownership and/or interest in its Background Intellectual Property.

**2.3 Breach.** The term “Breach” shall mean: (a) any failure to perform or comply with, any material covenant, obligation, warranty, or other provision of these Terms or any agreement between the parties; (b) a written declaration or objective manifestation of intent of a party not to perform or inability to perform or comply with any such material warranty, covenant, obligation or other provision of these Terms or any agreement between the parties or (c) Purchaser’s failure to accept or pay for, conforming Goods.

**2.4 Consequential Damages.** The term “Consequential Damages” shall mean any damages arising from, or calculated by, the loss of business opportunity, loss of profit, loss of production, loss of data, loss of use of hardware, economic loss of use of software, indirect, special, or incidental damage.

**2.5 Documentation.** The term “Documentation” or “document” shall refer to both electronic and written materials.

**2.6 Goods.** The terms “Good” or “Goods” shall refer to the goods furnished pursuant to these Terms, which consist of component parts incorporated by Purchaser into systems or assemblies.

**2.7 Purchaser Trademarks.** The term “Purchaser Trademarks” shall mean any trademark, logo, or service mark in which Purchaser has any rights as either: (a) identified by Purchaser in public filings and registrations in the United States and elsewhere throughout the world, whether acquired by purchase, registration, and/or application; or (b) through use in commerce in the United States or elsewhere throughout the world.

**2.8 Information.** The term “Information” means nonpublic data, designs, drawings, specifications, and other information, revealed or disclosed in any form or manner by one party to the other, including but not limited to information relating to party’s past, present, and future research, development, business activities, proprietary products, materials, and services, whether the Information is written, oral, electronic, visual, graphic, photographic, observational, or otherwise.

**2.9 Intellectual Property.** The term “Intellectual Property” shall mean all proprietary information or rights, including inventions, ideas, trade secrets, computer programs, formulae, industrial processes, business plans and strategy, data, materials, know-how, patents, design patents, patent and design applications, registered designs, copyrights, trademarks and all similar results of intellectual effort, whether developed, owned by or licensed to a party via one or more third party licenses.

**2.10 Invoices.** The term “Invoices,” whether referring to paper or electronic invoices, will refer to submissions of requests for payment that contain the following information, to the extent applicable: purchase order number, item number, description of items, quantities, prices and extended totals. Invoices will contain a separate line item for transaction taxes and shipping charges, if applicable.

### **ARTICLE III - OBLIGATIONS OF THE PARTIES**

**3.1 Terms Supersede other Agreements Between the Parties.** Except for any ongoing obligations existing under a prior agreement applicable to goods other than Goods subject to these Terms (including but not limited to indemnity, warranty, confidentiality, outstanding deliveries under purchase orders or payments under any purchase orders), these Terms supersede any and all prior agreements and any purchase orders, any and all prior or contemporaneous terms, amendments, negotiations or understandings with respect to any Goods covered by these Terms.

**3.2 Changes.** Purchaser may request changes or additions in instructions for work, method of shipment or packing, or place of delivery, but such requests must be clearly documented by a designated Purchaser representative and provided to Seller. No such change shall be binding upon Seller unless accepted by Seller in writing. Seller shall not be obligated to accept any such change. If any such change would cause an increase or decrease in the cost of Goods or the time required for supply of the Goods if accepted by Seller, Seller will inform Purchaser of such increase or decrease or change of time required for supply of the Goods, in writing. If, upon notification of such increase or decrease or other change, Purchaser wishes to purchase the Goods, it shall request such Goods, incorporating such change, in writing. Seller shall not be obligated to accept any such requested change. Upon acceptance by Seller in writing, Seller shall provide the Goods incorporating such change in price or time required for the supply of the Goods.

**3.3 Independent Contractor.** Seller is an independent contractor with respect to the Goods supplied hereunder and neither Seller nor anyone engaged or employed by Seller shall be deemed for any purpose to be the agent or employee of Purchaser in the supply of such Goods. Purchaser shall have no direction or control of Seller or its employees; Purchaser being solely interested in the results to be obtained. Seller may subcontract manufacture of the Goods without obtaining Purchaser’s consent.

**3.4 Interpretation of Terms.** Each party has participated fully in the review of these Terms. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting these Terms.

**3.5 Invoices.** At the time of delivery of the Goods, Seller shall issue Purchaser an Invoice in writing. The Invoice shall include, among other things, the item number, description of Goods, quantities, unit prices, a separate line item for transaction taxes and shipping charges, if applicable.

**3.6 Payment.** Purchaser shall pay to Seller all amounts due on Invoices pursuant to the payment terms set forth in these Terms. Payment of Invoices is due by wire transfer 30 days

from receipt of Invoice by Purchaser. Payment shall be made in U.S. dollars and within the United States.

**3.7 Pricing.** The price for Goods shall be the price agreed upon in writing by the parties.

**3.8 Inspection and Acceptance.** All Goods delivered hereunder will be subject to final inspection and acceptance by Purchaser upon receipt. Acceptance of any Goods will not alter or affect Seller's warranties herein. Purchaser shall inspect the Goods within thirty (30) days of receipt. If Purchaser fails to inspect and approve the Goods within such thirty (30) day period, the Goods shall be deemed to have been accepted as of such thirtieth day.

**3.9 Product Warranties.**

**Warranty:** Seller warrants the Goods to be manufactured by Seller will be manufactured in accordance with good manufacturing practice and, except for parts or components received from third parties (for which Seller makes no warranties whatsoever), to be free from defects in material and workmanship under normal use and regular service and maintenance for a period of one (1) year from the date of delivery (or, solely with respect to outlet gates manufactured by Seller, five (5) years from the date of delivery). This warranty is conditioned upon use and handling procedures, which qualify as good commercial practices of the trade.

Notwithstanding the foregoing, Seller does not warrant and shall have no obligation with respect to Goods which (i) have been repaired or altered by someone other than Seller; (ii) have been subject to misuse, abuse, neglect, intentional misconduct, accident, Purchaser or third party negligence, unauthorized modification or alteration, use beyond rated capacity, a force majeure event, or improper or a lack of maintenance; (iii) are comprised of materials provided by Purchaser, or are designed by, or are designed pursuant to, instructions from, Purchaser; (iv) have failed due to ordinary wear and tear; or (v) have been exposed to adverse operating or environmental conditions. **SELLER MAKES NO OTHER WARRANTY AND THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

This warranty shall extend only Purchaser, and shall not extend to any successor or transferee of Purchaser without Seller's express written consent.

Components or parts received from third parties are covered only by the warranty, if any, of the manufacturer thereof. Seller shall assign to Purchaser any such component or part warranty, to the extent assignable. Seller shall have no other obligation with respect to components or parts received from third parties.

With respect to Goods manufactured in accordance with a specification provided or requested by Purchaser, Purchaser represents and warrants to Seller that such Goods will be safe and fit for the purpose Purchaser intends.

**3.10 SELLER'S LIABILITY AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY:** Seller's sole and exclusive liability to Purchaser and Purchaser's sole and exclusive remedy against Seller for breach of Seller's warranty or any other claims or causes of action

against Seller in contract, tort or otherwise, with the sole exception of the intellectual property indemnification provided in Article 5.4, shall be limited to repair or replacement of any Goods found to be in breach of Seller's warranty, or, at Seller's option, a refund of the purchase price therefor. In the event of any breach of Seller's warranty, at Seller's request, Purchaser will, at Purchaser's expense, ship the affected Goods to Seller's plant or such other place as Seller may reasonably designate, or to a repair facility mutually agreed to by Purchaser and Seller. Purchaser will not repair, replace or discard the affected Goods until Seller has first been given a reasonable opportunity to inspect and repair or replace, if necessary. Any claim by Purchaser will be deemed waived unless submitted in writing to Seller within thirty (30) days from the date discovered by Purchaser. Any cause of action for breach of warranty must be brought by Purchaser within one (1) year from the date the cause of action arises. Under no circumstances shall Seller be liable to Purchaser for special, punitive, incidental, indirect or consequential damages (including, without limitation, any loss of anticipated profits incurred by Purchaser, loss of use of the Goods, cost of substitute equipment or downtime).

### **3.11 Title, Shipment, Risk of Loss and Supply Chain Security Programs.**

**3.11.1** Seller warrants clear title to the Goods, free from any and all liens or other encumbrances until the Goods are made available to the shipper as provided in Article 3.11.2.

**3.11.2** Seller is responsible for properly packing Goods for transportation and making the Goods available to Purchaser's shipper for loading by the shipper and shipping to Purchaser. At Seller's option, Seller may arrange for shipping, which shall be for Purchaser's account. Risk of loss will transfer to Purchaser upon placement of the Goods for pick-up by the shipper, whether arranged for by Seller or Purchaser. Seller shall include with the Goods a commercial invoice, and packing list. Title to the Goods shall pass upon Seller's receipt of payment for the Goods.

**3.12 Conflicts of Interest.** Seller may not offer Purchaser's employees any gifts, entertainment, or other favors of other than nominal value. Seller may not pay any commissions or fees or grant any rebates or other remuneration or monetary gratuity to any employee, agent, or representative of Purchaser.

**3.13 No Government Contracting.** Purchaser shall assure that none of the Goods is sold either directly or indirectly to any agency or department of the United States government, nor incorporated as a component into any product that is sold either directly or indirectly to any agency or department of the United States government.

## **ARTICLE IV - COMPLIANCE AND RISK ALLOCATION**

**4.1 Force Majeure.** In the event that either party is prevented by Force Majeure from performing any of its obligations, the obligations which the party is prevented from performing shall be suspended so long as the provisions of this Article 4.1 are met.

**4.1.1** Force Majeure shall mean any act of God, weather or nature, or any act of government, or any other act or force where such occurrence could not reasonably have been foreseen at the time of making of the parties' agreement, and could not reasonably

have been avoided or overcome by the party asserting benefit of this Article and shall include without limitation, hostilities, war, revolution, riots, act of terrorism, maritime border or boundary dispute, civil commotion, strike, labor disturbances, lock out or injunction, epidemic, quarantine, accident, fire, lightning, flood, wind storm, earthquake, explosion, blockade or embargo, lack of or failure of transportation facilities or any law, proclamation, regulation or ordinance, demand or requirement of any government or any government agency or agencies having or claiming to have jurisdiction over the Goods, or the parties hereto.

**4.1.2** The party which is prevented from performing its obligations by Force Majeure shall advise the other party immediately of its inability to meet its obligations under this Terms or any applicable order, specifying the Force Majeure and the estimated extent to which the Force Majeure event or conditions will impact performance and shall advise the other party when such difficulty ceases. If either party fails to give such advice in writing within seventy two (72) hours following the occurrence of the claimed Force Majeure event or condition, that party may not claim Force Majeure as a defense or excuse of performance hereunder. The party claiming a Force Majeure event or condition shall act diligently to remove or remedy such condition (but shall not be required to settle any labor dispute on unfavorable terms).

**4.1.3** In the event of Force Majeure, Purchaser and Seller agree that, although performance of the obligations may be suspended, all orders shall remain in full force pending the cessation of such Force Majeure, or termination of any applicable order in accordance with the terms hereof or thereof.

**4.1.4** Neither party shall have any right to claim, and the other party shall have no obligation to pay, additional compensation, costs, damages, or expenses incurred directly or indirectly as a result of any Force Majeure.

**4.1.5** As soon as practicable, but in any event within no more than seventy-two (72) hours following the cessation of Force Majeure affecting Seller, Seller shall provide Purchaser with written details of the cessation of Force Majeure and Seller's best reasonable estimates of its impact on the timing of Seller performance of its obligations.

**4.1.6** In the event that any Force Majeure causes a delay of more than sixty (60) days in filling an order, either party may terminate order without giving rise to any claim by Seller other than for Goods delivered to Purchaser.

**4.2 Ethical Business Conduct.** The following standards of conduct and legal requirements shall be observed with respect to these Terms.

**4.2.1** All dealings involving the relationship contemplated hereunder will be conducted in a fair manner with honesty and integrity, observing high standards of personal and business ethics.

**4.2.2** Business books and records will be maintained in a proper, responsible and honest manner which will allow both parties to comply with Applicable Law.

**4.2.3** Purchaser warrants and represents that neither the Purchaser nor the Purchaser's parent or subsidiary companies, affiliates or any of their shareholders, subcontractors, members, managers, directors, officers, employees, independent contractors, subcontractors or agents: (a) has made or authorized or will make or authorize any offer, payment, promise to pay, any money, including kick-backs, or a gift, promise to give, or the giving of anything of value to any third party including, but not limited to, a government official, political party, party official, family member or representative of a state-owned enterprise, for the purpose of wrongfully influencing the recipient; obtaining or retaining business; or for securing or obtaining an improper business advantage; or (b) has taken or permitted or will take or permit any action to be taken, including an action in connection with the conduct of their business and the transactions contemplated under these Terms, which would cause the Seller to be in violation of any applicable Anti-Bribery or Anti-Corruption Laws, including, where applicable, but not limited to the United States Foreign Corrupt Practices Act of 1977, as amended; the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related implementing legislation and all local equivalent laws in the countries in which business is conducted. Purchaser further agrees that it will make no payment in any form to any government official on behalf of Seller for the purpose of expediting or securing the performance of a routine non-discretionary governmental duty or action ("Facilitating Payment") without the prior written approval of Seller. For this purpose email is considered written approval. Separate approval is required for each such Facilitating Payment.

**4.2.4** Purchaser agrees that it will perform no act for or on behalf of Seller which would subject Seller to fines or penalties or loss of tax benefits for violation of United States anti-boycott laws.

**4.2.5** Purchaser agrees that it will perform no act for or on behalf of Seller which would subject Purchaser to fines or penalties for violation of export controls or licensing requirements or trade sanctions including those of the United States to the extent that they apply.

**4.2.6** The business relationship contemplated hereunder will be conducted in compliance with applicable antitrust and competition laws.

**4.2.7** In case of conflict between the laws of the United States of America and the local laws in the countries where business is transacted, compliance with the laws of the United States of America will be given priority.

### **4.3 Import and Export Compliance.**

**4.3.1** Purchaser agrees that, unless otherwise agreed to in writing by the parties, Purchaser or its designee will serve as the importer and exporter of record for any Goods that Purchaser desires to ship outside of the United States, Purchaser shall be solely responsible for required compliance with any applicable import and export laws and regulations in connection with its purchase of Goods under these Terms. When the Goods (or any part thereof) are subject to export control laws and regulations imposed by

a government, upon request, Seller will provide Purchaser with any and all information needed for Purchaser to comply with Applicable Law, including but not limited to, applicable Export Commodity Classification Numbers and harmonized Tariff Schedule Numbers, including certificates of manufacture in accordance with the origin rules imposed by governmental authorities. If any Goods are eligible for preferential tax or tariff treatment (such as a free trade terms) Seller will provide Purchaser with the documentation required to participate in said treatment, upon Purchaser's request.

**4.3.2** Upon Purchaser's notification to Seller in writing that Goods involving Purchaser's Intellectual Property are subject to export control laws and regulations, Seller shall advise Purchaser of the nationality and/or country of allegiance of individuals then assigned to such projects which may result in a "deemed exportation" under the laws of the United States and any countries imposing similar requirements upon the parties.

**4.4 Taxes.** Each party is responsible for all taxes legally imposed upon its respective business, including but not limited to taxes imposed upon its income, its personnel or its property. Where legally permitted and as required by Applicable Law, Seller is responsible for the collection and reporting of applicable transaction taxes such as sales, use, value added or similar taxes. Transaction taxes are in addition to established prices and shall be shown as a separate line item on the Invoice. If tax withholding is required by Applicable Law, Purchaser will adhere to statutory tax withholding requirements with respect to payments to Seller. Such withholdings are on Seller's account. Certificates of withholding taxes shall be provided to Seller as soon as administratively possible.

**4.5 Compliance with Applicable Laws.** Purchaser shall comply with all Applicable Laws in its usage and handling of the Goods.

**4.6 Purchaser Indemnification.** Purchaser shall indemnify and hold harmless Seller from and against any and all claims, actions, suits, and/or liabilities for actual damages or injuries, punitive and/or exemplary damages (including all reasonable attorney's fees and costs of litigation), which may be brought by a third party(s), arising in tort, contract, or otherwise, and in any way connected with the Goods (including, but not limited to, any property handled or transported using the Goods) or these Terms or any agreement subject to these Terms, including but not limited to, claims alleging any negligence by Seller. Purchaser's duty to indemnify as set forth herein shall commence at the time of the act or incident giving rise to the claim, action, suit, or liability, and shall continue until Seller's obligation(s), if any, to claimant(s), monetary or otherwise, are fully paid or discharged. Purchaser's duty to indemnify Seller as set forth herein exists whether or not it is claimed and/or determined that any of the damages alleged resulted solely, partially, or not at all from the conduct, acts, or omissions of Seller.

Purchaser shall not settle any such claims or actions in a manner which would require any action or forbearance from action by Seller without the prior written consent of Seller.

**4.7 Consequential Damages.** NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS TO THE CONTRARY, SELLER SHALL NOT BE LIABLE TO THE PURCHASER FOR ANY INDIRECT, CONSEQUENTIAL, OR OTHER INCIDENTAL

DAMAGES, INCLUDING BUT NOT LIMITED DAMAGES FOR LOSS OF USE, LOST PROFITS, OR PUNITIVE DAMAGES.

**4.8 Confidentiality of Terms and Purchase and Sale Information.**

**4.8.1** Except as provided in Articles IV and V, neither party shall disclose any Information processed in the purchase and sale process. All such Information contained in a purchase order, Invoice, or other document will be treated as confidential by the parties.

**4.9 Confidentiality of Purchaser Information.** Purchaser Information that is disclosed or provided by Purchaser to Seller will be held in confidence by Seller, except that (i) Seller will be free to use for any purpose any generally applicable knowledge, experience, ideas, concepts, know-how or techniques developed or learned by Seller in the course of manufacturing or supplying Goods hereunder, so long as any such use does not disclose to any third party Purchaser Information, and (ii) Seller personnel shall be free to use any residual information (Information which may be retained in intangible form in the minds of those Seller personnel who have had proper access to such Information) for any purpose whatsoever, including, without limitation, the development of Seller's own products, or business, provided that Seller shall not be entitled to disclose residual information to any third parties unless such disclosure is in the course of, or as part of, any disclosure of its own products or business or their development. Seller's right to use such generally applicable knowledge, experience, ideas, concepts, know-how or techniques and residual information does not include or amount to a license under any issued and unexpired patents or registered copyrights owned or controlled by Purchaser. Furthermore, no such Information will be disclosed within Seller's organization except on a need-to-know basis.

**4.10 Confidentiality of Seller Information.** Seller Information that is disclosed or provided by Seller to Purchaser will be held in confidence by Purchaser, except that (i) Purchaser will be free to use for any purpose any generally applicable knowledge, experience, ideas, concepts, know-how or techniques developed or learned by Purchaser in the course of manufacturing or supplying Goods hereunder, so long as any such use does not disclose to any third party Seller Information, and (ii) Purchaser personnel shall be free to use any residual information (Information which may be retained in intangible form in the minds of those Purchaser personnel who have had proper access to such Information) for any purpose whatsoever, including, without limitation, the development of Purchaser's own products, or business, provided that Purchaser shall not be entitled to disclose residual information to any third parties unless such disclosure is in the course of, or as part of, any disclosure of its own products or business or their development. Purchaser's right to use such generally applicable knowledge, experience, ideas, concepts, know-how or techniques and residual information does not include or amount to a license under any issued and unexpired patents or registered copyrights owned or controlled by Seller. Furthermore, no such Information will be disclosed within Purchaser's organization except on a need-to-know basis.

**4.11 Disposition of Confidential Information.** Each party will promptly return to the other any Information provided to, or produced or created by such party specifically for the other party in connection with these Terms. A party may, upon obtaining prior written approval from the

other party, satisfy this requirement by providing a written certification of destruction of such Information.

**4.12 Exclusions.** The foregoing obligations with respect to Information shall not apply to any Information which: (a) is publicly known or becomes publicly known through no fault of or disclosure by the receiving party; (b) is given to the receiving party by someone other than the other party as a matter of right and without restriction of disclosure; (c) was known to the receiving party prior to receiving the Information from the other party; (d) is legally compelled to be disclosed; or (e) is independently developed by the receiving party without use of or reliance upon the disclosing party's Information. If a receiving party receives a subpoena, order, notice, process or other legal process seeking disclosure of the other party's Information, the receiving party shall immediately notify the other party in order to allow the other party the opportunity to oppose the order, notice, or process, or seek a protective order. If requested by the disclosing party, the receiving party shall cooperate fully with the disclosing party in contesting such disclosure. Except as such demand shall have been timely limited, quashed or extended, the receiving party may thereafter comply with such demand, but only to the extent required by law. Where the disclosing party obtains a protective order, nothing in these Terms shall be construed to authorize the receiving party to use in any manner or disclose the party's Information to parties other than such governmental or judicial agency or body or beyond the scope of the protective order.

## **ARTICLE V - INTELLECTUAL PROPERTY**

**5.1 Background Intellectual Property of Purchaser.** To the extent that Purchaser's Background Intellectual Property is required to permit Seller to supply Goods under these Terms, Purchaser grants Seller a non-exclusive, non-transferable, worldwide, royalty-free license to use Purchaser's Background Intellectual Property for the sole purpose of providing Goods to Purchaser under these Terms.

**5.2 No Right to Use the Purchaser Name or Trademarks.** Seller shall not use Purchaser's company name or any Purchaser Trademarks in any publication or public presentation without the prior written consent of Purchaser.

**5.3 Use Rights to Intellectual Property.** Except for the limited use rights expressly enumerated herein, these Terms do not grant, and shall not be construed as granting, a license or any rights under any of either party's patent, trademark, copyright, or trade secret rights beyond that necessary for the purposes of these Terms and the manufacture of the Goods.

**5.4 Indemnification.** Seller shall indemnify and defend Purchaser, and hold Purchaser harmless, from and against any and all loss, damage, expense and liability incurred by Purchaser in connection with any third party claim brought against Purchaser asserting that the Goods supplied by Seller infringe or misappropriate any registered U.S. intellectual property right of any third party; provided, however, that Seller shall have no such obligation to defend and indemnify Purchaser to the extent that such a claim arises out of any portion of any specification provided or requested by Purchaser to be used if the Goods would have been non-infringing but for the portion of the specification provided by Purchaser nor shall Seller have any obligation to defend and indemnify Purchaser to the extent that such a claim arises from third party products

incorporated into the Goods, including Purchaser-supplied parts. In the instance of Purchaser-requested or provided specifications and/or Purchaser-supplied parts, Purchaser shall in like manner assume responsibility to defend, indemnify and hold harmless Seller hereunder. Prompt notice in writing shall be given by the indemnified Party of any such claim and the indemnifying Party shall promptly undertake and assume the defense thereof.

## ARTICLE VI - DISPUTES

**6.1 Default and Termination for Cause.** In the event of either party's: (a) material Breach of these Terms or default under any provision of these Terms and failure to cure such material Breach or default within ten (10) days after receipt of written notice from the non-breaching party or (b) bankruptcy, reorganization, receivership, insolvency, or making an assignment for the benefit of creditors; the non-breaching party has the right, in addition to any other rights or remedies it may have in law, in equity, or under the parties' agreement, to immediately terminate the agreement by written notice to the breaching party. In the event of a material Breach by Purchaser, Seller's remedies additionally include, but are not limited to, withholding delivery of the Goods, stopping delivery in transit, and reselling the Goods and recovering damages from Purchaser. Nothing contained in this Article expands or amends Purchaser's exclusive remedy for breach of warranty, or any other cause of action whether based in tort, contract or otherwise, as provided in Article III and Article 5.4.

**6.2 Termination.** Purchaser may not cancel an order without the written consent of Seller in Seller's sole discretion. If Seller consents to such cancellation, cancellation charges, as reasonably determined by Seller, shall be paid by Purchaser. Such cancellation charges include, but are not limited to, the cost of parts, components or materials ordered or purchased by Seller in reliance upon the order, and non-cancellable obligations entered into by Seller in reliance upon the order.

**6.3 Dispute Resolution.** Prior to trial or final judgment of any claim or dispute hereunder, upon the request of either party, any claim or dispute arising hereunder shall be referred to non-binding mediation in St. Charles, Missouri. Each party will be responsible for its own costs associated with such mediation, including attorneys' fees, and one-half of any mediation fees.

**6.4 Choice of Law.** These Terms and the parties' agreement shall be governed by the laws of the United States of America and the State of New York, without regard to choice or conflict of laws principles.

**6.5 Jurisdiction and Venue Selection.** The parties agree that venue for any judicial proceeding will be proper in the federal courts of New York, if federal jurisdiction exists or in the event federal jurisdiction does not exist, the state courts of New York. The parties hereby irrevocably submit to the exclusive jurisdiction of the federal and state courts located in said courts for the resolution of any claim arising under these Terms or the parties' agreement, and each party agrees not to assert any defense to any suit, action or proceeding initiated by the other within the state of New York based upon improper venue or inconvenient forum.

## ARTICLE VII - MISCELLANEOUS

**7.1 Surviving Clauses; Unenforceability; Non-waiver.** The rights and obligations of the parties shall survive, notwithstanding delivery of the Goods and payment for the Goods by Purchaser. If any provision of these Terms is deemed unenforceable, it shall be severed and the remaining Terms shall continue in force. A waiver by Seller of any breach shall not serve as a waiver, or evidence of a waiver, of any other breach.

**7.2 Notice.** All notices required or permitted must be in writing and may be served by: (a) depositing same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested; (b) delivering the same in person to such party; (c) prepaid overnight courier; or (d) facsimile copy transmission. Any such notice shall be conclusively deemed delivered when delivery is indicated on the receipt or other indicia of delivery by facsimile, private messenger service, overnight courier service or the United States Postal Service (in the case of delivery by certified mail, return receipt requested) or when the intended recipient of any such notice refuses any such notice as indicated on the receipt or other indicia of delivery by private messenger service, overnight courier service or the United States Postal Service.