

## General Terms and Conditions of Sale of Products and Services

Products furnished and services rendered by Seller are sold only on the Terms and Conditions stated herein, unless the parties have previously entered a written Agreement. All orders are subject to acceptance by Seller, with acceptance becoming effective upon receipt by the Buyer of Seller's written Order Acknowledgment. Notwithstanding any terms and conditions on Buyer's order, Seller's performance of any Purchase Order is expressly made conditional on Buyer's agreement to Seller's Terms and Conditions of Sale unless otherwise specifically agreed to in writing and signed by an authorized representative of Seller at its home office. In the absence of such an agreement, commencement of performance and/or delivery shall be at Buyer's convenience only and shall not constitute an acceptance of Buyer's terms and conditions. The terms and conditions of this instrument are intended by the parties as the complete, exclusive and final expression of their agreement, and any understanding, representations or agreements outside the provisions of the instrument do not constitute any part of or in any way affect this Agreement.

**1. Definitions.** "Supply" means any supply by Seller to Buyer including the supply of Products and/or Services; "Buyer" means the party buying Product(s) or procuring Services and shall include, if the context so permits, its agents or sub-contractors; "Seller" means any of the Busch Group affiliate named on the Purchase Order; "Purchase Order" means an order placed on Seller by Buyer; "Order Acknowledgment" means any of the Busch Group's written confirmation of acceptance of a Purchase Order to Buyer; "Product(s)" means products, consumable materials, Equipment, equipment components, spare parts, software and other goods and materials supplied by Seller to Buyer (including any exchanged products supplied by Seller as part of providing Services); "Equipment" means engineered or customized Products sold and manufactured by Seller; and "Services" means any services supplied by Seller to Buyer.

**2. Quotations and Prices.** All quotations are subject to the terms and conditions stated herein as well as any additional terms and conditions that may appear within Seller's quotation or proposal form. In the case of a conflict between the terms and conditions stated herein and those appearing within Seller's quotation or proposal form, the terms and conditions on the face of Seller's quotation or proposal form shall control. Seller's quotations and pricing are subject to the following:

- a. All Published prices are subject to change without prior notice.
- b. Unless otherwise specified in writing, all quotations constitute offers and are valid for thirty (30) days after the date the quotation is issued. In the interim, Seller reserves the right, upon notice, to revise pricing and commercial terms if there is a material change in global economic policies that adversely impact the cost or feasibility of fulfilling this Agreement. Such changes may include, but are not limited to, newly imposed or adjusted tariffs, trade restrictions, import/export regulations, currency fluctuations, or other government-imposed measures that affect international trade or the supply chain
- c. All shipments will be billed at the prices in effect on the date of acceptance of Buyer's order, unless Buyer notifies Seller of cancellation before Seller begins filling said order.
- d. Unless otherwise stated by Seller in writing, all prices quoted shall be exclusive of transportation, insurance, taxes, (including without limitation, any use tax, sales tax, excise or similar tax), license fees, customs fees, duties, and other charges related thereto, and Buyer shall report and pay any and all such shipping charges, premiums, taxes, fees, duties and other charges related thereto in a timely manner, and shall hold Seller harmless therefrom.
- e. Stenographical, typographical, and/or clerical errors are subject to correction.
- f. Unless expressly agreed to in writing by Seller, prices quoted are for Products contained in normal domestic commercial packaging. Quoted prices do not include technical data, proprietary rights of any kind, patent rights, qualifications, environmental or anything other than Seller's standard tests.
- g. Published weights and dimensions are approximate only. Certified dimension drawings can be obtained upon request. Manuals, programs, listings, drawings, or other documentation required must be referenced specifically, and will be the latest applicable version.
- h. The estimated delivery date shall be the date specified in Seller's order acceptance as indicated in the written order acknowledgment.

- i. Quoted delivery dates are those in effect on the date of the quotation and are subject to change without prior notice.

**3. Modifications:** Seller shall have the right to modify the design and/or method of manufacture of the Products without advance notice to Buyer if, in the reasonable judgment of Seller, such modification does not materially and adversely affect the performance of the Products. Buyer may request reasonable changes in writing in any one or more of the following, provided it is approved by Seller in writing: (1) drawings, plans, designs and specifications; (2) quantities; (3) material, packaging and delivery schedule; or (4) place, manner or time of delivery. If any such change cause increase or decrease the cost of the Products and/or delays Seller's performance, then Seller shall be entitled to an equitable adjustment in price and/or time of delivery.

**4. Terms of Payment.** Unless credit is granted, payment is due upon delivery. All payments for Products released and shipped on approved credit accounts shall be due in full thirty (30) days from date of invoice. Unless agreed otherwise between the Parties, for an order, or a series of orders, with a combined sales price of \$100,000 or more, payment terms are 30% due with order, 50% due prior to shipment, and balance due 30 days after shipment. For all orders involving Equipment's with a sale price of \$100,000 or more, payment terms are: 30% due with order, 30% due on receipt of approved drawings or major materials, as applicable, 30% due prior to shipment, and 10% due 30 days after shipment if no installation or field acceptance is needed, otherwise after installation and field acceptance sign off, which shall not exceed sixty (60) days from date of shipment.

Absent written agreement to the contrary, payment shall be in U.S. dollars. Past due balances shall be subject to a service charge of 1.5% per month (18% per annum), or the maximum rate allowed by law, whichever is less. Any such interest shall accrue and be payable in addition to any other rights and/or remedies available under the Terms and Conditions of Sale or otherwise provided by law. Partial shipments will be billed on a prorated basis and payments therefore are subject to the above terms. Payments shall not be withheld for delay in delivery of required documentation unless a separate price is stated therefore, and then only to the extent of the price stated for such undelivered documentation. Seller may cancel or delay delivery of Products in the event Buyer fails to: (i) make prompt payment for any products previously delivered, or (ii) fails to pay the scheduled payment required "prior to ship" per the agreed progress payment structure for the Products. All payments made by credit card will be assessed as a 3% processing fee, added to the invoice and charged at the time of processing. Any third-party cost incurred by the Seller on behalf of the Buyer will be invoiced at cost plus 25%.

**5. Delivery.** The Products will be delivered within a reasonable time after the receipt of Buyer's Purchase Order. Delivery dates are just estimates that are not guaranteed and are based upon prompt receipt of all necessary information. The Seller shall not be liable for any delays, loss or damage in transit. Shipping terms are Ex Works Origin (EXW Origin) to Seller's facility (the "Delivery Point"). Unless otherwise agreed to in writing by Seller, all transportation shall be at the risk and expense of Buyer. Unless otherwise advised, Seller may, but is not obligated to, insure at full value of the Products or declare full value thereof to the transportation company at the time of delivery and all such freight and insurance costs shall be for Buyer's account. Confiscation or destruction

of, or damage to Products shall not release, reduce, or in any way affect the liability of Buyer, therefore. Notwithstanding any defect or nonconformity, or any other matter, such risk of loss shall remain with Buyer unless and until the Products are returned at Buyer's expense to such a place as Seller may designate in writing. The Buyer, at its expense, shall fully insure Products against all loss or damage until Seller has been paid in full therefor, or the Products have been returned, for whatever reason, to Seller in their original condition. All Products must be inspected upon receipt and claims should be filed immediately with the transportation company when there is evidence of damage, either concealed or external. As used in the clauses appearing herein or attached hereto, "delivery" shall occur when Products are delivered at the Delivery Point, which shall be the point of manufacture or such other place, as Seller shall specify in writing, notwithstanding installation by or under the supervision of Seller.

If for any reason Buyer fails to accept delivery of any of the Products on the date fixed pursuant to Seller's notice that the Products have been delivered at the Delivery Point or if Seller is unable to deliver the Products at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss or damage to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; (iii) Payment will be due immediately; and (iv) Seller, at its option, may store the Products at a place of its choice, for the maximum period of 90 days, whereupon Buyer shall be liable for all related costs (including, without limitation, storage and insurance) and pay compensation to Seller at the rate of 2 % of the purchase price per month of delay, within thirty (30) days from the issuance of the invoice.

**6. Return of Products for Service or Repair.** In cases where a Product is received by Seller with no Purchase Order, or other written authority, to Seller to carry out Services within fourteen (14) days of receipt of the Product by Seller, Seller may, at its option, either return the Product to the Buyer or dispose of the Product as Seller deems fit and may charge Buyer for, and Buyer agrees to pay all the related costs and expenses. After the service of the product, if for any reason, Buyer fails to accept delivery of the product on the date fixed pursuant to Seller's notice to the Buyer that the Product is ready for shipment or collection or postpone it for more than five (5) days then Seller's obligation to deliver the product will be deemed satisfied and Buyer will become responsible for the risk of loss or damage to the Product and payment will be due immediately. Buyer will pay compensation to Seller at the rate of 2% of the price per month of delay, within thirty (30) days from the issuance of the invoice. The parties agree that compensation and other expenses payable are a genuine pre-estimate of the costs and losses which Seller would suffer from Buyer not taking delivery of the Products after service.

In the case of Service Exchange: (i) title to the Product passes to Seller upon receipt of the Product at the Seller's service center, and (ii) Buyer must ship at its costs the Product to be exchanged to Seller within thirty (30) days of the date of the relevant Purchase Order. Should Buyer not comply with this obligation (i) Seller may charge a non-return fee which shall be calculated at the rate of two per cent (2%) of the Purchase Price for each 14 day-period during which Seller has not received the Product to be returned, with the non-return compensation being payable within thirty (30) days of the date of invoice by Seller and (ii) should delay in returning the product exceed 3 months from the date of the relevant Purchase Order, Seller shall be entitled to terminate the Purchase Order or that part of the Purchase order related to the service exchange and Buyer shall pay the price which would be due against the supply of a new Product of equivalent specification, less any amount already paid towards the Service Exchange. The buyer shall pay within 30 days of the date of the invoice.

The parties agree that compensation and other expenses payable under the Conditions above are a genuine pre-estimate of the costs and losses which Seller would suffer from Buyer not taking delivery of the Products and/or for non-return of a Service Exchange Product on the Delivery Date.

**7. Inspection & Acceptance.** Each Product furnished by Seller shall be deemed accepted by Buyer unless notice of defect or nonconformity is received within five (5) days of delivery (the "Inspection Period") and Buyer furnishes evidence sufficient, in Seller's judgment, to deem the Products as nonconforming. Nonconforming Products means only the

following: (i) Product shipped is different than identified in Buyer's Purchase Order; or (ii) Product's label or packaging incorrectly identifies its contents. However, products that Seller agreed, in writing, to install using its own personnel shall be deemed accepted by Buyer upon completion by Seller of its applicable acceptance tests or execution of Seller's acceptance form by Buyer, whichever occurs first. Notwithstanding the foregoing, use of any such Seller-installed and/or customized Product by Buyer, its agents, employees, or licensees, for any purpose after delivery thereof, shall constitute acceptance of the Product by Buyer, irrespective of whether the testing process has been completed. Buyer understands that Seller initially qualifies all Products at its factory prior to shipment so as to ensure that said Products meet applicable quality standards. Seller reserves the right to modify, substitute, and/or add components or otherwise alter the Equipment as necessary to satisfy Buyer's needs. Measured parameters are defined by the performance specification for each subassembly or component, based upon industry standards and/or as agreed upon by Buyer and Seller. These procedures will also be performed at the Buyer's installation site prior to final acceptance, if agreed upon in advance in writing by Seller.

If Buyer notifies Seller of any Nonconforming Products within the Inspection period and timely ships, at its expense and risk of loss, the Nonconforming Products to Seller's facility and if Seller determines in its sole discretion that such products are indeed nonconforming, Seller shall replace such Nonconforming Products with conforming products within a reasonable time. The Seller shall ship to Buyer, at Buyer's expense and risk of loss, the replaced products to the Delivery Point. Buyer acknowledges and agrees that the remedies set forth herein are Buyer's exclusive remedies for the delivery of Nonconforming Products.

**8. Title and Risk of Loss.** Risk of loss to all Products ordered under any Purchase Order passes to Buyer upon Seller's tender of such Products to the carrier at Delivery Point. Unless agreed otherwise, Title of the Products remain with Seller until Buyer has made full and unconditional payment of all sums due to it in respect of the Products. From delivery to full payment, Buyer will be responsible to keep the Products in good condition (at no cost to Seller) separately from all other goods of Buyer or any third party in such a way that they remain readily identifiable as Seller's property. Buyer shall maintain the Products in satisfactory condition and keep them insured under adequate insurance policies with insurers of good reputation, covering the Purchase Price. Buyer hereby grants to Seller a lien on and security interest in and to all the right, title, and interest of Buyer in, to, and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The Lien and security interest will be satisfied once Buyer has made payment in full. A copy of these Terms and Conditions of Sale (along with any form of written acceptance) along with a UCC 1 Financing Statement may be filed on Seller's behalf with appropriate state authorities at any time to protect Seller's security interest. Buyer further agrees to execute – in a timely manner – any necessary paperwork to perfect Seller's security interest.

**9. Warranty.** Unless agreed otherwise, in writing, any warranty contained herein shall be to the original Buyer only and may not be assigned or transferred to any third party. Products manufactured by Seller are warranted against defects in materials and workmanship for twelve (12) months from the date of shipment. Remanufactured pumps are covered by a twelve (12) month warranty from the date of shipment. Other Seller-manufactured parts and components carry a 90-day warranty from the date of shipment.

Seller's liability under valid warranty claims is limited, at the option of Seller, to repair, replacement, or refund of an equitable portion of the purchase price of the Product. The warranty excludes (a) normal wear and tear; (b) wear items including, but not limited to, seals, bearings, couplings, oil drain plugs, oil fill plugs etc.; (c) Products that have not been properly stored, installed, serviced, maintained, or operated, outside of acceptable parameters, or deleterious operating conditions beyond Seller's control such as improper voltage, excessive ambient temperatures, or other conditions that would affect the performance or life of the product; (d) Products not used in accordance with current operating and maintenance instructions furnished by Seller, and (e) Products that have been altered or modified in any manner without Seller factory authorization. In-warranty repaired, or replacement parts

are warranted only for the remaining unexpired portion of the original warranty period applicable to the repaired or replaced parts. After expiration of the applicable warranty period, Buyer shall be charged at prevailing market prices for parts, labor, and transportation.

Seller expressly disclaims any responsibility for loss or damage caused by the installation or use of its Products by the Buyer other than in proper operating environments and in accordance with proper operating procedures. Warranties given by suppliers of goods or proprietary components not manufactured by Seller but incorporated by Seller into its Products shall be passed on to Buyer, provided that in no event Seller shall be liable for failure of any such supplier to perform on its warranty. Repair or replacement under applicable warranty shall be made at no charge for replacement parts, and such repair or replacement shall be performed during normal working hours (8 a.m. to 5:00 p.m. Monday through Friday, exclusive of holidays), provided Buyer will be responsible for all non-warranty related expenses including but not limited to travel expenses, travel labor, installation & removal costs, etc. and a Purchase Order will be required regardless of the results of the warranty evaluation. Replacement or repaired products (including Products that are the subject of Service Exchange) will be covered by this Limited Warranty for the remainder of the original product's warranty period as stated above.

The warranty under this Section does not cover the costs of installation or removal of the Product, which shall be at Buyer's cost. Notwithstanding anything to the contrary, any written or oral statements by Seller, its representatives, or employees do not constitute warranties of Seller, unless mutually agreed and signed by both the parties.

THE FOREGOING OBLIGATION TO REPAIR OR REPLACE THE PRODUCT(S) SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER OF THE PRODUCT(S) FOR THE BREACH OF THE FOREGOING WARRANTY. THERE ARE NO OTHER WARRANTIES AND SELLER HEREBY EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**10. Warranty for Services:** Seller warrants, in respect of Supply of Services, that Services shall be performed in a workmanlike manner using reasonable skill and care and in accordance with Seller's service policy and practice.

If subsequent to the performance of Services, failure or breakdown (normal wear and tear and consumables excepted): (a) occurs during the warranty period notified to Buyer at the time the Services are performed (or if no such period is notified to Buyer, and unless otherwise agreed, within 90 days of the date that the Services are completed); (b) occurs during normal usage; and (c) is shown by Buyer to Seller's reasonable satisfaction (after a reasonable opportunity for Seller to inspect the allegedly defective Services and to review documentation pertinent to the failure or breakdown) to have been caused by Seller's failure to perform the Services in accordance with this Condition: Seller, at its option, shall correct or re-perform the Service or replace the serviced Product; Except as expressly warranted above, Services are provided "as is" and Buyer assumes the entire risk as to the results of the Services. Nothing stated in this Section implies that the operation of any serviced Product will be uninterrupted or error-free or that errors will be corrected

THE OBLIGATION TO CORRECT OR REPERFORM SHALL BE THE SOLE AND EXCLUSIVE REMEDY OF BUYER FOR THE BREACH OF SERVICE WARRANTY.

**11. Warranty Claim Procedures.** Before any Products are returned for repair and/or adjustment, Buyer must obtain written authorization from Seller or its authorized representative for the return, and instructions as to how and where the Products should be returned. The following provisions must be satisfied in respect of all warranty claims for Products or Services: (a) Buyer gives written notice of the defect, reasonably described, to Seller within three (3) Business days of the time when Buyer discovers or ought to have discovered the defect; (b) the Products or any Product must not have been repaired or modified by anyone other than Seller or at Seller's direction; (c) to the extent necessary to evaluate the warranty claim, Buyer furnishes relevant evidence and information upon Seller's request; (d) return, in coordination with Seller, the

nonconforming Products or parts to Seller's specified location, properly decontaminated and/or not containing any residues of harmful substances, accompanied by a completed Declaration of contamination form; (e) give reasonable opportunity to Seller to examine the Products; (f) in the case of Products and related components, spares and parts not of Seller's own manufacture, unless otherwise required by law, Seller's responsibility shall be limited to passing on to Buyer the benefit of any guarantee or warranty given to Seller by the manufacturer of such Products or part; (g) Buyer has paid the purchase price in full or paid in accordance with agreed payment schedule. Buyer shall also be responsible for all non-warranty related expenses including but not limited to all handling, travel expenses, travel labor, installation, decontamination, & removal costs and a Purchase Order will be required regardless of the results of the warranty evaluation.

If it is determined solely by Seller, after the evaluation, that there has been no breach of warranty, then the Buyer shall be responsible for all repair or replacement charges and the warranty for such paid repairs is 6 months from the date of repair or replacement.

Any Product returned to Seller for examination shall be sent prepaid via the means of transportation designated by Seller. Buyer is responsible for shipping Products to the designated Seller service center at Buyer's risk and cost. Seller may charge Buyer for the cost of shipping Product from Seller service center back to Buyer if the Product is located in a country in which Seller does not have a service center. If Buyer requires a more expensive method of freight than Seller's standard shipping, then the extra cost shall be paid by Buyer. Seller reserves the right to reject any warranty claim not submitted in accordance with the provisions of this Section. When a Product is returned for examination, inspection, repair, or for any other reason, Buyer shall be responsible for all damage resulting from improper packing or handling, and/or for loss in transit, notwithstanding any defect or non-conformity in the Product. In all cases, Seller will be solely responsible for determining the actual cause and nature of failure, and Seller's determination with regard thereto shall be final. Any Products returned to Seller, for whatever reason, must be free from hazardous substances including, but not limited to, corrosive, radioactive, or toxic substances. If it is determined that Seller's Product has been returned without cause and is not defective, Buyer will be notified, and the Product returned at its expense; in addition, a charge for testing and examination may be made on Products so returned.

**12. Abandoned Products:** For Products sent in for evaluation, after the Product(s) has been evaluated, the Buyer has the following options: (i) repair the Product(s) at the Buyer's expense pursuant to the Service Proposal, (ii) return the Product(s) to the Buyer Collect (via the Buyer's preferred carrier, and payment of the evaluation fee), or (iii) destroy and discard the Product(s) (evaluation fee applies). If after 60 days from the date of the Service Proposal, the Buyer has failed to respond to Seller's attempts to contact them, a "Final Disposition Letter" and "Disposition Notice" shall be sent to the Buyer and serve as Seller's final notice regarding disposition of the Product(s). If Seller does not receive a completed "Disposition Notice" from the Buyer within 10 days from the date of the letter, Seller will be deemed to have elected sub clause (iii) above and to have abandoned the Product(s), and Seller will destroy or discard the Product(s) without further notice at Seller's discretion. By the Buyer sending in the Product(s) for evaluation or repair, the Buyer is accepting these Terms and Conditions, and no signature is required on the "Disposition Letter" to carry out sub clause (iii) (i.e. destroy and discard). The Buyer hereby knowingly and voluntarily releases Seller and any other related companies (predecessors or successors), subsidiaries, affiliates, employees, current and former owners, managers, officers, agents, attorneys, and directors (collectively, the "Seller Parties") from any and all known and unknown claims, suits, demands, causes of action, debts, damages, costs, losses, obligations, judgments, charges, expenses, dues, sums of money, accounts, and controversies whatsoever, known or unknown, contingent or noncontingent, at law or in equity, that Buyer may have against the Seller Parties arising out of, relating to, or based on the final disposition of the Product(s) in accordance with the terms of the Terms and Conditions.

**13. Field Work:** Additional delays or costs may result from circumstances out of Seller's control for any field work including, but not limited to:

- Buyer fails to provide manual labor or equipment, as agreed

- Buyer requires Seller employees to have special documentation and/or training
- Buyer requires Seller employees to have special safety equipment or clothing
- Buyer fails to appear at scheduled date and time
- Access to the Product(s) is physically obstructed
- Unsafe environment or circumstances
- Unsafe equipment or Product(s)
- Unreasonable time frames
- Scope of work may be greater than originally discussed

**14. Services:** If Buyer requests Seller to provide services on the Products, including, without limitation, installation or commissioning, such request has to be accepted in writing by Seller. The Buyer shall pay Seller's standard charges for all such services, plus reasonable travel and expenses incurred in connection therewith, including, without limitation, permits, licenses, authorizations and approvals required under applicable federal, state, and local laws, regulations, and ordinances to permit the purchase, installation, operation and use of the Products. All Products and environments (whether at Seller's or Buyer's or Buyer's customer's premises) must be free from risks to health and safety (save to the extent notified to, and specifically accepted by, Seller in writing). Seller may decline, without incurring any liability, to service any Product, or work in any environment in which, in Seller's opinion, the risks to health and safety are not managed satisfactorily by Buyer. Buyer will permit Seller prior to commencement of any Services to assess the condition of the Products and the working environment. Seller shall be under no obligation to service any Product which, in Seller's reasonable opinion, has been used in a way or for a purpose for which it was not suitable, has not been operated and maintained in accordance with the Seller's operating manual, is too old or in too poor a condition to be serviced economically or is in any way unsafe. Buyer will provide Seller with all available operating documentation, drawings, test certificates and maintenance inspection reports relating to any Product. Buyer will indemnify and hold Seller harmless against any loss, claim or damage suffered by Seller or its employees, agents or sub-contractors suffered on Buyer's site or Buyer's customer's site except to the extent caused by Seller's own negligence.

**15. Spare Parts.** Buyer acknowledges and agrees that the installation and use of spare parts by any party other than Seller, without Seller's written authorization (an "unauthorized party"), including, but not limited to unauthorized service providers, may impact the performance, safety, and reliability of the product and Buyer solely assumes the risk of such installation by an unauthorized party. Seller assumes no liability for damages, malfunctions, or failures resulting from improper installation, misuse, or servicing by unauthorized parties. Seller strongly advises Buyer to have parts installed and serviced by Busch Group trained service technicians to optimize performance and maintain warranty eligibility. The Seller disclaims any and all liabilities for direct, indirect, incidental, or consequential damages resulting from the installation of parts by an unauthorized party.

**16. Limitation of Liability.** NOTWITHSTANDING ANYTHING ELSE, THE TOTAL LIABILITY, IN THE AGGREGATE, OF SELLER ARISING FROM OR RELATED TO THIS PURCHASE ORDER (INCLUDING BUT NOT LIMITED TO PERFORMANCE OR BREACH THEREOF), THE EQUIPMENT/PRODUCTS, AND/OR THE SERVICES, SHALL BE LIMITED TO THE ACTUAL PURCHASE PRICE AMOUNT PAID TO SELLER BY THE BUYER FOR THE SPECIFIC EQUIPMENT, PRODUCTS OR SERVICE GIVING RISE TO THE CLAIM (REGARDLESS OF WHETHER SUCH DAMAGES ARE CHARACTERIZED AS ARISING OUT OF BREACH OF WARRANTY, TORT, CONTRACT, OR OTHERWISE). ALL CAUSES OF ACTION AGAINST SELLER ARISING FROM OR RELATED TO THE CONTRACT OR THE PERFORMANCE HEREOF SHALL EXPIRE UNLESS BROUGHT WITHIN ONE (1) YEAR OF TIME OF ACCRUAL THEREOF.

Notwithstanding the foregoing, in no event shall either party be liable under any theory of recovery, including, without limitation, contract, warranty, or tort (including negligence and strict liability) for any indirect, incidental, special or consequential damages, including, without limitation, loss of profits, business, or information; loss of use of the Products or any associated equipment, even if such party was advised of the possibility of such damages.

**17. Indemnification.** To the fullest extent permitted by law, each Party shall defend, protect, indemnify and hold the other Party, its parent company, partners, subsidiaries and any other related or affiliated entities, its customers and users of the Products and/or services, and all of their respective officers, directors, managers, partners, employees, successors and assigns (collectively, "Indemnitees") harmless from and against all claims, liabilities, damages, demands, lawsuits, causes of action, strict liability claims, penalties, fines, administrative law actions and orders, expenses (including, but not limited to, attorneys' fees) and costs of every kind and character (collectively, "claims/liabilities"), but only to the extent caused by the negligence of the indemnifying Party. Each Party shall at its sole cost and expense, immediately notify other Party of the third party's claim, investigate, handle, respond to and provide defense for any claim or liability for which the Party owes or may owe indemnity, provided that the indemnified Party shall have the absolute right and opportunity to participate in any such investigation or defense or elect to conduct any litigation regarding a claim for which it is indemnified through counsel of its own choosing at its sole expense and cost. Both Parties obligations under this section shall survive the termination, revocation or expiration of this agreement.

**18. Intellectual Property Ownership.** Buyer acknowledges and agrees that no patents, copyrights, trademarks, or other intellectual property are being sold, assigned, or otherwise transferred to Buyer. Without limiting the generality of the foregoing, Seller shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Seller or its employees, including but not limited to those developed, discovered, and/or conceived in connection with the manufacture of the ordered Products, Equipment or any of their component parts. It is expressly acknowledged that no drawings, designs, specifications, or anything else provided by Seller to Buyer shall be deemed to be "work made for hire" as that term is used in connection with the U.S. Copyright Act. Buyer should not use, copy, distribute, publish or communicate to any third party any drawings, designs, or other technical information designed or provided by Seller without prior written authorization of an executive officer of Seller (except as necessary to properly install, use, operate, maintain, and service the Equipment).

**19. Confidentiality.** Both the parties recognize and acknowledge that they may directly or indirectly furnish certain information regarding their or their affiliates' business operations in order to allow to perform the work, which information parties consider confidential and/or proprietary, and that they may develop or discover information arising from or relating to the work. Any such information furnished by Disclosing party and/or developed or discovered by Receiving parties shall be collectively referred to in this Agreement as the "Confidential Information"; provided, however, that "Confidential Information" shall not include (i) information that is at the time of disclosure, development, or discovery hereunder, or subsequently becomes, within the public knowledge generally through no fault of Receiving party; (ii) information that was known to Receiving party (on a non-confidential basis) as of the time of disclosure, development, or discovery hereunder, independent of anything relating to Disclosing party or its affiliates or to the work; and (iii) information that was obtained lawfully (on a non-confidential basis) from a third party (independent of anything relating to Disclosing party or its affiliates or to the work) that itself obtained the information lawfully and through no fault of Receiving party, subsequent to the time of disclosure, development, or discovery hereunder. Both parties, their directors, officers, employees and agents will keep the Confidential Information confidential and will not disclose all or any part of the Confidential Information to any third party (except as may be compelled by a court or other tribunal, and only then after giving another party reasonable notice and opportunity to object). Either party may disclose Confidential Information only to (i) those of its directors, officers, employees, agents, suppliers, contractors and sub-contractors who reasonably require access to the Confidential Information for purposes of performing the work, and (ii) those members of the Receiving party authorized by Disclosing Party to have access to the Confidential Information; Both the parties shall remain obligated to the other party to ensure that such persons receiving any of the Confidential Information treat it in accordance with the terms of this Agreement. Both the parties agree that the Confidential Information shall not be used by the other party for any purpose other than providing the work. Parties should limit

the duplication of Confidential Information to only the number of copies reasonably required for performing the work. Upon receipt of a written request from Disclosing party, receiving party shall, within 20 days after such request and at Disclosing parties' sole option, (i) return, or provide, as the case may be, all originals and copies of the Confidential Information, or (ii) destroy all originals and copies of the Confidential Information and certify in writing to such destruction. Notwithstanding the above, the receiving party may retain one copy of the Confidential Information for archival purposes; provided that such copy shall remain subject to this provision for as long as it is retained by the Receiving party. Parties' duties under this provision shall survive the termination, revocation, or expiration of this Agreement until the information becomes public knowledge for reason other than breach of this Agreement by either party.

Notwithstanding anything to the contrary contained in these Terms and Conditions, Buyer understands and agrees that Seller's manufacture of the product(s) is the result of extensive proprietary research and development on Seller's part and that Seller utilizes the technology incorporated into the product(s) in a wide variety of applications with many purchasers. The Buyer has a right to disclose information relating solely to Buyer-specified modifications of the product(s), which do not reveal in any way protected information relating to the design or operation of the product(s). This limited right shall in no way limit Seller's rights to continually modify or alter the product(s) and to develop or market the underlying technology to other customers, including Buyer's actual or potential competitors.

**20. Termination.** In addition to any remedies that may be provided under these Terms and Conditions, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms and Conditions, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**21. Cancellation.** Orders are not subject to cancellation except with the written consent of the seller given by an authorized representative of the seller. In the event a Buyer cancels a Purchase Order for any reason prior to shipment, the following cancellation charges apply:

- Standard (restockable) parts and accessories: 15% of Purchase Order value.
- Standard (restockable) Products: 30% of Purchase Order value.
- Non-Returnable Items (special): Full Cost Absorption
- Non-standard O.E.M. components: If returnable, subject to 30% return fee; If not returnable, full cost absorption
- Custom or Engineered to Order:
  - (1) Order entered but engineering not started: 5% of Purchase Order value unless the cancellation is done within 24 hours from time of receipt of the Purchase Order by the Supplier.
  - (2) Engineering and drawings initiated: 30% of Purchase Order value.
  - (3) Order released for manufacture and purchase orders for third party components placed: 45% of Purchase Order value.
  - (4) Manufacturing completed: 100% + of Purchase Order value.

**22. Export Control.** It is acknowledged that all Equipment/Products, Services, technical data, technology, software, and any other items or information provided by Seller to Buyer shall at all times be subject to any and all applicable export control laws and regulations, including but

not limited to applicable U.S. Export Administration Regulations, United Nations resolutions and European Union directives relating to trade embargoes and restrictions. Buyer expressly agrees that no Equipment, Product, Services, technical data, technology, software or other items or information or assistance or other item received from Seller shall be exported (or re-exported) by Buyer or its authorized transferees (if any), directly or indirectly, in violation of any law or regulation. Buyer further agrees that Buyer shall not violate or cause Seller to violate the U.S. Foreign Corrupt Practices Act of 1977 (as amended), in connection with any sale or distribution of the Products/Equipment.

**23. Governing Law.** The validity, performance, and all other matters arising out of or relating to the interpretation and effect of this Agreement shall be governed by and construed in accordance with the internal laws of the U.S. State in which Seller's applicable sale/service facility is located (hereinafter the "Applicable State") without giving effect to any choice or conflict of law provision or rule (whether of the Applicable State or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Applicable State. Any legal suit, action or proceeding and all other matters arising out of or relating to the interpretation and effect of this Agreement shall be instituted in a court (federal court or state court) sitting in the Applicable State, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such action, suit, or proceeding. Notwithstanding the foregoing, Seller shall have the right at any time (at its option and where legally available) to immediately commence a legal suit, action, or proceeding in any court of competent jurisdiction (in any State or country) in order to seek an injunction or similar order to enforce or protect intellectual property rights or trade secrets, and/or to enforce the provisions of Section 3 above (entitled "Payment Terms"). Seller and Buyer expressly agree that the United Nations Convention on International Sale of Goods shall not apply.

**24. Force Majeure.** Any delay or failure by the Seller to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the Seller and without its fault of negligence, such as, by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), pandemic, fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain power, material, labor, equipment or transportation, subcontractor or supplier caused delays or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within ten (10) days. Performance shall be deemed suspended during and extended for such time as any such circumstances or cause delay its execution. Whenever such circumstances or causes have been remedied, Seller will make, and Buyer shall accept performance hereunder. As used herein, "performance" includes, but is not limited to, fabrication, shipment, delivery, assembly, installation, testing and warranty repair or replacement, as applicable.

**25. Compliance with Laws.** Buyer shall at all times comply with all Laws applicable to this Agreement, Buyer's performance of its obligations hereunder and Buyer's use or sale of the Products. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase, use or resale of the Products and (b) not engage in any activity or transaction involving the Products, by way of resale, lease, shipment, use or otherwise, that violates any Law.

**26. Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

**27. Entire Agreement; Amendments; Waivers.** Neither party shall claim any amendment, modification or release of any provisions hereof unless the same is in writing and such writing: (i) specifically refers to

the Order; (ii) specifically identifies the term amended; and (iii) is signed by duly authorized representatives of Seller and Buyer. No waiver by Buyer and Seller of a provision or of a particular breach by the other of any obligation, terms, performance, conditions, or the failure of either at any particular time to exercise any of its rights herein provided, or any other course of dealing under the Order shall be deemed a waiver of any continuing or subsequent breach of the same or any other terms, performance, conditions or obligations hereunder.

**28. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**29. Notices.** All notices, requests, consent, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**30. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**31. Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Intellectual Property Rights and Survival.