



**ASYST Technologies L.P.**

An ISO/TS 169499 Certified Company

Phone: +1-262-857-2244 | Fax: +1-262-857-3623 | [www.asysttech.com](http://www.asysttech.com) | 5811 99<sup>th</sup> Avenue, Kenosha, Wisconsin USA

## **TERMS AND CONDITIONS OF SALE UPDATED JANUARY 1, 2025**

1. **Application.** These Terms and Conditions of Sale (“Terms and Conditions of Sale”) are the only terms (along with the other documentation making up the Agreement, as provided below) which govern the sale of goods and services by ASYST Technologies L.P. or any of its subsidiaries or affiliates (collectively, “Seller”) to the purchaser thereof set forth on the applicable Quotation issued by Seller (such purchaser, the “Purchaser” hereunder). These Terms and conditions of Sale apply to: (a) all proposals and quotations submitted by Seller; (b) all purchase orders received by Seller; and (c) all sales of goods and services sold by Seller, including all parts, components and any replacement or repair parts and components (all such goods and services are collectively referred to herein as the “Goods”). If and to the extent applicable, any services to be provided by Seller will be deemed ancillary to a sale of goods under the UCC.

2. **Formation.** These Terms and Conditions of Sale and any applicable sales quotation(s), proposal(s) or purchase order acceptance letters (if any) provided by Seller to Purchaser referencing these Terms and Conditions of Sale (such sales quotation(s) and/or proposal(s), a “Quotation”, and collectively with these Terms and Conditions of Sale and any purchase order acceptance letter(s), the “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Purchaser will be deemed to have accepted the provisions of these Terms and Conditions of Sale and a contract will be formed by any of the following: (a) signing and returning to Seller a copy of any Quotation; (b) sending to Seller a written acknowledgment of the Quotation; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of Goods (including instructions to bill and hold) following receipt of any Quotation; (d) failing to cancel a pending purchase order within 10 days after receiving these Terms and Conditions of Sale; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Purchaser’s acceptance of these Terms and Conditions of Sale. THESE TERMS AND CONDITIONS OF SALE PREVAIL OVER ANY OF PURCHASER’S TERMS AND CONDITIONS OF PURCHASE REGARDLESS OF WHETHER OR WHEN PURCHASER HAS SUBMITTED ITS PURCHASE ORDER OR SUCH TERMS AND CONDITIONS OF PURCHASE. FULFILLMENT OF ANY PURCHASER ORDER DOES NOT CONSTITUTE ACCEPTANCE OF ANY OF PURCHASER’S TERMS AND CONDITIONS AND DOES NOT SERVE TO MODIFY OR AMEND THESE TERMS AND CONDITIONS OF SALE. SELLER’S ACCEPTANCE OF ANY ORDER(S) FROM PURCHASER IS SUBJECT TO AND CONDITIONED ON PURCHASER’S ASSENT TO THESE TERMS AND CONDITIONS OF SALE. PURCHASER’S ORDER(S) IS ACCEPTED ONLY ON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND THE PROVISIONS OF ANY PURCHASER ORDER OR OTHER WRITING WHICH ARE INCONSISTENT HERewith SHALL NOT CONSTITUTE PART OF THESE TERMS AND CONDITIONS OF SALE OR OF THE AGREEMENT.

### 3. **Modification.**

A. *Order Information.* Order information specific to Goods (e.g., type, quantity, specification, delivery location and the like) in respect of any order or order modification submitted by Purchaser (whether orally, in a purchase order or other writing) may be accepted and fulfilled by Seller; provided however, that any such acceptance and fulfillment by Seller shall be deemed acceptance only of the order and order modification information specific to Goods (such as type, quantity, specification, delivery location and the like), and not with respect to any other purported modifications to terms and conditions contained in the Agreement, it being expressly acknowledged and agreed that Seller will not be deemed to have in any way expanded, enlarged or modified Seller's liabilities, warranties or other obligations under the Agreement as stated in the applicable Quotation(s) and these Terms and Conditions of Sale by virtue of any such acceptance or fulfillment.

B. *Modification.* Notwithstanding anything herein to the contrary, if a written contract separate from the Agreement is signed by both parties covering the sale of Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with the Agreement. Seller may be willing to negotiate written modifications to these Terms and Conditions of Sale (to be effective if and when any such modifications are memorialized in writing and signed by both parties); provided however, that the parties acknowledge and agree that all pricing information provided by Seller in Quotation(s) is conditioned upon and assumes acceptance to these Terms and Conditions of Sale as stated, and accordingly, all pricing is subject to change (notwithstanding any other provision in the applicable Quotation(s) and/or these Terms and Conditions of Sale) in the event any such modifications to the Agreement are made. Seller may correct unilaterally mathematical and typographical errors in the Agreement. No course of performance, course of dealing or trade customs will be deemed to modify or waive any provision of the Agreement. No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods that is not contained in the Agreement. An affirmation, waiver, representation or warranty will not be deemed to be part of the basis of the Agreement and will not be enforceable unless it is expressly included within the Agreement.

### 4. **Prices, Payment and Risk of Loss.**

A. *Prices.* Prices contained in individual Quotations are firm only for a period stated therein and otherwise for 30 days from the date of the Quotation. After the firm price period, the prices are subject to change, and Purchaser should inquire of Seller as to their validity and request a written confirmation or revision. All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Purchaser. Purchaser shall be responsible for all such charges, costs and taxes; provided, that, Purchaser shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. Unless expressly stated otherwise in the applicable Quotation, all prices are in United States dollars and must be paid in U.S. dollars at the location specified in Seller's invoice. Purchaser must pay all government fees levied on the installation and inspection of the Goods. Purchaser shall reimburse Seller, upon receipt of all invoices provided by Seller, for any sales, use and excise taxes and any other similar taxes, duties or charges of any kind Seller pays on behalf of Purchaser.

B. *Risk of Loss and Title.* The Agreement is for a shipment contract and, unless otherwise stated in a writing signed by Seller, the Goods will be delivered F.O.B. Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Purchaser upon tender

of the Goods to a carrier at Seller's dock. Purchaser shall be responsible for selecting its preferred freight carriers and the freight carrier's performance, including but not limited to, delays, damage and/or scheduling errors. Notwithstanding the transfer of the risk of loss, title to the Goods will remain with Seller until Purchaser pays for the Goods in full.

C. *Price Adjustments.* If any delay in delivery beyond the date of delivery scheduled at the time of entry of the order is requested or otherwise caused by Purchaser, Seller may adjust the price as provided below in this Subsection. Further, unless stated otherwise in the applicable Quotation(s), pricing set forth in the applicable Quotation shall be current and valid for a period of 90 days following the date the Agreement is formed, and following such 90 day period, Seller may unilaterally adjust and condition further supply on a new pricing to cover Seller's increased cost of performance due to, among other circumstances: volume fluctuations, increases in the costs of labor, materials, production or transportation, change in specifications or directions, changes in law, or other conditions beyond Seller's reasonable control. If new pricing is based on an increase in cost of raw materials or due to a surcharge imposed on Seller, the new pricing will include the difference between the raw material cost factored into the prior 90-day period pricing and the then-current raw material cost. If, for any 90-day period following formation of an Agreement, the actual volumes purchased are less than 80% of the volumes supporting and stated in Seller's Quotation, the pricing for the subsequent 90-day period will be adjusted as necessary to fully amortize Seller's investment over estimated remaining production. Seller and Purchaser will equally share, 50%/50%, all value-added or value-engineering or other savings that are the result of joint engineering efforts aimed at cost reduction, whether these changes occur before or after the start of production. Prices for Goods and tooling are valid only for volumes quoted, with the ability to provide additional volume of 15% for short-term surge requirements of not more than 30 days within any 365-day period, and any demand for additional volume beyond 30 days is subject to additional tooling charges or price adjustments in Seller's sole but reasonable discretion.

D. *Changes at Purchaser's Request.* In the event that Purchaser requests any changes specific to the Goods (e.g., type, quantity, specification, delivery location and the like) or that otherwise affects Seller's performance of the Agreement after the date of an applicable Quotation, Seller may accept or reject any such change requests in its sole discretion. In the event Seller does agree to accommodate any such change requests, Seller may unilaterally increase prices to cover its increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, treating, coating, plating, material or process capability data, logistics requests (including, but not limited to, Advanced Shipping Notices if Purchaser requires with shipment), and other performance costs.

E. *Shipping and Packaging.* Except as otherwise expressly provided in the applicable Quotation, Seller will not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included within pricing, any increase in rates for such services becoming effective after the date the price is quoted to Purchaser will be added to the price of Goods. All Goods will be packed for shipment by Seller in accordance with its standard practices. It is Purchaser's responsibility (whether or not Seller arranges shipping) to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods. Purchaser shall pay Seller for the additional procedures and materials. Purchaser shall further pay Seller for any additional handling charges for small, expedited or other shipments outside Seller's normal and ordinary course of business. As an example only, requests for drop shipments must be in writing and an additional charge will apply.

F. *Invoicing.* Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Unless expressly stated otherwise in the applicable Quotation, Purchaser must pay all invoices net 30 days after the date of shipment. Payment terms for all engineering changes and Purchaser's Property (as defined below), including but not limited to fixtures, gauges, tooling and related property will be 50% billable upon receipt of purchase order, and 50% upon submission of PPAP. Seller may change payment terms on seven days' written notice to Purchaser. Unless expressly stated otherwise in the applicable Quotation, Purchaser shall make all payments in US dollars by wire or ACH transfer, check or other mutually agreed upon method. Purchaser shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Purchaser shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under the Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Purchaser fails to pay any amounts when due hereunder and such failure continues for 10 days following written notice thereof. Purchaser will pay Seller for all non-warranty work in advance or upon such other terms as may be agreed.

G. *Forecasting.* On a monthly basis, Purchaser shall provide Seller with a rolling forecast matching the Seller's longest quote lead time of Purchaser's anticipated purchases of the Goods (each, a "Forecast"), which will take into consideration Purchaser's existing inventory. Purchaser authorizes Seller to rely on these Forecasts, and agrees that: (i) the first two (2) months of each Forecast are Firm with respect to finished Goods; and (ii) the first four (4) months of each Forecast are Firm with respect to raw material. For clarity, "Firm" means that Purchaser shall be committed to purchasing the applicable quantities from Seller.

H. *Cancellation.* If Purchaser cancels or terminates any purchase order, Forecast and/or the Agreement for any reason, Purchaser must immediately purchase all finished Goods, raw materials, and work in process that were purchased to produce, or fall within, the Firm quantities under Subsection (G) above or otherwise set forth in a purchase order. With respect to the work in process, Purchaser shall be obligated to pay the then-current purchase price. Purchaser shall also be obligated to immediately reimburse Seller the cost of manufacture (including labor, engineering, unamortized development cost, equipment time and overhead) calculated using Seller's standard internal costing procedures plus 15% of the sale price of the applicable Goods as liquidated damages. **THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH LIQUIDATED DAMAGES CONSTITUTE COMPENSATION AND NOT A PENALTY, AND THAT SELLER'S ACTUAL DAMAGES WOULD BE IMPOSSIBLE OR VERY DIFFICULT TO ACCURATELY DETERMINE, AND THAT SUCH LIQUIDATED DAMAGES ARE A REASONABLE ESTIMATE OF THE ANTICIPATED ACTUAL HARM THAT MIGHT ARISE FROM THE OCCURRENCE OF SUCH EVENTS.**

I. *Installments.* Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale, and Purchaser shall timely pay the applicable invoice price for each installment delivered. Any Goods indicated as back-ordered now or in the future will be considered an installment delivery. A failure to pay for an installment within the time for payment shall be deemed a material anticipatory breach of other installments by Purchaser.

J. *Payment Demand and Acceleration.* If, at any time, reasonable grounds for insecurity arise with respect to Purchaser's performance of its payment or other obligations under the Agreement, Seller may demand immediate payment in full or a documentary letter of credit approved by a U.S. bank acceptable to Seller or other financial security for such payment or

other obligations. In addition, all amounts owed by Purchaser to Seller will be accelerated and payable immediately if Purchaser fails to make any payment on time and as otherwise required or if Purchaser sells or transfers the line of business for which the Goods are purchased or is a participant in a merger or other reorganization. Seller may require that Purchaser post security for any or all amounts to be paid if Seller has a good faith doubt as to Purchaser's ability to make prompt payment. If Purchaser does not post such security, Seller may cease performance of its obligations, and enforce its remedies for Purchaser's default.

K. *Export/Import Fees.* For all Goods to be delivered within the United States, export and import permits and licenses and the payment of all export and import duties and customs fees will be the responsibility of Seller. All export and import duties, fees, permits, licenses and the payment thereof for Goods to be delivered outside of the United States will be the responsibility of Purchaser.

L. *Purchaser's Cooperation.* All amounts due on installation or other event which requires the action or cooperation of Purchaser which Purchaser fails to timely provide will become due upon such failure.

M. *Letters of Credit.* If the Agreement permits or requires the use of a letter of credit, the letter of credit must be a documentary letter of credit assignable, irrevocable, confirmed by a United States bank with a payment office in Illinois acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading. Purchaser will pay all costs related to the letter of credit.

N. *Right of Offset.* Purchaser waives any right of offset or recoupment and will pay all amounts owed to Seller when due regardless of any claim of Purchaser regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts under written protest will not constitute a waiver by Purchaser of its claims.

O. *Allocation of Payments.* Seller may allocate payments from Purchaser among outstanding invoices in Seller's discretion.

P. *Exchange Rate.* Goods ordered under the Agreement which are procured by Seller from sources outside the United States are predicated on the rate of exchange in force at the time of the Quotation (or acceptance of purchase order if there is no Quotation). If the rate of exchange between the United States dollar and the currency of the country from which the Goods are procured by Seller varies between the date of the Quotation (or acceptance of purchase order if there is no Quotation) and delivery of the Goods, the price of the Goods will be increased or decreased accordingly to account for such variation in the rate of exchange.

Q. *Retention.* If retention of any portion of the price is permitted under the Agreement, it will be paid upon the earlier of written acceptance of the Goods and 30 days from substantial completion of Seller's obligations.

R. *Samples.* Samples of Goods and sample test reports will be provided by Seller only with Seller's written agreement and at prices established by Seller memorialized by written agreement with Purchaser.

S. *Cost and Price Breakdowns.* Any cost or price breakdown information provided by Seller for tooling or Goods are for reference only and are not to be construed as contractual values.

5. **Manufacturing.** Purchaser acknowledges and agrees that Seller may elect to provide Goods for supply under the Agreement or to procure such goods from third-party subcontractors or suppliers, and that sources may include countries outside the United States. To the extent that any requirements imposed by a governmental authority may limit or preclude the acceptance of products manufactured or sourced outside the United States (or from particular countries), or impose additional duties or other cost on products from such country of manufacture, Seller will have the option to shift the source of manufacture or terminate the Agreement without liability to Seller.

6. **Delivery.**

A. *Shipping Dates.* Shipping dates are estimates based on Seller's present engineering capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Purchaser's order. All shipping dates are approximate and will be computed from the date of entry of the order on Seller's books. Timely delivery is dependent on Purchaser providing Seller with the minimum lead time quoted by Seller and Seller's prompt receipt from Purchaser of a written purchase order or acceptance, letter of credit, down payment and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary to provide the Goods and/or to grant any credit terms in the Agreement.

B. *Method and Cost of Shipment.* Seller will deliver the Goods by tendering the Goods on its docks for placement in the possession of a carrier. Seller will generally follow Purchaser's shipping instructions, but may make reasonable changes thereto without liability and at Purchaser's cost. On Purchaser's request, Seller will obtain and send to Purchaser documents necessary to enable Purchaser to obtain insurance. Seller is not responsible to prepay transportation or insurance costs. Purchaser must pay all handling and other charges incidental to transportation. Purchaser must pay all expedite costs and fees including those that result from Purchaser's failure to provide Seller the quoted lead time, unless delay was exclusively due to the fault of Seller (in which case Seller will be responsible for the incremental difference between the normal delivery costs and expedited delivery costs). Purchaser is responsible for making any claim against the carrier and other handlers of the Goods after tendering Goods to a carrier at Seller's docks as provided above.

7. **Shipment Delays.**

A. *Delayed Shipment.* If shipment or other performance by Seller is delayed at the request of or due to actions or inactions of Purchaser, Seller may at its option hold the Goods (at Seller's facilities or elsewhere, in each case at Purchaser's expense and with Purchaser having risk of loss). In the event of any such delay in shipment, full and final payment for Goods is due and payable 30 days after Purchaser is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Purchaser by holding such Goods, Purchaser must accept shipment immediately.

B. *Delayed or Failed Delivery.* All inspection, delivery and other dates for Seller's performance are estimates only. Seller will not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: (i) shortages of raw materials or labor; (ii) the lack of usual means of transportation or any accidents, contingencies, or events at Seller's or its supplier's plants or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance; (iii) delays by Purchaser in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or

otherwise; (iv) failure of Seller's suppliers to perform including third party's failure to provide directed source supplies or (v) for clarity, any other force majeure event(s). If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or establish a new delivery schedule without liability to Seller.

C. *Effect.* This Section will be effective even as to events described in Subsections A and B which exist on the date of Quotation or of contract formation.

D. *Storage.* If Purchaser requests storage of Goods prior to final delivery, Seller will attempt to provide or arrange such storage, but a reasonable charge for storage as computed by Seller plus all expenditures incurred for space, insurance, and handling will be charged to Purchaser. Invoices for Goods stored at Purchaser's request will be provided at the beginning of the storage period and periodically thereafter, and payment will be due net 30 days from the date of invoice.

## 8. **Inspection, Testing and Rejection.**

A. *Testing.* If the Agreement expressly provides for Purchaser's inspection and/or acceptance of the Goods, Seller's standard test procedures to be conducted by Seller representatives for acceptance shall apply (unless other specific procedures have been specified in the Agreement). On request, Seller will quote to Purchaser additional charges required to conduct any additional procedures requested by Purchaser acceptable to Seller. All design, application engineering, parts, labor, service, if any, provided by Seller or its representatives (including those provided under purchase orders subsequent to the Agreement) related to the Goods (whether or not covered by warranty) are subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Seller may have access to the Goods during or after installation of the Goods. Seller is not under any duty to inspect the Goods for any defects or any improper use or modification of the Goods nor to correct or advise Purchaser of any such condition, use or modification. Any notification which may be given is voluntary and subject to all limitations and disclaimers in the Agreement.

B. *Rejection.* Purchaser will have 7 days after receipt of Goods to inspect and either accept or provide notice of objection and/or rejection. All manuals, drawings, specifications, technical documentation, samples, prototypes and Goods will be deemed approved and/or accepted by Purchaser if Purchaser does not provide a written objection and/or rejection within 7 days of receipt. If any Good(s) are rejected, notice must be received by Seller within 10 days after receipt Goods by Purchaser. Failure to provide such notice of objection or rejection will constitute an irrevocable acceptance by Purchaser of the applicable Good(s). Any objection and/or rejection by Purchaser must be in writing and state with specificity all defects and non-conformities upon which Purchaser will rely to support its rejection. **ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED.** Purchaser may reject the Goods only for material non-conformities and all immaterial non-conformities will be resolved under the express warranty. If Purchaser rejects any tender of the Goods, Purchaser must return them to Seller promptly following such request by Seller. A failure to so return following Seller's request constitutes an irrevocable acceptance. No attempted revocation of acceptance will be effective, and Purchaser will be limited to any available remedies specifically provided in the Agreement. If Purchaser timely notifies Seller of non-conforming Goods, as Purchaser's sole and exclusive remedy, Seller shall, in its discretion, either (i) replace such non-conforming Goods with conforming Goods, or (ii) credit or refund the price for such non-conforming Goods following return of those non-conforming Goods to Seller. There will be no limitation on the period of time

in which Seller may cure any non-conformity so long as Seller continues to make reasonable efforts to cure.

C. *Inspection.* If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon notification by Seller that the Goods are ready for inspection or testing, Purchaser will provide, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods at the place of manufacture for general compliance with the Agreement, and authorize shipment. If Purchaser fails to do so within 7 days following notification that the Goods are ready for inspection or testing, then Seller may, in its discretion, determine that Purchaser has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods.

D. *Testing Facilities.* Purchaser will provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement (or reasonably requested by Seller). If Purchaser fails to supply such items within the time required, Seller may supply them at Purchaser's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Purchaser for testing and/or inspection will be returned to Purchaser at Purchaser's cost, unless Purchaser authorizes their disposal. If the Goods include the necessary fixtures and tooling, the inspection and/or testing at the place of manufacture may be performed on production or other equipment similar to, but other than, that identified to the Agreement.

E. *Delivery Shortages.* Any claim by Purchaser for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within 7 days of receipt.

9. **Assumption of Risk.** Purchaser assumes all risks of using the Goods alone and in connection with other equipment. Seller has no responsibility to determine the adequacy of the foundation, utilities, skills of Purchaser's employees, contractors or other representatives, or any other matters. Purchaser assumes all risk of using the Goods in its location and in connection with other equipment or improvements.

#### 10. **Limited Warranty.**

A. *General.* Seller warrants to Purchaser that, as of the date of delivery and subject to the warranty requirements, limitations and disclaimers set forth in the Agreement, the Goods will materially conform to specifications and will be materially free from defects in materials and workmanship, which limited warranty shall survive for a period of 12 months from the date of delivery (i.e., any breach of such limited warranty must be discovered and reported within the 12 month period following delivery of the applicable Goods). Under no circumstances will the warranty period extend beyond 12 months from the date of delivery of the alleged non-conforming or defective Goods to Purchaser. For clarity, if and to the extent Goods are to be produced to Purchaser provided specifications, Seller makes no warranty whatsoever in respect of design, fitting or function of Goods. Seller's limited warranty is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Perishable items are excluded from Seller's limited warranty against defects. Seller's limited warranty is made to Purchaser only and not to any other persons or entities, including, without limitation, any subsequent supply chain purchasers of Goods or other products containing Goods, and Purchaser may not assign or Seller's limited warranty to any other person or entity (whether or not the Goods are to be used exclusively by Purchaser).



B. *Warranty Requirements.* Seller's limited warranty will apply only if the Goods: (i) have been installed, maintained and used in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed and approved for in writing by Seller; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods; (v) Purchaser has complied with its obligations in respect of safe use as provided in Section 12 of these Terms and Conditions of Sale; and (vi) have been fully paid for. If any of the foregoing conditions are not satisfied in respect of any Goods, Seller's limited warranty in respect of such Goods shall be null and void for all purposes.

C. *Records.* Purchaser shall create, maintain and make available to Seller permanent records of the installation, maintenance, use and disposition of the Goods.

D. *Procedure.* The Seller shall not be liable for a breach of the limited warranty set forth above unless: (i) Purchaser gives written notice of the defect, reasonably described, to Seller within 10 days of the time when Purchaser discovers or ought to have discovered the defect (in any case within the applicable warranty period); (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Purchaser (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Purchaser's claim that the Goods are defective. Seller may provide Purchaser with a return authorization number, and other instructions relating to the return of Goods. If requested by Seller, Purchaser shall issue a new purchase order or amendment to Seller for replacement parts, subject to Seller issuing a credit memo if Purchaser's claim for warranty coverage is approved. Purchaser must promptly comply with Seller's return instructions (including return of the Goods) or the claim will be deemed conclusively to have been abandoned. Purchaser is responsible for properly tagging, identifying and packing returned Goods. Goods will not be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Purchaser, and then determine whether the failure is due to a non-conformity with Seller's limited warranty or defect attributable to Seller.

E. *Remedies.* Subject to the warranty requirements, limitations and disclaimers contained in the Agreement, with respect to any determined breach of Seller's limited warranty in respect of Goods, Seller shall, in its sole but reasonable discretion, either (i) repair or replace the applicable defective Goods (in the event of repair, Seller may repair directly or through use of third party contractors), or (ii) credit or refund the price for such Goods provided that, if Seller so requests, Purchaser shall return such Goods to Seller. If applicable, Seller will also reimburse Purchaser for out of pocket costs incurred in the repair or replacement of defective Goods which had been installed during production of a new vehicle in an amount not to exceed the purchase price paid by Purchaser for the Goods that fail due to a defect covered by Seller's limited warranty. **THE REMEDIES SET FORTH IN THIS SECTION 10(E) SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(A).**

F. *Third Party Product Disclaimer.* Products manufactured and/or supplied by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. **THIRD PARTY PRODUCTS ARE NOT COVERED BY SELLER'S LIMITED WARRANTY SET FORTH IN SECTION 10(A), AND SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY,**

(B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (C) WARRANTY OF TITLE OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. If and to the extent permitted and upon request, Seller may assign to Purchaser all assignable warranties of Seller's suppliers relating to Third Party Products(s).

G. *Warranty Disclaimers.* EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 10(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. For clarity, Seller is not responsible for any errors or omissions or for any loss or damage resulting from any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information in respect of the Goods (except for as expressly included within the limited warranty set forth above in Section 10(A)). Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures unless specifically contained in an applicable Quotation. Seller further does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction.

#### 11. **Limitation of Liability.**

A. *General.* IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCREASED PRODUCTION COSTS, DAMAGE TO EQUIPMENT, TOOLING OR PREMISES, SUBSTITUTE EQUIPMENT, PRODUCTION INTERRUPTION OR STARTUP INTERRUPTION, IN ANY CASE WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNTS PAID TO SELLER FOR THE APPLICABLE GOODS SOLD HEREUNDER OR PURCHASER'S UNINSURED LOSS, WHICHEVER IS LESS. FURTHER, UNDER NO CIRCUMSTANCES WILL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR SUCH OTHER EVENT GIVING RISE TO THE CLAIM.

B. *Prior Written Consent.* Seller will not be liable for any costs related to a recall, service campaign or similar action without its prior written consent. Seller's maximum

obligation in any such activity (including the provision of replacement Goods and all other costs) will not exceed 2% of Seller's average annual sales to Purchaser of the specific Good.

C. *Scope of Liability.* Purchaser waives any right of indemnity or subrogation against Seller as to third-party claims in excess of any applicable insurance carried by Seller.

12. **Responsibility for Safety.** Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safety under all circumstances. PURCHASER SHALL INSTALL AND USE THE SERVICES IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE. It is Purchaser's or other user's responsibility to provide all proper dies, devices, tools, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, setup, or service of the Goods. Purchaser shall comply ANSI Safety Standards, OSHA and similar state regulations, and other sources to insure the safe use of the Goods. If Purchaser desires or requires modifications to Goods necessary to comply with OSHA or any other law or regulation, Purchaser shall advise Seller of the same in writing (upon which, if Seller agrees to accommodate such modifications, a new Quotation will be submitted and a new contract formed in respect of modified Goods).

13. **Indemnification; Insurance.**

A. *Indemnification.* PURCHASER SHALL INDEMNIFY AND HOLD SELLER AND EACH OF ITS OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, AFFILIATES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, DEMANDS, LEGAL PROCEEDINGS, JUDGMENTS, SETTLEMENTS, SUMS, COSTS, LIABILITIES, LOSSES, OBLIGATIONS, DAMAGES, PENALTIES, FINES, COSTS AND OTHER EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES) RELATING TO, ARISING OUT OF OR RESULTING FROM (I) USE OF ANY GOODS BY PURCHASER OR ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM NEGLIGENCE OR MISCONDUCT BY PURCHASER OR ITS EMPLOYEES, AGENTS OR REPRESENTATIVES, OR THIRD PARTY INSTALLERS/INTEGRATORS CONTRACTED BY PURCHASER, (II) ANY ACT BY PURCHASER OR ITS EMPLOYEES, AGENTS OR REPRESENTATIVES WHICH CAUSES THE SELLER'S LIMITED WARRANTIES CONTAINED IN THESE TERMS AND CONDITIONS TO BE NULL AND VOID, (III) PURCHASER'S BREACH OR VIOLATION ANY OF THE REPRESENTATIONS, WARRANTIES OR OTHER OBLIGATIONS CONTAINED IN THE AGREEMENT, AND (IV) ANY NON-COMPLIANCE WITH LAW ON THE PART OF PURCHASER OR ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES. IF ANY CLAIM SHOULD BE ASSERTED OR ACTION COMMENCED AGAINST SELLER FOR WHICH SELLER IS ENTITLED TO INDEMNIFICATION HEREUNDER, PURCHASER SHALL, UPON SELLER'S DEMAND, PROMPTLY UNDERTAKE THE DEFENSE OF SUCH CLAIM OR ACTION, EMPLOYING COUNSEL SATISFACTORY TO SELLER OR AGREES THAT SELLER MAY ELECT TO DEFEND THE SAME ON ITS OWN BEHALF. IN EITHER CASE, PURCHASER SHALL, UPON DEMAND, PAY ALL REASONABLE ATTORNEYS FEES AND OTHER COSTS OR EXPENSES INCURRED BY SELLER IN CONNECTION WITH SUCH DEFENSE, INCLUDING, BUT NOT LIMITED TO, ANY JUDGMENT OR AWARD RESULTING FROM

ANY SUCH CLAIM OR ACTION AND ANY SETTLEMENT PAID BY SELLER WITH PURCHASER'S CONSENT.

B. *Unsafe Use.* Purchaser will notify Seller promptly, and in any event within 30 days, of any accident or malfunction involving Goods which results in personal injury or damage to property and will cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods and Purchaser's reports regarding the Goods for Seller's inspection.

C. *Insurance.* During the term of the Agreement and for a period of one year thereafter, Purchaser shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability, completed operations and contractual liability) in a sum no less than \$1,000,000 per occurrence or \$2,000,000 general aggregate on a claims made basis with financially sound and reputable insurers. Upon Seller's request, Purchaser shall provide Seller with a certificate of insurance from Purchaser's insurer evidencing the insurance coverage specified in these Terms and Conditions of Sale. Purchaser shall provide Seller with 10 days' advance written notice in the event of a cancellation or material change in Purchaser's insurance policy.

#### 14. **Confidential and Proprietary Information.**

A. *Confidentiality.* All non-public, confidential or proprietary information of Seller and/or its licensors ("Confidential Information"), including but not limited to specifications, drawings, schematics, bills of material, analysis, test results, models, recommendations, technologies, samples, proposals, plans patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Purchaser at any time (including during bidding, negotiating and/or performing the Agreement), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with the Agreement is strictly confidential, solely for the use of performing the Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Only those employees and contractors of Purchaser having a need-to-know shall be granted access to any Confidential Information, and any such employees and contractors of Purchaser shall be bound by the same obligations of confidentiality contained in these Terms and Conditions of Sale. Upon Seller's request, Purchaser shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Purchaser at the time of disclosure; or (c) rightfully obtained by Purchaser on a non-confidential basis from a third party. Purchaser does not obtain any license or other rights in respect of Seller's confidential or proprietary information, except as expressly contemplated by the Agreement.

B. *Drawings and Calculations.* Unless otherwise expressly contained in a Quotation, Seller shall not be obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof. Purchaser acknowledges that any information disclosed to Seller has not and will not be considered by Purchaser to be confidential or contain information protected as a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered by Purchaser to Seller at or prior to the time of the disclosure.

15. **Intellectual Property.** Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations will remain the exclusive

property of Seller and its licensors, as the case may be. Nothing in the Agreement will be deemed to grant Purchaser any license or any other rights in such Intellectual Property or in any Confidential Information of Seller. The term "Intellectual Property" means all industrial and other intellectual property and intellectual property rights, including without limitation: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design and process patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in progress, research and development information; and (v) all other proprietary rights relating to the foregoing. Any Intellectual Property developed by Seller in connection with the performance of the Agreement will be from inception the sole property of Seller, regardless of whether or not Seller charges for design, research, development, testing or similar services. Seller will be under no obligation to refrain from using in its business any Intellectual Property, including any information, manufacturing processes or unpatented disclosures which may pass to Seller in performance of the Agreement, except as expressly provided in accordance with the last sentence of Section 14(B).

Any design or specifications provided by Seller is based on information provided by Purchaser. Seller may rely entirely on information provided by Purchaser and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Purchaser or any third party. Purchaser's approval of drawings and/or prototypes constitutes Purchaser's acceptance and waiver of any responsibility for a failure to consider information provided by Purchaser. Any modifications of drawings, prototypes and other work of Seller after approval by Purchaser will be at Purchaser's expense at Seller's normal rates for services and materials.

**16. Purchaser's Property; Security Interest.** "Purchaser's Property" means tools, jigs, dies, gauges, fixtures, molds and patterns owned and fully paid for by Purchaser and provided to Seller for the purposes of manufacturing Goods or performing services for Purchaser. If Purchaser's Property wears out under normal use, Purchaser shall promptly supply to Seller new or repaired Purchaser's Property. Seller will release Purchaser's Property upon request to Purchaser, provided that: (i) Purchaser has fully paid Seller for all Goods produced by Purchaser's Property and delivered to Purchaser (ii) Purchaser has fully paid for all Goods, raw materials and work in process produced and/or associated with Purchaser's Property and falling within Firm commitments (iii) Purchaser's Property is not subject to any lien asserted by Seller or any third party and (iv) Purchaser releases Seller from any obligation for further production of the Goods that Seller produced with Purchaser's Property. If (i)-(iv) are satisfied, and upon written request to release by Purchaser, Seller, within 30 days of receipt of Purchaser's request, will make Purchaser's Property available for pick up by Purchaser. Purchaser is responsible for all costs associated with removing and transporting Purchaser's Property from Seller's premises including but not limited to freight and packaging. Under no circumstances is Seller responsible for any damage that occurs to Purchaser's Property. If Purchaser does not remove Purchaser's Property from Seller's premises within 20 days after Seller gives notice to Purchaser that Purchaser's Property is ready for removal, Seller may dispose of Purchaser's Property as it sees fit with without liability to Seller. Purchaser must insure Purchaser's Property and other property delivered to Seller against all risks and liability and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use, transportation or storage of such property.

As collateral security for amounts owed to Seller, to the maximum extent permitted by law, Purchaser hereby grants to Seller a security interest in Purchaser's Property and to the Goods that have not been paid for in full (such Goods, collectively with Purchaser's Property, the "Secured

Assets”), including all accessions thereto, modifications thereof and proceeds of the Secured Assets. Purchaser authorizes Seller to file any uniform commercial code financing statements necessary to perfect such security interest in the Secured Assets, and Purchaser shall sign financing statements and other documents, evidencing and confirming the security interests granted hereunder. Purchaser grants Seller an irrevocable power of attorney to sign Purchaser’s name to a financing statement if necessary or convenient to perfect Seller’s security interest. Upon reasonable request, (i) Purchaser shall provide a lien waiver from all third parties to whom the Secured Assets may be delivered, and (ii) Purchaser shall provide a landlord’s waiver of any lien rights at the premises to which Secured Assets are to be installed. In case of a default by Purchaser, Seller may peaceably enter the premises of Purchaser and others and take other actions to repossess or render inoperable all Secured Assets in which it has a security interest. In case of a default by Purchaser, Purchaser irrevocably appoints Seller as its agent to obtain possession of the Secured Assets and documents related thereto. Seller may install and activate procedures or devices to make the Secured Assets or software non-operative upon Purchaser’s default. The Secured Assets will be and remain strictly personal property and retain their character as such, no matter whether on permanent foundation or in whatever manner affixed or attached to building or structure, or for what purpose the Secured Assets may be used. Purchaser will maintain the Secured Assets in a segregated area and not co-mingle any Secured Assets (until fully paid for). Purchaser may not sell, exchange, transfer, convey, mortgage, pledge, hypothecate or grant a security interest in any Secured Assets which are subject to the Agreement if payment thereof will not have been made in full to Seller. Purchaser will immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Secured Assets (until the price of which has been paid in full to Seller).

**17. Additional Representations, Warranties and Covenants of Purchaser.**

Purchaser represents, warrants and covenants to Seller, which representations, warranties and covenants shall survive the termination or expiration of the Agreement, as follows: (i) Purchaser is and will continue to be in material compliance with all applicable laws and regulations relating to the Agreement, the Goods and the operation of Purchaser’s business; (ii) Purchaser has obtained and will maintain all licenses, authorizations, approvals, consents or permits requirement by applicable law to conduct its business generally and to perform its obligations under the Agreement; (iii) Purchaser is not insolvent and is paying all of its debts as they become due, and Purchaser will notify Seller at any time in which Purchaser becomes insolvent before the delivery of any Goods; (iv) all financial information provided by Purchaser to Seller is and will continue to be true and correct in all material respects; (v) if and to the extent that Purchaser provides to Seller any designs or other specifications in respect of Goods, Purchaser has legal ownership of, or a valid license to use, all of such designs and other specifications and any such designs or specifications do not and will not infringe on or otherwise violate, any industrial or intellectual property rights of any third party.

**18. United States Government Regulations.** Purchaser may not engage in any transaction with respect to the Goods, by way of resale, lease, shipment or otherwise, which violates any statute or regulation of the United States of America.

**19. Breach.**

A. *Default.* If Purchaser breaches or defaults in the performance of its obligations of the Agreement, if Purchaser advises Seller that it will breach or default in the performance of its obligations, or if any action is started by or against Purchaser seeking the appointment of a trustee or receiver or the entry of an order for debtor’s relief for Purchaser, Seller may cease performance of its obligations, recover the Goods in transit or delivered, disable

delivered Goods, and otherwise enforce its remedies for Purchaser's default. Unless otherwise explicitly specified, all remedies available to Seller under the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. The failure or delay of Seller to insist upon Purchaser's strict performance of the provisions in the Agreement or to exercise in any respect any right, power, or remedy provided for under the Agreement shall not operate as a waiver or relinquishment thereof, nor shall any single or partial exercise of any right, power, or remedy preclude other or further exercise thereof, or the exercise of any other right, power, or remedy.

B. *Attorneys' fees.* If Seller brings any action or proceeding to enforce any provision of the Agreement or to obtain damages as a result of a breach of the Agreement or to enjoin any breach of the Agreement and prevails in any such action, or if Purchaser brings an action or proceeding against Seller to enforce any provision of the Agreement or to obtain damages as a result of the Agreement and Seller prevails in the defense of any such action, in either case, then Seller, as the prevailing party in such action(s), shall be entitled to recovery of its reasonable costs and expenses (including attorneys' fees) incurred in connection with such action or proceeding from Purchaser.

20. **Claims.** Communications concerning disputed debts or other claims, including an instrument tendered as full satisfaction of a debt or must be delivered to the president of Seller.

21. **Service Parts.** Notwithstanding anything contained in the Agreement to the contrary, the Agreement shall not cover post-production service parts. In the event Purchaser requires Goods beyond the date of last production of an applicable vehicle model for which Goods were supplied, the purchase and sale of such service parts will be subject to mutual negotiation and agreement.

22. **Force Majeure.** Notwithstanding anything contained in the Agreement to the contrary, Seller shall not be liable or responsible to Purchaser or any other person or entity for any losses or damages, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in Seller's performance under the Agreement or any term of the Agreement when and to the extent such failure or delay is caused by, or results from, acts or circumstances beyond the reasonable control of Seller, including, without limitation, any outbreak, pandemic, epidemic, health crisis or public health event (including relating to the coronavirus and resulting disease (a/k/a COVID-19) or any variation, adaption, mutation or worsening thereof (and regardless of any foreseeability thereof)), any acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage, default of Seller's sub-tier suppliers, and/or Seller's inability or economic hardship in acquiring raw materials, components or processing necessary for the manufacture and delivery of Goods.

23. **Commercial Activity; Absence of Immunity.** Purchaser represents that it is subject to civil and commercial law with respect to its obligations, and the making and performance by it of the Agreement constitute private and commercial acts rather than public or governmental acts. Purchaser represents that it and its property are not entitled to immunity on the grounds of sovereignty or otherwise from the jurisdiction of any court or from any action, suit, set-off or proceeding, or service of process in connection otherwise, arising under the Agreement.

24. **Limitations of Actions.** Subject to the other limitations contained in the Agreement, a proceeding by Purchaser for breach of the Agreement or any other right against Seller arising from or in connection with the Agreement cannot be filed or maintained by Purchaser unless: (i) it is commenced within one year after the cause of action has accrued; (ii) Purchaser has given timely written notice to Seller of the details of its claim as provided in these Terms and Conditions of Sale; and (iii) Purchaser pays all amounts due to Seller or deposits the unpaid portion of the purchase price (if applicable) with the tribunal pending final adjudication.

25. **Choice of Law.** The agreement is governed, construed and enforced under the laws of the state of Illinois, without giving effect to any choice of law or conflict of law provision or rule (whether in the State of Illinois or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Illinois. The U.N. Convention on the International Sales of Goods does not apply.

26. **Jurisdiction.** THE COURTS OF ILLINOIS HAVE EXCLUSIVE JURISDICTION OVER PURCHASER AND SELLER AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT, UNLESS WAIVED IN A WRITING SIGNED BY SELLER AND SUBJECT TO ANY RIGHT OF ARBITRATION WHICH MAY BE PROVIDED BY THE AGREEMENT. Purchaser and Seller stipulate to the convenience of Illinois courts in general, and the Cook County Circuit Court and United States District Court for the Northern District of Illinois, as to all litigation. If Purchaser does not maintain a registered office or agent in the United States, Purchaser irrevocably appoints the Secretary of State of the state whose law applies and/or CT Corporation as Purchaser's agent to receive process in any proceeding arising under or related to the Agreement. Any declaration of unenforceability of a provision will be as narrow as possible and will not affect the enforceability of the other provisions. A tribunal with jurisdiction reform a provision of the Agreement, at the request of Seller, to the extent minimally required for enforcement.

27. **Arbitration.** At Seller's election, all controversies and claims arising out of or relating to the Agreement, or the breach thereof, will be settled solely by arbitration held in Chicago, Illinois, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided Seller may also elect to institute, prior to formation of the arbitration panel, an action for a claim and delivery or replevin action to enforce its security or other interests in the Goods. The arbitrator(s) may enter an interim award that the Goods be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereon. No demand for arbitration hereunder may be filed by Purchaser. The arbitrator(s) will be bound by the terms of the Agreement and will not apply any principles of ex aequo et bono nor allow any claims not specifically permitted by the Agreement. The arbitrator(s) may include the fees of the arbitration tribunal and arbitrators in an award. The arbitration proceedings and the award will be confidential.

28. **Severability.** If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability does not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify the Agreement to effect the original intent of the parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.



29. **Assignment.** No right or interest in the Agreement may be assigned by Purchaser without the prior written consent of the Seller. Any assignment attempted by Purchaser will be void and ineffective for all purposes unless made in conformity with this Section.

30. **Third Party Beneficiaries.** The Agreement is solely for the benefit of Purchaser and Seller and their respective successors and permitted assigns, and nothing contained herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right benefit or remedy of any nature; provided however, that notwithstanding the foregoing to the contrary, all disclaimers and limitations applicable to Seller will be also for the benefit of Seller's affiliates, agents, employees, contractors, and suppliers.

31. **Termination; Survival of Provisions.** In addition to any remedies that may be provided under the Agreement, Seller may terminate the Agreement with immediate effect upon written notice to Purchaser if Purchaser: (i) fails to pay any amount when due under the Agreement and such failure continues for 10 days after Purchaser's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with the terms of the Agreement, 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. Provisions of the Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Agreement.

32. **Acknowledgments.** Purchaser and Seller acknowledge that: (i) they are merchants in respect to the Goods; (ii) they have had an opportunity to review the Agreement; and (iii) the provisions of the Agreement are reasonable when considered as a whole.