

GENERAL TERMS AND CONDITIONS OF SALE

1. Application

These General Terms and Conditions of Sale (“General Terms”) 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, except as otherwise specifically provided in writing by Seller. Any services to be provided by Seller, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included as part of an installation), are considered ancillary to a sale of goods and shall be treated for the purpose of these General Terms as goods (“goods and services together hereinafter “Goods”).
- (d) These General Terms shall control all dealings between Seller and Buyer, are incorporated into and made a part of the Agreement as defined in ¶2. below, and all disputes related thereto shall be resolved first by turning to the language of Seller’s documents and these General Terms. Should the Seller’s documents and these General Terms not address the issue, then the Uniform Commercial Code (“UCC”) as enacted in the State of Tennessee at the time of the transaction shall control. Buyer acknowledges that any documents of Buyer’s pertaining to any purchase from Seller shall not control and that Seller’s documents and the General Terms herein constitute the only terms of sales between Seller and Buyer.

2. Formation

A written quotation issued by Seller is an offer to sell. Buyer accepts such offer and an Agreement is formed by any of the following:

- (a) signing and returning to Seller a copy of the 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 the Goods (including instructions to bill and hold) referenced in the quotation;
- (d) failing to cancel a pending purchase order within 10 days after placing the order;
- (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 Buyer’s acceptance of these General Terms.

3. Integration and Modification

A. Revocation

The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer’s acceptance of Seller’s quotation (according to its terms), Seller’s actions in reliance on Buyer’s oral acceptance of a written or oral quotation, or Buyer’s receipt of the Goods, constitutes a binding contract under the terms of the Agreement.

B. Complete Integration

The Agreement is a final, complete and exclusive statement of the agreement of Buyer and Seller, and the terms of the Agreement can be changed only by a writing signed by Seller's authorized employee at its home office agreeing to such change. An order or an amendment pursuant to the Agreement submitted by Buyer orally or in a purchase order or other writing may be accepted or filled by Seller, but shall not change the terms of the agreement unless Seller specifically advises Buyer in writing. Seller will not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to any new terms or conditions proposed by Buyer.

C. Minor Modifications

Seller may correct unilaterally mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or custom in the trade shall not modify or waive any of the General Terms.

D. Parties

The Agreement is only for the benefit of Buyer and Seller, except all Seller's disclaimers and limitations of liability shall also be for the benefit of Seller's affiliates, agents, employees, contractors, and suppliers.

E. Acknowledgments

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

F. Directed Source Supplies

Buyer may direct Seller to obtain components or services from third parties (Directed Source Suppliers) for use in the provision of the Goods. Seller makes no warranty for and disclaims all liability for any claims arising from Directed Source Supplies or from the failure of the third party to timely provide Directed Source Supplies. If a Directed Source Supplier which is to provide Directed Source Supplies fails or refuses to provide Goods, Seller will be able to assert *Force Majeure* under Section 31.

4. Authority of Seller's Agents

No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, 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, it is not a part of the basis of the Agreement.

5. Prices, Payment and Risk of Loss.

A. Prices

Prices contained in individual written quotations or proposals are firm only for a period stated therein and otherwise for 30 days from the date of the quotation. After the firm price period, prices are subject to change, and Buyer should inquire of Seller as to the price and request a written confirmation or revision. Prices do not include taxes and, unless exempt, Buyer is responsible for and must pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement. All prices are in

United States dollars and must be paid in U.S. dollars at the location specified in Seller's invoice. Buyer is responsible for and must pay all government fees levied on the installation and inspection of the Goods. Should Seller, at its option, advance funds and pay any such items, Buyer shall promptly reimburse Seller upon receipt of Seller's invoices for any such items.

B. Risk of Loss and Title.

All Goods will be delivered F.O.B. Seller's dock unless otherwise stated in a writing signed by Seller. Risk of loss passes to Buyer upon tender of the Goods to a carrier whether or not Seller prepays shipping charges. Buyer is responsible for selecting its preferred freight carriers. Buyer accepts all responsibility for their performance including but not limited to delays, damage and/or scheduling errors, whatever the cause. Any breach by Seller of the Agreement will not affect the passing of the risk of loss to Buyer, notwithstanding any provision of law to the contrary. Regardless of the transfer of the risk of loss to Buyer, title to the Goods will remain with Seller until Buyer pays for the Goods in full.

C. Price Adjustments

If Buyer requests or otherwise cause any delay in delivery beyond the date of delivery scheduled at the time of entry of the order, Seller may adjust the price under the provisions of this subsection. Buyer and Seller further agree that the pricing initially set out in the Agreement is only valid for 90 days and that at the expiration of each 90-day period following agreement, Seller may unilaterally adjust and condition further supply on a new price. If the price adjustment is based on an increase in cost of raw materials, the new price will include the difference between the raw material cost factored into the prior 90-day period pricing and the current raw material cost as determined by the Mid-West Metal Market Index where applicable. If for any 90-day period the actual volumes are less than 80% of the volumes supporting and stated in Seller's quote, the price for the subsequent 90-day period will be adjusted as necessary over the estimated remaining production to compensate Seller for any lost volume. Prices for goods and tooling are valid only for volumes quoted. However, Seller may provide additional volume of 15% for short-term surge requirements for 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 adjustment.

D. Changes at Buyer's Request

If after the date of any quotation Buyer requires changes to the Goods, changes in the shipment schedule, or other performance by Seller, Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, treating, coating, plating, material or process capability data, and logistics requests including but not limited to Advanced Shipping Notices. Seller is not obligated to perform any such changes, but if Seller complies with such requested changes, Seller shall be compensated for them.

E. Shipping and Packaging

Except as otherwise provided in the Agreement, 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 in the price, any increase in rates for such services becoming

effective after the date the price is quoted to Buyer will be added to the price. All Goods will be packed for shipment by Seller in accordance with its standard practices. Whether or not Seller arranges shipping, it is Buyer's responsibility to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods. Buyer will pay Seller for the additional procedures and materials. Buyer will pay Seller for 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. Payment Terms

Payment for all Goods produced for Buyer must be made 30 days from date of shipment unless Seller expressly agrees otherwise in a writing signed by Seller's authorized employee at its home office agreeing to such change.

G. Payment Demand and Acceleration

If at any time there arise grounds for insecurity arise, reasonable to Seller, with respect to Buyer's ability to perform its obligations hereunder, Seller may demand Buyer to take such action as necessary to protect Seller. Should the grounds be Buyer's ability to pay, Seller may demand immediate payment in full, a documentary letter of credit approved by a U.S. bank acceptable to Seller, or other financial security for payment. If Buyer fails to make any payment on time and as otherwise required, if Buyer sells or transfers the line of business for which the Goods are purchased, or Buyer is a participant in a merger or other reorganization, all amounts owed by Buyer to Seller will be accelerated and immediately due and payable.

H. Export/Import Fees

All export and import permits and licenses, and all export and import duties and customs fees will be the responsibility of Seller, if Seller is obligated by the agreement to deliver the Goods within the United States. All export and import duties, fees, permits, licenses, etc. for Goods to be delivered outside of the United States will be the responsibility of Buyer.

I. Invoices

Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer must pay all invoices net 30 days after the date of shipment. Seller may change any payment term in the agreement to Buyer on seven days' written notice.

J. 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 Buyer must pay timely the price for each installment which is delivered. Any Goods indicated as backordered will be considered an installment delivery. A failure to pay for an installment when due shall be a material anticipatory breach of other installments by Buyer.

K. Interest

All amounts not paid to Seller when due will incur interest at 1.5% per month. Upon Buyer's default under the agreement interest on all Buyer's obligations will accrue at the highest rate allowed by law.

L. Buyer's Cooperation

If Buyer fails to cooperate with any installation of Goods, or otherwise fails to cooperate with Seller in the sale, Seller's performance will be deemed complete and all amounts which would have been due on installation or other event in which Buyer fails to cooperate timely will immediately become due and payable.

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 Tennessee, acceptable to Seller, payable in installments if the Agreement requires, and require payment to Seller on submission of Seller's invoice and bill of lading. Buyer will pay all costs related to the letter of credit.

N. Right of Offset

Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. "Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by or is under common control with such Person. "Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, Governmental Body or other organization or entity. For purposes of this Agreement, each Selling Party is an Affiliate of each other Selling Party. Buyer waives any right of offset or recoupment and will pay all amounts owed to Seller when due regardless of any claim of Buyer 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 Buyer of its claims.

O. Allocation of Payments

Seller may allocate payments from Buyer 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 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 Order if there is no quotation) and delivery of the Goods, the price of the Goods will be increased or decreased accordingly to compensate Seller 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 or 30 days from substantial completion of Seller's obligations.

R. Samples

Samples of Goods and sample test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or written agreement with Buyer.

S. Minimum Orders

Minimum dollar value for order is \$250.00 for fasteners, and \$150.00 for tools or tool parts. Minimum quantity for fasteners is a standard carton quantity, and all orders must be in a multiple of same. Seller may adjust order quantities at time of shipment to comply

with these requirements. Seller reserves the right to enforce a minimum order quantity (MOQ) that may result in a minimum order value greater than \$250.00.

5. Manufacturing

Buyer acknowledges and agrees that Seller may elect to manufacture Goods for supply under this Agreement or to procure such goods from third-party subcontractors or suppliers, and that source for such goods 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 claim a *Force Majeure* under paragraph 31 and terminate the Agreement without liability.

6. Delivery

A. Shipping Dates

Shipping dates are estimates based on Seller's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer'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 Buyer providing Seller with the minimum lead time quoted by Seller and Seller's prompt receipt from Buyer 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 and, without liability, will make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost. On Buyer's request, Seller will obtain and send to Buyer documents necessary to enable Buyer to obtain insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer must pay all handling and other charges incidental to transportation. Buyer must pay all costs and fees to expedite including those that result from Buyer'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. Buyer is responsible for making any claim against the carrier and other handlers of the Goods after delivery to Buyer as provided above.

7. Delay of Shipment or Performance Excused for Various Reasons

A. Delayed Shipment

If shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time it is ready for

shipment. In the event of any such delay in shipment, full and final payment for Goods is due and payable 30 days after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer must accept shipment immediately.

B. Delayed or Failed Delivery

All inspection, delivery and other dates for Seller's performance are estimates only. In addition, 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) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order; (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, (iv) fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant 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; (v) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; (vi) failure of Seller's suppliers to perform including third party's failure to provide Directed Source Supplies. 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 waive such delay and establish a new delivery schedule.

C. Supply Allocation

Whenever Seller's supply of the Goods, materials or means of production is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned above in Subsections A and B, Seller, in its sole discretion, may allocate its supply to its own use or other customers.

D. Effect

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

E. Storage

If Buyer 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 Buyer. Invoices for Products stored at Buyer'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 Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative will be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. On request, Seller will quote to Buyer additional charges required to conduct any additional procedures requested by Buyer which may be acceptable to Seller.

B. Rejection

All manuals, drawings, specifications, technical documentation, samples, prototypes and Goods will be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven days of receipt or other reasonable time established by Seller. Buyer will have seven days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, notice must be given to Seller so that it will arrive no later than 10 days after receipt of the item by Buyer. Failure to so act will constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. All defects and non-conformities which are not so specified are waived. Buyer may reject the Goods only for material non-conformities and all non-material non-conformities will be resolved under the express warranty. If Buyer rejects any tender of the Goods, and if requested by Seller, Buyer must return them to Seller, express, collect, within three days after such request. A failure to so return constitutes an irrevocable acceptance. No attempted revocation of acceptance will be effective, and Buyer will be limited to any available remedies specifically provided in the Agreement. There will be no limitation on the period of time in which Seller may cure any nonconformity or breach, provided it continues to make reasonable efforts to cure.

C. Inspectors

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, Buyer will provide at the place of manufacture, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check the Goods for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven days, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense.

D. Testing Facilities

Buyer 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 requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Buyer for testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer 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 Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven days of receipt. Seller reserves the right to vary shipment quantities +/- 10% from the order quantity.

F. Expenses

Any expense incurred by Buyer in the inspection or testing of the Goods will be paid by Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

9. Installation

A. General

Unless otherwise provided in the Agreement, all Goods must be assembled and installed by and at the expense of Buyer.

B. Assumption of Risk

Buyer 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 Buyer's staff, or any other matter.

C. Risks

Buyer assumes all risk of using the Goods in its location and in connection with other equipment or improvements.

10. General Express Warranties

A. General

Seller warrants to Buyer only that, to the extent the Goods are manufactured by Seller, the Goods will be free from defects in materials and workmanship, excluding design, at the time of delivery. Seller will repair or replace Goods that fail due solely to manufacturing defects in materials and workmanship, which are discovered within 12 months from the delivery date to Buyer. Under no circumstances will the warranty period extend beyond 12 months from the date of delivery. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Accordingly the warranty is only against such defects and does not cover any other failures such as, but not limited to, those due to normal wear and tear, normal maintenance and unknown causes. When Buyer purchases to his own specifications, Seller will not be responsible for the design and fitting of Goods, and/or the function of Goods. Perishable items are excluded from this warranty against defects.

B. Nonmaterial Changes

Seller warrants to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated in these General Terms and Seller's published and internal standards. Seller may, in its discretion, also rely on any generally accepted industry standards.

C. Warranty Requirements

Seller's warranties will apply only if the Goods:

- (i) have been installed, maintained and used in conformity with the highest industry practices and in accordance with Metlog recommended installation methods;
- (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; and

(v) have been fully paid for.

D. Records

Buyer must create, maintain and make available to Seller upon request permanent records of the installation, maintenance, use and disposition of the Goods.

11. Patent Warranties

Seller disclaims any implied warranty of non-infringement. If the designs or specifications are furnished by Buyer, Buyer warrants that they do not infringe on any patent or other intellectual property right, and must indemnify and hold harmless Seller from any claims of infringement against Seller relating to their use by Seller.

12. Disclaimer and Limitation of Express Warranties

There are no express warranties other than those contained in these General Terms and, if applicable, in the Agreement. Warranties are not assignable. Any representations as to performance and other matters, except as contained in the Agreement, are for illustrative purposes only, and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third-party beneficiaries to any warranties contained in these General Terms or in any Agreement. Seller does not warrant any portion of the Goods not conceived, designed, developed or manufactured by Seller (whether or not specified by Buyer), but Seller will assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. 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. Such information provided by Seller is intended for general information only. 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 the agreement.

13. Remedies and Limitation of Seller's Liability

A. General

Defective or non-conforming Goods or parts thereof for which a claim is made during the express warranty period will be repaired, or replaced by Seller at Seller's plant without any additional charge and shipped to Buyer, F.O.B. Seller's plant, for reinstallation by Buyer at its cost, subject to the terms herein. Buyer must return Goods to Seller within the warranty period, transportation charges prepaid by Buyer. Seller will examine the Goods and determine whether they are defective or not in conformity with any express warranty. Seller will reimburse Buyer for costs incurred in the repair or replacement of installed Goods covered by warranty in an amount not to exceed the purchase price. To be deemed defective or non-conforming, Seller must be able to duplicate the alleged failure. Seller will then discuss the potential causes with Buyer, and determine whether the failure is due to non-conformity or a defect attributable to Seller. If Seller elects, In lieu of repair or replacement, Seller may in case of nonconformity or defect, keep the Goods and refund the purchase price. Seller may provide such repairs itself or through

its third-party contractors. Buyer's remedies for breach of warranty are to those provided in this Section. Under no circumstances will Seller be liable for exemplary, punitive, special, consequential or incidental damages, including but not limited to: lost profits or revenues; increased costs; damage to equipment, tooling, premises, or work-in-process; cost of capital; cost of purchased power; substitute or additional equipment, facilities or services, production interruption or start-up; or the claims of third parties for such damages. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise, except as specifically provided by the UCC codified in the statutes of the State of Tennessee and as modified and limited in these General Terms. The replacement or repair of Goods by Seller does not give rise to any new warranty, and the warranty period provided for in these General Terms will not be extended by the length of any period from the date defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer.

B. Buyer's Obligations

Buyer must request from Seller warranty coverage, a return authorization number, and other instructions relating to the return of Goods. If requested by Seller, Buyer must issue a new purchase order or amendment to Seller for replacement parts, for which Seller will issue a credit memo if Buyer's warranty claim is approved. Buyer must return the Goods and comply with Seller's return instructions within 30 days of notice to Seller of the claim or the claim will conclusively be deemed abandoned. Buyer is responsible for properly tagging, identifying and packing returned Goods. Goods returned without compliance with the above procedures will be returned to sender at sender's cost.

C. Defense and Indemnification

To the extent claims are made of Seller or Seller is found liable, Buyer agrees to defend and indemnify Seller from all claims, damages, losses and expenses incurred: (i) as a result of the use or disclosure of Seller's confidential or proprietary information by Buyer or its contractors (except in the performance of the Agreement); or (ii) as a result of advice, direction, information and/or specifications furnished by Seller to Buyer's contractors.

D. 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 Buyer of the specific Goods.

E. Scope of Liability

Under no circumstance will Seller's liability exceed Buyer's uninsured loss. Buyer waives any right of subrogation. Buyer waives any right of indemnity or subrogation as to third-party claims, in excess of any applicable insurance carried by Seller.

F. Substantial Compliance

Seller will not be liable for any damages for breach of any provision with which it has substantially complied.

14. Disclaimer of Implied Warranties

There are no warranties which extend beyond the express warranties contained in the General Terms or the Agreement. Seller disclaims all implied warranties and similar obligations (other than good title) including but not limited to those of fitness for a particular purpose and merchantability, whether otherwise arising by law, custom, usage, trade practice, course of dealing, or course of performance. Buyer affirms that it has not relied upon Seller's skill or judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in the agreement. **SELLER MAKES NO WARRANTY OF MERCHANTABILITY OF THE GOODS OR OF THE FITNESS OF THE GOODS FOR ANY PURPOSE.** Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer's approval of drawings and/or prototypes constitutes Buyer's acceptance and waiver of any claim related thereto. Any modifications of drawings, prototypes and other work of Seller after approval by Buyer will be at Buyer's expense at Seller's normal rates for services and materials. Seller 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 beyond the specific express warranties in the Agreement.

15. Design, Parts, Service and Training Provided by Seller

All design, application, engineering, parts, labor, service, if any, provided by Seller or its agents and contractors (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 these General Terms or the Agreement. Buyer will pay Seller for all non-warranty work in advance or upon such other terms as may be agreed. 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 or to correct or advise Buyer of any such condition, use or modification. However, in the event that Seller does inspect the Goods, Buyer agrees that such inspection is purely voluntary, invokes no duty on Seller's part, and Seller's actions are subject to all limitations and disclaimers in the General Terms or the Agreement.

16. Responsibility for Safety

A. Buyer's Obligations

Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safety under all circumstances. Buyer must install and use the goods 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 Buyer's or other user's responsibility to provide all proper dies, devices, tools, training, and means necessary to effectively protect from serious bodily injury which otherwise may result from the particular installation, use, operation, setup, or service of the Goods. Buyer should comply with ANSI Safety Standards, OSHA and

similar state regulations, and other applicable standards to insure the safe use of the Goods.

B. OSHA Compliance

Seller believes that the Goods will be in substantial compliance with the general requirements of federal OSHA regulations regarding operator safety and noise. If Buyer requests compliance with other specific OSHA or other standards, Seller may include such standards in Seller's quotation. Otherwise, Seller makes no assurances with regard to other OSHA regulations or other safety, environmental, and similar standards. Seller must be advised by Buyer in writing if it desires specific modifications in the Goods required for compliance with OSHA, state codes, local codes and user safety and other standards. A quotation will be submitted for such requested modifications.

17. Indemnification

A. Third Parties

If the action or inaction of Buyer or its employees, customers or agents, or if Buyer's design specifications are a material or proximate cause of injuries or damages, which result in claims against Seller, Buyer will indemnify Seller and save it harmless from any and all such claims, damages and expenses (including Seller's reasonable attorney fees), relating in any way to the Goods. Seller is under no obligation to indemnify Buyer for any reason.

B. Buyer's Indemnity for Unsafe Use

Buyer 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 the cause of such accident or malfunction, including allowing Seller access to the Goods and Buyer's reports regarding the Goods. If Buyer fails to provide such notice and cooperation to Seller, Buyer will indemnify Seller from any claims arising from such accident or malfunction whether or not the Goods are non-conforming or defective. If Buyer fails to comply with the obligations set forth in this subsection, Buyer will indemnify and save Seller harmless from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of the Goods, and all warranties of Seller will become automatically void.

18. Security Interest

In addition to any security interest granted by the UCC or other law, Buyer grants a security interest to Seller in all Goods and Buyer's Property, and documents related thereto, and proceeds and products from Buyer's Property, to secure all obligations of Buyer to Seller, whether or not arising under the Agreement. Seller may file a financing statement and at Seller's request, Buyer will sign financing statements and other documents, evidencing and confirming the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Buyer must provide a lien waiver from all third parties to whom the Goods may be delivered. Buyer must provide a landlord's waiver of any lien rights at the premises to which the Goods are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others and take other actions to repossess or render inoperable all Goods in which it has a security interest. In case of a default by Buyer, Buyer irrevocably

appoints Seller as its agent to obtain possession of the Goods and documents related thereto. Seller may install and activate procedures or devices to make the Goods or Software non-operative upon Buyer's default. The Goods 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 Goods may be used. Buyer will maintain the Goods in a segregated area and not co-mingle any Goods which are not fully paid. Buyer may not sell, exchange, transfer, convey, mortgage, pledge, hypothecate or grant a security interest in any Goods which are subject to the Agreement if payment thereof will not have been made in full to Seller. Buyer will immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which has not been paid to Seller.

19. Proprietary Information

A. Buyer's Rights to Confidentiality

Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

B. Seller's Rights to Confidentiality

All proposals, plans and other information furnished by Seller, in any form, during bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and may not be shown or disclosed to any other bidder, and may not be shown or disclosed to any other third party or used by Buyer except as may be necessary for the selection or use of the Goods and Seller provides Buyer with written consent.

C. Patentable Features

Any design, invention or other information developed by Seller in the performance of the Agreement will remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by Seller will be the property of Seller, and Seller will be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement, except as provided in Subsection A.

D. Drawings and Calculations

Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.

E. Buyer's Obligations

Buyer must treat as confidential any business proposal from Seller and all technology made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer may use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer may not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third

party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer must maintain, for Seller's inspection, written records which include the names and address of such employees and contractors granted such access. Buyer will indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer.

20. 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 this Agreement will be deemed to grant Buyer any license or any other rights in such Intellectual Property. The term "Intellectual Property" includes without limitation all of the following:

- (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.

21. Buyer's Property

"Buyer's Property" means tools, jigs, dies, gauges, fixtures, molds and patterns owned and fully paid for by Buyer and provided to Seller for the purposes of manufacturing Goods or performing services for Seller. If Buyer's Property wears out under normal use, Buyer must supply to Seller new or repaired Buyer's Property. Seller will release Buyer's Property to Buyer, provided that:

- (i) Buyer has fully paid Seller for all Goods produced by Buyer's Property and delivered to Buyer;
- (ii) Buyer has fully paid Seller for all Goods, raw materials and work in process produced and/or associated with Buyer's Property;
- (iii) Buyer's Property is not subject to any lien asserted by Seller or any third party; and
- (iv) Buyer releases Seller from any obligation for further production of the Goods that Seller produced with Buyer's Property.

If (i)-(iv) are satisfied, and upon written request to release by Buyer, Seller, within 30 days of receipt of Buyer's request, will make Buyer's Property available for pick up by Buyer. Buyer is responsible for all costs associated with removing and transporting Buyer'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 Buyer's Property. If Buyer does not remove Buyer's Property from Seller's premises within 20 days after Seller gives notice to Buyer that Buyer's Property is ready for removal, Buyer's Property becomes the property of Seller, and Seller may dispose of Buyer's Property as it sees fit. Buyer must insure Buyer'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 of personal injury arising from the use, transportation or storage of such property.

22. Solvency of Buyer

Buyer represents that it is solvent, able to pay the price for the Goods, and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it must notify Seller. Buyer's acceptance of delivery is a reaffirmation of Buyer's solvency, and a representation that there has not been a material adverse change to Buyer's financial condition.

23. United States Government Regulations

Buyer 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.

24. Fair Labor Standards Act

Seller certifies that any Goods produced in the United States will be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the U.S. Fair Labor Standards Act, as amended, and of the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. No other certifications or waivers are required, whether regarding payments to Seller's suppliers or laborers or otherwise.

25. Forecast, Finished Goods, and Raw Material

Each month, Buyer will provide Seller with a rolling forecast matching the Seller's longest quote lead time of its anticipated purchases of the Goods (Forecast), which will take into consideration Buyer's existing inventory. Buyer authorizes Seller to rely on these Forecasts, and agrees that:

- (i) the first 5 months of each Forecast are Firm with respect to finished Goods; and
- (ii) the first 3 months of each Forecast are Firm with respect to raw material. For purposes of this section, "Firm" means that Buyer has committed to purchase from Seller.

26. Cancellation/Termination

If Buyer cancels or terminates any Forecast and/or this Agreement for any reason, Buyer must immediately purchase all finished Goods, raw materials, and work in process that were purchased to produce, or fall within, the Firm quantities under paragraph 25 above. For all finished Goods, Buyer is obligated to pay the then current purchase price. For all Goods in process Buyer and Seller acknowledge the great difficulty of proving damages for the cancellation of such Goods, and accordingly they agree that the following liquidated damages provision is reasonable. For Goods in process, Buyer shall immediately reimburse

Seller the cost of manufacture, including but not limited to labor, engineering, unamortized development cost, equipment time and overhead, computed using Seller's standard internal costing procedures, plus 15% of the sale price of the Goods. For Firm quantities of Goods neither finished nor in process, Buyer shall pay Seller its profit measured by the Goods already produced.

27. Breach

A. Default

If Buyer defaults in the performance of its obligations as set forth in the Agreement or in the General Terms which are incorporated into the Agreement, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer in bankruptcy or seeking the appointment of a trustee or receiver, or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover the Goods whether in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.

B. Compensation

Seller shall be entitled to consequential and incidental damages, interest, and litigation costs (including reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.

C. Security

Seller may require that Buyer post security for any or all amounts Buyer is to pay if Seller has a good faith doubt as to Buyer's ability to make prompt payment. If Buyer does not post such security, Seller may cease performance of its obligations, and enforce its remedies for Buyer's default.

D. Cumulative Rights and Limitations

All rights granted to Seller and all limitations on Seller's liability in the General Terms or in the Agreement and by law are cumulative, except that Seller will be entitled to only a single full recovery.

E. Good Faith

Seller will not be liable for any action taken pursuant to a good faith exercise of any of its rights under the General Terms or the Agreement or law.

F. Waiver

Seller's failure or delay in enforcement of any provision will not constitute a waiver of a breach or of that provision.

28. Consequential, Incidental, and Other Damages

Buyer and third parties are not entitled to any consequential, punitive, exemplary or incidental damages, as defined in the Uniform Commercial Code or otherwise. This limitation will be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages will not affect the right of Seller to indemnification hereunder, and under no circumstance will Buyer recover more than the purchase price. 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.

29. 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.

30. Subsequent Requirements

The Agreement covers production Goods only, and not Goods required after the termination of the Agreement. If Buyer requires Goods beyond the last date for which the Goods were supplied, Buyer and Seller will negotiate a new agreement as they see fit.

31. Force Majeure

Seller will not be responsible for any delay or failure in any performance due to, without limitation, acts of God, war, warlike conditions, acts of terror, blockade, embargoes, riots, governmental restriction, labor disturbances, unavailability of anticipated usual means of supplies, transportation or loading facilities, wrecks, epidemics, quarantine, fire, flood, earthquake, explosion, unforeseen change in circumstances, or any other causes beyond its reasonable control.

32. Commercial Activity; Absence of Immunity

Buyer represents that it is a legal, private enterprise, in compliance with all state law pertaining to its organization and operation and that its obligations are subject to civil, commercial law, and that the making and performance by it of the agreement constitute private and commercial acts rather than public or governmental acts. Buyer represents that it and its property are not entitled to immunity, sovereign or otherwise, from the jurisdiction of any court or from any action, suit, set-off or proceeding, or service of process in connection with or arising under the agreement.

33. Limitations of Actions

A proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the agreement cannot be filed nor maintained by Buyer unless: (i) it is commenced within one year after the cause of action has accrued; (ii) Buyer has given timely written notice to Seller of the details of its claim as provided in these General Terms; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of warranty or any other provision of the Agreement accrues no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required by the Agreement.

34. Choice of Law

The laws of the State of Tennessee without regard to its choice of law provisions shall govern, construe and enforce the General Terms and the Agreement. The U.N. Convention on the International Sales of Goods shall not apply.

35. Jurisdiction

The courts of record of Shelby County, Tennessee shall have exclusive jurisdiction over Buyer and Seller and all 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. If Buyer does not maintain a registered office or agent in the United States, Buyer irrevocably appoints the Secretary of State of the state of Tennessee as Buyer's agent to receive process in any proceeding arising under or related to this 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.

36. Arbitration

With the exception of claims for extraordinary relief which are governed by ¶35 above, all controversies and claims arising out of or relating to the Agreement or the General Terms shall be settled solely by arbitration held in Shelby County, Tennessee, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration award shall be final with no appeal. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereon. Notwithstanding the foregoing, nothing in these General Terms or the Agreement shall prohibit the parties from seeking extraordinary relief pursuant to ¶35 above, e.g. Seller may 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 or to pursue injunctive relief. 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. The arbitrator(s) will be bound by the terms of the Agreement including these General Terms and not 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 and shall award the prevailing party its litigation costs including a reasonable attorneys' fee. The arbitration proceedings and the award shall be confidential.

37. Severability

Any provision found to be unenforceable by a final order entered by the court or arbitration tribunal shall not affect the other provisions of the General Terms and the Agreement, which shall be enforced as written. Should the court or tribunal find that without the unenforceable provision as originally written, the Agreement is not likely to meet the reasonable commercial expectations of Buyer and Seller, the court or tribunal shall rescind, terminate or reform this Agreement as necessary to reach an equitable result.

38. Assignment

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

39. Notice

All notices required under these General Terms and the Agreement shall be given to the parties in writing at their addresses found on Buyer's purchase order or similar document, or on Seller's quotation or invoice or at another address provided by the party in writing. All notices shall be provided by FedEx, DHL, or similar service and are effective upon delivery, with the delivery service's receipt as proof.