



**GENERAL TERMS AND CONDITIONS OF SALE (United States)
(GOODS AND SERVICES)**

1. **Application.** These General Terms and Conditions of Sale (“**Terms and Conditions**”) are hereby incorporated into the quotation, invoice or other document to which they are attached or referenced (“**Order**” and, together with the Terms and Conditions, the “**Contract**”), and apply to the customer, owner or its agent (“**Buyer**”) and the seller (“**Seller**”) listed on the Order. All purchases by Buyer and sales by Seller are expressly limited and conditioned upon acceptance of the Terms and Conditions. Seller objects to and rejects any provision additional to or different from the Terms and Conditions that may appear in Buyer’s purchase order, acknowledgement, confirmation, writing, or in any other prior or later communication from Buyer to Seller, unless such provision is expressly agreed to by Seller in a writing signed by Seller. For the purposes of these Terms and Conditions, the term “**Goods**” will refer to the goods, material and equipment listed on the Order as well as all equipment or other materials provided in connection with any Services, and the term “**Services**” will refer to the services listed on the Order as well as all ancillary services provided with any Goods. Terms not defined herein will have the meanings set forth in the Order.
2. **Quotations & Prices.** Unless specifically stated otherwise in Seller’s quotation, prices are Free Carrier (FCA) the Seller location listed in the Order per Incoterms 2010. Prices are subject to change upon written agreement between the parties. Written quotations automatically expire 30 calendar days from the date issued and are subject to termination by notice within that period. Quotations may not be disclosed to any third party or used in preparation of any request for quotation for goods similar to, or as a substitution for, Goods quoted by Seller. Prices for Goods and Services are exclusive of all city, prefectural and national excise taxes, including taxes on manufacture, sales, receipts, gross income, occupation, use, and similar taxes. Wherever applicable, such tax or taxes will be added to the invoice as a separate charge to be paid by Buyer.
3. **Delivery and Delays.** Unless otherwise stated in the Order, delivery of the Goods shall be EXW (Incoterms® 2010 International Chamber of Commerce (ICC) publication) Seller’s designated manufacturing facility. If the parties, instead of specifying the date for delivery, have specified a period of time within which delivery shall take place, such period shall start to run as soon as the Order is entered into and all agreed preconditions to be fulfilled by the Buyer have been satisfied.
 - a. Seller will use reasonable efforts to meet Buyer’s requested delivery date or delivery period. If Seller anticipates that he will not be able to deliver the Goods at the requested deliver date or during the delivery period, he will notify Buyer in writing with the time when delivery can be expected. Nevertheless, delivery of Goods are subject to, and contingent upon, delay directly or indirectly caused by, or in any manner arising from, fires, floods, accidents, weather related events, disease, riots, acts of God, war, government interference, embargoes, priorities, regulations, strikes, labor difficulties, shortages of labor, fuel, power, materials or supplies, transportation delays, compliance with any law, statute, ordinance, regulation, policy, order or request of any federal, state, provincial or local government unit, or any officer, department, agency, or committee thereof, Seller’s



production schedules, or any other cause or causes (whether or not similar in nature to any of these hereinbefore specified) beyond Seller's control and Seller will not be liable for any loss or damage suffered by Buyer arising therefrom. Seller will have the right, in the event of the happening of any of the above contingencies, at its option, to cancel the Contract any part thereof without any resulting liability.

4. **Partial Shipment.** Seller reserves the right to make delivery in installments. All such installments will be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment will not relieve Buyer of its obligation to accept remaining deliveries.
5. **Release Quantity.** [RESERVED]
6. **Storage.** In case of any delay in shipment of Goods caused by Buyer, Seller may place the Goods in storage and Buyer will pay all handling, insurance and storage charges. Buyer will pay such charges promptly upon receipt of invoice and will pay for Goods placed in storage in accordance with the terms originally specified by Seller.
7. **Title / Risk of Loss.** Unless otherwise stated in the Order, title to the Goods will transfer from Seller to Buyer upon payment in full. The risk of loss or damages to the Goods shall pass to Buyer upon delivery in accordance with the Order or Section 3.
8. **Cancellation, Rescheduling and Returns.** Orders may not be cancelled or rescheduled, and goods may not be returned, without Seller's prior written consent. If the Buyer anticipates he will be unable to accept delivery of the Goods at the time for delivery, he shall notify the Seller in writing thereof, stating the reason, and if possible, the time when he will be able to accept delivery. Nevertheless, acceptance of Goods are subject to, and contingent upon, delay directly or indirectly caused by, or in any manner arising from, fires, floods, accidents, weather related events, disease, riots, acts of God, war, government interference, embargoes, priorities, regulations, strikes, labor difficulties, shortages of labor, fuel, power, materials or supplies, transportation delays, compliance with any law, statute, ordinance, regulation, policy, order or request of any federal, state, provincial or local government unit, or any officer, department, agency, or committee thereof, Buyer's production schedules, or any other cause or causes (whether or not similar in nature to any of these hereinbefore specified) beyond Buyer's control and Buyer will not be liable for any loss or damage suffered by Seller arising therefrom. Buyer will have the right, in the event of the happening of any of the above contingencies, at its option, to cancel the Contract any part thereof without any resulting liability.
9. **Acceptance Tests.** Acceptance tests provided for in the Order shall, unless otherwise agreed, be carried out at the place of manufacture during normal working hours. If the Order does not specify the technical requirements, the tests shall be carried out in accordance with general practice in the appropriate branch of industry concerned in the country of manufacture. The Seller shall notify the Buyer in writing of the acceptance tests at least fifteen (15) days prior to commencing such tests to permit the Buyer to be represented at such tests. If the Buyer is not represented, the test report shall be sent to the Buyer and shall be accepted as accurate. If the acceptance tests show the Goods not to be in accordance with the Order, the Seller shall remedy any deficiencies in order to



ensure that the Goods comply with the Order. New tests shall be carried out at the Buyer's request, unless the deficiency was insignificant. The Seller shall bear all costs for acceptance tests carried out at the place of manufacture. The Buyer shall, however, bear all travel and living expenses for his representatives in connection with such tests.

10. Warranty.

- a. Seller warrants to Buyer for a period of one year from the date of shipment of the Goods to Buyer that (i), the Goods will conform to the Seller's specifications for the Goods in force at the date of shipment of the Goods to Buyer, and (ii) the Goods will be free from material defects in materials and workmanship. Seller's sole liability for any breach of warranty under this paragraph confirmed by Seller will be to repair or replace, at its option and at its expense, the defective or nonconforming Goods to a condition as warranted. Buyer shall notify Seller in writing within five (5) days after first notifying such defect. If Buyer fails to notify Seller within this time limit, he shall lose his right to have the defect remedied and Seller shall not be liable for such defect.
- b. Repair
 - i. Repair shall be carried out at the place where the Goods are located unless the Seller deems it more appropriate that the Goods be sent elsewhere.
 - ii. The Buyer shall at his own expense provide access to the Goods and arrange for any intervention in equipment other than the Goods, to the extent that this is necessary to remedy the defect.
 - iii. Unless otherwise agreed, necessary transport of the Goods or parts thereof to and from the Seller in connection with the remedying of defects for which Seller is liable shall be at the risk and expense of the Seller. The Buyer shall follow the Seller's instructions regarding such transport.
 - iv. Unless otherwise agreed, the Buyer shall bear any additional costs which the Seller incurs for remedying the defect caused by the Goods being located in a place other than the destination stated at the formation of the order for the Seller's delivery to the Buyer, or if no destination has been stated, the place of delivery.
- c. [RESERVED]
- d. Seller shall not be liable for defects arising out of materials provided or a design stipulated or specified by the Buyer, improper use or maintenance of the Goods by Buyer, incorrect installation or faulty repair of the Goods by Buyer, or modifications or alterations to the Goods carried out without Seller's consent in writing.
- e. Any replacement Goods will be warranted for the unexpired portion of the warranty period listed above.



- f. TO THE EXTENT NOT PROHIBITED BY LAW, THERE ARE NO OTHER WARRANTIES EXPRESS OR IMPLIED EXCEPT AS PROVIDED IN THIS SECTION; SELLER DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DISCLAIMS ANY WARRANTY AS TO THE QUALITY, CAPACITY, EFFICIENCY, CONDITION OR PERFORMANCE OF THE GOODS, EXCEPT AS EXPRESSLY PROVIDED IN A WRITTEN AGREEMENT SIGNED BY SELLER.
- g. SELLER EXPRESSLY DISCLAIMS ANY WARRANTY OBLIGATIONS IN THOSE INSTANCES WHERE THE FAILURES RESULTED FROM (I) THE MODIFICATION OF THE GOODS OR SERVICES BY BUYER OR ITS CUSTOMER, (II) IMPROPER HANDLING, STORAGE, INSTALLATION, MAINTENANCE OR ANY FAILURE TO FOLLOW ACCEPTED INDUSTRIAL PRACTICE OR ANY SPECIFIC INSTRUCTIONS PROVIDED BY SELLER, (III) BUYER HAS USED OR REPAIRED THE GOODS OR THE SUBJECT OF THE SERVICES AFTER DISCOVERY OF THE DEFECT WITHOUT SELLER'S PRIOR WRITTEN CONSENT, (IV) BUYER REFUSES TO PERMIT SELLER TO EXAMINE THE GOODS OR THE OBJECT OF THE SERVICES AND OPERATING DATA TO DETERMINE THE NATURE OF THE DEFECT CLAIMED; (V) BUYER FAILS TO MEET ITS OBLIGATIONS, (VI) MATERIALS PROVIDED OR A DESIGN STIPULATED OR SPECIFIED BY BUYER; OR (VII) ANY OTHER CAUSE BEYOND THE CONTROL OF SELLER. GOODS NOT MANUFACTURED BY SELLER ARE SUBJECT ONLY TO WARRANTIES OF SELLER'S VENDORS AND SELLER HEREBY ASSIGNS TO BUYER ALL RIGHTS IN SUCH VENDOR'S WARRANTIES, HOWEVER, SELLER WILL FURNISH TO BUYER REASONABLE ASSISTANCE IN ENFORCING SUCH RIGHTS.
11. **Claims.** A Return Material Authorization from Seller will be required for any product returned to Seller. No claims will be allowed for labor, rework, transportation or other expense incurred by Buyer, without prior written approval of Seller. If the Goods fail to meet the warranty specified in the paragraph on express product warranty above, Buyer will not return them but will notify Seller within the five day period, stating full particulars in support of its claim, and Seller will, at its option, either replace the Goods upon return of the nonconforming goods or otherwise adjust the price fairly and promptly. SELLER DOES NOT WARRANT OR GUARANTEE THE TECHNICAL ADVICE GIVEN BY IT IN CONNECTION WITH THE INSTALLATION OR THE USE OF GOODS SOLD HEREUNDER.
12. **Default.** Upon the occurrence of any of the following events: (a) Seller, or any affiliate of Seller, has not received a payment due from Buyer, or any affiliate of Buyer, hereunder by the date such payment is due under the Contract, and such failure remains uncured for a period of three business days after Buyer's receipt of written notice from Seller of such non-payment; (b) the failure of Buyer or Seller to perform any other obligation in the Contract (excluding providing Performance Assurances (as that term is defined in Section 16), which is subject to (d) below) and such failure is not excused or cured within 30 days after written notice thereof; (c) the occurrence of a Bankruptcy Event; or (d) the failure of



Buyer to timely provide prepayment or Performance Assurance, then the non-defaulting party, in its sole discretion and without prior notice (other than as provided above) to the defaulting party, may do any one or more of the following: (x) suspend performance under the Contract; or (y) terminate the Contract, whereby any and all obligations of the defaulting party, including payments or deliveries due, will, at the option of the non-defaulting party, become immediately due and payable or deliverable, as applicable. If, as a result of a default by Buyer, Seller suspends performance and withholds delivery of the Goods as permitted above, it may sell or scrap the Goods to a third party and deduct from the proceeds therefrom, if any, the purchase price and all reasonable costs resulting from Buyer's default as identified above, including all costs associated with the transportation (including demurrage and other vessel or shipping related charges), storage, and sale of the Goods. The foregoing rights, which will include specific performance, will be cumulative and alternative and in addition to any other rights or remedies to which the non-defaulting party may be entitled at law or in equity. The non-defaulting party will be entitled to recover from the defaulting party all court costs, reasonable attorneys' fees and expenses incurred by the non-defaulting party in connection with the defaulting party's default, and interest on past due amounts as set forth in Section 18, PAYMENT TERMS. In addition, Seller will have the right to maintain a lien on the Goods until payment in full is received by Seller. "**Bankruptcy Event**" means the occurrence of any of the following events with respect to either Buyer or Seller : (a) filing of a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law; (b) making of an assignment or any general arrangement for the benefit of creditors; (c) having a bankruptcy petition filed against it and such petition is not withdrawn or dismissed within 30 days after such filing; (d) otherwise becoming bankrupt or insolvent (however evidenced); (e) having a liquidator, administrator, custodian, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (f) being generally unable to pay its debts as they fall due.

13. **Limitation of Liability.**

- a. IN NO EVENT WILL EITHER PARTY BE LIABLE TO EACH OTHER OR TO ANY THIRD PARTY FOR THE COST OF PROCURING SUBSTITUTE GOODS, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
- b. IN NO EVENT WILL THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES BE IN EXCESS OF AN AMOUNT EQUAL TO THE LESSER OF (1) THE PAYMENTS RECEIVED BY SELLER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST CLAIM BROUGHT BY BUYER UNDER THIS ORDER, OR (2) \$500,000 USD, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, DEFENSE OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. ALL INSURANCE, BOND AND BANK



GUARANTEE OR LETTER OF CREDIT PROCEEDS WHICH MAY BE PAID TO BUYER BY THE INSURERS, SURETIES OR BANKS OF SELLER OR ITS AFFILIATES WILL BE CREDITED AGAINST THE LIMITATION STATED ABOVE AND REDUCE THE AMOUNT OF THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES.

- c. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. BUYER'S REMEDIES ARE LIMITED TO THOSE REMEDIES STATED HEREIN AND THESE REMEDIES WILL NOT FAIL THEIR ESSENTIAL PURPOSE BECAUSE BUYER IS LIMITED TO THE EXCLUSIVE REMEDIES AS STATED HEREIN. ALL OTHER REMEDIES (INCLUDING ANY TORTIOUS REMEDIES) ARE EXCLUDED AND ARE IRREVOCABLY WAIVED BY BUYER. NOTHING IN THIS CONTRACT WILL EXCLUDE OR LIMIT LIABILITY FOR DEATH OR PERSONAL INJURY DUE TO SELLER'S NEGLIGENCE OR FOR SELLER'S FRAUD, FRAUDULENT MISREPRESENTATION OR BREACH OF THE TERMS IMPLIED UNDER SECTION 12 OF THE SALE OF GOODS ACT 1979, IF APPLICABLE.

14. Indemnity.

- a. Buyer shall defend, indemnify and hold harmless Seller against all damages, losses, costs, claims, liabilities, and expenses (including reasonable attorneys' fees) resulting from bodily injury, death, or damage to tangible property to a Third Party, to the extent the Goods are incorporated into a product, device, or system that is used by a Third Party (collectively "**Incorporated Product Claims**").
- b. In the event Seller performs onsite services at Buyer's facility, (a) Seller shall defend, indemnify, and hold harmless Buyer against all damages, losses, costs, claims, liabilities, and expenses (including reasonable attorneys' fees) resulting from bodily injury, death, or damage to tangible property to a Third Party, to the extent caused by the negligent acts or omissions of Seller, its officers, directors, employees or agents ("**Seller Group**"); and Buyer shall defend, indemnify, and hold harmless Seller against all damages, losses, costs, claims, liabilities, and expenses (including reasonable attorneys' fees) resulting from bodily injury, death, or damage to tangible property to a Third Party, to the extent caused by the negligent acts or omissions of Buyer, its officers, directors, employees or agents ("**Buyer Group**").
- c. Except for Incorporated Product Claims under Section 14(a), all liability, losses, damages, costs or expenses resulting from bodily injury, death, or damage to tangible property to a Third Party, caused by the joint or concurring acts of Buyer Group and Seller Group, shall be borne by Buyer and Seller to the extent each is determined negligent either by agreement of the parties or by a court of component jurisdiction.
- d. The term "**Third Party**" shall mean any person or entity that is not a member of Seller Group or Buyer Group, or any of its respective affiliates, parent(s),



subsidiaries or any of their respective officers, directors, employees, agents or subcontractors.

15. **IP Infringement.**

- a. Seller will indemnify, defend and hold harmless Buyer from and against all claims, suits and actions (collectively “**Claims**”) brought against Buyer, and for any direct damages that arise directly from Claims that the Goods infringe any United States, Canadian, or European Union-member patent. Buyer shall immediately notify Seller in writing of such Claims, and assist Seller in defending such Claims. All aspects of the defense and settlement of any suit or proceeding involving the Claims shall be within Seller’s sole discretion. Buyer remains solely responsible for its own costs, including all fees and expenses of its own counsel, if any, or its personnel, which are incurred in conjunction with the defense of any Claims.
- b. Seller will not be responsible for any infringement to the extent such infringement is the result of (i) use of the Goods in combination with any other products not provided by Seller if the infringement would not have occurred but for such combination, (ii) any alteration or modification of the Goods not undertaken or authorized by Seller if the infringement would not have occurred but for such alteration or modification, (iii) Seller’s compliance with Buyer’s specifications if the infringement would not have occurred but for such compliance, (iv) of any method patent where the Goods are used with other apparatus for carrying out a process resulting in a combination of steps which is deemed to infringe a method patent or patent directed to a combination of steps, or (v) Buyer’s failure to comply with Seller’s instructions regarded as necessary to render the Product(s) non-infringing if the infringement would not have occurred if Buyer would have complied with Seller’s instructions. Buyer will indemnify, defend and hold harmless Seller and its officers, directors, employees, successors and assigns (collectively “**Indemnitees**”) from and against any Claims brought against Indemnitees by any third party based on claims resulting from exceptions (i) through (v) above.
- c. Upon a finding of infringement, Seller will, at its sole discretion, in addition to any indemnification, take one of the following actions: (i) obtain all rights required to permit the manufacture, sale, import, and use of the Seller Goods, (ii) modify or replace the Seller Goods so that they are no longer infringing, or if (i) and (ii) are not commercially reasonable alternatives, (iii) refund Buyer’s purchase price for any Goods found to be infringing and returned to Seller.

16. **Intellectual Property, Drawings and Technical Information.** Each party owns or possesses intellectual property rights developed or acquired prior to or independently of this Contract, and each party will continue to own all such intellectual property rights and any improvements or extensions thereof. Seller retains all intellectual property rights, whether registered or un-registered, including trademarks, patents, and copyright of all documents, drawing rights, design rights, developed programs, software, models and other data provided or developed in the course of the Contract. Seller will, if so required by Buyer, grant Buyer a non-exclusive, non-assignable royalty free license to use the same only for the purposes of operating or maintenance of the Goods by Buyer.



- a. Drawings, technical documents or other technical information received by one party shall not, without the consent of the other party, be used for any other purpose than that for which they were provided. They may not, without the consent of the submitting party, otherwise be used or copied, reproduced, transmitted or communicated to a third party.
 - b. The Seller shall, not later than at the date of delivery, provide free of charge, information and drawings which are necessary to permit the Buyer to install, commission, operate and maintain the Goods. Such information and drawings shall be supplied in the number of copies agreed upon or at least one copy of each. The Seller shall not be obliged to provide manufacturing drawing for the Goods or for spare parts.
17. **Changes in Specifications or Drawings.** All additional expense to Seller due to changes in specifications or drawings and for any Goods and Services furnished in addition to that herein specified, will be added to the purchase price and paid by Buyer.
18. **Payment Terms and Revocation of Credit.** Invoice payment terms are Net 30 days from invoice date. If the payment due date is not a business day, Seller must receive such payment on the next business day after such due date. All payments shall be made in USD unless otherwise specified in the Order. Each shipment of Goods is a separate transaction and payment will be made accordingly. Interest may be charged on all past due amounts owed by Buyer hereunder at an annual interest rate of 12% from the payment due date until paid in full, or the highest interest rate allowed by applicable law, whichever is less. Payments must be made via a financial institution that is not subject to the sanction laws of the United States, European Union, or other applicable jurisdiction. Seller reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any Goods when due or for any other reason deemed good and sufficient by Seller, and in such event all subsequent shipments will be paid for on delivery. In addition, Seller may require Buyer to provide collateral in the form of either cash or letter(s) of credit in a form, and from an issuing bank, acceptable to Seller (collectively, "**Performance Assurances**"), upon notice no later than three business days prior to a scheduled shipment of Goods or provision of Services.
19. **Software.** If the Goods include providing access to any computer software (installed on the Goods or otherwise available) ("**Software**") Buyer agrees to comply with Seller's most current standard license agreement regarding such Software (available upon request).
20. **Reservation of Rights.** Payment by Buyer of any "tooling charge" or other similar expense will not vest any right or title in Buyer, and Seller will have unrestricted right and authority to produce, use and/or sell identical machinery, Goods or Services to others.
21. **Export Compliance.**
 - a. Buyer hereby agrees to comply fully with all applicable Japan, United States ("**U.S.**"), United Kingdom ("**UK**"), European Union ("**EU**"), and other National sanctions and export control laws and regulations, including those regulations



maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), Department of State, ITAR Regulations, and the U.S. Commerce Department’s, Bureau of Industry and Security. Specifically, Buyer covenants that it will not- directly or indirectly sell, provide, export, re-export, transfer, divert, loan, lease, consign, or otherwise dispose of any product, services, software, source code, or technology (collectively, “Goods”) received from Seller under this Contract to any person, entity, or destination, or for any activity or use prohibited by the laws or regulations of the United States without obtaining prior authorization from the competent government authorities, including but not limited to the Dept. of State and/or Dept. of Commerce, as required by those laws and regulations.

- b. To the extent required under U.S. law, Buyer further covenants to screen all customers and business partners against all relevant U.S., UK, EU and Canadian Government lists of persons denied export privileges or otherwise subject to trade, export, or financial sanctions, including the U.S. Treasury Department’s OFAC list of SDN, U.S. Department of Commerce “BIS” Denied Persons List and Entity List, U.S. State Department DPL, The Canadian DPL, and the EU Consolidated List before providing or agreeing to provide any Goods to any person.
- c. Buyer acknowledges and agrees that Seller’s right to furnish certain products to Buyer is subject to and conditioned upon applicable sanctions and export control laws and regulations, and that Seller will have no liability for acting in a manner Seller deems to be in compliance with such laws and regulations

22. **Anti-Bribery and Corruption Laws.** Each party hereunder represents and warrants compliance with all applicable Japan, U.S. and foreign anti-bribery and corruption laws and regulations including, but not limited to, the U.S. Foreign Corrupt Practices Act (“FCPA”), the U.K. Bribery Act, The OECD Anti-Bribery Convention and the Brazilian Clean Companies Act. Each Party agrees to defend, indemnify, and hold harmless the other Party from any claims, costs, liabilities, penalties, obligations, and damages such other Party may incur, including without limitation reasonable court, attorney and expert fees, and costs, as a result of such Party’s breach or violation of this warranty.

23. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of State of Texas, without giving effect to any choice or conflict of law rules that would result in the application of the laws of any other jurisdiction. If this Agreement is translated into a language other than English, this English version shall control. The state and federal courts in Harris County, Texas will have exclusive jurisdiction over any legal suit, action or proceeding arising out of or related to this Agreement. Each Party irrevocably submits to the jurisdiction of such courts in any such suit, action or proceeding and waives any objection or defense based on improper venue or *forum non conveniens*. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.



24. **Notice.** All notices, consents, communications or transmittals under the Contract will be in writing and will be deemed received on the day of delivery if personally hand delivered or sent by facsimile or electronic transmission (with written confirmation of the completed transmittal); or within two business days if mailed as certified or registered mail with return receipt, postage prepaid addressed to the party to whom such notice is given at the address of such party stated in the Contract.
25. **Entire Agreement; Amendment; Waivers.** The Contract will supersede all prior negotiations, discussions, and dealings concerning the subject matter hereof, and will constitute the entire agreement between Seller and Buyer concerning the subject matter hereof. There are no understandings, inducements, commitments, conditions, representations or warranties of any kind, whether direct, indirect, collateral, express or implied, oral or written, from either party to the other, other than as contained in this Agreement. Neither party will claim any amendment, modification or release of any provisions hereof unless the same is in writing and signed by both parties. No waiver by Buyer of any breach of any terms, conditions or obligations under the Contract will be deemed a waiver of any continuing or subsequent breach of the same or any other terms, conditions or obligations hereunder.
26. **Electronic Transactions.** The Contract may be digitally copied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement (once digitally regenerated to paper form), and any facsimile, and all computer records of the foregoing, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form and neither party will object on the basis that such business records were not originated or maintained in documentary form under any rule of evidence.
27. **Severability.** The invalidity or unenforceability of any provision of the Contract will not affect the validity or enforceability of its other provisions and the remaining provisions will remain in full force and effect.
28. **Confidentiality.** All information that Buyer acquires from Seller hereunder, directly or indirectly, and all information that arises out of the sale of the Goods or Services hereunder, concerning such Goods, and/or proprietary processes involved, including information concerning Seller’s current and future business plans, information relating to Seller’s operations, know-how, and other Seller-furnished information will be deemed Seller’s “Confidential Information”. Buyer will (a) hold Seller’s Confidential Information in strictest confidence, (b) not disclose it to others, (c) use it solely for purposes of this Agreement and (d) upon Seller’s request, either promptly deliver to Seller all such Confidential Information that is in written, electronic or other form, including copies and summaries, or, at Seller’s option, destroy such Confidential Information and provide Buyer certification of such destruction. The obligations under this Section will survive the expiration or termination of the Contract.



29. **Assignability.** The rights and duties under the Contract are not assignable or transferable by Buyer or Seller, in whole or in part, by operation of law or otherwise, without the prior written consent of the non-assigning party, which consent may not be unreasonably withheld, delayed or conditioned. Notwithstanding, upon written notice, Buyer or Seller may assign this Contract in whole or in part to any of its affiliates which are as equally creditworthy and provided such affiliate is compliant with all applicable laws. Any assignment or attempted assignment in contravention of the foregoing shall be null and void. Any assignee is subject to all of the obligations, liabilities, waivers and limitations of this Contract.
30. **No Third-Party Beneficiaries.** The Contract is solely for the benefit of, and shall insure to the benefit of, Buyer and Seller, and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.
31. **Miscellaneous.** The captions and section headings set forth in the Contract are used for convenience only and will not be used in defining or construing any of the terms and conditions set forth in the Contract. The term “**days**”, as used herein, will mean actual days occurring, including, Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller’s chief executive office is located. The term “**business days**” will mean days other than Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller’s chief executive office is located. The term “**including**” or any variation thereof means “**including, without limitation**” and will not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicates otherwise, words importing the singular number will include the plural and vice versa, and words importing person will include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and words of masculine gender will be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

[End of General Terms and Conditions of Sale]