

Duncan Co - Master Terms and Conditions of Sale

1. Applicability: Term.

(a) These Master Terms and Conditions of Sale (these “Terms”), as incorporated by reference into each applicable Sale Document (as defined below) by the seller of Goods and Services (each as defined below) thereunder (“Seller”), are and shall be the only terms and conditions which govern the sale of goods (including all components, controls, equipment, parts, products, and materials) (the “Goods”) and/or services (the “Services”) by Seller, to the buyer of such Goods and Services (“Buyer”; together with Seller, the “Parties,” and each, a “Party”) identified on any sales quotation, proposal, confirmation, acknowledgment, invoice and/or similar document issued by Seller (“Sale Document”) or on any purchase order, request for proposal, request for quotation, and/or other documentation submitted by such Buyer (“Purchase Order”) to Seller with respect to an order for such Goods and/or Services. Goods sold by Seller to Buyer pursuant to the applicable Sale Document; these Terms; the Supplemental Terms and Conditions of Sale (if any) incorporated by reference into the applicable Sale Document by Seller (the “Supplemental Seller T&Cs”); and the Supplemental Seller Warranty (if any) which forms part of Seller’s Limited Warranty, each as defined in Section 9 below (all of the foregoing, collectively, this “Agreement”), from time to time may consist of (i) Goods manufactured solely and directly by Seller (“Seller-Manufactured Goods”) and/or (ii) Goods produced or manufactured by a party other than Seller (“Third-Party Goods”), as the case may be, it being understood and agreed, however, that for all purposes of this Agreement, (x) all Goods not constituting Seller-Manufactured Goods shall be deemed to constitute Third-Party Goods, and (y) neither the assembly of Goods by or on behalf of Seller using Third-Party Goods nor the assembly of Third-Party Goods (in whole or in part) by or on behalf of Seller into combined systems which constitute Goods (whether for testing purposes or otherwise) shall constitute the production or manufacture of Goods by or on behalf of Seller or the creation of any Seller-Manufactured Goods.

(b) In the event of a specific, express conflict between a provision of the Sale Document or the Supplemental Seller T&Cs, on one hand, and a provision of these Terms, on the other hand, such provision of the Sale Document or the Supplemental Seller T&Cs, as the case may be, shall prevail to the extent (but solely to the extent) of such conflict. Notwithstanding the foregoing, if (but only if) there exists (and remains in effect) a definitive written contract specifically signed by both Parties which expressly states that it governs the sale of the Goods and/or Services governed hereby, notwithstanding the existence of these Terms, then the terms and conditions set forth in such contract shall prevail to the extent (but solely to the extent) they expressly conflict with these Terms.

(c) This Agreement constitutes the entire agreement between the Parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, regarding the subject matter hereof, except that any confidentiality agreement that has been executed by and between the Parties shall remain in effect according to its terms. Absent any written or other prior acceptance of these Terms by Buyer, Buyer’s acceptance of or payment for the Goods and/or Services, or any part thereof, shall constitute Buyer’s agreement to these Terms. If Seller has initiated any activities in connection with any of the matters described in a Sale Document or Purchase Order, then all provisions of this Agreement for the benefit or protection of either Party shall apply to such activities even if this Agreement is unsigned at the time of initiation thereof. These Terms do and shall prevail over any of Buyer’s general or standard terms and conditions of purchase, or any other terms or conditions which Buyer purports to apply to Seller’s sale of Goods and/or Services in any manner (any of the foregoing, “Purported Buyer Terms”), regardless of whether or when Buyer has submitted or otherwise purported to apply such Purported Buyer Terms (which shall be effective, in all events subject to Seller’s acceptance thereof, only as to the identification and quantity of Goods ordered by Buyer from Seller). Fulfillment of Buyer’s order for Goods and/or Services by Seller shall not in any manner or to any extent constitute acceptance by Seller of any Purported Buyer Terms and does not serve in any respect to modify or amend these Terms. These Terms may be amended or modified only as set forth in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each Party. Without limiting the foregoing, for avoidance of doubt: (i) all Purported Buyer Terms are hereby expressly rejected in their entirety by Seller; (ii) if any Purported Buyer Terms seek to limit acceptance to the terms of Buyer’s offer, such offer is expressly rejected, and this Agreement shall constitute a counteroffer; and (iii) if Seller has received no Purported Buyer Terms, nor do any such Purported Buyer Terms purport to apply, this Agreement shall constitute an offer, with Buyer’s acceptance limited to the terms and conditions of this Agreement.

(d) The term of this Agreement shall, unless earlier terminated as provided in Section 19, expire at the later of (i) the end of the Inspection Period (as defined in Section 4 below) for all Goods and (ii) the provision of all applicable Services (in each case, subject to the survival provisions set forth in Section 19).

2. Price; Payment Terms.

(a) Prices within each Sale Document are as entered in Seller’s records, so Buyer must report any errors immediately. Any and all clerical errors made by Seller are subject to correction by Seller in its sole discretion. All amounts are quoted in U.S. dollars unless specifically noted otherwise. Options and base price may not add up to line price. Unless expressly and specifically stated in the Sale Document by Seller, neither the price nor the scope of Seller’s work includes haulage, unloading (including provision of lifting equipment), permits, bonds, insurance, installation, field termination to any primary or secondary devices, engineering services, design services, field services, field testing, safety equipment, start-up, calibration, post-installation inspection, certification or commissioning,

or power, chemicals, water, concrete pedestals, grout, anchor bolts, anchor bolts calculations, special brackets, automatic transfer switches, electrical equipment, controls, wire, conduit, lights, fans, piping, valves, fittings, drains, flow meters, pressure gauges, signs, labor, tools, field paint or lubricants. References in the Sale Document to specifications and drawings provided by Buyer do not indicate that all items in such specifications and drawings are being provided by or on behalf of Seller. The Parties acknowledge and agree that Seller reserves and shall have the right, at all times prior to final acceptance of delivery of (and payment in full for) the applicable Goods or Services by Buyer, to increase prices of Goods and/or Services in the event of any increases in the cost of producing or delivering any Goods or Services beyond Seller's reasonable control, including any and all such increases related to (i) raw material costs, (ii) modifications to specifications requested by Buyer, (iii) prices of goods manufactured by others and re-sold by Seller, and/or (iv) as further set forth below in this Section 2(a). Seller does not waive, and expressly reserves, the right to charge and collect Taxes (as defined in Section 3) determined to be due after the date of invoice. Buyer further agrees to pay any additional Taxes arising from an ultimate use of Goods which is both (A) different from that indicated on an applicable tax exemption certificate furnished to Seller and (B) considered taxable by any applicable taxing authority. In addition, if, at any time, any government (or any branch thereof), executive or administrative office, agency, customs authority or other similar body of the U.S. or any other country (or any state, province, territory or other subdivision or part of any country) involved in any way in the shipment (including regulating, overseeing or assessing any form of Taxes on such shipment) of relevant goods, services or other commodities to or from the U.S. adjusts, increases, imposes, or adds duty rates, antidumping duties, countervailing duties, special or other tariffs, surtaxes, import taxes, retaliatory duties or taxes, or any other customs duty or charge related to the import or export of goods, or modifies the trade relation status of the importing or exporting country, in any of the foregoing cases so as to cause an increase in the applicable duty rate or Taxes, or otherwise modifies any customs or other trade-related charges, Laws, policies, procedures, processes, and/or requirements so as to cause an increase in the cost of producing or delivering any Goods or Services (all of the foregoing together, "Additional Costs"), then Seller in its sole discretion shall have the right to pass through all or any portion of such Additional Costs to Buyer, whether in the form of a pass-through or surcharge applied to the affected Goods and Services or otherwise, as a condition to Buyer's final acceptance of delivery of such Goods or Services.

(b) If this Agreement provides for aggregate payments for Goods and/or Services (the "Total Purchase Price") in excess of \$500,000, then, unless expressly and specifically otherwise agreed by Seller by written agreement with Buyer, progress payments shall be required from Buyer which are no less favorable to Seller than the following: 1/3rd of the Total Purchase Price upon release to manufacture, 1/3rd of the Total Purchase Price prior to shipment, and the balance of the Total Purchase Price within net 30 days of Seller's invoice. Subject to the approval of Seller's Credit Department in its sole discretion, payment terms under this Agreement are that Buyer shall pay the amount(s), in U.S. dollars, as stated on the applicable Sale Document within the period(s) specified thereon, or, if no payment terms are stated thereon, net 30 days after the date of Seller's invoice. For any order, Buyer is required to provide promptly all credit information (including bank reference, bonding company, or other information, with complete names, addresses, phone numbers, personal references, and account and bond numbers, as applicable) requested at any time by Seller. Seller will determine, in its sole discretion, what is acceptable and what credit rating is required for Seller to allow any purchase on credit by Buyer. A non-refundable surcharge of up to 3% in Seller's discretion may be added to each sale of Goods and/or Services paid for by credit card. If any payment owed to Seller is not paid when due, it shall bear interest at the monthly rate of 2.5% (or, if lower, the maximum rate permitted by applicable Laws) from the date on which it is due until it is paid. If Seller agrees, in its sole discretion, to payment terms that include retainage, Buyer agrees, as part of final payment, to pay Seller its pro rata share of interest on retained funds (if any), to the extent required or permitted by applicable Laws. If separately paid start-up services are included in the applicable Sale Document, the payment amount for such start-up services provided for in this Agreement shall be due when start-up is complete, except that if start-up is delayed more than 90 days after the delivery of the applicable Goods, then payment for start-up instead shall be due 90 days after such Goods have been delivered (*i.e.*, prior to the start-up occurring). In the event Buyer fails to make any payment to Seller when due, the Total Purchase Price immediately shall become due and payable without notice or demand by Seller, and Seller shall have the right, among other remedies (including the right of setoff), to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer. Buyer shall be liable for all expenses, including collection service and attorneys' fees, relating to the collection of past-due amounts. Seller may require full or partial payment in advance of shipment if, in Seller's opinion, the credit or financial condition of Buyer is, or is about to become, impaired. If Buyer requests or causes delayed shipment or delayed manufacture of Goods, Seller may (i) bill for Goods when ready for shipment and charge reasonable daily storage fees and costs (which may include the cost of storage, applicable shipping fees, insurance, and other incidental expenses), and (ii) require Buyer to make pro rata payments to Seller if Seller is required to make such pro rata payments to the applicable supplier or manufacturer of such Goods due to such delayed shipment or manufacture. Buyer shall not be entitled to withhold from Seller payment of any amounts due and payable by reason of any set-off of any claim or dispute by Buyer against Seller or any of its affiliates. Seller may, in its sole discretion and at any time, demand payment in advance and may completely suspend its own performance and all preparation therefor until it receives such payment. In the event such payment is not received within the period of time designated by Seller in such demand, Seller may at its election treat this Agreement as repudiated by Buyer and Seller shall not be obligated to demand adequate assurance of performance, as provided in Section 2-609 of the Uniform Commercial Code (the "UCC"), prior to deeming itself insecure or treating this Agreement as repudiated. If the Goods or any part thereof are in transit at the time Seller deems itself insecure, Buyer authorizes Seller to direct the carrier or any bailee having possession of the Goods not to deliver the Goods to Buyer, regardless of the quantity of the Goods in the possession of the carrier or bailee, and to direct the carrier or bailee to redeliver the Goods to Seller or any other person or entity, all at Buyer's sole expense.

3. Taxes, Etc. Except where prohibited by applicable Laws, all freight charges, as well as any tax (including sales, use, value added, privilege, license, excise or otherwise), tariff, duty, surcharge, levy or other governmental charge, whether federal, state, local or foreign (“Taxes”), imposed upon the design, manufacture, production, sale, import, export or delivery of Goods and/or Services, or any aspect of the procurement of materials and components used therein, may, in Seller’s sole discretion, be added to the price of such Goods and/or Services to Buyer, or separately invoiced by Seller for payment by (or reimbursement of Seller by) Buyer; provided, however, that Buyer shall not be responsible for any such Taxes imposed on or with respect to Seller’s net income.

4. Shipment & Delivery. The Goods will be made available to Buyer, in accordance with these Terms, within a reasonable time after the receipt of Buyer’s Purchase Order and, unless otherwise expressly and mutually agreed in writing by the Parties, delivered using Seller’s standard methods for packaging and shipping such Goods. While Seller will make commercially reasonable efforts to maintain the delivery date acknowledged or quoted by Seller in the Sale Document, all delivery dates are approximate. Deliveries of Goods by Seller to Buyer are made F.O.B. Seller’s (or Seller’s applicable supplier’s or manufacturer’s) dock, warehouse, or other facility for the applicable Goods (or another shipping point designated by Seller to Buyer or requested by Buyer and specifically accepted by Seller in writing, if applicable) (the “Delivery Point”), and the sale price applicable to such Goods reflects delivery at such Delivery Point, in each case unless otherwise expressly and mutually agreed in writing by the Parties. Buyer shall take delivery of and inspect such Goods within 48 hours after Seller’s written notice that such Goods have been delivered to the Delivery Point (the “Inspection Period”), or within such other Inspection Period (if any) which may be set forth in the applicable Supplemental Seller T&Cs. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. Seller shall not be liable for any delays, shortages, losses or damage suffered in transit of the Goods; any claims therefor shall be submitted by Buyer directly to the carrier. Seller reserves the right, in its sole discretion, without liability or penalty, to make partial shipments of Goods to Buyer and to segregate “specials” and made-to-order Goods from normal stock Goods. Each shipment by Seller will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s order for Goods. Seller shall not be obligated to tender delivery of any Goods for which Buyer has not provided shipping instructions. If, for any reason, Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses, permits or authorizations, then (i) risk of loss to such Goods regardless shall pass to Buyer on such date, (ii) such Goods shall be deemed to have been delivered by Seller to Buyer on such date, and (iii) Seller, at its option, may store the Goods until Buyer picks them up, with Buyer bearing liability for all related costs and expenses (including storage, shipping fees (if applicable), insurance, and other incidental expenses).

5. Non-Delivery. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller’s (or Seller’s applicable supplier’s or manufacturer’s) place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer provides conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods unless Buyer gives written notice to Seller of such non-delivery within 48 hours of the date when such Goods would have been delivered to the Delivery Point in the ordinary course of events. Any liability of Seller for non-delivery of Goods shall be limited to replacing such non-delivered Goods within a reasonable period of time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

6. Title and Risk of Loss. Title and risk of loss shall pass to Buyer upon delivery of the Goods at the Delivery Point. Goods delivered to Buyer will remain personal property, regardless of how they are installed or affixed to any realty or structure. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Upon Seller’s request, Buyer agrees to cooperate fully with Seller in the filing of any UCC financing statements or other documents necessary to perfect such security interests and liens. The security interest granted under this Section 6 constitutes a purchase money security interest under the UCC as in effect in the U.S. State of Seller’s principal place of business (the “Governing State”). If Buyer defaults in its obligations before the Goods have been fully paid for, Seller may take any actions permitted by Law to protect its interests including, where permissible, repossession of the Goods.

7. Inspection, Rejection and Return of Goods; Buyer Order Cancellations & Modifications. Except as may be otherwise set forth in the applicable Supplemental Seller T&Cs (if any):

(a) Buyer shall inspect the Goods and shall (i) notify Seller in writing within the Inspection Period of any damage to the Goods or any other complaint whatsoever which Buyer may have concerning delivery of same, in each case accompanied by such evidence or documentation as may be required by Seller, and (ii) also note any damage to the Goods on the applicable delivery tickets and shipping receipts at the time of delivery thereof (any of the foregoing in clause (i) and/or (ii), “Timely Noted Delivery Exceptions”). Except in the event (and then only to the extent) of any Timely Noted Delivery Exceptions (but without limiting Buyer’s rights and Seller’s obligations pursuant to Seller’s Limited Warranty under and as defined in Section 9 below), Buyer shall be deemed to have accepted the Goods as delivered and waived any and all claims concerning delivery thereof.

(b) In no event shall Seller be obligated to accept returns of (or issue any credit or refund for) any Goods without the express prior written consent of Seller (which may be granted or withheld in Seller's sole discretion and the grant of which may require any such returns to be evidenced by a return authorization number issued by Seller with respect to such specific Goods) ("Seller's Return Authorization"). Seller accepts no responsibility for Goods returned without Buyer's having obtained Seller's Return Authorization, and upon Buyer's receipt of Seller's Return Authorization, the related Goods must be returned by Buyer in saleable condition within 30 days from the date of Seller's invoice. Notwithstanding Seller's Return Authorization, Seller will not accept Goods for return if they (i) have been damaged or used, (ii) were custom-manufactured for or special-ordered by Buyer, (iii) have been returned not in their original packaging (unopened), (iv) were not purchased from Seller, (v) are otherwise incapable of being resold by Seller, or (vi) have not been delivered to Seller, freight prepaid, at the physical address specified by Seller for such return. With respect to any returns of Goods that comply with the requirements set forth in this Section 7(b) ("Seller-Authorized Returns"), Seller shall have the right, in its sole discretion, to either (A) replace such Goods or (B) credit or refund the price paid for such Goods by Buyer, in each case subject to the conditions applied by Seller in its sole discretion. When Seller has authorized the return of Goods for any reason other than pursuant to Seller's Limited Warranty, the amount of credit or refund issued by Seller may be subject to a restocking charge of up to 40%, applied by Seller in its sole discretion. Any Goods returned by Buyer which do not qualify as Seller-Authorized Returns will be returned by Seller to Buyer at Buyer's expense or become the property of Seller.

(c) Seller in no event shall be obligated to accept any cancellations or modifications, in whole or in part, of any orders for Goods and/or Services, or any rescheduling of deliveries of Goods or provision of Services, requested by Buyer (any of the foregoing, "Modifications"), and, in the event of any such acceptance of Modifications by Seller in its sole discretion (which acceptance shall be binding only if expressly and specifically granted in writing by Seller to Buyer), Seller reserves all rights, in addition to any and all other remedies of Seller hereunder and under applicable Law, to charge Buyer (in the form of a modification or cancellation fee or otherwise) for recovery of Seller's costs and losses of anticipated profit incurred by Seller as a result of any such Modification, including charges for (i) a price adjustment for the Goods and Services based upon the quantity thereof delivered or provided, (ii) all costs (whether direct or indirect) incurred or committed to with respect to this Agreement, including all restocking, reshipping and return charges which may be incurred, the cost of any components, equipment, parts or materials which were made to order or otherwise customized for Buyer for the order or otherwise cannot be returned, and a reasonable allowance for prorated general expenses, and (iii) all Services and work performed by Seller as of the date on which Seller's acceptance of such Modification is granted. Charges for Modifications may represent up to 100% of the value of the order which is canceled or modified, depending in part on the level of customization of the affected Goods and the status of work-in-process regarding such order.

(d) Buyer agrees that the remedies set forth in Section 7(b), subject to the limitations set forth in Section 7(c), are Buyer's exclusive remedies for the delivery of Goods except in the event that Seller's Limited Warranty pursuant to Section 9 applies in accordance with its terms. Except as provided in Section 7(b) (as limited by Section 7(c)) and Section 9, all sales of Goods to Buyer are made on a one-way basis, and Buyer has no right to return to Seller any Goods purchased under this Agreement (including any Purchase Order).

8. Performance Claims; Responsibility; Disclaimer for Buyer-Supplied Components.

(a) Performance claims with respect to the Goods or Services do not constitute representations, warranties, or promises by Seller that the Goods will attain the performance values depicted therein after installation in the field. The actual values may vary in actual field application, depending on usage and environmental factors. It is solely Buyer's responsibility to (i) ensure that all Goods and Services sold under this Agreement are compatible and compliant with Buyer's and its customers' and other end users' systems, as applicable, and (ii) if applicable, obtain approval of Goods from its customers and end users and their respective contractors, consultants, and advisors (including project owners and engineers) (collectively, "Project Parties"). Seller represents only that Goods and Services are as described in this Agreement; Seller does not represent or warrant that the Goods or Services as so described will be approved or otherwise satisfactory to any Project Parties, or that the Goods or Services meet project specifications. Performance of the overall system that incorporates the Goods, and/or to which the Services have been applied, is not guaranteed. Seller is not responsible for ensuring, and does not guarantee, system compatibility or compliance of any Goods or Services, including with respect to the Occupational Safety and Health Act of 1970 (and the standards and regulations issued thereunder), as amended from time to time, or any other codes or Laws, unless specifically and expressly stated otherwise in the applicable Sale Document or agreed to in a separate, issue-specific, written agreement signed by a corporate officer of Seller. Timely performance of each of Seller's obligations hereunder is contingent upon Buyer supplying to Seller, when needed, all required technical information, including drawing and submittal approval, and all required commercial documentation. Buyer shall also supply and complete, as applicable, all shipping delivery information, pre-delivery checklists, and pre-startup checklists in a timely manner or the applicable overall schedule may be impacted without liability (and at no cost) to Seller.

(b) Buyer acknowledges that the Goods purchased by Buyer under this Agreement may contain products, parts, and/or components supplied by Buyer or by a third party at Buyer's direction ("Buyer-Supplied Components"). For avoidance of doubt, Seller (i) makes no representations or warranties with respect to any Buyer-Supplied Components and (ii) disclaims any and all liability and damages of any kind arising in any way from or in connection with Buyer-Supplied Components, including those delivered late, damaged, defective, or nonconforming.

9. Seller's Limited Warranty.

(a) This Section 9, together with any additional or substitute warranty which the applicable Sale Document and/or the Supplemental Seller T&Cs (if any) expressly and specifically states or incorporates by reference (including the conditions, qualifications and limitations provided therein, the "Supplemental Seller Warranty"), collectively set forth Seller's sole and exclusive warranty (collectively, "Seller's Limited Warranty"), provided that in the case of any express, specific conflict between a term or condition of this Section 9 and the applicable Supplemental Seller Warranty, such term or condition of the applicable Supplemental Seller Warranty shall control. Seller's Limited Warranty in its entirety is hereby incorporated into and made a part of this Agreement. Except to the limited extent expressly and specifically provided in Section 12, Seller's Limited Warranty constitutes Buyer's sole and exclusive remedy, and Seller's entire liability, for any and all claims made in connection with the Goods and Services, whether by, through, or on behalf of Buyer or otherwise, and whether based in contract, tort (including negligence) or otherwise. Except for Seller's Limited Warranty, as applicable, Buyer acknowledges and agrees that it has relied on no other representations or warranties, and that no other representations or warranties have formed the basis of its bargain under this Agreement. In all cases pursuant to Seller's Limited Warranty, Seller assumes no obligation for any labor, equipment or materials costs associated with replacement, repair, and/or removal of defective Goods unless performed by (or with the express prior written consent of) Seller.

(b) With respect to Third-Party Goods, solely to the extent permitted by Seller's contract with the original supplier or manufacturer thereof, Seller agrees to assign to Buyer, and Buyer shall be permitted to assign to its direct customer (so long as such customer is the original end user of such Third-Party Goods) ("Buyer's Customer"), any rights which Seller may have under any warranty made by such original supplier or manufacturer, subject to the terms, conditions, qualifications and limitations applicable in or to each such warranty (the "Third-Party Warranty"). Seller's warranties with respect to Third-Party Goods, as set forth in this Section 9(b), shall not be enlarged or affected by, and no other obligation or liability shall arise or grow out of, Seller's rendering of design or other technical advice or services in connection with Buyer's order of any Third-Party Goods from Seller, or Seller's furnishing of such Third-Party Goods to Buyer.

(c) With respect to the Seller-Manufactured Goods (if any), Seller warrants to Buyer solely as expressly and specifically set forth in this Section 9 (excluding Section 9(b)) and/or the Supplemental Seller Warranty (if any), and Buyer in turn shall be permitted to assign its rights under such warranty pursuant to this Section 9(c) to Buyer's Customer (so long as Buyer's Customer is the original end user of such Seller-Manufactured Goods).

(d) Seller's entire obligation under Seller's Limited Warranty (and Buyer's sole and exclusive remedy for breach thereof) shall be limited to (i) repair or replacement of the applicable Third-Party Goods or Seller-Manufactured Goods so warranted, consistent with the terms of this Section 9 and the applicable Third-Party Warranty or Supplemental Seller Warranty, which prove to be defective within the warranty period specified therein, or (ii) refund of the purchase price in lieu of such repair or replacement, provided that Seller in all cases shall have the sole and exclusive option as to which remedy, or combination thereof, it shall provide with respect to any such Goods which have been proven to be defective. Seller may, in its sole discretion, use new or refurbished replacement parts for repairs and/or replace affected Goods or parts with Goods or parts that are materially functionally equivalent to the replaced Goods or parts. In addition to (A) such exclusions, qualifications, conditions, and limitations as may be set forth in the applicable Third-Party Warranty or Supplemental Seller Warranty, (B) Seller's Limited Warranty shall not apply to (i) Buyer-Supplied Components, (ii) products, parts, and components normally consumed in operations (such as grease, oil, packing, light bulbs, and the like), and (iii) any Goods which Seller determines, in its sole discretion, to have been subjected to or the object of any Other Warranty Exclusions (as defined in Section 9(e) below), and (C) Seller's Limited Warranty shall become invalid and of no further force or effect upon any failure to comply with any of the following conditions: (u) all Goods, and all ancillary equipment, components and parts, must be installed in accordance with the Documentation (as defined in Section 11(a) below); (v) regular maintenance and service must be performed on all Goods in accordance with the Documentation; (w) Goods must be put only to their intended use, in accordance with the Documentation; (x) replacement parts must be manufactured by Seller or a third party authorized or approved in writing by Seller; (y) Buyer at all times must comply fully with the claims procedure set forth in this Section 9; and (z) Seller must have received full and timely payment of all invoices issued to Buyer (all of the foregoing in clauses (A), (B), and (C), including all sub-clauses of each thereof, "Warranty Exclusions"). Goods which prove to be defective during such applicable warranty period must be actually received by Seller not later than 30 days after the termination of such warranty period. All transportation and insurance charges for shipment of such defective Goods to Seller shall be paid by Buyer. Such warranty is further subject to these additional conditions: (I) Seller is promptly notified in writing, during the applicable warranty period, upon discovery by Buyer that such Goods have failed to conform to this Agreement, including a detailed explanation of any alleged deficiencies; (II) unless otherwise requested by Seller, such Goods are returned to Seller, FOB Seller; and (III) Seller's examination of such Goods shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and have not been caused by or resulted from or in connection with any Warranty Exclusions. Following Seller's receipt of any claim made by Buyer under Seller's Limited Warranty in accordance with the foregoing, Seller shall have a reasonable period of time to inspect, repair, replace, or provide a refund or credit for such Goods, as provided in this Section 9(d). In the case of any Seller-Manufactured Goods (and, to the extent so provided in the applicable Third-Party Warranty, the related Third-Party Goods), when Seller replaces any Goods or any component thereof, the applicable warranty period for such replacement Goods or component equals the warranty period remaining on the original Goods or component so replaced at the time of such replacement (*i.e.*, furnishing the replacement does not extend the original warranty period or start a new warranty period), and is subject to all other terms and conditions of Seller's Limited Warranty (or such Third-Party Warranty, as the case may be).

(e) “Other Warranty Exclusions” means (i) any accident, alteration, misuse, neglect, negligence, abuse, vandalism or physical damage; (ii) any unauthorized repair, replacement or alteration, including by any person or facility not approved in writing in advance by Seller; (iii) improper installation (including electrical damage caused by improper installation) or failure to follow installation instructions provided by Seller; (iv) any use inconsistent with the Documentation; (v) any use of equipment, components, products, or parts not manufactured by Seller; (vi) any explosion, implosion, flood, earthquake, lightning strike, acid rain, chemical fallout, catastrophic event, or other act of God or nature; (vii) exposure to severe environmental conditions or unintended uses and/or substances; (viii) decomposition by chemical action and wear caused by the presence of abrasive materials; (ix) acts or omissions of any carrier delivering any Goods; and (x) any failure to provide reasonable maintenance or to care for or maintain any Goods in accordance with the Documentation.

(f) With respect to any Services that Seller agrees to perform in the Sale Document, except as otherwise expressly and specifically set forth in the Supplemental Seller Warranty and/or the Supplemental Seller T&Cs, Seller warrants only that it will perform such Services in a professional and workmanlike manner (with Buyer’s sole remedy for breach of such warranty being Seller’s re-performance of any nonconforming Services if Buyer provides conclusive, satisfactory written notice and evidence of same to Seller within seven days after Seller’s performance of such original Services claimed to be nonconforming).

(g) EXCEPT FOR THE EXPRESS PROVISIONS SET FORTH IN SELLER’S LIMITED WARRANTY (INCLUDING THE LIMITATIONS, EXCLUSIONS, QUALIFICATIONS AND CONDITIONS THEREIN), SELLER MAKES NO WARRANTY OF ANY KIND, AND EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER STATUTORY, EXPRESS AND IMPLIED WARRANTIES WHATSOEVER (WHETHER IN FACT OR BY LAW), INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, THE NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY OR OTHERWISE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR OF PERFORMANCE, CUSTOM OR USAGE OF TRADE.

10. Confidential Information. All non-public, confidential or proprietary information of Seller (including specifications, samples, patterns, designs, processes, methods, techniques, formulas, plans, prints, drawings, documents, technical and other data, videotapes, audiotapes, business operations, customer lists, pricing, discounts or rebates) disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with this Agreement or otherwise (“Confidential Information”), is confidential and solely for the use of performing this Agreement (including the authorized use of the Goods) and may not be disclosed or copied unless, in each case, specifically and expressly authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Breach of this Section 10 will cause irreparable harm; accordingly, Seller shall be entitled to seek injunctive relief for any violation of this Section 10, without posting bond, and Buyer hereby waives the claim or defense that Seller has an adequate remedy at law. This Section 10 does not apply to information that either (a) is in the public domain through no act or omission of Buyer, is lawfully and rightfully known to Buyer at the time of disclosure by Seller without any violation of this Section 10, or has been lawfully and rightfully obtained by Buyer from a third party or public source without confidentiality limitations, in each case as demonstrated by Buyer with competent documentary evidence, or (b) is required to be disclosed by any applicable Law, or in the context of any administrative or judicial proceeding, in each case provided that Buyer, to the fullest extent legally permissible, provides Seller prompt prior written notice of such required disclosure sufficient to allow Seller to seek to oppose, quash or limit such requirement, cooperates with Seller in any such effort, and only discloses as much of such information as it is legally required to disclose.

11. Intellectual Property.

(a) As between the Parties, Seller solely and exclusively retains and owns all right, title, and interest in and to all Seller Intellectual Property Rights (as defined below), and no right, title, or interest of any kind in any such Seller Intellectual Property Rights is conveyed to Buyer unless (and solely to the extent) expressly and specifically provided in a separate, issue-specific, written agreement signed by a corporate officer of Seller; provided that, except as otherwise provided herein, Buyer is hereby granted a nonexclusive, royalty-free license to use the Software (if any) and copies thereof Incorporated (each as defined below) into the Goods, but solely in conjunction with the authorized and intended use of such Goods and only at Buyer’s (or its customer’s, if applicable) site where such Goods are first used, and solely in strict accordance with Seller’s or its third-party licensor’s applicable license terms. “Seller Intellectual Property Rights” means (i) all creations by or on behalf of Seller or its affiliates, suppliers (including manufacturers), or licensors related to their work and services which are or may become legally protectable or recognized as forms of Intellectual Property Rights (as defined below), including all works, whether registerable or not, in which copyright, design right or any form of Intellectual Property Rights may exist, which Seller or any of its affiliates, suppliers (including manufacturers), or licensors, either solely or jointly with Buyer, conceives, makes or reduces to practice, and, without limiting the generality of the foregoing, (ii) any and all Intellectual Property Rights in and to (A) the Goods, (B) all computer programs, firmware, software, and code owned by Seller, its affiliates, suppliers (including manufacturers), or licensors or its or their direct or indirect licensors, including any firmware or other software incorporated, included, embodied, embedded, linked, bundled, or delivered with or in, or otherwise made a part of (any of the foregoing, “Incorporated” in) the Goods, or any portion thereof (the “Software”), including all copies thereof, (C) user manuals and other documentation and instructions provided with or otherwise Incorporated in the Goods, or published or otherwise made available from time to time by Seller or its third-party suppliers, manufacturers, or licensors in respect of the Goods, including safety warnings, product labeling, datasheets, specification sheets, and/or other installation, use, operation, and technical documentation (collectively, the “Documentation”), (D) the Confidential Information, (E) any feedback, input, ideas, and/or suggestions

with respect to any Goods, Software, Confidential Information, and/or Documentation, or any portion of any of the foregoing, including any suggested changes to or improvements of any of the foregoing, in each case which are provided or made available by Buyer or any third party, whether during or after the term of this Agreement (“Feedback”), and (F) all new versions, updates, upgrades, revisions, changes, expansions, enhancements, improvements, modifications, and/or derivative works of or to the Goods, Software, Confidential Information, Documentation, and/or Feedback, or any portion of any of the foregoing, in each case which are possessed, owned, controlled, created, conceived, developed, produced, authored, originated, invented, gathered, compiled, made, obtained, or acquired by Seller, Buyer, or any third party, whether during or after the term of this Agreement.

(b) “Intellectual Property Rights” means all industrial, intellectual property, and/or proprietary rights of any kind, including: (i) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other governmental authority-issued indicia of invention ownership (including inventor’s certificates, petty patents, and patent utility models); (ii) trademarks, service marks, trade dress, trade names, brand names, logos, and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world; (iii) privacy and publicity rights, rights of attribution, integrity, artist’s and other moral rights, and the like; (iv) literary and other works of authorship, artistic and other expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (v) methods, techniques, innovations, inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures and other confidential and proprietary information and all rights therein, in each case whether patentable or not; (vi) semiconductor chips, mask works and the like; and (vii) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction throughout or in any part of the world.

(c) On behalf of Buyer and all of Buyer’s employees, agents, contractors, and other personnel (any of the foregoing, “Personnel”), Buyer hereby assigns and transfers to Seller all right, title, and interest in and to any and all Seller Intellectual Property Rights which may be deemed to be owned by Buyer or Buyer Personnel, as applicable, and waives any and all rights Buyer or any Buyer Personnel may have under any Law or other legal or judicial source of authority applicable to any Seller Intellectual Property Rights, and agrees to execute such further instruments as Seller may from time to time deem necessary or desirable to evidence, establish, maintain, and/or protect Seller’s ownership of such Seller Intellectual Property Rights and all right, title, and interest therein.

(d) Without Seller’s express prior written consent in each instance, Buyer will not, and will not permit any other person or entity to, (i) alter, modify, translate, disassemble, decompile, reverse engineer, copy, reengineer, create derivative works of, or otherwise seek to duplicate the performance or characteristics of, the Goods, the Software, or any Seller Intellectual Property Rights, or any portion of any of the foregoing, (ii) seek to defeat or circumvent any safety or security feature of the Goods, Software, or any Seller Intellectual Property Rights, or any portion of any of the foregoing, or (iii) use the Goods, Software, or any Seller Intellectual Property Rights, or any portion of any of the foregoing, in any manner not expressly authorized by the Documentation or this Agreement, or in any manner which violates any applicable any Law or other legal or judicial source of authority, including any export Laws, or any of the Documentation. Buyer will not, and will not authorize any other person or entity to, remove, obscure, or alter any Seller notices, legends, labels, or marks, including any of Seller’s trademarks, from the Goods (or any portion thereof).

12. Indemnification.

(a) To the maximum extent allowed by Law, Buyer, at its sole cost and expense, must defend, indemnify, and hold harmless Seller, its affiliates, and its and their respective directors, officers, employees, owners, consultants, insurers, suppliers, licensors, agents, representatives, successors, and assigns (collectively, “Seller Parties”) from and against any and all claims, demands, sums, costs, expenses, liabilities, deficiencies, losses, obligations, suits, proceedings, actions, orders, awards, damages, penalties, fines, interest and other expenses (including all amounts paid under judgment or settlement, attorneys’ fees, expert fees, court costs, costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers) (all of the foregoing, collectively, “Claims”) that any Seller Parties may incur or be obligated to pay in any way relating to Buyer-Supplied Components and/or in any way as a result of any of the following: (i) Buyer’s or Buyer’s Customer’s negligence or use, ownership, maintenance, transfer, transportation, or disposal of the Goods; (ii) any actual or alleged infringement of the Intellectual Property Rights of others arising from Buyer’s or Buyer’s Customer’s plans, specifications (including Buyer’s or Buyer’s Customer’s trademarks, trade names, and brand names), or production of the Goods ordered by Buyer or Buyer’s Customer; (iii) Buyer’s or Buyer’s Customer’s actual or alleged violation of any Laws, including Laws governing safety, labeling, packaging, and labor practices; (iv) Buyer’s breach of this Agreement (or Buyer’s Customer’s breach of its agreement with Buyer); (v) Buyer’s or Buyer’s Customer’s breach of any of the terms, conditions, and requirements of the manufacturer of any Goods; (vi) any warranties, remedies, and third-party Claims for which Buyer or Buyer’s Customer is actually or alleged to be obligated which extend beyond Seller’s obligations pursuant to Seller’s Limited Warranty and Section 12(b) hereunder; and (vii) damage

to any property, or death or injury of any person, in any manner arising or resulting from or attributable or related to the actions or omissions of Buyer, any Buyer Parties (as defined in Section 12(b) below), Buyer's Customer, any of its affiliates, or any of their respective successors and assigns, directors, officers, employees, owners, consultants, suppliers, licensors, contractors, invitees, representatives, or agents. Buyer may not, without the prior written consent of Seller, accept any settlement or compromise, or consent to any entry of judgment, with respect to any such Claim that (A) subjects Seller to injunctive or other equitable actions or orders, or (B) does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release of the applicable Seller Parties from all liability in respect of such Claim. Seller has the right, at its own expense, to monitor the defense or settlement of such Claims through counsel of its own choosing.

(b) To the maximum extent allowed by Law, Seller, at its sole cost and expense, must defend, indemnify, and hold harmless Buyer, its affiliates, and its and their respective directors, officers, employees, insurers, agents, successors, and permitted assigns (collectively, "**Buyer Parties**") from and against all Claims that any Buyer Parties may incur or be obligated to pay solely and directly as a result of the gross negligence or willful misconduct of Seller (or its employees or subcontractors) in the course of its performance of the Services. Seller may not, without the prior written consent of Buyer, accept any settlement or compromise, or consent to any entry of judgment, with respect to any such Claim that (i) subjects Buyer to injunctive or other equitable actions or orders, or (ii) does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release of the applicable Buyer Parties from all liability in respect of such Claim. Buyer has the right, at its own expense, to monitor the defense or settlement of such Claims through counsel of its own choosing.

(c) In addition, Seller, at its sole cost and expense, must defend or settle any third-party legal action instituted against Buyer or any other Buyer Party, to the extent that it alleges that the authorized use of Seller-Manufactured Goods (if any) as delivered to Buyer, without modification or alteration, and not in combination, operation, or use with equipment, products, hardware, software, systems, or data furnished by any party other than Seller, and not in any manner inconsistent with the Documentation for such Goods, directly infringes upon any valid U.S. patent or copyright of such third party, and Seller must pay all damages attributed to such action that are finally awarded against Buyer pursuant to a non-appealable order issued by a court of competent jurisdiction; provided that Seller shall have sole authority to defend or settle any such action. Seller's indemnification obligations pursuant to this Section 12(c) are further contingent upon: (i) Buyer's notifying Seller in writing of such action promptly (but in no event more than seven business days) after Buyer receives notice or otherwise becomes aware thereof; (ii) Buyer's providing Seller with all documentation, information, cooperation, and assistance requested by Seller to defend or settle such action; and (iii) such action's not arising out of (A) any modification to any Seller-Manufactured Goods (or any portion thereof) not expressly authorized in writing by Seller or (B) the use of Seller-Manufactured Goods in a manner that failed to comply with this Agreement or Documentation or was otherwise not intended. If any such action has been instituted, or in Seller's opinion might be instituted, Seller also may, in its sole discretion and expense, either: (x) obtain for Buyer the right to continue using the Seller-Manufactured Goods at issue, or replace or modify the same, in any such case so that they may continue to be used in the manner contemplated by this Agreement without infringement; or (y) if the foregoing alternatives are not reasonably practicable, as determined by Seller in its sole discretion, terminate this Agreement or the applicable order(s) and refund to Buyer an amount equal to the Seller-determined depreciated value of the infringing items. Seller may not, without the prior written consent of Buyer, accept any settlement or compromise, or consent to any entry of judgment, with respect to any such action that (I) subjects Buyer to injunctive or other equitable actions or orders, or (II) does not include as an unconditional term thereof the delivery by the claimant or plaintiff of a written release of Buyer from all liability in respect of such action. Buyer shall have the right, at its own expense, to monitor the defense or settlement of such action through counsel of its own choosing.

13. Limitation of Liability.

(a) IN NO EVENT SHALL ANY OF THE SELLER PARTIES BE LIABLE IN ANY RESPECT, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OF THE CLAIM, TO THE BUYER PARTIES OR ANY OTHER PERSON OR ENTITY FOR (AND THE BUYER PARTIES AND SUCH OTHER PERSONS AND ENTITIES HEREBY EXPRESSLY WAIVE) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ANY OTHER SIMILAR FORM OF DAMAGES WHATSOEVER, WHETHER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, INFRINGEMENT, OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE GOODS OR SERVICES, OR ANY PORTION OF ANY OF THEM, INCLUDING LIABILITY OR DAMAGES FOR LOST OR ANTICIPATED PROFITS, REVENUE, OR USE, BUSINESS INTERRUPTION, COVER COSTS (INCLUDING FOR CAPITAL, FUEL, AND POWER), CLAIMS BY CUSTOMERS OF BUYER, DELAYS IN THE DELIVERY OF GOODS OR PERFORMANCE OF SERVICES (EVEN IF CAUSED BY THE NEGLIGENCE OF ANY OF THE SELLER PARTIES), LOST TIME OR GOODWILL, LOSS OF DATA, OR LOSS OF USE OF THE GOODS (OR ANY PORTION THEREOF), IN ANY WAY ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT, IN EVERY SUCH CASE EVEN IF ANY OF THE SELLER PARTIES HAS BEEN ADVISED OF (OR OTHERWISE MIGHT HAVE ANTICIPATED) THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. THE SELLER PARTIES SHALL NOT BE LIABLE (EXCEPT TO THE EXTENT SPECIFICALLY AND EXPRESSLY PROVIDED IN SECTION 12) FOR ANY CLAIMS AGAINST ANY OF THE BUYER PARTIES BY ANY THIRD PARTIES. IN NO EVENT SHALL THE MAXIMUM CUMULATIVE LIABILITY OF THE SELLER PARTIES TO THE BUYER PARTIES AND/OR THEIR CUSTOMERS OR OTHER THIRD PARTIES FOR ANY AND ALL CLAIMS ARISING IN CONNECTION WITH THE GOODS, THE SERVICES, AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM(S) OF ACTION, EXCEED, IN THE AGGREGATE, THE PRICE ACTUALLY PAID BY BUYER TO SELLER FOR THE SPECIFIC GOODS OR SERVICES PROVIDED BY SELLER UNDER THIS AGREEMENT

GIVING RISE TO THE APPLICABLE CLAIM(S) OR CAUSE(S) OF ACTION FOR THE SIX MONTHS PRIOR TO THE TIME THE LIABILITY THEREFOR AROSE. NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THIS AGREEMENT MAY BE BROUGHT BY ANY OF THE BUYER PARTIES MORE THAN SIX MONTHS AFTER SUCH ACTION HAS ACCRUED. THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS SECTION 13 ARE A MATERIAL PART OF THE BARGAIN. EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT BE WILLING TO ENTER INTO THIS AGREEMENT WITHOUT SUCH PROVISIONS. EACH PARTY ACKNOWLEDGES AND AGREES THAT THESE PROVISIONS SHALL APPLY WHETHER OR NOT THE REMEDIES ALLOWED UNDER THIS AGREEMENT ARE DEEMED ADEQUATE AND WHETHER OR NOT SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

(b) To the extent that Seller has relied upon any data or information supplied by Buyer to Seller in the selection, design, or performance of the Goods and/or Services and/or Seller's preparation of the Sale Document, and such data or information is inaccurate or incomplete, all warranties and other provisions contained herein which are affected thereby shall be deemed null and void.

14. Insurance. During the term of this Agreement and for a period of 12 months thereafter, Buyer shall, at its own expense, maintain and carry in full force and effect, with financially sound and reputable insurers, insurance which includes (a) commercial general liability coverages with a minimum limit of \$1,000,000 each occurrence and \$2,000,000 in annual aggregate, including product liability coverage for bodily injury, property damage and personal injury liability, and (b) property coverage to protect the Goods being sold under this Agreement against loss or damage from any external cause, including losses from fire, wind, water, and other causes, in an amount no less than the sales price of such Goods, until the Goods are accepted and paid for in full by Buyer. Upon Seller's request, Buyer shall provide Seller with a certificate(s) of insurance from Buyer's insurer(s) evidencing all of the insurance coverage specified in these Terms and naming Seller as an additional insured. Buyer shall provide Seller with no less than 30 days' advance written notice in the event of a cancellation or material change in any of Buyer's above insurance coverages. Except where prohibited by Law, Buyer shall require its insurer(s) to waive all rights of subrogation against Seller's insurers and Seller.

15. Compliance with Laws. Buyer shall comply with all applicable laws, rules, regulations and ordinances (collectively, "Laws"). Buyer shall obtain and maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement, and relating to, as applicable, the installation and use of the Goods and Services. Buyer shall comply with all export and import Laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance.

16. Government Contracts. Goods provided by Seller are commercial off-the-shelf items as such term is defined in U.S. Federal Acquisition Regulations. Buyer shall not resell the Goods to any governmental authority or its respective agencies without Seller's prior written approval. Unless otherwise separately agreed to in a writing signed by both Seller and Buyer, no provisions required in any U.S. government contract or any subcontract related thereto shall be a part of this Agreement or imposed upon or binding upon Seller, and this Agreement shall not be deemed an acceptance of any government provisions that may be included or referenced in Buyer's Purchase Order or any other document.

17. Nuclear/Atomic Sales. UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THE SALE DOCUMENT, GOODS AND SERVICES HEREUNDER ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN OR WITH ANY NUCLEAR/ATOMIC OR NUCLEAR/ATOMIC-RELATED APPLICATION, INSTALLATION, OR ACTIVITY. If Buyer or the ultimate user of Goods intends to use them in such an application, installation, or activity, Seller's Nuclear Terms of Sale, which Seller will furnish to Buyer upon written request, shall be incorporated into, made a part of, and control this Agreement. Buyer (i) accepts Goods and Services in accordance with the restriction set forth in the immediately preceding two sentences, (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users and (iii) agrees to defend, indemnify and hold harmless the Seller Parties from any and all Claims, including incidental and consequential damages, arising from use of Goods and Services in any nuclear/atomic or nuclear/atomic-related applications, installations, or activities, whether the cause of action be based in tort, contract, or otherwise, including allegations that Seller's liability is based on negligence or strict liability.

18. Non-Solicitation. Buyer shall not, directly or indirectly, recruit, hire, employ, contract with, or deal directly with any of Seller's employees, subcontractors, or suppliers while Seller is performing its work or for a period of 12 months after the conclusion of Seller's work or termination of the Agreement, whichever is earlier, or without the prior written approval of Seller.

19. Termination; Survival. In addition to any remedies that may be provided under these Terms or applicable Laws, Seller shall have the absolute right, in its sole discretion, to terminate this Agreement without penalty and with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement, and such failure continues for two days after Buyer's receipt of written notice of non-payment; (ii) has failed to perform or comply with this Agreement (other than non-payment), in whole or in part, and such failure has not been cured within 10 days of Buyer's receipt of written notice of such breach; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Sections 1 through 3 (inclusive) and 8 through 22 (inclusive) shall survive expiration or earlier termination of this Agreement. If Seller terminates this Agreement pursuant to this Section 19, in whole or in part, including all or part of any order or orders,

Seller reserves all rights to charge Buyer (in the form of a termination fee or otherwise) for recovery of Seller's costs and losses of anticipated profit incurred by Seller as a result of any such termination, including as set forth for Buyer Modifications in Section 7(c).

20. Force Majeure. Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from events, conditions, acts, or circumstances beyond the reasonable control of Seller, including acts of God, acts of Buyer or Buyer's Customer (and, if different from Buyer or Buyer's Customer, acts of the owner or controller of the premises where the Goods are to be delivered or Services provided), flood, fire, earthquake, severe weather, sabotage, explosion, governmental actions, war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, pandemic, epidemic, lockouts, strikes or other labor disputes, shortages or difficulties (whether or not relating to Seller's or its supplier's or sub-contractor's workforce), or restraints or delays affecting manufacturing or material sourcing, carriers, vehicles, or other inability or delay in obtaining or transporting supplies of adequate or suitable materials, telecommunication breakdown, power outage, or fuel or energy shortage (any of the foregoing, a "Force Majeure Event"). Seller shall notify Buyer of any Force Majeure Event and make commercially reasonable efforts to mitigate the same to the extent reasonably practicable, and the date of delivery or time for completion of performance, as the case may be, will be extended by a period of time reasonably necessary under the circumstances to overcome the effect of such Force Majeure Event. If any Force Majeure Event occurs, Seller reserves the right to (a) substitute alternative materials and make adjustments to orders of Goods as needed to perform Seller's obligations to make shipments and fulfill orders under this Agreement and (b) allocate production and deliveries among its customers as Seller deems appropriate in its sole discretion. If any delay in shipment or delivery due to a Force Majeure Event extends for longer than 90 days beyond the due date for such shipment or delivery, Seller shall have the option to cancel such applicable portion of such order upon written notice to Buyer, without penalty or cost, but the balance of this Agreement shall otherwise remain unaffected. This Section 20 shall not in any way be deemed to limit or preclude Seller from asserting Sections 2-613 or 2-615 of the UCC or other rule of Law or defense as an excuse of Seller's delay or failure to perform any term of this Agreement.

21. Dispute Resolution. Any dispute or disagreement between Seller and Buyer arising out of or relating to this Agreement or any order of Goods hereunder (a "Dispute") shall be governed by the laws of the Governing State (without giving effect to the conflicts of laws provisions thereof), and each provision of this Agreement must be interpreted in a manner which is valid thereunder. The rights and obligations of the Parties shall not be governed by the 1980 United Nations Convention for the International Sale of Goods. Buyer and Seller shall negotiate in good faith to attempt to resolve any Dispute. Failing such efforts, unless Seller elects arbitration as provided below, the applicable state court of the Governing State shall be the court of exclusive jurisdiction and venue over any Disputes, any such Disputes must be commenced and maintained in the said state court, and Buyer expressly waives any right of removal to federal court pursuant to 28 U.S.C. §1441. Buyer further waives and agrees not to assert as a defense in any action, suit, or proceeding relating to this Agreement, any claim that (a) Buyer is not personally subject to the jurisdiction of the courts of the Governing State; (b) the venue of the action, suit or proceeding is improper, (c) the action, suit or proceeding is brought in an inconvenient forum, or (d) the subject matter of this Agreement may not be enforced in or by such courts of the Governing State. Seller may, in its sole discretion, elect that any or all Disputes be submitted to and settled exclusively by final and binding arbitration (in lieu of any judicial proceeding), administered by Seller's selected office in the Governing State of the American Arbitration Association under its Commercial or Construction Arbitration Rules, as selected by Seller in its sole discretion (or such other arbitration rules of the American Arbitration Association as may be agreed upon by both Parties), which are existing at the date of submission of the Dispute to arbitration. Any such Dispute shall be heard by a panel of three arbitrators with experience in the discipline that is the subject of the Dispute, who shall be jointly selected by Seller and Buyer. If the Parties are unable to agree upon the arbitrators within 20 days, then each Party shall select one arbitrator and those two arbitrators shall select a third arbitrator. The decision of a majority of the arbitrators shall be the decision of the panel. An award rendered by such arbitrators shall be binding upon and enforceable against the Parties and judgment on such award may be entered by any court of competent jurisdiction in the Governing State as the exclusive courts of competent jurisdiction. This Section 21 shall not prohibit either Party from seeking or obtaining from the applicable state court of the Governing State either (i) injunctive relief or (ii) equitable or other judicial relief to specifically enforce the provisions of this Agreement or to preserve the status quo prior to the event(s) leading to the Dispute.

22. Miscellaneous. Seller may photograph and/or make video recordings of areas where its work is being performed and use same for advertising or promotional purposes. Any notice or other communication regarding this Agreement must be in writing and delivered both by email and in one of the following manners: (a) personally delivered; (b) transmitted by a recognized national courier service; or (c) mailed in registered or certified form, with confirmation of receipt, to the business address of the Party to which such notice or communication is being given, as shown on the Sale Document (or, if different, the last known business address of such Party). No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No modification to this Agreement shall be valid or binding unless in writing and signed by the Party to be charged thereby. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Upon a Party's reasonable written request, the other Party shall, at its sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement. As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words, and, unless otherwise explicitly provided in the applicable Sale Document, "\$" or "dollars" means U.S.

dollars. This Agreement shall not be assignable by either Party without the prior written consent of the other party, except that, with or without such consent, Seller may assign any of its rights or delegate any of its obligations under this Agreement to any of its affiliates or to any acquirer of all or substantially all of the stock or assets of, or any other successor in interest to, Seller (or its applicable division). Any purported assignment or delegation in violation of the foregoing sentence is null and void. This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and assigns. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any actual or apparent agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties for any purpose, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. 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. If any term or provision of this Agreement is modified by a court, it shall be modified so as to carry out the intent of this Agreement, and any terms or provisions so modified shall be fully enforced as modified. Any Sale Document requiring signatures by both Parties may be executed in counterparts (including by email of PDF documents or other electronic transmission), each of which shall be deemed an original, with the same effect as if the signatures thereto were upon the same instrument. The Parties agree that this Agreement was drafted without regard to any presumption or rule requiring construction or interpretation against a party drafting an instrument or causing any instrument to be drafted. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
