



MJ Aerospace
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MJ AEROSPACE GENERAL TERMS AND CONDITIONS OF SALE

1. **Application.** These General Terms and Conditions of Sale (General Terms) apply to: (a) all proposals and quotations submitted by MJ Aerospace (Seller); (b) all purchase orders received by Seller; and (c) all sales of goods and services sold by Seller, except as otherwise specifically provided in a document issued by Seller. Any services to be provided by Seller, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included as part of an installation), will be considered ancillary to a sale of goods, and the UCC will apply to all goods and services to be provided by Seller (Goods).
2. **DEFINITIONS**
 - A. **"Business Day"** means a day on which the federal banks are open for normal business in New York which is not a Saturday or Sunday;
 - B. **"Company"** means either (i) MJ Aerospace, a company incorporated under the laws of California having a mailing address at 5234 Chesebro Road Suite 100, Agoura Hills, CA 91301.
 - C. **"Order"** means a purchase order issued by the Company to the Supplier (together with any terms or special conditions referred to or set out therein) as amended from time to time by the Company in writing;
 - D. **"Parties"** means the Company and the Supplier; and "Supplier" means the person, firm or company to whom the Order is addressed
3. **Acceptance And Agreement.** These terms and conditions apply to, and are agreed to be incorporated in, any Order issued by Buyer to Seller. An Order becomes a binding contract, including all terms and conditions that appear in the Order, in these Purchase Order Terms and Conditions, and in documents incorporated by reference, either upon acknowledgement in writing or commencement of performance. The Order, including these terms, supersedes all prior written or oral communications and is the sole and exclusive statement of the agreement between Buyer and Seller. It is not subject to variation, regardless of the wording of any purported acceptance by Seller, unless stated in a written agreement signed by Buyer's Purchasing Representative. Any additional or different terms appearing in Seller's acceptance are hereby expressly rejected.
4. **Formation.** A written quotation issued by Seller is an offer to sell. Buyer will be deemed to have accepted the provisions of these General Terms and an agreement will be formed by any of the following: (a) signing and returning to Seller a copy of any quotation; (b) sending to Seller a written acknowledgment of the quotation; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of the Goods (including instructions to bill and hold) following receipt of any quotation; (d) failing to cancel a pending purchase order within 10 days after receiving these General Terms; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer's acceptance of these General Terms. All sales by Seller consist only of these General Terms and those in other documents which are referred to in these General Terms or are attached hereto or in a document provided or signed or issued by Seller and referencing the transaction (all of which constitute the Agreement). Seller objects to all terms proposed by Buyer.
5. **Integration and Modification.**
 - A. **Revocation.** The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of Seller's quotation (according to its terms), Seller's actions in reliance on Buyer's oral acceptance of a written or oral quotation, or Buyer's receipt of the Goods, will constitute a binding contract under the terms of the Agreement.
 - B. **Complete Integration.** The Agreement is a final, complete and exclusive statement of the Agreement of Buyer and Seller. An order or an amendment submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to or inconsistent with these General Terms), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller will be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is given that Seller objects to any such terms or conditions in Buyer's purchase order or other document or communication. Seller will not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions.

- C. **Modification.** SELLER IS WILLING TO NEGOTIATE WRITTEN CHANGES TO THESE GENERAL TERMS SIGNED BY SELLER, BUT SELLER RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED COST OF SUCH CHANGES. No modifications, limitations, waivers or discharge of the Agreement or any of its terms will bind Seller unless in a writing signed by Seller's authorized employee at its home office. Notwithstanding anything to the contrary in this Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement will affect Buyer's liabilities to Seller accrued prior thereto. Seller may correct unilaterally mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or custom in the trade will not modify or waive any right of Seller.
- D. **Parties.** The Agreement is only for the benefit of Buyer and Seller, except all disclaimers and limitations applicable to Seller will be also for the benefit of Seller's affiliates, agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers also apply.
- E. **Acknowledgments.** Buyer and Seller acknowledge that: (i) they are merchants in respect to the Goods sold by Seller; (ii) they have had an opportunity to review the Agreement; and (iii) the provisions of the Agreement are reasonable when considered as a whole.
6. **Authority of Seller's Agents.** No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement. An affirmation, waiver, representation or warranty will not be deemed to be part of the basis of the Agreement and will not be enforceable, unless it is expressly included within the Agreement.
7. **Prices, Payment and Risk of Loss.**
- A. **Prices.** Prices contained in individual written quotations or proposals are firm only for a period stated therein and otherwise for 30 days from the date of the quotation. After the firm price period, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. ANY PRICE COMMITMENT FOR MORE THAN ONE YEAR REQUIRES THE WRITTEN APPROVAL OF AN OFFICER OF SELLER AND ANY ACTIONS OTHERWISE INDICATING ACCEPTANCE DO NOT REPRESENT ACCEPTANCE OF A PRICE COMMITMENT FOR ANY LENGTH OF TIME. Prices do not include taxes and Buyer will pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt from such taxes. All prices are in and will be paid in U.S. dollars at the location specified in Seller's invoice. Buyer will pay all government fees levied on the installation and inspection of the Goods. Buyer will pay upon receipt of all invoices rendered by Seller for any such items Seller may pay.
- B. **Risk of Loss and Title.** Unless otherwise stated on the face of an Order, delivery shall be to Buyer's facility (F.O.B Destination). Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier and Buyer is responsible for selecting its preferred freight carriers and is responsible for their performance including but not limited to delays, damage and / or scheduling errors caused by Buyer's freight carrier. Seller's breach of the Agreement will not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods will remain with Seller until Buyer pays for the Goods in full.
- C. **Changes at Buyer's Request.** Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, treating, coating, plating, material or process capability data, logistics requests including but not limited to Advanced Shipping Notices if Buyer requires with shipment, and other performance by Seller, required by changes requested by Buyer to the Goods, schedule or any other performance by Seller after the date of any quotation. Seller is not obligated to perform any such changes, but will be compensated for them if Seller complies with such requested changes.
- D. **Shipping and Packaging.** Seller shall pack, mark and ship all goods in accordance with specific requirements of an Order, and in a manner which complies with transportation regulations and good commercial practice for protection and shipment of goods. No separate or additional charge is payable by Buyer for containers or any other aspect of packing and shipping to the F.O.B. Point unless specifically stated in an Order. Seller shall mark the number of an Order on each container and include a packing slip with each shipment, listing Order and line item numbers.
- E. **Invoices.** Invoices may be rendered separately for each shipment (including any early shipment) made by Seller.
- F. **Installments.** Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale, and Buyer will pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future will be considered an installment delivery. A failure to pay for an installment within the time for payment is a material anticipatory breach of other installments by Buyer.
- G. **Terms.** Payment terms for all Goods will be 30 days from date of shipment.

- H. **Payment Demand and Acceleration.** If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or a documentary letter of credit approved by a U.S. bank acceptable to Seller or other financial security for such payment or other obligations. In addition, all amounts owed by Buyer to Seller will be accelerated and payable immediately if Buyer fails to make any payment on time and as otherwise required or if Buyer sells or transfers the line of business for which the Goods are purchased or is a participant in a merger or other reorganization.
- i. **Carrying Charge.** All amounts not paid to Seller when due will incur a carrying charge of 1.5% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.
- J. **Right of Offset.** Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and will pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts under written protest will not constitute a waiver by Buyer of its claims.
- K. **Allocation of Payments.** Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.
- L. **Exchange Rate.** Goods ordered under the Agreement which are procured by Seller from sources outside the United States are predicated on the rate of exchange in force at the time of the quotation (or purchase order if there is no quotation). If the rate of exchange between the United States dollar and the currency of the country from which the Goods are procured by Seller varies between the date of the quotation (or purchase order if there is no quotation) and delivery of the Goods, the price of the Goods will be increased or decreased accordingly to compensate Seller for such variation in the rate of exchange.
8. **Delivery.**
- A. **Shipping Dates.** Shipping dates are estimates based on Seller's present engineering and capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and will be computed from the date of entry of the order on Seller's books. Timely delivery is dependent on Buyer providing Seller with the minimum lead time quoted by Seller and Seller's prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary to provide the Goods and/or to grant any credit terms in the Agreement.
- B. **Method of Shipment.** Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost. Buyer will pay all expedite costs and fees including those that result from Buyer's failure to provide Seller the quoted lead time, unless delay was exclusively due to the fault of Seller.
9. Delay of Shipment or Performance Excused for Various Reasons.
- A. **Delayed Shipment.** If shipment or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for Goods is due and payable 30 days after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer will accept shipment immediately.
- B. **Estimated Delivery.** All inspection, delivery and other dates for Seller's performance are estimates only.
- C. **Supply Allocation.** Whenever Seller's supply of the Goods, materials or means of production is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned above in Subsection A or Section 25, Seller, in its sole discretion, may allocate its supply to its own use or other customers.
- D. **Storage.** If Buyer requests storage of Goods prior to final delivery, Seller will attempt to provide or arrange such storage, but a reasonable charge for storage as computed by Seller plus all expenditures incurred for space, insurance, and handling will be charged to Buyer. Invoices for Products stored at Buyer's request will be provided at the beginning of the storage period and periodically thereafter, and payment will be due next 30 days from the date of invoice.
10. Inspection, Testing and Rejection.
- A. **Testing.** If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods,

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

- B. **Rejection.** All manuals, drawings, specifications, technical documentation, samples, prototypes and Goods will be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within 7 days of receipt or other reasonable time established by Seller. Buyer will have 7 days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, notice will be given to Seller so that it will arrive no later than 10 days after receipt of the item by Buyer. Failure to so act will constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer will be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. Buyer may reject the Goods only for material non-conformities and all non-material non-conformities will be resolved under the express warranty. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer will return them to Seller, express, collect, within 3 days after such request. A failure to so return constitutes an irrevocable acceptance. No attempted revocation of acceptance will be effective, and Buyer will be limited to any available remedies specifically provided in the Agreement. There will be no limitation on the period of time in which Seller may cure any non-conformity or breach, provided it continues to make reasonable efforts to cure.
- C. **Inspectors.** If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon notification by Seller that the Goods are ready for inspection or testing, Buyer will provide at the place of manufacture, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check the Goods for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within 7 days, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense.
- D. **Testing Facilities.** Buyer will provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Buyer for testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the Goods include the necessary fixtures and tooling, the inspection and/or testing at the place of manufacture may be performed on production or other equipment similar to, but other than, that identified to the Agreement.
- E. **Delivery Shortages.** Any claim by Buyer for shortages in any delivery will be in writing with satisfactory written evidence delivered to Seller within 7 days of receipt.
- F. **Expenses.** Any expense incurred by Buyer in the inspection or testing of the Goods will be paid by Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.
11. **Assumption of Risk.** Buyer assumes all risks of using the Goods alone and in connection with other equipment. Seller has no responsibility to determine the adequacy of the foundation, utilities, skills of Buyer's staff, or any other matter. Buyer assumes all risk of using the Goods in its location and in connection with other equipment or improvements.
12. **General Express Warranties.**
- A. **General.** Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods to the extent performed by Seller will be free from defects in workmanship, excluding design, at the time of delivery, and will repair or replace Goods that fail due solely to manufacturing defects in workmanship, which are discovered within the period of 12 months from the delivery date to Buyer. Under no circumstances will the warranty period extend beyond 12 months from the date of delivery of the alleged non-conforming or defective Goods to Buyer. When Buyer purchases to its own specifications, Seller will not be responsible for the design and fitting of Goods, and/or the function of Goods. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Perishable items are excluded from this warranty against defects.
- B. **Nonmaterial Changes.** Seller warrants to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated in these General Terms and Seller's published and internal standards. Seller may, in its discretion, also rely on any generally accepted industry standards.
- C. **Warranty Requirements.** Seller's warranties will apply only if the Goods: (i) have been installed, maintained and used in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed and approved for in writing by Seller; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods; and (v) have been fully paid for.

13. **Patent Warranties.** Seller disclaims any implied warranty of non-infringement. If the designs or specifications are furnished by Buyer, Buyer warrants that they do not infringe on any patent or other intellectual property right, and will indemnify and hold harmless Seller from any claims of infringement against Seller relating to their use by Seller.
14. **Disclaimer and Limitation of Express Warranties.** There are no express warranties other than those contained in the Agreement, and they are not assignable. Any representations as to performance and other matters, except as contained in the Agreement, were for illustrative purposes only, and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there will be no third-party beneficiaries to the express warranties contained in these General Terms. Seller does not warrant any portion of the Goods not conceived, designed, developed or manufactured by Seller (whether or not specified by Buyer). Seller is not responsible for any errors or omissions or for any loss or damage resulting from any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information. Such information provided by Seller is intended for general information only. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures unless specifically contained in the Agreement.
15. **Remedies and Limitation of Seller's Liability.**
- A. **General.** Defective or non-conforming Goods or parts thereof discovered during the express warranty period will be repaired, or replaced by Seller without any additional charge and shipped to Buyer, Ex Works Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods Which Buyer will, exercising reasonable judgment and within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller will determine upon examination to be defective or not in conformity with the express warranties contained in these General Terms. Goods cannot be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine whether the failure is due to a non-conformity or defect attributable to Seller. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price. Seller may provide such repairs itself or through its third-party contractors. Buyer's remedies are limited (even in the event of Seller's default of its warranty obligations or a failure of an item to meet its intended purpose) exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOSS PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise, except as specifically provided by the UCC as modified and limited in these General Terms. The replacement or repair of Goods by Seller does not give rise to any new warranty, and the warranty period provided for in these General Terms will not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer.
- B. **Buyer's Obligations.** Buyer will contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods. If requested by Seller, Buyer will issue a new purchase order or amendment to Seller for replacement parts, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer will comply with Seller's return instructions (including return of the Goods) within 30 days or the claim will be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying and packing returned Goods. Goods returned without compliance with the above procedures will be returned to Buyer at Buyer's cost.
- C. **Indemnification.** Buyer will defend and indemnify Seller from all liability for claims, damages, losses and expenses incurred: (i) as a result of the use or disclosure of Seller's confidential or proprietary information (except in the performance of the Agreement) by Buyer or its contractors; and (ii) as a result of the advice, direction, information and/or specifications furnished by Seller to, and relied on by, Buyer's contractors to the extent the liability exceeds any liability as limited by the Agreement had the advice, direction, information and/or specifications been furnished to, and relied on by, Buyer.
- D. **Recalls.** Seller will not be liable for any costs related to a recall, service campaign or similar action without its prior written consent.
- E. **Scope of Liability.** Under no circumstance will Seller's liability exceed Buyer's uninsured loss. Buyer waives any right of subrogation. Buyer waives any right of indemnity or subrogation as to third-party claims, in excess of any applicable insurance carried by Seller.
- F. **Substantial Compliance.** Seller will not be liable for any damages for breach of any provision with which it has substantially complied.
16. **Disclaimer of Implied Warranties.** SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE,

AND MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. There are no warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon Seller's skill or judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in the Agreement. Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer's approval of drawings and/or prototypes constitutes Buyer's acceptance and waiver of any responsibility for a failure to consider information provided by Buyer. Any modifications of drawings, prototypes and other work of Seller after approval by Buyer will be at Buyer's expense at Seller's normal rates for services and materials. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement.

17. **Design, Parts, Service and Training Provided by Seller.** All design, application engineering, parts, labor, service, if any, provided by Seller or its agents and contractors (including those provided under purchase orders subsequent to the Agreement) related to the Goods (whether or not covered by warranty) are subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Buyer will pay Seller for all non-warranty work in advance or upon such other terms as may be agreed. Seller may have access to the Goods during or after installation of the Goods. Seller is not under any duty to inspect the Goods for any defects or any improper use or modification of the Goods nor to correct or advise Buyer of any such condition, use or modification which is observed. Any notification which may be given is voluntary and subject to all limitations and disclaimers in the Agreement.
18. **Indemnification.** Buyer will indemnify Seller from any and all third-party claims, damages and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the production, use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller. Seller is under no obligation to indemnify Buyer for any reason.
19. **Security Interest.** In addition to any security interest granted by the UCC or other law, Buyer grants a security interest to Seller in all Goods and Buyer's Property, and documents related thereto, and proceeds and products from Buyer's Property, to secure all obligations of Buyer to Seller, whether or not arising under the Agreement. Seller may file a financing statement and at Seller's request, Buyer will sign financing statements and other documents, evidencing and confirming the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Buyer will provide a lien waiver from all third parties to whom the Goods may be delivered. Buyer will provide a landlord's waiver of any lien rights at the premises to which the Goods are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others and take other actions to repossess or render inoperable all Goods in which it has a security interest. In case of a default by Buyer, Buyer irrevocably appoints Seller as its agent to obtain possession of the Goods and documents related thereto. Seller may install and activate procedures or devices to make the Goods or Software non-operative upon Buyer's default. The Goods will be and remain strictly personal property and retain their character as such, no matter whether on permanent foundation or in whatever manner affixed or attached to building or structure, or for what purpose the Goods may be used. Buyer will maintain the Goods in a segregated area and not co-mingle any Goods which are not fully paid. Buyer may not sell, exchange, transfer, convey, mortgage, pledge, hypothecate or grant a security interest in any Goods which are subject to the Agreement if payment thereof will not have been made in full to Seller. Buyer will immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which has not been paid to Seller.
20. **Proprietary Information.**
 - A. **Buyer's Rights to Confidentiality.** Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.
 - B. **Seller's Rights to Confidentiality.** All proposals, plans and other information furnished by Seller, in any form, during bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and may not be shown or disclosed to any other bidder, and may not be shown or disclosed to any other third party or used by Buyer except as may be necessary for the selection or use of the Goods and Seller provides Buyer with written consent.
 - C. **Drawings and Calculations.** Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.
 - D. **Buyer's Obligations.** Buyer will treat as confidential any business proposal from Seller and all technology made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer may use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer may not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer will maintain, for Seller's inspection, written records which will include the names and address of such employees and contractors granted such access. Buyer will indemnify

Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer.

21. **Intellectual Property.** Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations will remain the exclusive property of Seller and its licensors, as the case may be. Nothing in this Agreement will be deemed to grant Buyer any license or any other rights in such Intellectual Property. The term "Intellectual Property" includes without limitation all of the following: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design and process patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in progress, research and development information; and (v) all other proprietary rights relating to the foregoing.
22. **Buyer's Property.** "Buyer's Property" means tools, jigs, dies, gauges, fixtures, molds and patterns owned and fully paid for by Buyer and provided to Seller for the purposes of manufacturing Goods or performing services for Seller. If Buyer's Property wears out under normal use, Buyer must supply to Seller new or repaired Buyer's Property. Seller will release to Buyer, Buyer's Property, provided that: (i) Seller has fully paid Buyer for all Goods produced by Buyer's Property and delivered to Buyer, (ii) Seller has fully paid for all Goods, raw materials and work in process produced and/or associated with Buyer's Property, (iii) Buyer's Property is not subject to any lien asserted by Seller or any third party, and (iv) Seller releases Buyer from any obligation for further production of the Goods that Seller produced with Buyer's Property. If (i)-(iv) are satisfied, and upon written request to release by Buyer, Seller, within 30 days of receipt of Buyer's request, will make Buyer's Property available for pick up by Buyer. Buyer is responsible for all costs associated with removing and transporting Buyer's Property from Seller's premises including but not limited to freight and packaging. Under no circumstances is Seller responsible for any damage that occurs to Buyer's Property. If Buyer does not remove Buyer's Property from Seller's premises within 20 days after Seller gives notice to Buyer that Buyer's Property is ready for removal, Buyer's Property becomes the property of Seller and Seller may dispose of Buyer's Property as it sees fit. Buyer must insure Buyer's Property and other property delivered to Seller against all risks and liability and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use, transportation or storage of such property.
23. **Cancellation/Termination.** If Buyer cancels or terminates this Agreement for any reason, Buyer will immediately purchase all finished Goods, raw materials, and work in process that were purchased to produce the Goods. With respect to the work in process, Buyer is obligated to pay the then-current purchase price.
24. **Breach.**
 - A. **Default.** If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover the Goods in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.
 - B. **Security.** Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment. If Buyer does not post such security, Seller may cease performance of its obligations, and enforce its remedies for Buyer's default.
 - C. **Cumulative Rights and Limitations.** All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, except that Seller will be entitled to only a single full recovery.
 - D. **Good Faith.** Seller will not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.
 - E. **Waiver.** Seller's failure or delay in enforcement of any provision will not constitute a waiver of a breach or of that provision.
25. **Consequential, Incidental, and Other Damages.** BUYER AND THIRD PARTIES ARE NOT ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. This limitation will be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages will not affect the right of Seller to indemnification hereunder, and under no circumstance will Buyer recover more than the purchase price. UNDER NO CIRCUMSTANCES WILL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR SUCH OTHER EVENT GIVING RISE TO THE CLAIM.
26. **Force Majeure.** Seller will not be responsible for any delay or failure in any performance due, without limitation, to acts of God, war, warlike conditions, blockade, embargoes, riots, governmental restriction, labor disturbances, unavailability of anticipated usual means of supplies, transportation or loading facilities, wrecks, epidemics, quarantine, fire, flood, earthquake, explosion, any unforeseen change in

circumstances, or any other causes beyond its reasonable control.

27. **Limitations of Actions.** A proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the Agreement cannot be filed nor maintained by Buyer unless: (i) it is commenced within 1 year after the cause of action has accrued; (ii) Buyer has given timely written notice to Seller of the details of its claim as provided in these General Terms; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of warranty or any other provision of the Agreement accrues no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required by the Agreement.
28. **Choice of Law.** THE AGREEMENT IS GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF CALIFORNIA INCLUDING THE UNIFORM COMMERCIAL CODE IN FORCE ON THE INITIAL DATE OF THE AGREEMENT (UCC), EXCEPT AS PROVIDED IN THESE GENERAL TERMS. The U.N. Convention on the International Sales of Goods does not apply.
29. **Jurisdiction.** THE COURTS OF STATE OF CALIFORNIA HAVE EXCLUSIVE JURISDICTION OVER BUYER AND SELLER AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT, UNLESS WAIVED IN A WRITING SIGNED BY SELLER AND SUBJECT TO ANY RIGHT OF ARBITRATION WHICH MAY BE PROVIDED BY THE AGREEMENT. Buyer and Seller stipulate to the convenience of California courts in general, and the Central District Court for the southern District of California, as to all litigation. If Buyer does not maintain a registered office or agent in the United States, Buyer irrevocably appoints the Secretary of State of the state whose law applies and/or CT Corporation as Buyer's agent to receive process in any proceeding arising under or related to this Agreement. Any declaration of unenforceability of a provision will be as narrow as possible and will not affect the enforceability of the other provisions. A tribunal with jurisdiction reform a provision of the Agreement, at the request of Seller, to the extent minimally required for enforcement.
30. **Arbitration.** At Seller's election, all controversies and claims arising out of or relating to the Agreement, or the breach thereof, will be settled solely by arbitration held in Chicago, Illinois, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided Seller may also elect to institute, prior to formation of the arbitration panel, an action for a claim and delivery or replevin action to enforce its security or other interests in the Goods. The arbitrator(s) may enter an interim award that the Goods be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereon. No demand for arbitration hereunder may be filed by Buyer. The arbitrator(s) will be bound by the terms of the Agreement and will not apply any principles of ex aequo et bono nor allow any claims not specifically permitted by the Agreement. The arbitrator(s) may include the fees of the arbitration tribunal and arbitrators in an award. The arbitration proceedings and the award will be confidential.
31. **Severability.** Any provision found to be unenforceable by a final unappealed order entered by the court or tribunal will be severed from this Agreement. Such severance will be as narrow as possible and may not affect the remainder of this Agreement in such action and other actions, unless the court or tribunal also finds, on the request of Seller that without such provision as originally written, the Agreement is not likely to meet the reasonably commercial expectations of Buyer and Seller and in such case, the court or tribunal will enter an equitable judgment of rescission, termination or reformation of this Agreement as necessary to reach an equitable result.
32. **Assignment.** No right or interest in the Agreement may be assigned by Buyer without the prior written consent of the Seller. Any assignment attempted by Buyer will be void and ineffective for all purposes unless made in conformity with this section.