

**THIS AGREEMENT CONTAINS IMPORTANT CONTRACT TERMS INCLUDING INDEMNITY, DISCLAIMER OF WARRANTIES, RELEASE, AND LIMITATIONS OF LIABILITY. APPLICABILITY, ACCEPTANCE AND COMPLETE AGREEMENT**

These Terms and Conditions of Sale ("Terms") apply to the purchase of goods ("Goods") and services ("Services") by buyer ("Buyer") from seller ("Seller"), each of which is identified in the accompanying Seller's quotation, proposal, order acknowledgement, or invoice (the "Sales Confirmation"). These Terms and the Sales Confirmation comprise the sole and entire agreement between the parties (collectively, the "Agreement") with respect to the sale of the Goods or Services. Buyer's silence, acceptance, use of Goods or Services, signing and returning Seller's quotation, sending a purchase order in response to the quotation, or Buyer's instructions to Seller to ship the Goods or to proceed with the Services each constitutes acceptance by Buyer of these terms. No terms, conditions, or warranties, other than those expressly set forth in the Agreement, and no agreement or understanding, oral or written, in any way purporting to modify the Terms or the Agreement, whether contained in Buyer's purchase order, shipping release forms, or elsewhere, shall constitute an agreement by Seller to any terms other than those set forth in the Agreement unless hereafter made in writing and signed by Seller.

Buyer will not be deemed to have waived any terms of the Agreement if it fails to object to provisions submitted by Buyer. No action or inaction by Seller (including fulfillment of Buyer's order), other than a writing signed by Seller's authorized representative, shall be deemed to be consent by Seller to terms other than those set forth in the Agreement. Buyer is hereby notified of Seller's express rejection of any terms inconsistent with this Agreement or to any other terms proposed by Buyer in accepting Seller's quotation. Trade custom, trade usage and past performance are superseded and shall not be used to interpret the Agreement. If the Goods or Services are subject to the terms of an existing written contract, executed and between Seller and Buyer, the terms of said contract shall prevail to the extent of any irreconcilable conflict between it and the Agreement. Any irreconcilable conflict among such an existing contract, the Terms, and Sales Confirmation will be resolved by giving precedence in the following order from highest precedence to lowest: (1) The terms of the existing, executed contract, (2) Seller's Sales Confirmation, and (3) the Terms. Any prior or contemporaneous understandings, agreements, and representations, oral or written, are superseded by this Agreement. Buyer confirms that it has not entered into this Agreement on the basis of any representations that are not expressly incorporated in this Agreement and that it shall have no remedy for any such representations being untrue. No modification to this Agreement shall be valid unless in writing and signed by authorized representatives of Buyer and Seller.

**SECURITY INTEREST**

Buyer grants Seller and Seller reserves a security interest in the Goods, their proceeds, and account receivables deriving from the Goods for all amounts owing to Seller or related to the Goods to secure Buyer's obligations hereunder. Buyer appoints Seller as its agent and attorney-in-fact to execute and file any financing statements under the Uniform Commercial Code and amendments thereto on Buyer's behalf which Seller deems, in its sole discretion, desirable to protect Seller's interest in the Goods. Seller has the right to file a copy of the Agreement as with a financing statement.

**PRICES**

All prices and applicable discounts are subject to change without notice. Prices quoted, unless otherwise stated in writing, are "Ex-Works (EXW) [Incoterms®2010]" Seller's facility and do not include sales, use, excise or similar taxes or duties. Buyer shall be responsible for payment of any applicable taxes or duties that may be levied by relevant government authorities, and if payable or paid by Seller, then added to the Price. Buyer will provide tax exemption certificates or evidence of tax payment on request. Prices are exclusive of storage fees, packaging or crating fees for anything other than domestic shipments, shipping fees, loading, and unloading costs. Prices are exclusive of extraneous expenses and costs, including shipping, travel, removal and installation costs, or service call costs, which shall be invoiced to Buyer.

**PAYMENT**

Seller may issue its invoices at completion or at various intervals. Unless otherwise agreed, Buyer shall pay the invoiced amount within thirty (30) days of the date of the invoice accompanied by a remittance advice. In the event credit has not been established, Seller reserves the right to require payment, or the issuance of an irrevocable letter of credit, in advance of shipment. Any amounts not paid when due shall bear interest at the rate of 1.5% per month or at the highest rate permitted by applicable law (whichever is less), from the due date until paid. Buyer's order is a representation that Buyer is solvent and able to pay for the Goods or Services ordered. Payments must be made in United States currency.

**DEFAULT**

If Buyer fails to make payments when due, fails to comply with its obligations under this Agreement, if bankruptcy or insolvency proceedings are instituted by or against Buyer, if Buyer makes an assignment for the benefit of creditors, or if Seller has any other reasonable cause to be insecure or to believe Buyer may be unable to timely pay or comply with its obligations under this Agreement, Seller may, at its discretion, in addition to and without limiting its other remedies: (a) be relieved of its obligations under the Agreement; (b) set-off any credit or sum owed by Seller to Buyer against any amount owed by Buyer to Seller; (c) suspend production, shipment, and/or delivery of any and all Goods, and suspend the provision of any Services, (d) demand prepayment for any Goods or Services, (e) by notice to Buyer, treat such failure to comply as a repudiation by Buyer of the portion of this Agreement not then fully performed, whereupon Seller may cancel all further deliveries and make the entire amount of the purchase price for all Goods and Services and all other amounts due under this Agreement (which have not already been paid to Seller) immediately due and payable, (f) terminate any or all of its obligations under this Agreement, including warranty obligations, by written notice to Buyer, but such termination will

not affect Buyer's obligation to pay for Goods or Services delivered and work in progress, (g) enter the premises where any Goods are located and reclaim or repossess such Goods, (h) charge storage or inventory carrying fees on Goods; (i) by notice to Buyer, treat such failure to comply as a repudiation by Buyer of the portion of any other agreement between Seller and Buyer not then fully performed, whereupon Seller may cancel all further deliveries and make the entire amount of the purchase price for all Goods and Services and all other amounts due under such other agreements (which have not already been paid to Seller) immediately due and payable, until Seller receives either payment or satisfactory assurances of payment; (j) recover all costs of collection including without limitation attorney's fees and expert fees; or (k) combine any of the above rights and remedies and any other rights of Seller.

**NO SET-OFF**

Buyer waives and releases all rights of set-off and recoupment for any amount claimed by Buyer against Seller for any amount due Seller. Buyer shall not withhold or delay payment of (a) any undisputed amounts, or (b) amounts due and payable by reason of set-off of any claim, counterclaim, abatement, delay of customer payment, or dispute with Seller, whether relating to Seller's claimed breach, bankruptcy or otherwise.

**DELIVERY**

Goods shall be delivered pursuant to the International Commercial Term [Incoterms® 2010]. Unless otherwise provided on the face hereof, all Goods furnished hereunder will be shipped "Ex-Works (EXW)" at Seller's shipping facility. Delivery dates are estimates only and are not guaranteed. In no event shall Buyer be entitled to monetary compensation for any delay unless such compensation is otherwise expressly agreed to in a writing signed by Seller. BUYER HEREBY WAIVES AND RELEASES SELLER FROM ANY AND ALL LOSS, COST, EXPENSE, OR DAMAGES ARISING OUT OF ANY DELAYS. Seller may make partial shipments at its discretion. Shipping or the receiving of any Goods under this Agreement shall not constitute a waiver of any right or remedy of Seller hereunder or at law of any obligation of Buyer to comply with the provisions of the Agreement.

**FORCE MAJEURE**

As used in this Agreement "Force Majeure" means all acts of God, catastrophic storms or floods, tornadoes, hurricanes, earthquakes, tsunamis, landslides, fires, floods, wars, civil disturbances, civil unrest, terrorist attacks, revolts, insurrections, sabotage, commercial embargoes, epidemics, explosions, acts or omissions of Buyer or of any civil, governmental or military authority, strikes, inability of Seller to obtain materials or component parts, local and general industrial disputes, shortages of labor, inability to secure fuel, supplies or power, requisition, seizure, embargo, export and import restrictions, restrictions in the use of power, defects or delays in deliveries by manufacturers of component parts to Seller, and any other occurrence or condition considered force majeure or its equivalent under applicable law. Seller shall not be liable to Buyer for any loss or damage arising out of delay, failure to deliver, or other failure to perform its obligations under this Agreement due in whole or part to any occurrence or condition of Force Majeure. No obligation of Buyer to pay money or to perform its other obligations under or pursuant to this Agreement shall be delayed or excused due in whole or part to any occurrence or condition of Force Majeure.

**TITLE AND RISK OF LOSS**

Notwithstanding Seller's right to a security interest in the Goods until full and final payment, title to and risk of loss for Goods shall pass to Buyer per the applicable Incoterms®2010. Buyer agrees to maintain appropriate insurance coverage to cover its risks under this Agreement.

**BUYER'S DELAY**

For delays, hindrance, or prevention in the production, shipment, or delivery of Goods or Services attributable to Buyer including, without limitation, postponement or the inability or refusal to accept delivery, (a) Seller shall be entitled to an adjustment in the sales price equal to the increased costs incurred and revenues lost, and (b) as to finished Goods, Buyer agrees that Seller has complied with its obligations under the Agreement through delivery, and shall pay all reasonable costs associated with the delayed delivery, storage of the Goods, and any other costs incurred by Seller for managing, segregating, and warehousing the Goods ("Storage Period"). Buyer agrees to bear all risk of loss and insurance during the Storage Period. Seller reserves the right to adjust, shorten, or terminate any warranty period to be applicable to any Goods stored by Seller for a Storage Period longer than sixty (60) days.

**INSPECTION**

Buyer has five (5) days from receipt of the Goods at the "ship to" location to inspect the Goods ("Inspection Period"). Failure to reject Goods for non-conformity with the terms of this Agreement within the Inspection Period will be deemed acceptance of the Goods. In the event Buyer claims any Goods are non-conforming, Buyer shall send written notice to Seller no later than the last day of the Inspection Period and send to Seller a full report of the claimed non-conformity within seven (7) days of the end of the Inspection Period. Seller shall, in its sole discretion: (a) replace the non-conforming Goods with conforming Goods without additional expense to Buyer, or (b) credit or refund the price for the non-conforming Goods together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. At Seller's request, Buyer shall ship, at its expense and risk of loss, the non-conforming Goods to the Seller's facility or other place Seller shall designate. Seller shall credit Buyer's reasonable expenses for shipment if Seller accepts Buyer's claim of non-conformance.

**COMPLIANCE WITH LAWS**

Buyer agrees to abide by all federal, state, and local laws, ordinances and regulations, licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Agreement, including but not limited to, Section 1502 of the Dodd-Frank Act relat-

ed to conflict minerals; all provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented by the Department of Labor's regulations (29 C.F.R. part 3); and Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1 and 2). Furthermore, to the extent where applicable, the Parties agree to comply with the following: the Federal Labor Standard Act of 1938 as amended; Executive Order 11246; EEO-1 Reporting; Vietnam Era's Veterans' Readjustment Assistance Act; Affirmative Action and Equal Opportunity for Workers with Disabilities (48 C.F.R. § 52.222-36, and 41 C.F.R. § 60-741.5.); and Utilization of Small Business Concerns (48 C.F.R. § 52.219-8 et. seq.)

**COMPLIANCE WITH U.S. EXPORT LAWS**

BUYER REPRESENTS AND WARRANTS THAT IT: (1) IS FAMILIAR WITH IS IN AND WILL MAINTAIN COMPLIANCE WITH THE TRADING WITH THE ENEMY ACT, 50 U.S.C. APP. 1-44, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT, 50 U.S.C. 1701-06, THE UNITED NATIONS PARTICIPATION ACT, 22 U.S.C. 287C, THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT (8 U.S.C. 219, 18 U.S.C. 2332D, AND 18 U.S.C. 2339B), THE CUBAN DEMOCRACY ACT, 22 U.S.C. 6001-10, THE CUBAN LIBERTY AND DEMOCRATIC SOLIDARITY ACT, 22 U.S.C. 6021-91, THE EXPORT ADMINISTRATION ACT, 50 U.S.C. APP. 2401-20, THE EXPORT ADMINISTRATION REGULATIONS, 15 C.F.R. PARTS 730-74, AND THE VARIOUS ECONOMIC SANCTIONS PROGRAMS ADMINISTERED BY THE OFFICE OF FOREIGN ASSETS CONTROL OF THE U.S. TREASURY DEPARTMENT (COLLECTIVELY, "U.S. FOREIGN ASSETS CONTROL REGIME"); (2) IS NOT UNDER INVESTIGATION OR BEING PROSECUTED AND HAS NOT BEEN UNDER INVESTIGATION OR BEEN PROSECUTED BY ANY DEPARTMENT OR AGENCY OF THE UNITED STATES FOR ALLEGED VIOLATION OF THE U.S. FOREIGN ASSETS CONTROL REGIME; AND (3) WILL PROVIDE WRITTEN NOTICE TO SELLER IMMEDIATELY UPON RECEIVING NOTIFICATION OF ANY INVESTIGATION OR PROSECUTION CONCERNING BUYER WITH RESPECT TO THE U.S. FOREIGN ASSETS CONTROL REGIME OR UPON THE OCCURRENCE OF A TRANSACTION OR OTHER EVENT THAT MAY LEAD TO A VIOLATION OF THE U.S. FOREIGN ASSETS CONTROL REGIME. BUYER FURTHER REPRESENTS AND WARRANTS THAT IT: (1) IS FAMILIAR WITH, IS IN AND WILL MAINTAIN COMPLIANCE WITH THE EXPORT ADMINISTRATION ACT, 50 U.S.C. APP. 2401-20, 15 C.F.R. PARTS 760 (RESTRICTIVE TRADE PRACTICES AND BOYCOTTS), 762 (RECORDKEEPING), 764 (ENFORCEMENT AND PROTECTIVE MEASURES) AND 766 (ADMINISTRATIVE ENFORCEMENT PROCEEDINGS), 26 U.S.C. §999 (INTERNAL REVENUE CODE, INTERNATIONAL BOYCOTT DETERMINATIONS) AND 26 C.F.R. §7.999-1 (TREA-SURY REGULATIONS, COMPUTATION OF THE INTERNATIONAL BOYCOTT FACTOR), EACH AS CURRENTLY IN EFFECT AND AS MAY BE HEREINAFTER AMENDED, SUPPLEMENTED OR EXPANDED WITH RESPECT TO THE SUBJECT MATTER THEREOF (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "U.S. ANTI-BOYCOTT REGIME"); (2) IS NOT UNDER INVESTIGATION OR BEING PROSECUTED AND HAS NOT BEEN UNDER INVESTIGATION OR BEEN PROSECUTED BY ANY DEPARTMENT OR AGENCY OF THE UNITED STATES FOR ALLEGED VIOLATION OF THE U.S. ANTI-BOYCOTT REGIME; AND (3) WILL PROVIDE WRITTEN NOTICE TO SELLER IMMEDIATELY UPON RECEIVING NOTIFICATION OF ANY INVESTIGATION OR PROSECUTION CONCERNING BUYER WITH RESPECT TO THE U.S. ANTI-BOYCOTT REGIME OR UPON THE OCCURRENCE OF A TRANSACTION OR OTHER EVENT THAT MAY LEAD TO A VIOLATION OF THE U.S. ANTI-BOYCOTT REGIME. BUYER FURTHER REPRESENTS AND WARRANTS THAT IT IS NOT LOCATED IN, IS NOT UNDER THE CONTROL OF, IS NOT A NATIONAL OR RESIDENT OF, AND IS NOT ACTING AS AN AGENT FOR OR ON BEHALF OF ANY COUNTRY TO WHICH THE UNITED STATES HAS PLACED AN EMBARGO, AND THAT IT IS NOT ON, OR ACTING AS AN AGENT FOR OR ON BEHALF OF A PERSON OR ENTITY ON, THE U.S. TREASURY DEPARTMENT'S SPECIALLY DESIGNATED NATIONALS LIST OR THE U.S. COMMERCE DEPARTMENT'S TABLE OF DENY ORDERS. BUYER AGREES TO PROVIDE SELLER IN WRITING WITH THE ULTIMATE DESTINATION AND IDENTITY OF THE END-USER PRIOR TO SHIPMENT IF THE PRODUCTS ARE TO BE EXPORTED. THE GOODS, TECHNOLOGY OR SOFTWARE SHALL ONLY BE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO UNITED STATES LAW IS PROHIBITED.

**CORRUPT PRACTICES**

BUYER WARRANTS AND REPRESENTS TO SELLER THAT NEITHER BUYER NOR ANY OF BUYER'S AFFILIATES NOR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES HAS PERFORMED OR WILL PERFORM ANY OF THE FOLLOWING ACTS IN CONNECTION WITH THIS PO, ANY SALE MADE OR TO BE MADE HEREUNDER, ANY COMPENSATION PAID OR TO BE PAID HEREUNDER, ANY PAYMENT MADE OR TO BE MADE HEREUNDER, OR ANY OTHER TRANSACTIONS INVOLVING THE BUSINESS INTERESTS OF SELLER AND ITS AFFILIATES: PAY, OFFER OR PROMISE TO PAY, OR AUTHORIZE THE PAYMENT OF, ANY MONEY, OR GIVE OR PROMISE TO GIVE, OR AUTHORIZE THE GIVING OF, ANY SERVICES OR ANYTHING ELSE OF VALUE, EITHER DIRECTLY OR THROUGH A THIRD PARTY, TO ANY OFFICIAL OR EMPLOYEE OF ANY GOVERNMENTAL AUTHORITY OR INSTRUMENTALITY, OR OF A PUBLIC INTERNATIONAL ORGANIZATION, OR OF ANY AGENCY OR SUBDIVISION THEREOF, OR TO ANY POLITICAL PARTY OR OFFICIAL THEREOF OR TO ANY CANDIDATE FOR POLITICAL OFFICE FOR THE PURPOSE OF (A) INFLUENCING ANY ACT OR DECISION OF THAT PERSON IN HIS OFFICIAL CAPACITY, INCLUDING A DECISION TO FAIL TO PERFORM HIS OFFICIAL FUNCTIONS WITH SUCH GOVERNMENTAL AGENCY OR INSTRUMENTALITY OR SUCH PUB-

LIC INTERNATIONAL ORGANIZATION OR SUCH POLITICAL PARTY, (B) INCLUDING SUCH PERSON TO USE HIS INFLUENCE WITH SUCH GOVERNMENTAL AGENCY OR INSTRUMENTALITY OR SUCH PUBLIC INTERNATIONAL ORGANIZATION OR SUCH POLITICAL PARTY TO AFFECT OR INFLUENCE ANY ACT OR DECISION THEREOF OR (C) SECURING ANY IMPROPER ADVANTAGE.

#### CANCELLATION/SUSPENSION/RETURNS

No Goods may be returned without prior written consent of Seller. Buyer must not terminate this Agreement except upon (1) Seller's written consent prior to shipment of the Goods or performance of the Services, and (2) Buyer's payment to Seller of Seller's cancellation charges which shall compensate Seller for all costs and losses (including lost revenue) pertaining to the terminated Agreement. Buyer must not suspend Seller's work under this Agreement for the sale of Goods or Services except upon (1) Seller's written consent prior to shipment of the Goods or performance of the Services, and (2) Buyer's payment to Seller of Seller's suspension charges which shall compensate Seller for all costs and losses (including lost revenue) pertaining to the suspended work. Any work to manufacture Goods under an Agreement suspended for more than sixty (30) days may be treated by Seller as Buyer's termination of this Agreement and the associated Goods may be returned to Seller only at Seller's sole discretion. Seller reserves the right to terminate this Agreement without liability to Buyer (except for refund of monies already paid for undelivered Goods or unperformed Services), if it determines, in its sole discretion, that the manufacture or sale of the Goods or provision of the Services becomes technically or economically impractical.

#### THIRD PARTY WARRANTY

Seller makes no warranties or representations of any kind, whether express, implied or statutory, in respect of and disclaims any responsibility for any part of any Good which was not manufactured or fabricated by Seller ("Third-Party Good(s)"). To the extent permitted by applicable law and by the manufacturers, Seller transfers and assigns to Buyer any warranty given by the manufacturer of such Third-Party Good(s), but Seller does not guarantee any such warranty. Buyer shall make any warranty claim with respect to any Third-Party Good(s) in accordance with the requirements of the manufacturer of such Third-Party Good(s) regarding return, repair, or replacement. Seller shall, at Buyer's cost, use reasonable efforts to cooperate with Buyer in processing any such claims.

#### SELLER'S LIMITED WARRANTY

For Goods sold, Seller warrants to Buyer that the Goods will be free from material defects in material and workmanship for a period ending twelve (12) months after the date Seller places the Goods at Buyer's disposal at Seller's facility. For Services provided, Seller warrants to Buyer that the Services (if any) shall be performed in accordance with any written specification agreed to in writing between Seller and Buyer, and if no such written specification is made, then in accordance with standard industry practices prevailing at the time of the making of this Agreement. This warranty shall terminate the earlier of six (6) months after the date Seller first invoices Buyer for such Services or six (6) months after the date that such Services have been completed. The warranties are not transferrable beyond the first primary user of the Goods or Services sold under this Agreement. Goods that are normally consumed in operations or which have a normal life inherently shorter than the warranty periods, normal wear and tear, and the need for regular overhaul and periodic maintenance do not constitute non-conformance and are not covered by these warranties. The warranties shall not apply to and Seller does not warrant the Goods or Services against any non-conformance, defect, or failure: (a) other than expressly stated herein; (b) chemical or stress corrosion or cracking; (c) any defective third party products contained in, incorporated into, attached to or packaged together with the Goods (such as electric or pneumatic mechanisms); (d) repairs or replacements required because of accident, misuse, neglect, contamination, abuse, or failure to maintain such Goods in accordance with Seller's instructions or specifications, or causes other than ordinary and acceptable use; (e) use of counterfeit or replacement parts that are not manufactured nor approved by Seller for use in Seller's Goods; (f) repairs or replacements required because of maintenance, repair, installation, handling, packing, transportation storage, commissioning, or operation or use that is improper or not in conformance with Seller's oral or written instructions or prior approval; (g) any portion of the Goods modified by or on behalf of Buyer or on which Buyer has done or procured to be done any work other than routine maintenance performed in accordance with Seller's instructions or specifications; (h) Goods manufactured in accordance with specifications, design parameters, information, or equipment selections mandated by Buyer or other user or person which are not in accordance with Seller's standard design and safety practices; (i) Goods where manufacturer's serial numbers or warranty decals have been removed or altered; (j) where Seller performed as directed by Buyer, its agents or representatives and the warranty matter arises as a result of Seller's compliance with those directions; (k) where Buyer fails to follow the recommended operating and maintenance procedures of Seller or the original equipment manufacturer; (l) where Buyer fails to maintain an industry-standard safety shutdown/alarm system; (m) to repairs or replacements required as a result of extreme environmental conditions; or (n) where Seller is not invited to participate in start-up procedures after installation of the Goods or performance of the Services. Buyer must notify Seller in writing ("Notice") during the applicable warranty period and within three (3) days of the time when Buyer discovers or should have reasonably discovered that the Goods or Services do not conform to the applicable warranty. The Notice must set forth the model number, serial number, and details of the non-conformance. Upon receipt of the Notice, Buyer must permit Seller reasonable opportunities to inspect the claimed non-conforming Goods or Services and verify the claims asserted in the Notice during normal business hours. The warranties are expressly conditioned upon the occurrence of the following conditions precedent: (a) Buyer giving Seller timely Notice as required by this Agreement; (b) Buyer giving Seller reasonable opportunities, after receiving the Notice, to examine such Goods or Services and to investigate the claim; (c) Buyer not making any further use of such Goods or Services after giving

Notice of the non-conformance; and (d) Buyer timely and fully complying with its obligations under this Agreement including timely payment of all amounts due to Seller. If Buyer fails to timely comply with any of these conditions, Seller shall have no liability to Buyer under any otherwise applicable warranty. Seller's exclusive obligations and Buyer's sole remedies under the applicable warranty are, at Seller's sole option: (a) servicing or adjusting any good returned to the factory for that purpose including replacing any defective parts therein, (b) re-performance of the Services, or (c) refunding or crediting to Buyer the purchase price equitably allocable to the non-conforming Good or Service. All Goods and Services repaired or replaced are warranted only for the unexpired portion of the original warranty period. Seller's obligations shall be performed at a facility chosen by Seller. Buyer shall arrange and pay in advance for all packing, crating, and transportation costs of the Goods to and from Seller's chosen facility. At Buyer's request, Seller will make reasonable efforts to provide warranty service at the Buyer's premises, provided the Buyer pays Seller's then current rates for field service and associated travel and living expenses. If Seller determines that a warranty does not apply to, or that Seller did not warrant the Goods or Services against the claimed non-conformance, any work to correct such claimed non-conformance will be charged and invoiced to Buyer at Seller's customary rates and paid by Buyer as set forth in this Agreement. If the Good or the non-conformance is not covered by warranty, an estimate of charges will be furnished to the Buyer before corrective work begins. THE WARRANTIES EXPRESSLY SET FORTH IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES OF SELLER WITH RESPECT TO THE GOODS AND SERVICES AND ARE IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR COMMUNICATION WITH BUYER. SELLER EXPRESSLY DISCLAIMS AND BUYER WAIVES ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, GOOD AND WORKMANLIKE PERFORMANCE, NON-INFRINGEMENT, AND ANY WARRANTY AGAINST LATENT DEFECTS. SELLER DOES NOT WARRANT DESIGNS OR EQUIPMENT OF BUYER OR OF THIRD-PARTY SELLERS OR MANUFACTURERS FURNISHED BY BUYER. NO AFFIRMATION WHETHER BY WORDS, ACTION, OR INACTION OF SELLER SHALL CONSTITUTE A WARRANTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, BUYER HAS NOT RELIED UPON ANY EXPRESS OR IMPLIED WARRANTIES OR SELLER'S REPRESENTATIONS IN MAKING THIS AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE REMEDIES SET FORTH IN THIS SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDIES, AND SELLER'S SOLE AND EXCLUSIVE OBLIGATIONS TO BUYER, UNDER ANY APPLICABLE WARRANTY. SELLER MAKES NO REPRESENTATIONS AND NO OTHER WARRANTIES OR CONDITIONS OF THE PERFORMANCE OF THE GOODS OR SERVICES IN ANY OTHER PROVISION OF THIS AGREEMENT OR COMMUNICATION WITH BUYER.

#### LIMITATION OF DAMAGES

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER OR ITS RESPECTIVE AFFILIATES, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, EMPLOYEES OR REPRESENTATIVES, BE LIABLE HEREUNDER OR IN CONNECTION HERewith AT ANY TIME FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS) FOR ANY MATTER, IN CONTRACT OR TORT, ARISING OUT OF, RELATED TO, OR ATTRIBUTABLE TO THIS AGREEMENT EVEN IF ATTRIBUTABLE IN WHOLE OR IN PART TO SELLER'S NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY, AND BUYER EXPRESSLY RELEASES SELLER AND ITS RESPECTIVE AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, MEMBERS, EMPLOYEES OR REPRESENTATIVES THEREFROM. THIS PROVISION AND RELEASE APPLIES REGARDLESS OF WHETHER SELLER WAS INFORMED ABOUT THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER EXCEED AN AMOUNT EQUAL TO THE LESSER OF (a) THE AMOUNT BUYER HAS ACTUALLY PAID TO SELLER UNDER THIS AGREEMENT OR (b) TEN PERCENT (10%) OF THE TOTAL PURCHASE PRICE OF THE GOODS AND SERVICES TO BE PURCHASED UNDER THIS AGREEMENT.

#### BUYER'S INDEMNITY

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER SHALL HOLD SELLER, ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, EMPLOYEES, AND CONTRACTORS OF ANY TIER HARMLESS AND SHALL INDEMNIFY SUCH PERSONS AND ENTITIES FROM ANY CLAIMS, DEMANDS, LIABILITIES, FINES, PENALTIES, CLEAN-UP OR OTHER REMEDIAL OR CONTAINMENT COSTS, DEFENSE AND SETTLEMENT COSTS, AND LEGAL, TECHNICAL OR OTHER PROFESSIONAL FEES: (a) FOR INJURY OR DEATH TO OR FOR DAMAGE TO PROPERTY OF BUYER, ITS AFFILIATES OR CONTRACTORS (OTHER THAN SELLER), OR TO ITS OR THEIR OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, EMPLOYEES OR CONTRACTORS OF ANY TIER; (b) FOR INJURY OR DEATH TO OR FOR DAMAGE TO PROPERTY OF THIRD PARTIES, THEIR AFFILIATES OR CONTRACTORS (OTHER THAN SELLER), OR TO ITS OR THEIR OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, EMPLOYEES OR CONTRACTORS OF ANY TIER; (c) FOR INJURY OR DEATH TO OR FOR DAMAGE TO PROPERTY OF ANY PERSON ARISING OUT OF OR RELATED TO POLLUTION, CONTAMINATION, OR OTHER LOSS OR DAMAGE TO THE ENVIRONMENT OR NATURAL RESOURCES WHICH ARISE IN CONNECTION WITH ANY GOODS OR SERVICES PROVIDED BY SELLER UNDER THIS AGREEMENT, REGARDLESS OF CAUSE, INCLUDING WITHOUT LIMITATION SELLER'S NEGLIGENCE, STRICT LIABILITY, OR OTHER ACT OR OMISSION; (d) BELONGING TO OR ASSERTED BY BUYER'S CUSTOMERS OR CONTRACTORS AND ARISING OUT OF ANY CAUSE OF ACTION; (e) ARISING OUT OF ANY FAULT OR NEGLIGENCE OF BUYER, ITS AFFILIATES OR CONTRACTORS (OTHER THAN SELLER), AND ALL OF THEIR OFFICERS,

DIRECTORS, REPRESENTATIVES, AGENTS OR EMPLOYEES; OR (f) FOR WHICH BUYER IS OBLIGATED TO PROVIDE INSURANCE UNDER THIS AGREEMENT. SUCH INDEMNITIES ARE OWED REGARDLESS OF THE SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY, OR FAULT OF SELLER, ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, EMPLOYEES OR CONTRACTORS OF ANY TIER. IN ACCORDANCE WITH CHAPTER 127, TEX. CIV. PRAC. & REM. CODE, AS MAY BE AMENDED, IF APPLICABLE, BUYER AS INDEMNITOR AGREES TO FURNISH, PROVIDE AND MAINTAIN ADEQUATE LIABILITY INSURANCE COVERAGE OR QUALIFIED SELF INSURANCE TO SUPPORT THE INDEMNITY OBLIGATIONS SET FORTH ABOVE, OR IN THE AMOUNTS SET FORTH IN THE SALES CONFIRMATION, WHICHEVER IS GREATER.

#### MANUFACTURE

Seller reserves the right to discontinue the manufacture of, or change or modify the design and/or construction of Goods sold pursuant to this Agreement, without incurring any obligation or liability to Buyer.

#### DRAWINGS

Any drawings, brochures, or other sales materials submitted to Buyer are with the sole purpose to show the general style, arrangement, and approximate dimensions of Goods offered for sale by Seller. Any work by the Buyer should only be based on drawings duly certified and marked as such by the Seller. In no event will the Seller's manufacturing or proprietary drawings be submitted to Buyer.

#### CONFIDENTIALITY

Buyer agrees that all drawings, prints and other technical material which Seller provides to Buyer, whether prepared by Seller or by third parties under contract to Seller, contain data which embody trade secrets and confidential know-how of commercial value to Seller or third parties under contract to Seller. Buyer agrees, except as required by law or as necessary to carry out this Agreement, (a) not disclose to any person any business financial, or commercial information, including pricing, technical data and information, with respect to this Agreement; (b) not to use such information in any other way except as necessary to carry out this Agreement; (c) it will not sell, lease, loan or permit any other person, corporate division or entity to use such information for any purpose, without Seller's prior written consent; and (d) it will promptly return or destroy any confidential information at Seller's request, to Seller's satisfaction, including inspection and seizure. Nothing herein shall restrict the use of publicly available information.

#### INSURANCE

Buyer agrees to maintain Workmen's Compensation and Comprehensive General Liability insurance, including property damage coverage, in an amount, form and duration satisfactory to Seller. Upon request, Buyer agrees to provide Seller with certificates or other evidence satisfactory to Seller that such insurance is being maintained.

#### WAIVER

No failure to exercise and no delay in exercising on the part of Seller any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege hereunder preclude further exercise of the same right, power or privilege.

#### APPLICABLE LAW, JURISDICTION AND DISPUTES

THIS AGREEMENT SHALL BE INTERPRETED, GOVERNED, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE STATE OF TEXAS, USA, WITHOUT REGARD TO ITS CONFLICTS OF LAWS RULES, LAWS OR PROVISIONS WHICH WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (1980), AND ANY SUCCESSOR THERETO, SHALL NOT APPLY TO THIS AGREEMENT. THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN HOUSTON, HARRIS COUNTY, TEXAS IN CONNECTION WITH ANY DISPUTE ARISING OUT OF, OR RELATING TO, THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY THAT IS PERMITTED TO BE COMMENCED IN COURT, AND EACH PARTY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH DISPUTE OR PROCEEDING THAT ARE PERMITTED TO BE COMMENCED IN COURT SHALL BE HEARD AND DETERMINED EXCLUSIVELY IN SUCH COURTS. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH THEY MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY DISPUTE ARISING OUT OF, OR RELATING TO, THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BEING BROUGHT IN SUCH COURT OR ANY DEFENSE OF INCONVENIENT FORUM FOR THE MAINTENANCE OF SUCH DISPUTE. EACH PARTY AGREES THAT A JUDGMENT IN ANY SUCH DISPUTE MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND AS SEPARATELY BARGAINED FOR CONSIDERATION, EACH OF SELLER AND BUYER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY CLAIM ARISING OUT OF, OR RELATING TO, THIS AGREEMENT. NO ACTION ARISING OUT OF, OR RELATING TO, THIS AGREEMENT MAY BE BROUGHT LATER THAN TWO (2) YEARS AND ONE (1) DAY AFTER IT ACCRUES.

#### SOLE BENEFIT

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any right on the part of, or obligation to, any other person except to the extent expressly set forth in this Agreement.

#### SURVIVAL AND SEVERABILITY

(a) These Terms and (b) the provisions of the Sales Confirmation that by their nature should apply beyond the term of Seller's obligations, shall survive and continue as valid and enforceable obligations of the Parties, notwithstanding any termination, cancellation, completion, or expiration of this Agreement. In the event that any provision or any part or portion of any provision of the Agreement shall be held to be invalid, void, or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.