



TERMS AND CONDITIONS OF SALE

1. Definitions; Applicability. (a) THESE TERMS AND CONDITIONS OF SALE APPLY TO ALL SALES OF GOODS BY WELLFLEX ENERGY SOLUTIONS ("Wellflex"), AND EACH SUBSIDIARY THEREOF (EACH OF WELLFLEX AND ITS SUBSIDIARIES COLLECTIVELY REFERRED TO HEREIN AS A "SELLER"). SELLER'S ACCEPTANCE OF ANY PURCHASE ORDER FROM BUYER IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF SALE SET FORTH IN THESE TERMS AND CONDITIONS OF SALE, AND ANY PROPOSAL FOR ADDITIONAL OR DIFFERENT TERMS OR ANY ATTEMPT BY BUYER TO VARY IN ANY DEGREE ANY OF THESE TERMS AND CONDITIONS OF SALE IS HEREBY OBJECTED TO AND REJECTED BY SELLER. ALL REFERENCES HEREIN TO "BUYER" REFER TO THE PURCHASER OF GOODS FROM SELLER.

(b) The following definitions will apply to these conditions of sale:

(i) "Buyer" means the purchaser of the Goods referred to in the Order.

(ii) "Goods" shall mean the materials, supplies, goods (as defined in the Texas Uniform Commercial Code), products, ancillary services and any deliverables identified in any quotation, purchase order, invoice, offer or other document of sale or purchase, and sold, or agreed to be sold, by Seller to Buyer.

(iii) "Order" means collectively any request for quotation, quotation, purchase order, sales order, offer, invoice, agreement and other document of sale of the Goods..

(iv) "Seller" has the meaning first set forth therefor above.

(v) "Storage Agreement" means the storage agreement terms and conditions that Seller generally applies to its customers for the storage of Goods.

2. Buyer Acceptance. (a) Notwithstanding any prior correspondence, conversations or Orders relative to the Goods described in connection herewith and sold by Seller to Buyer, these are the only Terms and Conditions of Sale applicable to the sale of the Goods. If this writing constitutes an acceptance of an offer by Buyer, then such acceptance is expressly conditioned on Buyer's assent to these Terms and Conditions of Sale; any additional or different terms or conditions set forth in any communication(s) from Buyer are hereby objected to by Seller and shall not be effective unless assented to in writing by an authorized officer or agent of Seller. If this writing constitutes an offer by Seller, then acceptance of this offer by Buyer is expressly limited to the terms hereof, and any additional or different terms which are proposed by Buyer in any document, quotation, correspondence (including email, fax or other electronic communication) conversation or Order relative to the Goods shall not become a part of these Terms and Conditions of Sale under any circumstances unless assented to in writing by an authorized officer or agent of Seller. Any proposal by Buyer to expand the warranties or other terms set forth herein unless agreed to in writing by an authorized officer or agent of Seller, shall be deemed a material alteration and shall not become part of these Terms and Conditions of Sale. For the avoidance of doubt, any subsequent sale of the Goods made under these Terms and Conditions of Sale, whether under an Order, sales order or otherwise, shall not, except with respect to the price of the Goods and the quantity of the Goods sold, vary, alter, amend or otherwise modify these Terms and Conditions of Sale.

(b) These Terms and Conditions of Sale are posted on the Seller's web site at www.wellflex.com and shall be deemed to be incorporated by reference in the agreement of Seller and Buyer with respect to the sale of Goods.

3. Title and Risk of Loss. (a) Unless otherwise expressly agreed in writing signed by Seller and Buyer, risk of loss with respect to the Goods passes from Seller to Buyer when Seller delivers the Goods to the carrier or when the carrier otherwise obtains the Goods from the Seller or the Seller's agent. Any costs of insuring the Goods, whether required by law, a carrier, another party or otherwise or desired by Buyer, shall be borne entirely by Buyer.

(b) If Seller stores the Goods for Buyer, whether due to Buyer's request or due to Buyer's delay (regardless of the cause) in picking up the Goods from Seller, then, notwithstanding paragraph 3(a) hereof, title and risk of loss shall pass to Buyer from Seller on the date that such Goods are placed in storage by Seller, regardless of whether such Goods are stored on Seller's premises or at a third-party storage facility. Seller assumes no liabilities of any kind with respect to the Goods while maintaining temporary storage of Goods for Buyer, including liability for insurance, risk of loss or taxes.

(c) Buyer shall be liable for and agrees to pay (i) property and similar taxes associated with possession or ownership of Goods from the time that title and risk of loss pass from Seller to Buyer and (ii) excise, sales and similar taxes on transactions between Seller and Buyer. Buyer shall have the sole and exclusive responsibility for compliance with import and export laws.

4. Prices/Quotation. The price for the Goods specified by Seller in connection with this agreement is subject to change by Seller from time to time in Seller's sole and absolute discretion, without notice to Buyer for any reason, including (without limiting the generality of the foregoing) on account of (a) any increase or decrease in import duties or surcharges, or in insurance, transportation or freight charges, payable by Seller after the date of this agreement, and (b) any increase in the cost of transportation of the Goods caused by the negligence or other actions of Buyer,

including, without limitation, Buyer-requested changes to the delivery date. Prices quoted for Goods are based on receiving orders for the quantity specified. Prices quoted also assume Seller shall not be responsible for any duties, fees, licenses, permits, tariffs or taxes. Buyer shall be responsible and pay for all permit and license fees required by any law, order, rule or regulation of any governmental or other authority having jurisdiction relative to the Goods sold hereunder, including boiler, electrical, mechanical, safety, environmental and other inspections. All quoted prices assume continuous use of and free entry to and exit from Buyer's site by Seller's personnel and delivery vehicles on all-weather roads. Except as stated above, a price expires 15 days from the date that such price is first quoted by Seller to Buyer, if not previously canceled in writing by Seller.

5. Shipment/Delivery. (a) Buyer must contract for, at its own expense, the transport and carriage of the Goods from Seller's premises, storage yards (including third party storage facilities) or other facilities used by Seller and provide Seller with reasonable notice thereof, including, without limitation, the name of the carrier and the shipment date. In the event Buyer requests that Seller contract for the transport and carriage of the Goods or fails to provide Seller with instruction as to transport or carriage of the Goods within a reasonable time period, Seller may contract for the transport and carriage of the Goods at Buyer's risk and expense in such a manner as the transport mode, quantity and nature of the Goods may require, as determined by Seller in Seller's sole and absolute discretion. Buyer shall pay to Seller an administrative fee equal to 5% of the freight charge, not to exceed \$500, which will be added to all freight shipments. Shipment shall be by commercial carrier unless otherwise specifically provided in these Terms and Conditions of Sale or in an agreement signed by Seller and Buyer. The date of the bill of lading or air waybill shall be deemed to be the date of shipment. Seller shall have the right to make shipments and/or deliveries in separate lots.

(b) The delivery date of any Goods shall be agreed upon in writing between the parties hereto prior to Seller's acceptance of any Order from Buyer. If no such agreement as to delivery date is agreed upon in writing, then the delivery date shall be deemed to be the date upon which the Goods are first made available by Seller for pickup by a carrier. If the delivery date for any Goods is delayed as a result of (i) a Force Majeure Event (hereinafter defined) or (ii) a Buyer-related action or Buyer inaction when Buyer (or Buyer's designee) was required to do or perform an action, then such delay shall not be deemed a missed delivery date. Unless otherwise specifically provided in these Terms and Conditions of Sale, delivery of the Goods shall be made by way of documents of title, and payment shall be made against tender of such documents.

(c) Generally prefabricated packages or skid-mounted assemblies shall be assembled in Seller's facilities to the extent practicable. These assembled units shall be disassembled before shipping, but only to the extent required to facilitate the chosen means of transportation. All field reassembly necessary to place units in operable condition shall be done by and at Buyer's risk and expense. Any change in shipping method must be given by Buyer to Seller at least ten business days prior to the shipping date previously agreed upon by Seller and Buyer; otherwise, Buyer will be charged all fees, storage expenses and costs associated with any change in shipment method. If such notice is given less than ten business days prior to such shipping date, then Buyer shall pay all losses, costs, fees and expenses arising from such change.

(d) Buyer shall pick up purchased Goods from Seller within one day after the date that Seller notifies Buyer that such Goods are ready for pickup by a carrier, or otherwise on the delivery date agreed upon in writing by Seller and Buyer if different. If Buyer fails to pick up the Goods within such period, then Buyer shall be (i) deemed tardy in performing such obligation, and (ii) deemed to have requested that Seller store the Goods subject to such storage charges, at Buyer's sole cost and expense, as are provided for herein.

6. Inspection. (a) Any inspection or acceptance required by Buyer shall take place at Seller's facilities; however, it is expressly understood that inspection and acceptance by Buyer at Seller's facilities shall not relieve Seller of the warranty responsibilities expressly set forth in these Terms and Conditions of Sale. Rejection by Buyer of the Goods due to breach of Seller's warranty or for any other reason shall not be permitted if Buyer fails to inspect the Goods and identify Seller's warranty breach at the shipping point.

(b) Unless Buyer and Seller agree otherwise, Buyer shall be deemed to have inspected and accepted the Goods if Buyer has not objected to or rejected such Goods prior to the expiration of the Warranty Period (hereinafter defined). In order to effectively reject any Goods in accordance with this paragraph 6, Buyer shall, prior to the end of the Warranty Period, supply Seller with reasonably detailed written information stating the manner in which the Goods are not conforming to these Terms and Conditions of Sale. If Buyer properly rejects the Goods in accordance with this paragraph 6, Seller shall, at Seller's option, repair or replace such Goods or refund to Buyer the amount of the purchase price of such Goods, all as set forth in paragraph 8 hereof. Buyer and Seller hereby agree that the timeframes set forth in this paragraph 6 for notice and inspection provide reasonable time and opportunity for inspection and acceptance or rejection by Buyer. The parties hereto agree and understand that delivery of the Goods may be delayed, without charge, fee, cost or penalty to Seller, if Seller chooses to repair or replace such Goods.

7. Changes. (a) Buyer may request changes, including rescheduling or cancellation, of either all or part of an Order; however, Seller reserves the right, in its sole and absolute discretion, to reject any change to or cancellation of an Order requested by Buyer. Changes, rescheduling or cancellation of custom orders must be submitted by Buyer to Seller in writing at least 60 calendar days prior to the ship date and must be preapproved in writing signed by Seller or an authorized representative of Seller, either of which may reject any change or cancellation in Seller's or such representative's sole and absolute discretion. Any change or cancellation of an Order accepted by Seller shall be subject to a change or cancellation fee equal to the estimated cost, including Seller's time, materials and lost profits, incurred by Seller associated with such change or cancellation, including the costs of the Goods that are in progress and not yet complete and lost profits related thereto. With respect to any cancellation by Buyer, Seller shall have no obligation to mitigate loss for steel, other consumable commodities used in the manufacture of the Goods, or in other respect in connection with such cancellation.

(b) If Buyer requests or causes a change in Seller's quoted schedule or method of engineering, fabrication, or shipment that results in delay or additional expense to Seller, all losses, costs, claims, damages and expenses incurred shall be for the account of and paid by Buyer, including storage charges in the event of a suspension of fabrication or delivery. The delivery date shall be equitably adjusted when affected by any Buyer change. IN NO EVENT WILL A CHANGE ORDER BE IMPLEMENTED WITHOUT A CHANGE ORDER, EXECUTED BY SELLER AND BUYER, THAT PROVIDES FOR PAYMENT TO SELLER BY BUYER OF ALL OF THE LOSSES, COSTS, CLAIMS, DAMAGES AND EXPENSES ARISING FROM SUCH CHANGE.

8. Warranty on Goods. (a) Seller makes no warranty of any kind, express or implied, with respect to the Goods sold hereunder, except that upon payment by Buyer therefor, Seller warrants to Buyer that (i) the Goods shall be free from liens and encumbrances, and (ii) subject to the limitation on remedies set forth in paragraphs 8(b) and 16 hereof, for a period of 90 calendar days from the date of delivery to Buyer (the "Warranty Period"), (A) the Goods shall be free from any defects in material and workmanship and (B) in no event shall Seller be liable for the operating performance of the Goods, if any, manufactured according to designs, drawings or specifications of Buyer or a third party acting for Buyer, except that Seller warrants only that such Goods shall conform in all material respects to such designs, drawings or specifications. This warranty and Seller's liability hereunder is expressly conditioned upon Buyer's proper use, care, maintenance and storage of the Goods in accordance with Seller's instructions and policies and prudent industry practices with respect to the Goods. THE WARRANTIES SET FORTH IN THIS PARAGRAPH 8(a) SHALL BE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER REPRESENTATION OR WARRANTY, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

(b) BUYER'S SOLE AND EXCLUSIVE REMEDY (I) WITH RESPECT TO A BREACH OF THE WARRANTY SET FORTH IN PARAGRAPH 8(a), (II) AFTER INSPECTION OF THE GOODS IN ACCORDANCE WITH PARAGRAPH 6, OR (III) FOR ANY OTHER BREACH OF THIS AGREEMENT, SHALL BE LIMITED TO THE RETURN OF THE DEFECTIVE OR NONCONFORMING GOODS AND THE REPLACEMENT OR REPAIR OF SUCH DEFECTIVE OR NONCONFORMING GOODS AT SELLER'S OPTION OR, AT SELLER'S OPTION, THE REPAYMENT OF THE PURCHASE PRICE TO BUYER AS SET FORTH BELOW. In the event Seller receives from Buyer notice of any breach of the warranty set forth in paragraph 8(a) within the time period set forth below, or any notice of any nonconforming Goods within the time period set forth in paragraph 6(b) Seller shall, at Seller's option, (i) replace, at the delivery point agreed upon by the parties, any Goods furnished hereunder that are found to be defective or otherwise fail to conform to this agreement, (ii) repair any Goods furnished hereunder that are found to be defective or otherwise fail to conform to this agreement upon Buyer's return of such Goods to Seller (and Seller shall pay all reasonable costs of such return shipment by Buyer and Seller's subsequent shipment of repaired Goods to Buyer in the shipping manner originally specified under this agreement) or (iii) repay the price paid for such Goods to Buyer. Written notification of a claim under the warranty set forth in paragraph 8(a) must be made within ten calendar days following discovery of the defect and in no event later than 90 calendar days from the date of delivery. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF PROFIT, DELAY OR ANY INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY TYPE OR NATURE ARISING FROM ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE BREACH OF SELLER'S WARRANTY HEREUNDER OR FROM THE NEGLIGENCE OR ACTS OF SELLER OR THE EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS AND CONSULTANTS OF SELLER. BUYER SHALL INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY CLAIMS OR ACTIONS BROUGHT BY THIRD PARTIES WITH RESPECT TO ANY DAMAGES OR CLAIMS DESCRIBED IN THE IMMEDIATELY PRECEDING SENTENCE. FURTHERMORE, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY DAMAGES OF BUYER TO THE EXTENT SUCH DAMAGES ARISE FROM BUYER'S FAULT, NEGLIGENCE, WILLFUL MISCONDUCT OR STRICT LIABILITY. UNDER NO CIRCUMSTANCES, INCLUDING ANY FAILURE OF AN EXCLUSIVE REMEDY OF ITS ESSENTIAL PURPOSE, SHALL SELLER'S LIABILITY HEREUNDER EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE DEFECTIVE OR NONCONFORMING GOODS.

(c) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR DELAYS, CURTAILMENT OF PLANT OPERATIONS, PROCESS FAILURE, POLLUTION, LOSS OF PROFITS, COSTS FOR REMOVING ANY PARTS OR GOODS TO BE REPAIRED OR REPLACED, TRANSPORTATION, OR INSTALLATION CHARGES IN CONNECTION WITH THE REPAIR, REPLACEMENT, OR SERVICING OF ANY PARTS OR GOODS. ANY DRAWINGS OR GENERAL INFORMATION FURNISHED TO AID BUYER IN THE INSTALLATION OR ERECTION OF GOODS SOLD ARE FURNISHED FOR BUYER'S CONVENIENCE ONLY AND ARE NOT WARRANTED BY SELLER, AND SELLER SHALL INCUR NO LIABILITY WHATSOEVER ARISING THEREFROM. SELLER MAKES NO WARRANTY WITH RESPECT TO (1) SERVICE WORK, (2) PARTS REQUIRING REPLACEMENT DUE TO NORMAL WEAR AND TEAR, (3) USED GOODS, (4) DESIGN OF GOODS OR (5) PAINTING/COATING/LINING, EXCEPT FOR THE WARRANTY EXPRESSLY STATED ABOVE. Buyer agrees to use the Goods in accordance with the operator's manual and other written instructions provided from time to time by Seller to Buyer, and use of the Goods (i) outside of the environment or application parameters or limitations set forth in such manual or instructions, or (ii) in a manner that exceeds the specifications or application limits set forth for such Goods at www.Wellflexnc.com, shall render all of Seller's warranties hereunder void and without further force or effect.

9. Change of Control. Buyer shall notify Seller immediately upon (i) any change in the ownership of more than fifty percent (50%) of the voting rights in Buyer or in the holders of a controlling interest in Buyer, (ii) the execution of any agreement providing for a change of control of Buyer or (iii) any sale of all or substantially all of the business or assets of Buyer or the execution of any agreement for same. If Buyer fails to do so or Seller objects to the change or occurrence of such event, then Seller may (a) terminate this agreement, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment or collateral satisfactory to Seller to secure Buyer's obligations to Seller hereunder) or (c) put in place special controls regarding Seller's confidential and/or trade secret information.

10. Buyer's Financial Condition. If, at any time prior to delivery of Goods hereunder, Buyer's credit, liquidity or financial condition is or becomes unsatisfactory to Seller, then Seller in its sole and absolute discretion may cancel any shipment or require Buyer, at Buyer's cost, to procure acceptable letters of credit or other security in favor of Seller without further obligation or liability on Seller's part. Seller may suspend or terminate its performance hereunder without further liability or obligation to Buyer, or Seller may require payment in advance before making any shipment, if Buyer's credit, liquidity or financial condition declines or otherwise becomes unsatisfactory to Seller at any time. Nothing contained herein obligates Seller to extend credit or provide financing to Buyer, and any such extension of credit is in the sole and absolute discretion of Seller.

11. Payment Terms. Buyer shall pay to Seller for the Goods a 50% down payment on the date that Buyer agrees to purchase the Goods from Seller, and Buyer shall pay the balance in full to Seller within 30 days from the date of Seller's invoice; provided, however, that Buyer shall be permitted to pay the entire purchase price for the Goods within 30 days from the date of Seller's invoice (and therefore not to make a 50% down payment with respect to the Goods) if Seller elects, in its sole and absolute discretion, in writing to provide open account credit to Buyer. Any decision by Seller to extend credit to Buyer shall be subject to change or revocation from time to time by Seller in Seller's sole and absolute discretion, and such change or revocation may include, without limiting the generality of the foregoing, the termination of any outstanding credit

and the acceleration of the due date of any such open account credit. Unless otherwise agreed in writing to by the parties hereto, Buyer shall pay, for the period overdue, a late charge on any amount overdue for a period of at least 30 calendar days at a rate equal to the lesser of: (1) 10% per annum, and (2) the maximum rate permitted by applicable law, it being the intention of the parties hereto to comply with applicable law in all respects. All fees, costs and expenses (including legal fees or other charges) incurred by Seller to collect monies due from Buyer, or to enforce the terms and provisions hereof, shall be reimbursed to Seller by Buyer..

12. Assignment. Any transaction resulting from an Order or these Terms and Conditions of Sale shall not be assignable by either party without the prior written consent of the other party, except that any transaction may be assigned without consent of the other party (A) to the successor of either party acquiring all or substantially all of the business or assets of that party, provided that if the credit of any such successor to Buyer is unsatisfactory in any way as determined in the sole and absolute discretion of the Seller, then Seller shall have the right to terminate any Order and its obligations hereunder, (B) to an affiliate of a party, provided that assignment to any such affiliate shall not release or discharge the assignor, or (C) pursuant to a pledge of accounts receivable arising from the performance hereof.

13. Force Majeure. (a) This agreement is made on the basic assumption that performance by Seller, any supplier of Seller (including, without limitation, any manufacturer of the Goods or any component of the Goods) or any carrier of the Goods shall not be prevented, hindered, delayed or otherwise made impracticable by an Act of God, peril of the sea, act of or restriction imposed by any government or instrumentality thereof or by the public enemy, fire, war, revolution, insurrection, terrorism, riot or civil commotion, accident, epidemic, embargo, court order, strike, lockout or other labor interruption, partial or total interruption, loss or shortage of transportation or loading facilities, fuel shortage, flood, hurricane, tornado, snowstorm, ice storm or other storm (whether or not similar to any of the foregoing), drought, lightning, tsunami, third party non-performance, acts of third parties, failures, fluctuations or nonavailability of materials, components, power (electric or other), heat, light, air conditioning, computing or information technology systems or telecommunications or any other unforeseen supervening circumstances not within the contemplation of the parties at the date hereof (each, a "Force Majeure Event"). This paragraph 13 is not intended as an exhaustive expression of the contingencies the non-occurrence of which are a basic assumption on which this agreement is made and shall not be construed to impose upon Seller a greater obligation than that imposed by the Uniform Commercial Code. In the event that a Force Majeure Event occurs, Seller shall have the right, during the continuation of the Force Majeure Event, to allocate supplies of its goods and products, including the Goods, to its customers in proportion (as determined by Seller in its sole and absolute discretion) to the orders placed by its customers for similar goods and products (including goods and products similar to the Goods), and Buyer shall remain obligated to purchase its allocated portion during the Force Majeure Event. Upon the cessation of such Force Majeure Event, Buyer shall remain obligated hereunder to perform in accordance with the terms hereof unless this agreement is cancelled by Seller as hereinafter provided.

(b) Seller is not liable for its failure to perform any of its obligations under this agreement during any period in which Seller's performance is delayed, prevented, hindered or otherwise made impracticable by a Force Majeure Event. Should a Force Majeure Event continue for 30 consecutive calendar days, Seller may, if Seller elects in its sole and absolute discretion, terminate this agreement, either in whole or in part, with no liability for losses, costs, claims, expenses or any other damages to Buyer arising from such termination.

14. Storage. In the event Buyer delays shipment for any reason and desires to store the Goods by or with Seller (whether on Seller's premises or at a third-party storage facility, as determined by Seller in its sole and absolute discretion) either before or after making payment therefor, and provided that Seller agrees to store such Goods, Buyer agrees to and shall execute and perform Seller's then-current Storage Agreement, including terms providing for the payment for storage of the Goods at such storage rates as are provided in accordance with such agreement. In the event that Buyer is tardy in picking up the Goods from Seller's premises, Buyer agrees that the Goods shall be stored by or with Seller (whether on Seller's premises or at a third-party storage facility, as determined by Seller in its sole and absolute discretion) for so long as Seller is willing to do so and subject to such storage charges as would otherwise be provided in Seller's then-current Storage Agreement. Buyer shall pay all storage charges to Seller upon demand by Seller, but no less frequently than on the first business day of each month. Unpaid overdue storage charges owed to Seller by Buyer shall accrue interest at the rate of 10% per annum.

15. INDEMNITY. Neither Seller nor any of its agents, employees, officers, directors, representatives or consultants (collectively, the "Seller Parties") shall have any liability whatsoever for any losses, claims, damages or expenses of Buyer or Buyer's agents, employees, officers, directors, customers, representatives or consultants (collectively, the "Buyer Parties"), however caused, arising or occurring, whether through the negligence or other fault of Seller or any Seller Party or otherwise. Buyer shall release, protect, defend, indemnify and hold each of Seller and the Seller Parties harmless from and against any losses, costs, claims, damages or expenses (including any reasonable attorney's fees) incurred by Seller or such Seller Party by reason of (a) the failure of Buyer, or any Buyer Party, to follow specifications, instructions, warnings or recommendations with respect to the Goods furnished by Seller or a Seller Party, (b) failure of Buyer or any Buyer Party to comply with all applicable legal requirements, including the Occupational Safety and Health Act of 1970, as amended, respecting the Goods, (c) any misuse or misapplication of the Goods by Buyer or any Buyer Party, (d) any misrepresentation by Buyer or any Buyer Party, (e) any infringement or alleged infringement of any patent, trademark, copyright or trade secret by Buyer or any Buyer Party, (f) any personal injury, death, or loss or damage to property, or (g) any pollution occurring after delivery of the Goods regardless of source or cause. THE INDEMNITY PROVIDED IN THIS PARAGRAPH APPLIES TO ANY CLAIM OF STRICT LIABILITY OR TO ANY CAUSE WHATSOEVER, WHETHER PREDATING THE ORDER OR NOT, WHETHER OR NOT CAUSED BY THE NEGLIGENCE OF ANY OF THE SELLER PARTIES; PROVIDED, HOWEVER, THAT THE SELLER PARTIES SHALL NOT BE ENTITLED TO BE INDEMNIFIED FOR ANY CLAIMS THAT WERE DUE TO THEIR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

16. Waiver of Certain Damages. (a) Neither party shall be liable for any special, indirect, speculative, punitive, incidental or consequential damages of any type or character (including, but not limited to, loss of profits (except as expressly provided in paragraph 7 hereof), loss of use, or lost production) arising from or related in any way to the Goods.

(b) Other than with respect to a breach of the warranty provisions in paragraph 8, which is governed by paragraph 8, or with respect to the inspection and rejection of non-conforming or defective Goods, which is governed by paragraph 6, in the event of a breach of this agreement by Seller, Buyer's exclusive remedy and Seller's limit of liability shall be for Buyer's actual damages, which shall in no event exceed the price specified herein of the particular Goods (or in the Order applicable to the particular Goods) with respect to which the damages occurred. **Seller shall in no event be liable to Buyer (a) on account of any such breach unless Buyer shall have commenced an action of such breach within 100 calendar days after the cause of action accrued, (b) for any of Buyer's damages, to the extent such damages arise from Buyer's fault, negligence, willful misconduct or strict liability or (c) for Buyer's manufacturing costs, lost profits,**

goodwill or other incidental, punitive, special, indirect or consequential damages, regardless of whether Buyer is aware of the possibility of such damages.

(c) Buyer shall be solely responsible for management of any hazardous or toxic waste or material or any component thereof generated during cleaning or servicing of Buyer's equipment ("Waste"). As used in this provision, the term "management" and its derivatives include, but are not limited to, transporting, collecting, processing, treating, using, reselling and storing. Seller is not permitted, certified or otherwise licensed to manage or dispose of Waste generated when cleaning or servicing Buyer's Goods. BUYER SHALL ASSUME SOLE RESPONSIBILITY AND LIABILITY FOR ALL WASTE AND HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS THE SELLER PARTIES FROM AND AGAINST ALL CLAIMS THAT RESULT IN ALLEGED OR ACTUAL POLLUTION OR OTHER DAMAGE (INCLUDING PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE) THAT ARISES OUT OF OR IS RELATED IN ANY WAY TO ANY WASTE. Seller makes no representation or warranty as to the compliance of the Goods with any environmental laws, regulations or ordinances, whether federal, state, local or foreign.

17. Compliance with Law. Except as otherwise expressly provided herein, each party hereto represents and warrants that it is familiar with and at all times shall observe and comply with all applicable international, federal, state and local laws, ordinances, rules, decrees and regulations in any manner affecting the Order and the related Goods that exist at present and those that may be enacted later by bodies, agencies, or tribunals having jurisdiction or authority over the Goods. The items, technologies or software that are sold to Buyer under these Terms and Conditions of Sale are subject to the export laws of the United States and perhaps similar laws of other countries. The export, deemed export, re-exports, or release of these items, technologies or software provided by Seller to any country, government, person, entity, organization or other parties may require the prior approval of the U.S. Government, the governments of other countries, and international organizations such as the United Nations, and Buyer is solely and exclusively responsible for assuring compliance with all import, export, licensing and other statutory or regulatory compliance pertaining to or affecting the sale and shipment of the Goods. Diversion of the items, technologies or software constituting a part of the Goods contrary to U.S. and international law is prohibited. Buyer hereby warrants to Seller that, in connection with the purchase of the Goods, neither Buyer, nor any of Buyer's directors, officers, employees, agents or representatives has made or will make any gifts or payment of money or anything else of value, directly or indirectly, to an official or employee of Seller, or of any government, or any department or agency thereof (including governmental-owned companies), to any official of any international organization, or to any political party or candidate for political office (each, an "Official") for the purpose of influencing any decisions of such Official in his official capacity, inducing any such Official to act or fail to act in violation of his official duty, or inducing such Official to use his influence to influence or affect any act or decision of a government, any department or agency or instrumentality thereof, or international organization for the purpose of obtaining, retaining, or directing business to or for Buyer or any other person.

18. Applicable Law. The duties and obligations of Buyer and Seller, and the terms and provisions hereof, shall be governed by and construed in accordance with the Uniform Commercial Code and all other laws of the State of Texas, without regard to principles of conflicts of laws of that jurisdiction, as effective and in force on the date of the agreement formed by these Terms and Conditions of Sale. It is understood, however, that this is a general form of contract, designed for use wherever Seller may decide to sell Goods, and that any provision herein which in any way violates the laws of any appropriate state or jurisdiction shall be deemed not to be a part of these Terms and Conditions of Sale to the extent that it so violates. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this agreement. The parties submit to the exclusive jurisdiction of the federal or state courts located in Fort Worth, Tarrant County, Texas with respect to any and all Claims that arise out of or are related in any way to the subject matter of any Order or these Terms and Conditions of Sale.

19. Default. (a) Without limiting Seller's remedies for default as provided in the Uniform Commercial Code, upon default by Buyer under the terms hereof, Seller may, at its option, (i) by written notice to Buyer forthwith (A) terminate this agreement and (B) accelerate any installment or otherwise postponed or deferred payment for shipment already made under this agreement, therefore causing all amounts owed by Buyer to Seller hereunder to become immediately due and payable, (ii) without affecting in any way the obligation of either party in respect of further shipments hereunder, regard each shipment as a separate and independent sale on and under these Terms and Conditions of Sale and any other terms and conditions applicable hereunder, or (iii) immediately suspend deliveries hereunder if any one of the following events shall occur: (x) if Buyer fails to perform any provision of this agreement (including, without limitation, the failure to pay any amount when due hereunder) which failure remains uncorrected for more than ten calendar days after written notice thereof is sent by Seller to Buyer; or (y) if Buyer shall become unable to pay its debts generally as they become due, or shall hold a meeting of its creditors, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or shall suffer a receiver, trustee or liquidator to be appointed to its business, or shall be adjudicated or declared a bankrupt or insolvent, or shall file a petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, adjustment, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegation of a petition or answer filed against it for or proposing any such relief, or if any such or similar proceeding against Buyer, or if any such or similar appointment, not so uncontested or acquiesced in, shall remain unvacated or unstated or such trustee, receiver or liquidator shall not have been dismissed or discharged for an aggregate of 60 calendar days (whether or not consecutive). If any of the events listed in clauses (x) or (y) of the foregoing sentence shall have occurred, Buyer shall remain liable to Seller for all loss and damage sustained by reason of any such breach or event, regardless of whether Seller exercises any remedies listed in clauses (i), (ii) or (iii) of the foregoing sentence. Seller's right to require strict performance of Buyer's obligations hereunder shall not be affected in any way by any previous waiver, forbearance or course of dealing. No failure by Seller to give written notice of any failure by Buyer to perform any provision of this agreement shall constitute a waiver thereof, nor shall any delay by Seller in enforcing any of its rights hereunder or at law be deemed a waiver of such rights nor shall a waiver by Seller of any default of Buyer be deemed a waiver of any other or subsequent default.

(b) Seller is not liable for its failure to perform any of its obligations under this agreement in the event Seller's performance is delayed, prevented, hindered or otherwise made impracticable by a Buyer-related action or Buyer inaction when Buyer (or Buyer's designee) was required to do or perform an action.

20. Arbitration. Any controversy or claim arising out of or relating to this agreement, or the breach, validity or termination thereof, shall be settled exclusively by final and binding arbitration in Ft. Worth, Texas in accordance with the laws of the State of Texas, without regard to the principles of conflicts of laws of that jurisdiction. Such arbitration shall be conducted in the English language and in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), and judgment upon the award rendered by the arbitrator(s) may

be entered in any court having jurisdiction thereof. If the amount in dispute (including claim(s) and counterclaim(s), if any) is equal to US \$2,000,000 or less, the controversy or claim shall be decided by a sole neutral arbitrator, who shall be appointed by agreement between Seller and Buyer or, in the event Seller and Buyer fail to reach an agreement with respect thereto within 25 calendar days after confirmation of notice of filing of the demand is sent by the AAA, by the AAA in accordance with the AAA Rules. If the amount in dispute (including claim(s) and counterclaim(s), if any) exceeds US \$2,000,000, the controversy or claim shall be decided a tribunal of three neutral arbitrators appointed in accordance with the AAA Rules. The arbitrator(s) shall have the power to decide on his or her (their) own jurisdiction. The arbitrator(s) shall have no power to consider any arbitration initiated by Buyer more than 100 calendar days after the alleged cause of action accrued, to award damages to Buyer in excess of the damages permitted by paragraphs 8 and 16 of these Terms and Conditions of Sale or to grant any remedy to Buyer other than such damages. Claims or causes of action that accrue and for which no arbitration proceeding is commenced within such 100 calendar day period shall be deemed irrevocably waived, released and extinguished. In no event shall any arbitrator have the power or authority to award or impose punitive damages. The arbitrator(s) shall have the power to award reasonable attorney's fees and costs in accordance with paragraph 15 hereof. The arbitrator(s) shall issue a reasoned award. Unless otherwise agreed by the parties in writing, or unless disclosure is required by law, the parties undertake to keep the arbitration, including any award(s), confidential. **In entering into the arbitration provision in this paragraph 20, the parties expressly acknowledge and agree that they are knowingly and voluntarily waiving their rights to a jury trial, including any rights to a trial by jury in any litigation in any court with respect to, in connection with, or arising out of this agreement.**

21. General. (a) These Terms and Conditions of Sale, as supplemented by Seller with respect only to terms of price, quantity of goods sold and trade credit (if any) extended by Seller to Buyer (including as provided in any Order), constitutes and is intended as a final, entire and complete expression of the agreement between Seller and Buyer with respect to the Goods covered hereby and supersedes all prior or contemporaneous communications, representations or agreements with regard to the subject matter hereof. No term or provision of these Terms and Conditions of Sale shall be waived, modified, amended or changed except by a writing signed by both Seller and Buyer. The parties waive any rights they may have, under the Uniform Commercial Code or otherwise, to satisfy any of their obligations hereunder by means of an accord and satisfaction without the prior written consent of the other party. In entering into the agreement by Seller to sell Goods to Buyer, neither Buyer nor Seller has relied on any oral representations made by the other. A waiver on the part of either party of any breach of any term, provision or condition of the Order or of these Terms and Conditions of Sale shall not constitute a precedent and not bind either party hereto to a waiver of any succeeding or other breach of the same or any other term, provision or condition of the Order or of these Terms and Conditions of Sale. Unless otherwise specifically provided, all notices and other communications provided for in the Order or in these Terms and Conditions of Sale shall be in writing and shall be effective upon receipt. Such notices and communications shall be addressed to the other party at its registered office or principal place of business or such other address as may be provided by the receiving party.

(b) Seller may subcontract the production of the Goods or fulfillment of any other of Seller's obligations hereunder, in whole or in part. The delivery of the Goods shall not terminate or limit any of the terms or provisions hereof.

(c) Should any clause, sentence or part of this agreement be held invalid, illegal or unenforceable, (i) such holding shall in no way affect the validity of the remainder, which shall remain in full force and effect, and (ii) such invalid, illegal or unenforceable provision shall be reformed (or severed, if it cannot be reformed) by a court of competent jurisdiction so as to make this agreement enforceable.

(d) Headings, subheadings and captions herein are for the convenience of the parties only and shall not be used to construe the meaning or intent of any provision hereof.