

**ElringKlinger Engineered Plastics North America, Inc.**  
**("Seller")**

**GENERAL TERMS AND CONDITIONS OF SALE**

**1. General Application, Formation, Choice of Law and Jurisdiction.**

(a) General Application. These General Terms and Conditions of Sale ("General Terms") apply to all proposals and quotations submitted by Seller, to all purchase orders received by Seller, and to all sales of goods and services sold by Seller, except as otherwise specifically provided in a document specifically issued by Seller as an exception. 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), shall be considered ancillary to a sale of goods and the law adopted by these General Terms shall apply to all goods and services to be provided by Seller (collectively "Goods"). All references to "Seller" include the Seller identified above and any affiliate of such entity that receives a purchase order referencing or otherwise subject to these General Terms.

(b) Formation. A written quotation issued by Seller is an offer to sell. A contract shall be formed and Buyer shall be deemed to have accepted the provisions of these General Terms by any of the following: (a) signing and returning to Seller a copy of any quotation within the time provided therein; (b) sending to Seller a written acknowledgment or acceptance of the quotation within the time provided therein; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assembly, or delivery of the Goods (including instructions to build and hold) following receipt of any quotation or these General Terms; (d) failing to cancel a pending purchase order which is not deemed to be an acceptance of an offer by Seller within ten 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, in the following descending order of priority, only of these General Terms, terms in other documents which are referred to herein or are attached hereto or in a document provided, signed, or issued by Seller which reference the transaction, and Buyer's purchase order (excluding Buyer's standard terms and conditions of purchase and other terms inconsistent with Seller's quotation and these General Terms) (all of which constitute the "Agreement").

(c) Choice of Law and Jurisdiction. THE AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAWS OF THE STATE OF GEORGIA INCLUDING THE UNIFORM COMMERCIAL CODE IN FORCE ON THE INITIAL DATE OF THE AGREEMENT ("UCC"), EXCEPT AS PROVIDED HEREIN. THE U.N. CONVENTION ON THE INTERNATIONAL SALES OF GOODS SHALL NOT APPLY. THE COURTS OF GEORGIA SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES 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.

**2. Integration, Modification, and Status of Parties.**

(a) Complete Integration. The Agreement is a final, complete and exclusive statement of the Agreement of the parties related to the Goods. A purchase order or an amendment submitted by Buyer orally or in writing (whether or not it contains terms or conditions modifying,

adding to, repugnant to or inconsistent with these General Terms), may be accepted, approved, performed or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement without such terms and notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other document or communication, unless Seller otherwise advises Buyer in writing. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by performing such purchase order or by failing to further object to Buyer's terms or conditions.

(b) Modification. SELLER IS WILLING TO NEGOTIATE CHANGES TO THESE GENERAL TERMS IN A WRITING SIGNED BY SELLER, BUT SELLER RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED COST RELATED TO SUCH CHANGES. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in a writing signed by Seller's authorized employee.

(c) Parties. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be also for the benefit of Seller's affiliates, agents, employees, contractors, and other suppliers. Customers of Buyer and end users are not intended third party beneficiaries of the Agreement. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

(d) Quotations. Goods quoted to Buyer are subject to prior sale or other commitment. Unless otherwise stated therein, prices and delivery schedules in quotations are valid for 30 days from date of issue and subject to modification by Seller thereafter.

(e) Acknowledgments. Buyer and Seller acknowledge that: (i) they are merchants in respect to the Goods produced 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.

**3. 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 written Agreement. An affirmation, waiver, representation or warranty shall not be deemed to be part of the basis of the Agreement and shall not be enforceable, unless it is expressly included within the Agreement.

#### **4. Prices and Payment.**

(a) Prices and Payment. Buyer shall pay Seller according to the pricing set forth in the accepted quotation. Prices contained in quotations are firm only for a period stated therein and otherwise for 30 days from the date of the quotation, unless modified in writing by Seller prior to Buyer's acceptance. After any firm price period in a quotation or other communication, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. All prices are ex works Incoterms in the most recent version. Prices are for the Product only, and do not include any amount for freight, insurance, fees, customs duties or federal, state or local excise, value added, sales, use, service, occupation, gross income, property or any other taxes, all of which shall be paid by Buyer even if the tax is assessable against Seller (except for taxes on Seller's net income). Buyer shall reimburse Seller for any such amounts which are Buyer's responsibility. Unless provided otherwise in the

Agreement, all prices are in United States dollars and must be paid in U.S. dollars at the location specified in Seller's invoice. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt of all invoices issued by Seller to Buyer for any such items Seller may pay which were the obligation of Buyer to pay under the Agreement.

(b) 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 delivery of a documentary or stand-by letter of credit issued or confirmed by a U.S. bank acceptable to Seller or other financial security or other assurance for such payment or other performance.

(c) Export/Import Fees. All export and import permits and licenses and the payment of all export and import duties and customs fees shall be the responsibility of Seller, if Seller is obligated by the Agreement to deliver the Goods within the United States. All export and import duties, fees, permits, licenses, etc., for Goods to be delivered outside of the United States shall be the responsibility of Buyer.

(d) Payment Terms. Buyer shall pay for all deliveries of Goods net 30 days after delivery. Buyer may change payment terms without cause on 30 days notice to Seller.

(e) Installments. The Agreement may require or the Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer shall pay timely the price for each installment which is delivered. A failure to pay for an installment when due is a material anticipatory breach of other installments by Buyer.

(f) Carrying Charge. All amounts not paid to Seller when due shall incur a carrying charge of 1.0% per month above the current LIBOR one month rate to the extent allowed by law and otherwise at the highest written contract rate allowed by law. Buyer shall reimburse Seller for all costs of collection, including reasonable attorney fees, of amounts not paid when due.

(g) Buyer's Failure to Cooperate. All amounts due on inspection, delivery, installation, acceptance or other event which requires the action or cooperation of Buyer which Buyer fails to supply timely shall become due upon such failure, irrespective of whether or not the Goods are formally accepted by Buyer or the Goods have been installed.

(h) 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 shall 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 by Buyer under written protest shall not constitute a waiver by Buyer of its claims.

(i) Allocation of Payments. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.

(j) Cumulative Rights. All remedies of Seller under the Agreement are cumulative and to the extent not specifically waived under the Agreement in addition to those provided by law.

(k) Solvency of Buyer. Buyer represents that it is solvent and able to pay the price for the Goods and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it shall notify Seller. Acceptance of delivery shall be a reaffirmation at delivery of Buyer's solvency, and that there has not been a material adverse change in such information.

## **5. Delivery.**

(a) Shipping Dates. Shipping dates are estimates based on Seller's and/or its supplier's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's purchase order and/or delivery releases. All shipping dates are approximate and shall be computed from the date of entry of the purchase order and/or delivery releases on Seller's books. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or formal acceptance, letter of credit, deposit and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary for Seller to provide the Goods and/or to grant any credit terms.

(b) Method, Cost and Insurance of Shipment. Seller shall deliver the Goods ex works Incoterms (in the most recent version) by tendering the Goods for placement in the possession of a carrier and, unless otherwise advised by Buyer in writing, without liability, shall make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost. On Buyer's request, Seller shall obtain and send to Buyer upon its reasonable request documents to assist Buyer in obtaining insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation. Buyer is responsible for making any claim against the carrier, riggers and other handlers of the Goods after delivery to Buyer.

(c) Risk of Loss and Title. The Agreement is for a shipment contract and the Goods shall be delivered ex works Incoterms (in the most recent version) Seller's dock. Whether or not Seller prepays shipping charges shall 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 shall remain with Seller until Buyer pays for the Goods in full.

(d) Shipping and Packaging. Except as otherwise provided in the Agreement, Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included in the price or Seller's obligations, any increase in rates for such services becoming effective after the date the price is quoted to Buyer shall be added to the price. All Goods shall be packed for shipment by Seller for over-the-road travel transportation, and for placement in a seaworthy container if transportation under the Agreement includes transportation by sea, in accordance with Seller's standard practices. It is Buyer's responsibility, whether or not Seller arranges shipping, to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods and advise Seller in writing of Buyer's requirements. Buyer shall pay Seller for the additional procedures and materials.

**6. Delay of Shipment or Performance Excused for Various Reasons.**

(a) Delayed Shipment. If shipment of any Goods 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 the Goods are ready for shipment. In the event of any such delay in shipment, full and final payment for Goods shall be due and payable 30 days after Buyer is notified that the Goods are ready for shipment.

(b) Supply Allocation. Whenever Seller's supply of the Goods, materials or means of production or source of supply is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned in Subsections (a) and (b), Seller, in its sole discretion, may allocate its supply to its own use, to Buyer, and to other customers.

**7. Inspection, Testing and Rejection.**

(a) Rejection. All manuals, drawings, specifications, technical documentation, samples, test results, prototypes and Goods shall be immediately inspected by Buyer after receipt and be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection. Buyer shall have seven days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If an item is rejected, notice must be given to Seller so that it will arrive no later than ten days after receipt of the item by Buyer. Failure to so act shall constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must 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 shall be resolved under the express warranty. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer shall return them to Seller, express, collect, within three days after such request. A failure to so return shall constitute an irrevocable acceptance. No attempted revocation of an acceptance shall be effective, and Buyer shall be limited to any available express warranty remedies specifically provided in the Agreement. There shall be no limitation on the period of time in which Seller may cure any non-conformity or breach, provided Seller continues to make reasonable efforts to cure.

(b) Delivery Shortages. Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven days of receipt of the shipment at Buyer's facilities.

(c) Expenses. Any expense incurred by Buyer in the inspection or testing of the Goods shall 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.

**8. General Express Warranties.**

(a) General. Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods shall conform in all material specifications in the Agreement, shall be in material conformance with the specifications in the Agreement, and shall be free from defects in materials and workmanship, which are discovered and reported to Seller within the period of 12 months from the date of delivery of the alleged non-conforming or defective

Goods to Buyer. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Because the Goods may be subject to a wide variety of use, installation, maintenance, cleaning, and other factors, the warranty is only against the named defects and not against any other defects or failures such as, but not limited to, those due to normal wear and tear, normal maintenance and unknown causes. Perishable items are excluded from warranty against defects. Notwithstanding anything to the contrary, there is no warranty as to prototype Goods.

(b) Conformity. Included in Seller's warranty against defect is Seller's warranty to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated herein and Seller's published and internal standards; however, Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is nonmaterial. Seller may, in its discretion, also rely on any generally accepted industry standards in making changes.

(c) Warranty Requirements. Seller's warranties against non-conformities and defects shall continue to apply only so long as the Goods: (i) have been installed, maintained and used in conformity with instructions furnished by Seller from time to time, if any, and otherwise in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller or Seller authorized warranty service providers 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.

**9. Patent Warranties**. Seller shall defend and indemnify Buyer from any claim which asserts that the Goods or their inherent methods of operation, intrinsically, infringe any United States patent, except as to a claim based on Buyer's modifications and use of the Goods as a step in an overall process or as an element in an overall combination. Seller's obligation shall not apply to a claim based on the Goods or portions thereof specified, designed, or manufactured by Buyer. Buyer shall notify Seller promptly of any assertions of patent infringement and provide Seller with assistance and information requested by Seller for its defense, or Seller shall have no further obligation to defend or indemnify. Seller shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to prosecute or settle such claims. Seller's exclusive obligation to indemnify as to the Goods declared to infringe is limited to the acquisition of a License, the replacement of the Goods with non-infringing Goods, the modification of the Goods so that they are non-infringing, or the return of the purchase price and shipping costs in exchange for the Goods, as Seller may elect. This Section states Seller's entire and exclusive obligation regarding patent infringement and the exclusive remedies therefor, and Buyer waives all other rights. Seller disclaims any implied warranty of non-infringement. Buyer shall defend and indemnify Seller for all infringement claims (including direct, contributory and inducement) based on Goods or portions thereof specified, designed or manufactured by Buyer.

**10. 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 expressed as a warranty 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 shall be no third party beneficiaries to

the express warranties contained herein unless specifically provided and identified. Seller is not responsible for any errors or omissions or for any loss or damage resulting from reliance on catalogues, brochures, price lists or other information provided to Buyer from Seller, including, without limitation, 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 and is not a representation, warranty or other obligation of Seller. Buyer is to conduct its own tests or include in the written Agreement with Seller's written consent any express obligations of Seller which Buyer deems material. 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.

#### **11. Remedies and Limitation of Seller's Liability.**

(a) General Remedies. Defective or non-conforming Goods or parts thereof discovered and reported during the express warranty period shall be repaired, or replaced by Seller without any additional charge, and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof of the Agreement, as Buyer's exclusive remedy. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller shall determine upon examination to be defective or not in conformity with the express warranties contained herein. Seller shall also reimburse Buyer for any costs incurred in the repair or replacement of defective Goods which had been installed during production of a vehicle or other new end product in an amount as to each individual Good not to exceed 2 times the price paid by Buyer for each of the Goods that fail due to a defect covered by Seller's express warranty or a total of \$250,000 for all such Goods. Goods cannot be deemed defective or non-conforming if Seller cannot observe or duplicate the alleged failure. If the alleged failure can be observed or duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine in its reasonable discretion whether the failure is due to a non-conformity or defect for which Seller is liable under the Agreement. 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 as Buyer's exclusive remedy. Seller may provide such repairs itself or through its third party contractors. Buyer's remedies shall be 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 SHALL SELLER BE LIABLE, REGARDLESS AS TO WHETHER SELLER'S LIABILITY ARISES UNDER CONTRACT, TORT, STRICT LIABILITY STATUTES, OR OTHERWISE, 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; COST OF PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE OR SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each provision of the Agreement which provides for a limitation of liability, disclaimer of warranties, or exclusion or limitation of damages or remedy is severable and independent of each other and to be enforced as such. Buyer waives any causes of action or theories of liability relating to or arising under the Agreement 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

herein. The replacement or repair of Goods by Seller does not give rise to any new or extended warranty, and the warranty period provided for herein shall 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 or otherwise.

(b) Buyer's Obligations. Buyer shall contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods or parts thereof. If requested by Seller, Buyer shall 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 shall provide with any claim in writing a complete description of the non-conformity or defect. Buyer shall comply with Seller's return instructions (including return of the Goods) within 30 days or the claim shall 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 shall be returned to the sender at sender's cost.

(c) Recall. Seller shall not be liable for any costs related to a recall, service campaign or similar action without its prior written consent and Seller's maximum obligation in any such event (including the provision of replacement Goods and all other costs) shall not exceed 100% of the total amount paid to Seller for such Goods by Buyer except Seller shall reimburse Buyer for its direct out-of-pocket costs incurred as a result of a recall of Goods in an amount up to 100% of Seller's average annual sales to Buyer of the specific Good which is recalled because of a breach of express warranty creating a safety defect under NHTSA during the period of Buyer's full production of the defective Good; provided the amount of reimbursement shall not exceed for any single individual recalled item of Goods five times the amount paid to Seller for such Good or a total of \$250,000 for the total quantity of all such Goods recalled.

(d) Maximum Damages. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (e) BELOW IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED 2 TIMES THE TOTAL AMOUNT PAID OR PAYABLE TO SELLER PURSUANT TO THIS AGREEMENT IN THE 12 MONTHS PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$ 250.000 WHICHEVER IS LESS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF BUYER'S THE REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

(e) Exclusive Remedy. This Section sets forth Seller's sole liability and entire obligation and Buyer's exclusive remedy for any action that is brought against Seller.

**12. Disclaimer of Implied Warranties.** SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN THAT THE GOODS WILL BE NEW AND GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF NON-INFRINGEMENT, 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 nor judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in the Agreement. 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 or correct information or approval provided by Buyer. 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. Seller does not warrant that the Goods will operate with any accessories or within any system not sold under the Agreement and Seller's warranty is limited to the operation of the Goods in a stand-alone mode.

**13. Design, Parts, Service and Training Provided by Seller.** All design, application engineering, parts, labor, service, software and training, 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. Seller may elect to discontinue service and parts on the types of Goods sold at any time upon 180 days' notice. 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.

**14. Responsibility for Safety.**

Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safe use and condition under all circumstances. IT IS BUYER'S OBLIGATION TO INSTALL AND USE THE GOODS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND LAWS, INFORMATION PROVIDED BY SELLER, AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE. If Seller provides installation or assistance in installation it is without warranty as to compliance with safety laws. It is Buyer's or other user's responsibility to provide all proper dies, devices, tools, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, setup, or service of the Goods. Buyer shall comply with manuals furnished by Seller, ANSI Safety Standards, OSHA and similar state regulations, and other sources to insure the safe use of the Goods.

**15. Indemnification.**

(a) **Third Party Claims.** Buyer shall indemnify, and at Seller's request defend, 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 use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts, components and systems manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's or customer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller. Buyer shall defend and indemnify Seller from all liability for claims, damages, losses and expenses incurred as a result of the advice 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 been furnished to, and relied on by, Buyer.

(b) Buyer's Indemnity for Unsafe Use. Buyer shall use and shall require its employees and all other users of the Goods to use all safety devices and guards furnished with or intended to be used with the Goods, and to follow proper safe operating procedures in accordance with general industry standards and as set forth in manuals and instruction information furnished by Seller and as otherwise required by the Agreement. If Buyer fails to comply with the obligations set forth in this subsection, Buyer shall indemnify and save Seller harmless and on Seller's request defend Seller from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of the Goods and all warranties of Seller shall become automatically void. Buyer shall notify Seller promptly, and in any event within 30 days, of any accident or malfunction involving Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods and Buyer's reports regarding the Goods for Seller's inspection.

**16. Security Interest.** In addition to any security interest granted by the UCC or other law, Buyer hereby grants a security interest to Seller in all Goods and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller. Seller may file a financing statement and at Seller's request, Buyer shall sign financing statements and other documents which evidence, perfect and confirm the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement or other similar documents if necessary or convenient to perfect Seller's security interest. Buyer shall not change the name of Buyer, the jurisdiction of Buyer's formation, or the location of any Goods from the original delivery point or installation site without prior written notice to Seller. Buyer shall provide a lien waiver or subordination from all third parties to whom the Goods may be delivered. Title shall not transfer to Buyer until the Goods shall be paid in full. Buyer shall maintain the Goods which constitute inventory in a segregated area and not co-mingle any Goods which are not fully paid. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate or grant a security interest in any Goods which are subject to the Agreement until payment has been made in full to Seller.

**17. Proprietary Information.**

(a) Seller's Rights to Confidentiality. All proposals, plans and other information furnished by Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any other third party or used by Buyer unless necessary for the selection or use of the Goods and notice of such disclosure has been given to Seller. Buyer shall treat as confidential any quotation or other business proposal from Seller and all technology which shall be 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 shall use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer shall not manufacture or sell any product using confidential information provided by Seller or obtained from reverse engineering or decompiling Goods. Buyer shall not disclose, or authorize or instruct any third party 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 and without prior written notice to Seller of Buyer's intent to do so. 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 shall maintain, for Seller's inspection, written records which shall include the names and address of such employees and contractors granted such access. Buyer shall 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 except as specifically provided in the Agreement.

(b) Proprietary Features. Any design, invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by Seller in the performance of the Agreement, , shall be the property of Seller and Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement.

(c) Drawings and Calculations. Seller is not obligated to furnish detailed or shop working drawings, manufacturing drawings, engineering calculations, computer programs, names of suppliers, or other information for any Goods or part thereof.

(d) Trade Secrets. Goods and related Software contain valuable trade secrets of Seller, and Buyer shall not translate, reverse engineer, de-compile or disassemble or make any other unauthorized use of such Seller Software and Goods. Since unauthorized use of such Seller Software and Goods will greatly diminish the value of such trade secrets and cause irreparable harm to Seller, Seller, in addition to any other remedies it may have, shall be entitled to equitable relief to protect such trade secrets, including without limitation temporary and permanent injunctive relief without providing further proof of irreparable harm by Seller.

**18. United States Government Regulations.** Buyer shall not engage in any transaction with respect to the Goods, by way of resale, lease, shipment or otherwise, which violates any statute or regulation of the United States of America or other governmental body. Buyer shall comply with all applicable export control laws and shall not, directly or indirectly, export, re-export, resell, ship, or divert any service, technical data, or software furnished hereunder to any person, entity, project, use, or country in violation of the laws or licensing requirements of the United States. Buyer warrants that Seller is not and shall not become a government subcontractor to Buyer and shall not be required to comply to the government acquisition regulations of any governmental body because of the Agreement or performance of the Agreement. If Buyer elects to sell Goods to the U.S. government or any state, local or non-U.S. government entity, or to a prime contractor or other subcontractor selling to such purchasers, Buyer does so solely at its own option and risk. Buyer remains exclusively responsible for compliance with all laws governing such sales and shall not obligate Seller as a subcontractor or otherwise to such entities. Seller makes no representations, certifications or warranties whatsoever with respect to the ability of its Goods or prices to satisfy any such statutes or regulations.

**19. Fair Labor Standards Act.** Seller certifies that any Goods produced in the United States shall be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the U.S. Fair Labor Standards Act, as amended, and of the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. Buyer warrants that no other certifications or waivers regarding Seller's payments to Seller's suppliers or laborers are required for Buyer to pay Seller.

**20. Breach.**

(a) Default. If Buyer defaults in the performance of payment or any other of its obligations, if Buyer advises Seller that it will or may 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 a protective order for debtor's relief for Buyer, Buyer shall be in breach and Seller may cease performance of its obligations, recover the Goods in transit or delivered, disable delivered Goods, terminate its obligation to deliver Goods and otherwise enforce its remedies for Buyer's default.

(b) Seller's Damages. Seller shall be awarded interest, and costs (such as but not limited to actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.

(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, provided Seller shall be entitled to only a single full recovery.

(d) Waiver. Seller's failure or delay in enforcement of any provision shall not constitute a waiver of a default or of the provision itself.

(e) Substantial Compliance. Seller shall not be liable for any damages for breach of any provision of the Agreement with which it has substantially complied.

(f) Currency. The choice of currency expressed in the Agreement and the place of payment are essential terms and there are no equivalent terms. Any money judgment rendered under the Agreement shall be converted in any enforcement action in a jurisdiction in which the local legal currency is other than as expressed in the Agreement shall be converted into the legal currency of the enforcing jurisdiction at the current New York rate of exchange as published in the *Wall Street Journal* on the date of entry of the original judgment.

**21. Consequential, Incidental, and Other Damages.**

(a) Exclusion. SELLER, BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, LIQUIDATED, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED IN THE APPLICABLE LAW OR OTHERWISE, EXCEPT AS TO ANY INDEMNIFICATION OBLIGATIONS TO THIRD PARTIES SPECIFICALLY PROVIDED IN THIS AGREEMENT. "CONSEQUENTIAL DAMAGES" SHALL INCLUDE, BUT NOT BE LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF CONTRACT GOODS, COSTS OF REPLACEMENT POWER OR CONTRACT GOODS, ADDITIONAL EXPENSES INCURRED IN THE USE OF CONTRACT GOODS OR FACILITIES, OR THE CLAIMS OF THIRD PARTIES, EVEN IF SELLER HAS BEEN ADVISED OF POSSIBILITY OF SUCH DAMAGES OR IF THEY ARE OTHERWISE REASONABLY FORESEEABLE. THIS DISCLAIMER SHALL APPLY TO INCIDENTAL, CONSEQUENTIAL AND LIQUIDATED DAMAGES BASED UPON ANY CAUSE OF ACTION WHATSOEVER ASSERTED AGAINST SELLER, INCLUDING ONE ARISING OUT OF PRINCIPLES OF CONTRACT, ANY BREACH OF WARRANTY, EXPRESSED OR IMPLIED, GUARANTEE, EQUIPMENT OR OTHER CONTRACT GOODS LIABILITY, NEGLIGENCE, TORT, OR ANY OTHER CAUSE PERTAINING TO PERFORMANCE OR NON-PERFORMANCE TO THE PROPOSAL OR ORDER. This limitation shall 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 shall not affect the right of Seller to indemnification hereunder, and under no circumstance shall Buyer recover more than the purchase price.

(b) Overall Limitation. IRREGARDLESS OF THE DISCLAIMER IN SUBSECTION (a), UNDER NO CIRCUMSTANCES SHALL 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 OR TO BE 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, EXCEPT AS MAY BE SPECIFICALLY PROVIDED BY THESE GENERAL TERMS.

## **22. Termination or Cancellation.**

(a) A party may terminate or cancel the Agreement immediately by written notice to the other party if:

(i) The other party breaches any of its material obligations under the Agreement and that breach is not capable of remedy.

(ii) A party becomes insolvent.

(iii) It becomes unlawful for the party to perform its obligations under the Agreement.

(b) Seller may terminate or cancel the Agreement immediately by written notice to Buyer if Buyer fails to:

(i) Pay money owing under the Agreement for more than seven days.

(ii) Accept delivery at the delivery point within seven days from the date the Goods are first available for delivery as advised to Buyer by Seller, unless agreed otherwise in writing.

(iii) Carry out any other provision of the Agreement or breaches any of its material obligations under the Agreement and does not remedy that failure or breach within the remedy period set out in a written notice from Buyer giving full particulars of the breach and requiring it to be remedied. Any breach which is not so described is waived.

(c) The rights of termination or cancellation under the Agreement are in addition to any right of action or remedy which the parties have in respect of any breach of the terms and conditions of the Agreement.

(d) The termination or cancellation of the Agreement does not affect the right of action or other remedy by the parties before termination in respect of any prior breach of the terms and conditions of the Agreement, including any breach which is the grounds of termination.

(e) All rights and obligations of each party to the Agreement which are

expressed to survive termination, cancellation, or expiry of the Agreement, or which by their nature or context must survive termination, cancellation, or expiry of the Agreement, will survive the termination, cancellation, or expiry of the Agreement.

**23. Claims.** COMMUNICATIONS CONCERNING DISPUTED DEBTS OR OTHER CLAIMS, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT OR MUST BE DELIVERED TO THE PRESIDENT OF SELLER.

**24. Force Majeure.** All inspection, delivery and other dates for Seller's performance are estimates only. In addition, Seller shall not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or purchase order; (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or other performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; or (v) failure of Seller's suppliers to perform. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or waive such delay and establish a new delivery schedule. Neither party shall be responsible for any delay or any failure of or defect in any performance (other than payment), due in whole or in part to fire, explosion, lack of or reduction in the anticipated usual utilities, transportation, loading facilities or other means of supply generally available to Seller and its suppliers, or labor disputes, acts of God, war, warlike conditions, blockade, embargoes, riots, governmental restriction, labor disturbances, epidemics, quarantine, flood, tornadoes, earthquake, explosion, or any other causes beyond the reasonable control of the party providing notice.

**25. Limitations of Actions.** A proceeding by Buyer for breach of the Agreement or any other right against Seller arising under or related to the Agreement or any open account or account stated arising under or related to this Agreement cannot be filed nor maintained by Buyer unless: (i) it is commenced within one 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 the Agreement; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. Except as specifically provided otherwise in the Agreement, an action for breach of warranty or any other provision of the Agreement shall accrue no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required by the Agreement. Buyer waives all claims under an account stated or open account arising under or relating to this Agreement unless stated in a writing signed by Seller acknowledging liability for such amount.

**26. Severability.** Any provision found to be unenforceable by a final unappealed order entered by the court or tribunal shall be severed from the Agreement. Such severance shall be as narrow as possible and shall not affect the remainder of the Agreement in such action and other actions, unless the court or tribunal shall also find, on the request of Seller that without such provision as originally written, the Agreement is not likely to meet the reasonably commercial expectations of the parties and in such case, the court or tribunal shall enter an equitable judgment of rescission, termination or reformation of the Agreement as necessary to reach an equitable result.

**27. 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 shall be void and ineffective for all purposes unless made in conformity with this Section.

**28. Arbitration.** At Seller's election, all controversies and claims arising out of or relating to the Agreement, or the breach thereof, shall be settled solely by arbitration held in Atlanta, Georgia 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 as a claim or counterclaim if Buyer has not given timely written notice of its claim to Seller or if more than one year has expired from the date the cause of action accrued, as provided in the Agreement. Upon the filing of a demand for arbitration by Seller or Buyer, Buyer shall deposit with the arbitration body or the arbitrator(s) the unpaid balance of the purchase price to be held in an interest bearing account. If such deposit is not made, the arbitrator(s) shall enter a final award against Buyer in the amount of the unpaid purchase price and other amounts owed by Buyer to Seller under the Agreement. The arbitrator(s) shall be bound by the terms of the Agreement and shall 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 shall be confidential.