



TERMS AND CONDITIONS OF SALE

1. ACCEPTANCE: The acceptance of Buyer's order is expressly made conditional on Buyer's assent to the terms and conditions set forth herein, and the Seller identified in the quotation or invoice (as applicable) ("Seller") agrees to furnish the materials, goods, products and services (collectively "Goods") covered thereby only upon these Terms and Conditions of Sale. Any terms and conditions that may be contained in any purchase order or other form of Buyer shall be absolutely without force and effect, regardless of when received by Seller. By placing an order, Buyer accepts these Terms and Conditions of Sale, and the sale and delivery by Seller of Goods shall be conclusively presumed to be subject to these Terms and Conditions of Sale. Seller reserves the right to accept or reject any order in whole or in part. Possession of a product catalog by Buyer does not constitute an offer to sell.

2. CANCELLATION: Cancellation or modification of orders are subject to Seller' prior written consent in each instance.

3. PRICE CHANGES: Prices quoted in Seller' product catalog are subject to change without notice at any time and from time to time. Goods are invoiced at prices prevailing on the date of shipment.

4. PAYMENT; TAXES: Unless otherwise set forth on Seller's invoice or otherwise agreed upon by the parties in writing, and upon approved credit, payment shall be made within thirty (30) days of the date of Seller' invoice. Unpaid amounts shall accrue interest at a rate equal to the lesser of one and one half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Seller' reasonable costs of collection. In addition, Seller reserves all other rights granted to a seller under the Uniform Commercial Code for Buyer's failure to pay for Goods or any other breach by Buyer of these Terms and Conditions of Sale. All stated prices are exclusive of any taxes, fees, duties and levies, however designated or imposed, including, but not limited to, value added and withholding taxes which are levied or based upon the amounts paid hereunder (collectively, "Taxes"). Any Taxes related to Goods purchased pursuant to these Terms and Conditions of Sale shall be paid by Buyer (excluding taxes based on Seller's net income), unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. Applicable Taxes shall be billed as a separate item on the invoice to the extent possible.

5. SECURITY INTEREST: Seller reserves a purchase money security interest in the Goods delivered hereunder and in proceeds from the sale, exchange, collection, or disposition thereof, until Buyer has made payment in full for such Goods. Buyer shall, upon request by Seller, provide all information and signatures required by Seller to perfect such security interest. Seller reserves all rights granted to a secured creditor under the Uniform Commercial Code, including the right to repossess upon default by Buyer.

6. MODE OF PACKAGING OR SHIPMENT: Seller reserves the right to pack or ship orders in the most economical manner. However, where Buyer requests special packaging or shipping, any additional cost will be billed to and be the responsibility of Buyer.

7. DELIVERY: Unless otherwise agreed to in writing by the parties, Goods shall be delivered EX WORKS Seller's facility (Incoterms 2000) and Buyer shall be responsible for all shipping costs. Buyer is advised that quoted ship dates are based on estimates at the time of quotation and that Seller will devote its commercially reasonable efforts to meeting such schedules. However, Seller assumes no liability for additional costs or damages resulting from late deliveries. In addition, on orders for non-stock products, or special orders, or where manufacturing processes make it



difficult to provide the exact quantity specified, Seller reserves the right to under-ship or over-ship and invoice Buyer accordingly.

8. RISK OF LOSS: Seller shall not be liable for any Goods lost, damaged, or destroyed while in transit, and Buyer acknowledges and agrees that any risk of such loss, damage, or destruction transfers to, and is assumed by, Buyer upon delivery of the Goods to a common carrier or when otherwise placed in transit.

9. LIMITED WARRANTY: Unless otherwise expressly stated in Seller's published specifications for the Goods, Seller warrants that that Goods are free from defects in material and workmanship, except for services which are warranted to be performed in a competent and diligent manner in accordance with any mutually agreed specifications. The foregoing warranty shall apply for twelve (12) months from the date of shipment from Seller's facility, except for services for which the warranty shall apply for ninety (90) days from the date of performance (the "Warranty Period"). Provided Buyer informs Seller in writing of any breach of warranty prior to the expiration of the applicable Warranty Period, Seller shall, as its sole obligation and Buyer's sole and exclusive remedy for any breach of this warranty, repair or replace/reperform the Goods which gave rise to the breach or, at Seller' option, refund the amounts paid by Buyer for the Goods which gave rise to the breach. Any repair, replacement or reperformance by Seller hereunder shall not extend the applicable Warranty Period. The parties shall mutually agree on the specifications of any test to determine the presence of a defect. Unless otherwise agreed upon by Seller in writing, Buyer shall bear the costs of access, de-installation, re-installation and transportation of Goods to Seller and back to Buyer. These warranties and remedies are conditioned upon (a) the proper storage, installation, operation, and maintenance of the Goods and conformance with the proper operation instruction manuals provided by Seller or its suppliers or subcontractors, (b) Buyer keeping proper records of operation and maintenance during the applicable Warranty Period and providing Seller access to those records, and (c) modification or repair of the Goods only as authorized by Seller. Seller does not warrant the Goods or any repaired or replacement parts against normal wear and tear or damage caused by misuse, accident, or use against the instructions of Seller. Any modification or repair of any of the Goods not authorized by Seller shall render the warranty null and void. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY DISCLAIMED TO THE EXTENT PERMITTED BY APPLICABLE LAW.

10. INDEMNIFICATION: To the fullest extent permitted by applicable law, Buyer agrees to defend, indemnify, and hold harmless Seller, its subsidiaries, affiliates, parents, partners, their successors and assigns, and each of their past and present directors, officers, employees and agents (collectively "Seller Indemnitees"), jointly and severally, from and against any and all losses, damages, liabilities, demands, claims, actions, judgments, charges, court costs, and legal or other expenses, including, without limitation, reasonable attorneys' fees and expenses, which Seller Indemnitees may sustain, incur, or become liable for in defending or compromising any suit, action, or other proceeding arising out of, related to, or in any way connected with Buyer's purchase, sale, or use of the Goods, including, but not limited to, Buyer's misuse of such Goods or any other acts or omissions, willful misconduct or negligent misconduct, whether active or passive, on the part of Buyer; provided, however, Buyer shall have no indemnity obligations under this Section 10 for any losses, damages, liabilities, demands, claims, actions, judgments, charges, court costs, and legal or other expenses caused solely by the willful misconduct or negligent misconduct of a Seller Indemnitee or otherwise covered by Seller's obligations under Section 11.

11. INFRINGEMENT: Seller will defend at its own expense any action against Buyer brought by a third party to the extent that the action is based upon a claim that the Goods infringe any U.S.



patents or copyrights or misappropriate any trade secrets of a third party, and Seller will pay those costs and damages finally awarded against Buyer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Buyer (a) notifying Seller promptly in writing of such action, (b) making no admission of liability and giving Seller sole control of the defense thereof and any related settlement negotiations, and (c) cooperating and, at Seller's request and expense, assisting in such defense. If the Goods become, or in Seller's opinion are likely to become, the subject of an infringement claim, Seller may, at its option and expense, either (i) procure for Buyer the right to continue using such Goods, (ii) replace or modify such Goods so that they become non-infringing, or (iii) accept return of such Goods and refund Buyer the amounts actually paid by Buyer to Seller for such Goods. Notwithstanding the foregoing, Seller will have no obligation under this Section 11 or otherwise with respect to any infringement claim based upon (A) any use of the Goods not in accordance with these Terms and Conditions of Sale or Seller's instructions, (B) any use of the Goods in combination with other materials, goods, products or services not intended by Seller to be used with the Goods, (C) failure of Buyer to implement any update provided by Seller that would have prevented the claim, (D) any modification of the Goods by any person other than Seller or its authorized agents or subcontractors, or (E) any Goods made or performed to Buyer's specifications or designs. THIS SECTION 11 STATES SELLER'S ENTIRE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

12. LIMITATION OF LIABILITY: IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST DATA, LOST PROFITS AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATING TO ANY GOODS SHALL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE CLAIM.

13. DESIGN CHANGES: Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Buyer.

14. NO LICENSE: The sale of Goods shall not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all such rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any Goods, other than with respect to the resale of Goods pre-marked or packaged by or on behalf of Seller.

15. FORCE MAJEURE: Seller shall not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of Seller, including but not limited to, fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or short-ages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, Seller shall not be obligated to seek or obtain any settlement which, in Seller's sole judgment, is not in Seller's best interest.

16. COMPLIANCE: Each party shall comply with all applicable laws, regulations, and ordinances. Without limiting the foregoing, in no event shall Buyer take any action(s) contrary to the United States export laws and regulations in effect as of the date of shipment of the Goods, including without limitation, diversion of Goods. Seller is U.S. Customs-Trade Partnership Against



Terrorism (C-TPAT) certified. Seller's status verification interface (SVI) number will be provided upon Buyer's written request.

17. GOVERNING LAW AND VENUE: These Terms and Conditions of Sale shall be governed by the laws of the State of Colorado, USA, without reference to any conflict of laws principles that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Buyer irrevocably consents to the personal jurisdiction of the state and federal courts located in the State of Colorado, USA, for any suit or action arising from or related to the Goods, and waives any right Buyer may have to object to the venue of such courts. Buyer further agrees that these courts will have exclusive jurisdiction over any such suit or action initiated by Buyer against Seller.

18. CHOICE OF LANGUAGE: It is by the express intention of the parties hereto that the present Agreement and all its related documents be drafted in English. Il est de l'intention expresse des parties à la présente Convention (connaissance, bon de commande, bon de conditionnement ou facture) et tout document s'y rattachant soient écrit en langue anglaise.

19. MISCELLANEOUS: Buyer acknowledges that is has not been induced to purchase any Goods from Seller by any representation or warranty not expressly set forth herein. This document constitutes the entire agreement of the parties and supersedes all existing agreements and all other oral or written communications between them concerning its subject matter. None of the terms and conditions contained herein may be added to, modified, superseded, or otherwise altered except by a written document signed by an authorized representative of Seller. Any waiver or failure to enforce any provision herein on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. The Section headings contained herein are intended for convenience of reference only and shall not affect the interpretation of any provision. If any provision of this Agreement is held to be prohibited or unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Buyer may not assign any quotation or order for Goods, in whole or in part, without Seller's prior written consent.

Revised 5/10