

The Spiratex Company

GENERAL TERMS AND CONDITIONS OF SALE

TABLE OF CONTENTS

	<u>Page</u>
1. Applicable Law and Jurisdiction.	1
2. Formation, Integration and Modification.....	1
3. Authority of Seller’s Agents.	2
4. Prices, Payment and Risk of Loss.....	2
5. Delivery.	4
6. Delay of Shipment or Performance Excused for Various Reasons.	5
7. Inspection, Testing and Rejection.	6
10. General Express Warranties.....	7
11. Patent Warranties.	7
12. Disclaimer and Limitation of Express Warranties.	8
13. Remedies and Limitation of Seller’s Liability.....	8
14. Disclaimer of Implied Warranties.	9
15. Design, Parts, Service and Training Provided by Seller.	10
16. User’s Responsibility for Safety.....	10
17. Indemnification.	10
18. Breach and Cancellation.	11
19. Consequential, Incidental, and Other Damages.....	12
20. Security Interest.	12
21. Buyer’s Property.	13
22. Solvency of Buyer.....	13
23. Proprietary Information.....	13
24. United States Government Regulations.	14
25. Fair Labor Standards Act.	14
26. Limitations of Actions.....	14
27. Assignment.....	14
28. Claims.....	14
29. Currency.	15
30. Force Majeure.	15
31. Severability.	15

THE SPIRATEX COMPANY
(“Seller”)

GENERAL TERMS AND CONDITIONS OF SALE

1. Applicable Law and Jurisdiction.

These general terms and conditions apply to all proposals and quotations submitted by Seller, to all purchase orders received by Seller, and to all goods and services sold by Seller, except as otherwise specifically provided in a document issued by Seller. This sale or any sale resulting herefrom consists only of these General Terms and Conditions of Sale and those in other documents which are referred to herein or are attached hereto or in a document provided or signed by Seller and referencing this transaction (all of which constitute the “Agreement”). THE AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAW OF THE STATE OF MICHIGAN 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. Any services to be provided hereunder, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included in a project), shall be considered ancillary to a sale of goods and the UCC shall apply to all goods and services to be provided hereunder (“Goods”). THE COURTS OF MICHIGAN 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. The parties stipulate to the convenience of Michigan courts in general, and Monroe Circuit Court in particular, as to all litigation. Any declaration of unenforceability of a provision shall be as narrow as possible and shall not affect the enforceability of the other provisions. A tribunal with jurisdiction may reform a provision of the Agreement, at the request of Seller, to the extent minimally required for enforcement.

2. Formation, Integration and Modification.

A. The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer’s acceptance of Seller’s quotation (according to its terms), Seller’s actions in reliance on Buyer’s oral acceptance of a written or oral quotation, or Buyer’s receipt of the Goods, will constitute a binding contract under the terms of the Agreement. The Agreement is subject to Seller’s revocation or cancellation without liability until it is approved by Seller at its home office. Notice of such approval may be furnished to Buyer in the form of an acknowledgment, shipment, or other form of express approval.

B. An order submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with these Terms and Conditions), may be accepted, approved or filled by Seller, but any

resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other document or communication. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions.

C. The Agreement is a final, complete and exclusive statement of the Agreement of the parties. SELLER IS WILLING TO NEGOTIATE WRITTEN CHANGES TO THESE TERMS AND CONDITIONS SIGNED BY SELLER, BUT SELLER RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED COST OF SUCH CHANGES. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in writing signed by Seller's authorized employee at its home office. Notwithstanding anything to the contrary in this Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement shall affect Buyer's liabilities to Seller accrued prior thereto. Seller may correct unilaterally mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or custom in the trade shall not modify or waive any right of Seller.

D. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be for the benefit of Seller's affiliates, agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

E. Goods quoted to Buyer are subject to prior sale or other commitment.

F. Buyer and Seller acknowledge that: they are merchants in respect to the Goods; they have had an opportunity to review the Agreement; and 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 any authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement. Unless an affirmation, waiver, representation, or warranty is expressly included within the Agreement, it is not a part of the basis of the Agreement and it is not enforceable.

4. Prices, Payment and Risk of Loss.

A. Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices contained in individual written quotations or proposals are firm only for a period stated therein and otherwise for 30 days from the date of the quotation. After the firm price period the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. Prices do not include taxes and Buyer shall pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt therefrom. 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 all invoices rendered by Seller for any such items Seller may pay.

B. The Agreement is for a shipment contract and the Goods shall be delivered F.O.B. Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary.

C. Prices may be changed by Seller to Seller's prices charged to other customers on the date of delivery. If any delay in delivery beyond the date of delivery scheduled at the time of entry of the order is requested or otherwise caused by Buyer, Seller shall adjust the price under the provisions of this subsection. Seller may unilaterally adjust the price to cover Seller's increased cost of performance due to increases in the costs of materials or transportation, change in the law, or other conditions beyond Seller's reasonable control after the date of any quotation.

D. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, and other performance by Seller, required by changes requested by Buyer to the Goods, schedule, or any other performance by Seller after the date of any quotation. Seller is not obligated to perform any such changes, but shall be compensated for them if Seller complies with such requested changes.

E. 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, any increase in rates for such services becoming effective after the date the price is quoted to Buyer shall be added to the price.

F. If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or a documentary letter of credit approved by a U.S. bank acceptable to Seller or other financial security for such payment or other obligations. In addition, all amounts owed by Buyer to Seller shall be accelerated and payable immediately if Buyer fails to make any payment on time and as otherwise required or if Buyer sells or transfers the line of business for which the Goods are purchased or is a participant in a merger or other reorganization.

G. 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.

H. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer shall pay all invoices net 30 days after the date of

shipment unless seller agrees to other terms in writing. Seller may change any payment term to Buyer on seven days written notice.

I. Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale and Buyer shall pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future shall be considered an installment delivery. A failure to pay for an installment within the time for payment is a material anticipatory breach of other installments by Buyer.

J. All amounts not paid to Seller when due shall incur a carrying charge of 1.5% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.

K. All amounts due on installation or other event which requires the action or cooperation of Buyer which Buyer fails to supply timely shall become due upon such failure.

L. If the Agreement permits or requires the use of a letter of credit, the letter of credit must be a documentary letter of credit assignable, irrevocable, confirmed by a United States bank with a payment office in Michigan acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading. Buyer shall pay all costs related to the letter of credit.

M. 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 under written protest shall not constitute a waiver by Buyer of its claims.

N. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.

O. It is understood that any of the Goods ordered under this contract which are procured by Seller from sources outside the United States are predicated on the rate of exchange in force at the time of the placing of the order or the time of the acceptance of the order at Seller's choice. In the event that prior to the delivery of such Goods to Buyer the rate of exchange between the United States dollar and the currency of the country from which the Goods are procured should vary, the price of the Goods shall be increased or decreased accordingly to compensate Seller for such variation in the rate of exchange.

5. Delivery.

A. Shipping dates are estimates based on Seller's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller's books. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment, and

other conditions as specified in the Agreement, and of all drawings, information and approvals necessary to provide the Goods and to grant any credit proposed in the Agreement.

B. Seller shall deliver the Goods by tendering the Goods on its docks for placement in the possession of a carrier and, 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 documents necessary to enable Buyer to obtain 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 and other handlers of the Goods after delivery.

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

A. 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 at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for Goods shall be due and payable 30 days after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer shall accept shipment immediately.

B. 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 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 performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; (v) failure of Seller's suppliers to perform. If one or more deliveries hereunder are 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.

C. Whenever Seller's supply of the Goods, materials or means of production is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned above in Subsections A and B, Seller, in its sole discretion, may allocate its supply to its own use or other customers.

D. This Section shall be effective even as to events described in Subsections A, B and C which exist on the date of a quotation or of contract formation.

7. Inspection, Testing and Rejection.

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

B. All manuals, drawings, specifications, technical documentation, samples, prototypes and Goods shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven days of receipt or other reasonable time established by Seller. Buyer shall have thirty days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, notice must be given to Seller so that it will arrive no later than 30 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. 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 acceptance shall be effective, and Buyer shall be limited to any available 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 it continues to make reasonable efforts to cure.

C. If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon notification by Seller that the Goods are ready for inspection or testing, Buyer shall provide, at a place selected by Seller, at Buyer's own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check the Goods for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven days, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense.

D. Buyer shall provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Buyer for testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the Goods include the necessary fixtures and tooling, the inspection and/or testing at the place of manufacture may be performed on production or other equipment similar to, but other than, that identified to the Agreement.

E. 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.

F. 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 nonconformity.

8. General Express Warranties.

A. Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods to the extent manufactured by Seller shall be free from defects in materials and workmanship, excluding design, at the time of delivery. Under no circumstances shall the warranty period extend beyond 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 and cleaning, the warranty is only against such defects and not against any other failures such as, but not limited to, those due to normal wear and tear, normal maintenance and perishable items are excluded from this warranty against defects.

B. Seller warrants to Buyer 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.

C. Seller's warranties shall apply only if 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 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 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.

D. Buyer shall create, maintain and make available to Seller, permanent records of the installation, maintenance, use and disposition of the Goods.

9. Patent Warranties.

Seller disclaims any implied warranty of non-infringement. 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 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 Goods declared to infringe is limited to the acquisition of a license, the replacement of 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 remedies therefor, and Buyer waives all other rights.

10. Disclaimer and Limitation of Express Warranties.

There are no express warranties other than those contained in the Agreement. Any representations as to performance and other matters, except as contained in the Agreement, were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein. Seller does not warrant any portion of the Goods not conceived, designed, developed, or manufactured by Seller but Seller shall assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. 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. 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. Defective or non-conforming Goods or parts thereof discovered 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. 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. Goods cannot be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine whether the failure is due to a non-conformity or defect attributable to Seller. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price. Buyer's remedies shall be limited exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOST PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new

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 repaired or replacement Goods are delivered to Buyer.

B. Buyer must contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods. 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 must 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. Buyer shall defend and indemnify Seller from all liability for claims, damages, losses, and expenses incurred: (a) as a result of the use or disclosure of Seller's confidential or proprietary information (except in the performance of the Agreement) by Buyer or its contractors; and (b) 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.

D. Seller shall not be liable for any costs related to a recall, service campaign, or similar action without its prior written consent.

E. Under no circumstance shall Seller's liability exceed Buyer's uninsured loss. Buyer waives any right of subrogation. Buyer waives any right of indemnity or subrogation as to third party claims, in excess of any applicable insurance carried by Seller.

F. Seller shall not be liable for any damages for breach of any provision with which it has substantially complied.

12. Disclaimer of Implied Warranties.

SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. There are no warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon Seller's skill or judgment to select or furnish Goods for any particular purpose beyond the specific express warranties in the Agreement. Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer's approval of drawings and/or prototypes constitutes Buyer's acceptance and waiver of any responsibility for a failure to consider information provided by Buyer. Any modifications of drawings, prototypes and other work of Seller after approval by Buyer shall be at Buyer's expense at Seller's normal rates for services and materials. Seller does not warrant the Goods

will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement.

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. Buyer shall pay Seller for all non-warranty work in advance or upon such other terms as may be agreed. Seller may have access to the Goods during or after installation of the Goods. Seller is not under any duty to inspect the Goods for any defects or any improper use or modification of the Goods nor to correct or advise Buyer of any such condition, use or modification, which is observed. Any notification which may be given is voluntary and subject to all limitations and disclaimers in the Agreement.

14. User's Responsibility for Safety.

A. 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 should 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.

B. Seller believes that the Goods will be in substantial compliance with the general requirements of federal OSHA regulations directly associated with operator safety and noise level control. The technical detail of the complete OSHA regulations and many additional references to other standards render it impracticable to provide complete compliance unless Buyer requests compliance with specific sections or paragraphs of OSHA or other standards and such standards are included in Seller's quotation. Because of changes which occur in OSHA, state codes, local codes and user safety programs, Seller must be advised by Buyer or other users if they desire specific modifications in the Goods required for compliance. A quotation will be submitted for such requested modifications.

C. Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safety under all circumstances. BUYER MUST INSTALL AND USE THE GOODS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE.

15. Indemnification.

A. Buyer shall indemnify Seller from any and all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in

connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller.

B. Buyer shall use and shall require its employees 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. If Buyer fails to comply with the obligations set forth in this subsection, Buyer shall indemnify and save Seller harmless 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. If Buyer fails to provide such notice and cooperation to Seller, Buyer shall indemnify Seller from any claims arising from such accident or malfunction whether or not the Goods are non-conforming or defective.

16. Breach and Cancellation.

A. If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover Goods in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.

B. Seller shall be awarded interest, consequential and incidental damages and costs (such as interest and 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. Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment, and if such security is not posted Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.

D. 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.

E. Seller shall not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

F. Seller's failure or delay in enforcement of any provision shall not constitute a waiver of a breach or of the provision itself.

G. Buyer may cancel its order for the Goods prior to their completion by immediate payment to Seller of Seller's cost of manufacture and liquidated damages (including labor, engineering, materials, equipment time, and overhead) computed using Seller's standard internal costing procedures, plus 15% of the sale price of the Goods. Cost of manufacture shall include all materials or services which Seller has ordered and which cannot be canceled and all costs incurred in canceling material and service orders which can be canceled. Seller may retain without cost all materials and partially completed Goods on canceled orders. The parties acknowledge the great difficulty of proving damages for the cancellation of products such as the Goods and the reasonableness of this liquidated damages provision.

17. Consequential, Incidental, and Other Damages.

BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. 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. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY FOR CLAIMS FOR PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS, OR OTHERWISE, EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS, OR OTHER EVENT GIVING RISE TO THE CLAIM.

18. 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, whether or not arising under the Agreement. Seller may file a financing statement and at Seller's request, Buyer shall sign financing statements and other documents, evidencing and confirming the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others and take other actions to repossess or render inoperable all Goods in which it has a security interest. In case of a default by Buyer, Buyer hereby irrevocably appoints Seller as its agent to obtain possession of the Goods and documents related thereto. The Goods shall be and remain strictly personal property and retain their character as such, no matter whether on permanent foundation or in whatever manner affixed or attached to building or structure, or for what purpose the Goods may be used. Buyer shall maintain the Goods 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 the subject to the Agreement if payment therefor shall not have been made in full to Seller. Buyer shall immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which have not been paid to Seller.

19. Buyer's Property.

Buyer shall insure all materials, fixtures, tooling, and other property delivered to Seller against all risks and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use or storage of such property.

20. 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.

21. Proprietary Information.

A. Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

B. 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 third party or used by Buyer except as may be necessary for the selection or use of the Goods.

C. The Process used in the manufacture of products is proprietary and any tooling, dies and fixtures used may not be inspected or removed from the Seller's plant. 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 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, except as provided in subsection A.

D. Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.

E. Buyer shall treat as confidential any business proposal from Seller and all confidential and proprietary information and 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, formulas, techniques, methods of manufacture and/or operation, samples, results of research and development, intellectual property, intellectual property rights, computer programs, costs of products and materials, including discounts, customer lists, sales history, product mixes, specialized equipment used in the manufacturing process, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer shall use such confidential and proprietary information and technology only to evaluate its business relationship with Seller

and to enable Buyer to perform under the Agreement. Buyer shall not disclose, or authorize or instruct any other 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. 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, including all costs and attorney fees, and damages related to the improper use or disclosure of Seller's confidential and proprietary information and technology by Buyer or its employees and contractors. Buyer acknowledges that such disclosure would cause Seller irreparable harm, in addition to monetary damages. As such, Buyer agrees that Seller would be entitled to injunctive relief should Buyer breach this paragraph, and further agrees that no bond would be required from Seller if the Court granted such relief. Business proposals and technology of Seller may also be protected by patent, copyright, trademark, and other law. No license or other right to business proposals or technology is granted.

22. 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.

23. 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. No other certifications or waivers regarding payments to Seller's suppliers or laborers are required.

24. Limitations of Actions.

Any proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the payment cannot be filed nor maintained unless: (i) it is commenced within one year after the cause for action has accrued; (ii) Buyer has given timely written notice to Seller of its claim as provided herein; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of 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.

25. 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.

26. Claims.

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

27. Currency.

The choice of currency expressed in this Agreement and the place of payment are essential terms and there are no equivalent terms. Any money judgment rendered under this Agreement shall be converted in any enforcement action in a jurisdiction in which the currency expressed shall be converted into the 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.

28. Force Majeure.

Seller shall not be responsible for any delay or failure in any performance due, without limitation, to acts of God, war, warlike conditions, blockade, embargoes, riots, governmental restriction, labor disturbances, unavailability of anticipated usual means of transportation or loading facilities, wrecks, epidemics, quarantine, fire, flood, earthquake, explosion, any unforeseen change in circumstances, or any other causes beyond the reasonable control of the party providing notice.

29. Severability.

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