

**AUTOMATED PRODUCTION SYSTEMS
TENNESSEE RAND, INC.
TERMS AND CONDITIONS RELATING TO THE SALE OF GOODS**

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AUTOMATED PRODUCTION SYSTEMS
TENNESSEE RAND, INC.
TERMS AND CONDITIONS RELATING TO THE SALE OF GOODS
Effective Date: February 3, 2016

1. DEFINITIONS

- **“Advanced Automation Systems” (“System”)** means automation products sold by Seller that are built to Buyer’s specifications and referred to as Advanced Automation Systems (“System”). Depending on the System, typical components can include but are not limited to: a power source, a welding torch, a wire feeder, robots, tooling, positioners, welding fixtures, a torch cleaner and calibration units.
- **“Agreement”** means Tennessee Rand, Inc.’s (“Seller’s”), Terms and Conditions Relating to the Sale of Goods (“Terms and Conditions”) and the Order Acknowledgment (defined below); which together shall comprise the entire Agreement. Notwithstanding the above, if no Order Acknowledgment is issued, Seller’s Final Proposal as identified by Seller, or invoice, together with these Terms and Conditions shall comprise the entire Agreement.
- **“Buyer”** means the person or entity who is buying, or who is contracting to buy the Goods and/or Services. The Buyer may also be referred to as the customer (“Customer”).
- **“Component Parts”** means those constituent parts integrated into the System.
- **“Consumables”** means any material that is consumed within the welding/cutting or other processes.
- **“End User”** means the person or entity who ultimately uses or possesses the Goods without any intention of resale. The End User may be the Buyer.
- **“Goods”** means any saleable item manufactured by Seller and/or listed in Seller’s Product List for delivery, sale or use as the context requires. Goods include System, Component Parts and Consumables.
- **“Order Acknowledgment”** means a written document as may be amended from time to time, generated by Seller, which sets forth the terms for the sale of Goods and/or Services as agreed by Buyer and Seller. The Order Acknowledgment, includes the Seller’s Final Proposal by incorporation.
- **“Pre-Shipment Run-off”** means any process as determined by Seller by which it tests the Goods at its facility, prior to shipment to the Buyer, to ensure the Goods are operating in accordance with the agreed upon System Design specifications.
- **“Price”** means the amount agreed to by Seller and Buyer for the Goods and/or Services as further outlined in an Agreement.
- **“Project Schedule”** means the approved timetable, as amended from time to time, established between the Buyer (defined above) and Seller utilizing the designs, resources and processes required to manufacture a System and to provide Services.
- **“Purchase Order”** means a document generated by Buyer authorizing the purchase of Goods and/or Services by Buyer.
- **“Request for Quote”** means Buyer’s request to Seller for information pertaining to the purchase of Goods and/or Services.
- **“Seller’s Final Proposal”** means the last modified proposal generated by Seller itemizing all Goods and/or Services to be offered for sale to the Buyer. All terms set forth in Seller’s Final Proposal, as

determined by Seller, shall be incorporated into the Order Acknowledgment and/or the Agreement. For purposes of clarification, Seller's Final Proposal may be referred to and used interchangeably with Seller's final quote or Seller's final presentation.

- **“Services”** means the installation, repair and any additional related activities by Seller with respect to the operation of the Goods pursuant to an Agreement. These activities include, but are not limited to education, programming, training and/or start-up and production support.
- **“System Design”** means the engineering and other technical specifications that are the basis for a System; including but not limited to a complete listing of all System components, a set of assembly and component drawings with welding notations, dimensions, tolerances and/or any other technical specifications, instructions or plans that are required for the System to be built.

2. **SCOPE OF THE TERMS AND CONDITIONS**

Seller's issuance of an Order Acknowledgment, its commencement of work subject to Buyer's Purchase Order, its performance of all or a portion of the Services subject to a Purchase Order, or its shipment of the Goods to Buyer, whichever occurs first, shall constitute acceptance of an Agreement. If no Order Acknowledgment is issued, the Seller's Final Proposal as identified by Seller, or invoice, together with these Terms and Conditions shall comprise the entire Agreement.

The Terms and Conditions applicable to an Agreement shall be the version in effect at the time of acceptance. Seller's Terms and Conditions may not be waived or modified by Buyer unless agreed to in writing by Seller.

In the event there is a conflict between Seller's Order Acknowledgment, Seller's Final Proposal or invoice and these Terms and Conditions, the Order Acknowledgment, Seller's Final Proposal or invoice shall prevail and control. Seller's failure to object to any conflicting, contrary, or additional conditions in Buyer's Request for Quote or Purchase Order, shall not be deemed an acceptance of such conditions or a waiver of any of the provisions hereof. Any sales of Goods and/or Services under these Terms and Conditions is conditioned on acceptance of these Terms and Conditions. Seller expressly objects to any additional or different terms proposed by Buyer, whether in a Purchase Order or any other document, which adds to, varies from, or conflicts with the terms herein; and any such additional or different terms or conditions are deemed to be material and hereby rejected.

The current version of these Terms and Conditions is posted on Seller's website at (<http://www.tennrand.com>). Seller reserves the right to revise these Terms and Conditions from time to time in Seller's sole discretion. Any changes or amendments to these Terms and Conditions shall become effective on the date when the revised terms and conditions are posted on Seller's website. Revised terms and conditions shall apply to all new Agreements created on or after the date the revised terms and conditions are posted on Seller's website. Seller shall not be obligated to notify Buyer separately of any changes, amendments or updates to these Terms and Conditions. It is Buyer's responsibility to check Seller's webpage periodically to verify whether a revised version of the terms and conditions have been posted.

3. **SYSTEM BUILD PROCEDURE**

A. **Project Schedule and System Design**

Prior to the commencement of System production, a comprehensive Project Schedule shall be established for every phase of production including, System Design, machining, assembly, integration and on-site support, as applicable. The Project Schedule is closely monitored throughout the life of the project by both Buyer and Seller and may be revised by Seller, from time to time, to document any agreed upon revisions to the timeline, Price, resources, Services and/or any other material changes set forth therein.

After the Project Schedule timeline is established, but prior to the commencement of System production, Seller shall work with Buyer to develop a mutually agreed upon System Design consistent with Buyer's required specifications. System Design specifications shall include, but are not limited to, a complete listing of System components as well as assembly and component drawings with welding notations, plans, dimensions, tolerances, instructions and/or any additional technical and engineering specifications necessary to build the System. Should Buyer provide any new and/or additional information or special requirements not incorporated into Seller's Final Proposal prior to the development of the System Design, Seller reserves the right to modify any aspect of the Seller's Final Proposal/Order Acknowledgment and/or Project Schedule, including Price, upon notice to Buyer, with no liability to Seller.

To ensure the completion of System production as provided for in the Project Schedule, Buyer agrees to not unreasonably withhold approval of System Design. In the absence of Buyer's formal approval of System Design, Buyer's failure to object to Seller's notice of commencement of any work or Services on the System shall constitute Buyer's approval of the System Design ("Buyer's Deemed Approval"). Buyer's unnecessary delay and/or unreasonable withholding of its approval of the System Design shall constitute a material breach and shall be grounds for Seller to invoke the remedies provided for in these Terms and Conditions or by applicable law.

B. Buyer Change Orders

Following Seller's receipt of Buyer's approval or Buyer's Deemed Approval of the System Design, no changes shall be made to the System Design, Seller's Final Proposal and/or Project Schedule without the express written approval of Seller. To request a change to an approved System Design, Seller's Final Proposal and/or Project Schedule, Buyer must submit a request for change ("RFC") to Seller, in writing, prior to completion of pre-shipment run-off ("*Pre-Shipment Run-off*"). For purposes of clarification, depending on the facility, the term RFC may be used interchangeably with the following terms: Engineering Change Order ("ECO"); Project Change Request ("PCR") and/or a Project Change Request Form ("PCRF").

RFC's must include all required drawings, specifications, dimension tolerances and any other information/documentation necessary for the performance of the requested modification(s) at the time of submission. Upon receipt of a Buyer's RFC, Seller shall review the RFC to determine the viability of the changes requested as well as whether the requested changes would result in a modification of the System Price, System Design, the scope of the project and/or Project Schedule.

Requested RFC's resulting in a modified Price, scope of the project, Project Schedule and/or modified System Design shall detail the costs associated with the implementation of the approved changes, if any, and shall incorporate any new or revised milestones and/or key System production dates resulting therefrom. These costs shall include, but are not limited to, the addition of any Component Parts, labor, Services or other Goods not previously quoted in an Order Acknowledgment, Seller's Final Proposal or invoice as well as any previously purchased Goods that can no longer be used due to the changes.

Upon Seller's approval of Buyer's RFC, any modifications set forth therein shall be implemented in a timely manner. Any approved RFC's shall be incorporated into the Agreement as an amendment and shall be deemed a part of the Agreement and these Terms and Conditions. Any additional costs, fees and/or expenses incurred by Seller due to the implementation of the RFC shall be paid by Buyer as required. Buyer's failure to comply with all additional and/or modified terms required by an approved RFC shall constitute a material breach and shall be grounds for: 1) Seller's suspension of performance on Buyer's System until such time that Seller determines, in its sole discretion, performance shall recommence; or 2) Seller to invoke any other remedies provided for in these Terms and Conditions or by applicable law. Additional fees may apply for storage of Systems for which performance has been suspended.

C. **Pre-Shipment Run-off**

Seller shall conduct *Pre-Shipment Run-off* prior to shipment of the System to the Buyer. Upon completion of *Pre-Shipment Run-off*, Seller may provide Buyer with the results verifying that the System meets the specifications and requirements set forth in the Order Acknowledgment System Design and/or Project Schedule (or as modified, if applicable).

Provided that Buyer has made all required payments and unless otherwise indicated in an Agreement, upon Seller's completion of *Pre-Shipment Run-off*, Seller shall authorize System shipment to Buyer's designated facility. Buyer's failure to accept shipment of the System following Seller's *Pre-Shipment Run-off* shall constitute a material breach and shall be grounds for Seller to invoke the remedies provided for in these Terms and Conditions or by applicable law.

D. **Installation and Other Services By Seller**

If provided for in an Agreement, Seller shall provide installation and other Services as required. In the event Buyer claims that the System and/or Services are noncompliant with the final agreed upon specifications, Seller shall make all reasonable efforts to correct any deficiencies described by Buyer and confirmed by Seller. Buyer's unreasonable withholding of its acknowledgment of System delivery and completion of any agreed upon Services shall constitute a material breach and shall be grounds for Seller to invoke the remedies provided for in these Terms and Conditions or by applicable law.

4. **SYSTEM PRICE AND PAYMENTS**

System Price shall be set forth in the Agreement. System Price does not include any federal, state or local sales, use, excise, gross receipts, value added or other taxes which may now or hereafter be applicable. Buyer agrees to pay or reimburse Seller for any such taxes which Seller or its suppliers are required to pay or collect.

Buyer's failure to make payments in the amount and manner specified in the Agreement constitutes a waiver of Buyer's right to demand Seller's performance.

Standard payment terms are as follows:

- 30% of the Price at the time of Agreement acceptance;
- 30% of the Price at Design Approval by the Buyer;
- 30% of the Price at the time of *Pre-Shipment Run-off* but prior to shipment; and
- 10% of the Price upon completion of installation services including but not limited to system installation, Buyer on-site run-off, training, start up and/or production support (as applicable).

Payments are due at the time of the occurrence of the foregoing events, or upon cancellation of an Agreement. Seller does not provide any cash discounts. Alternative payment terms may be offered at Seller's sole discretion, however, additional charges may apply.

It is Buyer's responsibility to pay any amounts due at the times and in the manner delineated in an Agreement. Buyer shall comply with all payment schedules in a timely manner irrespective of whether Seller issues an invoice to Buyer as a reminder of Buyer's payment obligations. Upon Seller's completion of *Pre-Shipment Run-off*, Buyer shall not cancel the Agreement and shall pay the full price in accordance with the payment terms set forth in the Agreement. Unless otherwise agreed, full payment shall be due to no later than forty-five (45) days from the completion of *Pre-Shipment Run-off*, even if the Buyer never makes arrangements with Seller for shipment of the System.

Any additional taxes, charges or fees not included in the Agreement, may be invoiced separately to Buyer. Unless otherwise agreed, Payment terms for such additional taxes, charges or fees are net thirty (30) days from the date of invoice.

Buyer's failure to perform its payment obligations under the terms set forth in the Agreement shall constitute a material breach and shall be grounds for: 1) Seller's suspension of performance on Buyer's System until such time that Seller determines, in its sole discretion, performance shall recommence or the Agreement be cancelled; or 2) Seller to invoke any other remedies provided for in these Terms and Conditions or by applicable law. Additional fees may apply for Systems for which performance has been suspended.

Should Seller determine, in its sole discretion, that the credit of Buyer shall hereafter become impaired or its financial condition becomes such that in Seller's sole judgment, the credit extended to Buyer for the System should be curtailed or eliminated, Seller shall have the right to require full payment in advance of the payment schedule set forth in this Section.

In addition to any other remedies set forth herein or by applicable law, Seller reserves the right to bill late payment charges of 1.5% per month on Buyer's past due invoices as well as to revoke payment terms on future orders.

5. SYSTEM SHIPPING AND DELIVERY

Unless otherwise agreed in writing by Buyer and Seller, upon completion of *Pre-Shipment Run-off* and receipt of all required payments from Buyer, Seller shall authorize System shipment to Buyer's designated facility. Subject to the transfer of title and risk of loss provisions set forth in Section 7, all domestic and international shipments shall be made utilizing Incoterms® 2010, *Ex Works ("EXW"): Seller's Chosen Facility (Loading Included)*. All shipping deadlines are approximate only and are based upon the availability of purchased Goods and scheduling demands in Seller's facility. While Seller shall engage in its best efforts to comply with these delivery dates, Seller shall not be liable for any penalties or damages of any kind if these anticipated shipment deadlines are not met.

System Price includes standard packing, marking and labeling as determined by Seller. Seller reserves the right to charge additional shipping and handling costs to Buyer's invoice if Buyer requires additional packaging of the System and/or has other special delivery requirements. Seller agrees to provide required shipping documentation such as commercial invoices, packing lists, bills of lading or other customary documents that may be required for domestic and international shipments. Export boxing/crating charges, where required by the Buyer, may require additional charges.

All additional fees and charges, including but not limited to: customs broker and freight forwarder fees, warehouse and terminal charges, insurance, inspection, storage, special notifications, and special equipment/handling charges shall be at the Buyer's additional expense unless otherwise agreed in writing by Seller. Any such expenses may be separately invoiced to Buyer. Payment terms for such additional fees and/or charges are net thirty (30) days from the date of invoice, with approved credit.

In the event Buyer is responsible for any delay in System shipment, Seller reserves the right to charge Buyer additional fees for System storage to be determined at Seller's sole discretion.

6. SYSTEM POST-INSTALLATION SERVICE AND SUPPORT

If provided for in the Agreement, following System installation, Seller shall make a technical representative available to Buyer to conduct training as described therein.

7. SYSTEM TRANSFER OF TITLE AND RISK OF LOSS

Transfer of title and risk of loss of the System shall transfer from Seller to Buyer as Seller performs work (including all Goods and purchased materials) to build the System as indicated in the Agreement. Buyer shall pay Seller the sales Price for all work performed.

8. **BUYER'S PROPERTY FOR THE SYSTEM**

Buyer may, during the System production process, provide Seller with equipment owned by Buyer such as jigs, tools, drawings, fixtures, dies, molds, patterns and materials to reduce the costs of customizing the System in accordance with the System Design specifications (or as modified, if applicable). Such items are the legal property of Buyer. Seller shall maintain such items in good working order and shall ensure that these items are clearly marked, segregated, and stored as being the legal property of the Buyer. Any use of such items is restricted to the production of Buyer's System.

9. **PURCHASE MONEY SECURITY INTEREST FOR GOODS**

Seller is hereby given, and shall be deemed to have, a purchase money security interest in the Goods from the beginning of the production process until all payments are received by Buyer. Buyer shall execute, upon Seller's demand, such instruments and documents, including Uniform Commercial Code ("UCC") financing statements, as Seller shall require. If Buyer fails or refuses to sign any such statements, Seller is irrevocably authorized to execute such statements as Buyer's attorney in fact, subject to Buyer receiving prior notice of any such statements. Said security interest shall remain until Seller receives full payment of the purchase price; after which such UCC financing statements shall be terminated.

10. **COMPONENT PARTS AND CONSUMABLES**

In additional to all other provisions, as applicable, the following provisions shall apply to the purchase and delivery of Component Parts and Consumables.

A. **Purchase of Component Parts and Consumables**

Prices for Component Parts and Consumables shall be established by Seller and shall be those in effect at the time of acceptance of the Agreement.

Any additional taxes, charges or fees shall be invoiced separately to Buyer. Payment terms are net thirty (30) days from the date of invoice, with pre-approved credit. There are no cash discounts. Seller may change this method of payment if, in its judgment, extension of such terms is not justified.

The Price for Component Parts and Consumables does not include any federal, state or local sales, use, value added, excise, gross receipts, or other taxes which may now or hereafter be applicable. Buyer agrees to pay or reimburse Seller for any such taxes which Seller or its suppliers are required to pay or collect.

Buyer is responsible for all shipping costs and risk of loss associated with the delivery of Component Parts and Consumables; both domestic and international.

B. **Delivery of Component Parts and Consumables**

All estimated shipping deadlines for Component Parts and Consumables are approximate only and are based upon the availability of purchased Goods and scheduling demands in Seller's facility. While Seller shall engage in its best efforts to comply with these delivery dates, Seller shall not be liable for any penalties or damages of any kind if these anticipated shipment deadlines are not met. Delivery times shall be automatically extended as needed to resolve any technical matters between the Seller and the Buyer with respect to the delivery, installation or use of Component Parts and/or Consumables.

The Seller shall be entitled to make partial deliveries.

All domestic and international shipments of Component Parts and Consumables shall be made using Incoterms® 2010, *Ex Works* (“*EXW*”): Seller’s Chosen Facility (Loading Included).

C. **Title and Risk of Loss**

Title and risk of loss shall pass to the Buyer upon tender of the Component Parts and/or Consumables to the first transportation carrier.

11. **STATEMENT OF WARRANTY**

A. **Limited System Warranty**

Except for Consumables or those parts customarily replaced due to wear and tear during the course of normal operation, Seller warrants its System to be free from defects in material and workmanship for a period of twelve (12) months from the date of System shipment from a Seller designated facility. This warranty specifically excludes all third party original equipment manufacturer (“OEM”) Component Parts. All OEM Component Parts used in Seller’s System(s) are warranted by the OEM, and are not covered by Seller’s Limited System Warranty. If OEM Component Parts are found to be defective or non-conforming and are covered by an OEM warranty, Seller shall assist Buyer in identifying any defects and shall work with local distributors or OEM to ensure that the OEM Component Parts are repaired or replaced as required, subject to the terms and restrictions of the OEM’s warranty.

Some Component Parts that are manufactured by The Lincoln Electric Company and are sold as part of a System by Seller may have warranty terms that exceed the twelve (12) month Limited System Warranty. Seller will honor the Lincoln Electric Company warranty for the Component Parts for the full term of the warranty. The Lincoln Electric Company Component Parts warranty in no way extends the term of the Limited System Warranty.

The sole obligation of Seller hereunder is to replace or repair, at the Seller’s option, any Component Part manufactured by Seller which Seller, in its sole discretion, determines to be defective under normal use and service, provided that such notice of defect is provided to Seller within the warranted period. The sole obligation of Seller hereunder for any Component Parts not manufactured by Seller is to use commercially reasonable efforts to assist Buyer in obtaining any available OEM warranty coverage.

Seller shall perform all Services it agrees to perform in a workmanlike manner consistent with industry standards for a period of twelve (12) months from the date of shipment of the System. If Seller breaches such warranty, its sole obligation shall be to re-perform the Services in question.

This Limited System Warranty is void if the System (including, but not limited to, System programming) or any Component Parts have been subjected to improper installation, improper care or abnormal operations, or if repairs or alterations have been undertaken by anyone other than Seller or a Seller Approved Service Facility (“ASF”). Warranty coverage is available only to the initial End User and is non-transferrable. Any subsequent purchaser interested in transferring warranty coverage must contact Seller to determine whether warranty coverage may be transferred and if an additional charge will be required for such transferability. A separate written agreement will be required for this coverage.

End User shall contact Seller immediately upon the discovery of any defect or other basis of warranty coverage. Seller reserves the right to inspect the System or Component Parts to determine warranty eligibility. If Seller confirms the existence of a defect covered by Seller’s warranty, Seller shall provide Buyer a Return Merchandise Authorization (“RMA”) approving the repair or replacement of the defective or inoperable Component Part and shall assist the End User with the coordination of its warranty service. An approved RMA must accompany the System Component Part when shipping to Seller or a Seller’s ASF. Final determination of warranty coverage eligibility shall be made by the Seller.

System or Component Parts shipped to and from Seller or a Seller ASF for warranty repair or replacement shall be at the sole expense and risk of the Buyer. At Seller’s request, any defective System Component Parts thereof shall be returned to Seller.

B. Limited Warranty for Component Parts

Component parts manufactured by Seller are warranted by Seller and are covered under Seller's Limited Warranty for Component Parts to be free from defects in workmanship and material subject to the terms and restrictions of that individual Component Part's warranty. Warranty periods vary by Component Part. This warranty specifically excludes all third party original equipment manufacturer ("OEM") Component Parts. All OEM Component Parts are warranted by the OEM and are therefore not covered by Seller's Limited Warranty for Component Parts. If OEM Component Parts are found to be defective or non-conforming and are covered by an OEM warranty, Seller shall assist Buyer in identifying any defects and shall work with local distributors or OEMs to ensure that the OEM Component Parts are repaired or replaced as required, subject to the terms and restrictions of the OEM's warranty.

Some Component Parts manufactured by The Lincoln Electric Company may have warranty terms that exceed the twelve (12) month Limited System Warranty. Seller will honor the Lincoln Electric Company's Component Part(s) warranty for the full warranty term. The Lincoln Electric Company Component Parts warranty in no way extends the term of the System warranty.

The sole obligation of Seller hereunder is to replace or repair, at the Seller's option, any Component Part manufactured by Seller which Seller, in its sole discretion, determines to be defective under normal use and service provided that such notice of defect is provided to Seller within the warranted period. To request a determination for warranty eligibility and/or to request warranty service for Component Parts, Buyer must contact the Seller directly.

The sole obligation of Seller hereunder for any Component Parts not manufactured by Seller is to use commercially reasonable efforts to assist the End User in obtaining any available OEM warranty coverage.

Buyer shall contact Seller immediately upon the discovery of any defective manufactured Component Part or other claims of warranty coverage. If the Seller confirms the existence of a defect covered by Seller's Component Part Warranty, Seller shall create a Return Merchandise Authorization (RMA) approving the repair or replacement of the defective Component Part and shall assist the Buyer with the coordination of warranty service. An approved RMA must accompany the Component Part shipped to Seller or a Seller ASF. Final determination of warranty coverage eligibility shall be made by the Seller.

Component Parts shipped to and from Seller or a Seller ASF for warranty repair or replacement shall be at the sole expense and risk of the End User. At Seller's request, any defective Component Parts thereof shall be returned to Seller.

Seller's Warranty for Component Parts in no way extends the Limited System Warranty. This warranty excludes welding electrodes and other components deemed as Consumables.

C. Limited Warranty for Consumables

All Consumables are warranted by Seller or the OEM and therefore are covered under those respective warranties. Consumables manufactured by Seller are warranted by Seller's Limited Warranty for Consumables to be free from defects in workmanship and material for the period of time set forth in that particular Consumable's warranty. Warranty periods vary by product. This warranty specifically excludes all third party OEM Consumables as all OEM Consumables are warranted by the OEM. If OEM Consumables are found to be defective or non-conforming and are covered by an OEM warranty, Seller shall assist Buyer in identifying any defects and shall work with local distributors or OEMs to ensure that the OEM Consumables are repaired or replaced as required, subject to the terms and restrictions of the OEM's warranty.

Requests for warranty eligibility for Consumables shall be evaluated on a case-by-case basis and shall be determined by Seller in its sole discretion. To request a determination for warranty eligibility and/or to request warranty service for Consumables, Buyer must contact the Seller directly.

The sole obligation of Seller hereunder is to replace or repair, at the Seller's option, any Consumables manufactured by Seller which Seller, in its sole discretion, determines to be defective under normal use and service provided that such notice of defect is provided to Seller within the warranted period. The sole obligation of Seller hereunder for any Consumables not manufactured by Seller is to use commercially reasonable efforts to assist End User in obtaining any available OEM warranty coverage.

Consumables shipped to and from Seller or a Seller ASF for warranty repair or replacement shall be at the sole expense and risk of the End User. At Seller's request, any defective Consumables shall be returned to Seller.

D. Service Warranty

Any separately contracted Services shall be warranted for a period of ninety (90) days from the date of completion of the Services. Seller shall perform all agreed Services in a workmanlike manner consistent with industry standards. This Service warranty applies to any Services contracted separately, including, Services contracted for following the expiration of the Limited System Warranty.

E. Warranty Limitations

THE WARRANTIES SET FORTH HEREIN ARE THE ONLY EXPRESS WARRANTIES PROVIDED BY SELLER WITH RESPECT TO THE SYSTEM, COMPONENT PARTS AND CONSUMABLES. SELLER WILL NOT ACCEPT RESPONSIBILITY OR LIABILITY FOR REPAIRS OR MODIFICATIONS MADE BY ANY INDIVIDUAL OR ENTITY OTHER THAN SELLER AND/OR ANY REPAIRS/MODIFICATIONS PERFORMED OUTSIDE OF AN AUTHORIZED SERVICE FACILITY ("ASF"). SELLER'S LIABILITY UNDER THIS WARRANTY SHALL NOT EXCEED THE COST OF REPLACING THE GOODS, CORRECTING THE DEFECT, OR REFUNDING AN AMOUNT EQUAL TO THE TOTAL SALE COST OF THE GOODS, OR THE COST OF THE COMPONENT'S REPAIR OR REPLACEMENT; WHICHEVER REMEDY SELLER CHOOSES IN ITS SOLE DISCRETION. SELLER WILL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOSS OF BUSINESS) CAUSED BY THE DEFECT OR THE TIME INVOLVED TO CORRECT THE DEFECT. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF THE GOODS, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS OR SUBSTANCES.

SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED. SELLER WILL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (SUCH AS LOSS OF BUSINESS AND LOST PROFITS) CAUSED BY A DEFECT OR THE TIME INVOLVED TO CORRECT THE DEFECT. SELLER LIABILITY UNDER THIS WARRANTY SHALL NOT EXCEED THE COST OF THE GOODS.

THIS WARRANTY GIVES THE BUYER SPECIFIC LEGAL RIGHTS. THE BUYER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

12. CONFIDENTIALITY

"Confidential Information" means all information, know-how, trade secrets or other material disclosed by Buyer to Seller and Seller to Buyer. Both Buyer and Seller shall treat each other's Confidential Information as confidential; shall not use such Confidential Information except in connection with the Agreement; and shall not disclose such Confidential Information to any third party who has not executed an agreement to maintain the confidentiality of the Confidential Information with restrictions at least as restrictive as those set forth herein. All technical, business, sales, distribution channel, financial, marketing, pricing, planning, competitor information and the lists of customers who have purchased Goods from Seller are considered Confidential Information.

Confidential Information does not include information that is: (i) generally known and available in the public domain; (ii) was known to recipient prior to the date of disclosure; (iii) was received from a third-party without any obligation of confidentiality; or (iv) was independently developed without reliance on Confidential Information. Given the nature of the Confidential Information and the likely consequences of its unauthorized use

or disclosure, monetary damages would not be an adequate remedy and both Seller and Buyer reserve the right to seek and obtain injunctive relief, in addition to any other remedy that may be available, in any proper forum.

13. INTELLECTUAL PROPERTY OWNERSHIP

All materials, and any inventions (whether or not patentable), works of authorship, trade secrets, ideas, concepts, trade names and trade or service marks created or prepared by Seller under this Agreement (collectively “*Inventions*”), shall belong exclusively to Seller. Buyer hereby assigns the worldwide right, title and interest in and to the Inventions to Seller. Seller shall have the right, at its option and expense, to seek protection by obtaining patents, copyright registrations, and filings related to proprietary or intellectual property rights. Buyer agrees to execute, and to cause its employees to execute, such documents, applications, and conveyances and to supply information as Seller shall request, in order to permit Seller (at Seller’s expense) to protect, perfect, register, record and maintain its rights in the Inventions and effective ownership of them throughout the world. These obligations survive the expiration or termination of this agreement.

14. INTELLECTUAL PROPERTY INDEMNITY

A. By Seller.

Seller agrees to defend any suit, proceedings or counterclaim against Buyer for the infringement of any United States Letters Patent by: (1) any Goods, of whatever kind, or any parts thereof, made to Seller’s design or specifications, but only in the form, state or condition supplied under the Agreement; or (2) any use of such Goods where the Goods constitute a material part of any patented method of such patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use. Such defense is conditioned only if Seller is: (1) notified promptly in writing of any charges of infringement; (2) given authority to direct and control the defense of such charge or suit; and (3) furnished such information and assistance, at Seller’s expense, as may be necessary for such defense. Seller shall pay all costs and damages awarded therein against Buyer. If at any time, such Goods or any part thereof, or their use, are considered by the Seller to constitute infringement, Seller may, at its own expense: (1) procure for the Buyer the right to continue using such Goods; (2) modify them so they become non-infringing; or (3) remove them and refund the purchase price and the transportation costs thereof, if any. The foregoing states the entire liability of the Seller for patent infringement by such Goods or their use.

B. By Buyer.

In the event Buyer supplies a build order request to Seller for a product Buyer represents that Buyer has ownership rights to, and/or have a license to have built for Buyer (hereinafter “*Buyer Provided Specs*”), then Buyer agrees to defend and indemnify against any claims, suits, proceedings (whether in court or out of court) of all types whatsoever against Seller, its parent company, agents or affiliates, and shall indemnify for all costs, damages, judgments, settlements and compromises (including incurred costs and attorneys’ fees) for the infringement or claimed infringement of any patent, trademark, service mark, trade secret, copyright, moral rights or other claims of violation of intellectual property anywhere in the world by: (1) Buyer’s request that Seller reproduce, manufacture, modify, utilize or incorporate Buyer Provided Specs into an order placed with Seller; or (2) any misrepresentation by Buyer that it had ownership rights and/or a license to have products built for it when such representation was not accurate and/or resulted in claims against Seller based upon Seller’s completion of a project for Buyer under such misrepresentation. Buyer shall pay all costs, damages, judgments, settlements and compromises (including incurred costs and attorneys’ fees) arising out of or related to such claims, suits, proceedings (whether in court or out of court) against Seller, its parent company, agents or affiliates.

15. INDEMNIFICATION AND INSURANCE

Buyer shall indemnify, defend and hold Seller harmless against all liabilities, damages, claims, losses, costs and expenses, (including reasonable legal fees), relating to property damage, death and/or bodily injury arising out of Buyer’s performance under any agreements to which these Terms and Conditions are applicable in full or in part which liability, claim, loss or expense is occasioned by Buyer’s actions or omissions.

Seller shall indemnify, defend and hold harmless the Buyer against all liabilities, damages, claims, losses, costs and expenses, (including reasonable legal fees,) relating to property damage, death and/or bodily injury arising out of Seller's performance under any agreements to which these Terms and Conditions are applicable in full or in part which liability, claim, loss or expense is occasioned by Seller's actions or omissions.

Buyer shall maintain general liability insurance including coverage in an amount no less than two million (U.S. \$2,000,000) dollars per claim for property damage, bodily injury, and contractual liability.

Until Seller is in receipt of full payment by Buyer, Buyer shall maintain insurance in an amount that is sufficient to cover the cost of the System. Further, Buyer shall maintain insurance in an amount that is sufficient to cover the cost of any equipment owned by Buyer such as jigs, tools, drawings, fixtures, dies, molds, patterns and materials in Seller's possession for the purposes of building Buyer's System until such time that Buyer's property is returned to Buyer. Unless otherwise agreed to by Buyer and Seller as documented in the Agreement, Seller shall not maintain insurance on such Buyer provided materials and will not assume any liability for destruction or loss of the same.

16. FORCE MAJEURE

Seller shall not be liable to the Buyer for any delay in any performance or for failure to render any performance, and any such delay or failure shall for all purposes be excused, when such delay or failure is directly or indirectly caused by governmental laws or regulations (whether or not valid); acts of war; acts of government; acts of God; acts of terrorism; sabotage; civil disturbances; strikes or other labor disturbances; equipment failure; the inability to procure raw materials, power, equipment, labor or other supplies on an economical or other basis; explosions; accidents; transportation delays or shortages; floods; landslides; epidemics; or similar or dissimilar events which events are beyond the reasonable control of Seller, in any of the foregoing cases whether or not foreseeable (collectively hereinafter the "Force Majeure Event").

In expansion and not limitation of the foregoing, a Force Majeure Event shall be deemed to delay or prevent performance if it directly or indirectly causes the timely performance by Seller of any of its obligations to be commercially impracticable. Seller shall not be denied relief under this paragraph if it fails to avoid or resolve any Force Majeure Event, except to the extent that it fails to employ commercially reasonable efforts to avoid or resolve such event, which efforts shall not be required to include the expenditure of funds. Upon the occurrence of any event or circumstance referenced above, Seller shall have the right to allocate Goods among its customers in its sole discretion. This paragraph shall be effective and apply even if the Force Majeure Event invoked by Seller had been in effect on the date of acceptance of the Agreement. This Section supplements, and does not replace, any remedies available to Seller under applicable law.

17. CANCELLATION OF ORDERS

Buyer may cancel an Agreement only upon Seller's written consent. There shall be absolutely no cancellations of an Agreement after completion of *Pre-Shipment Run-off*. If Buyer attempts to cancel an Agreement following completion of *Pre-Shipment Run-off*, Buyer shall pay Seller the full price established in the Agreement within forty-five (45) days of completion of *Pre-Shipment Run-off*, irrespective of whether Buyer arranges for System shipment.

Seller shall have the right to cancel and refuse to complete an Agreement at its sole discretion if: (1) Buyer fails to comply with any of the terms set forth in the Agreement; (2) At any time the Buyer fails to post security or execute documentation required for a Purchase Money Security Interest within fifteen (15) days after Seller has requested the same; (3) Buyer interrupts or suspends the manufacture or assembly of the System for a period of thirty (30) days or more, regardless of whether they are consecutive; (4) If Buyer fails to or refuses to furnish required items including, but not limited to, security or progress payments, equipment, jigs, tools, drawings, fixtures, dies, molds, patterns, materials, Component Parts and other final part designs; or (5) At any time, Buyer makes an assignment for the benefit of creditors; ceases doing business as a going concern; becomes insolvent; a

voluntary or involuntary petition for bankruptcy is filed by or against Buyer, or a trustee, receiver or liquidator is appointed to Buyer.

In the event Seller cancels the Agreement, or agrees to Buyer's request to cancel an Agreement, Seller shall be entitled to (1) payment of the sales Price for all work completed up to and including the date of cancellation as referenced in Section 7; (2) Indemnification for any and all other costs incurred by Seller not covered in (1) above ("Cancellation Indemnified Costs"). Such Cancellation Indemnified Costs include, but are not limited to: the costs of any engineering studies and/or special matters, labor, materials, typical general and administrative costs; loss of profit; the costs of settling and paying claims arising out of the termination of work under Seller's subcontracts or vendors; and any accounting, legal, and clerical costs arising out of such cancellation; and (3) A cancellation fee equal to ten percent (10.0%) of the total Price amount set forth in the Agreement ("*Cancellation Fee*").

Seller may apply all amounts previously paid by Buyer to Seller to cover all amounts due. Seller shall then invoice Buyer for any remainder, to be paid by Buyer within ten (10) days of the date of the invoice. In the event a surplus exists from Buyer's payments, Seller shall return the remainder, if any, to Buyer, within a reasonable time of Buyer's cancellation.

Seller shall have no responsibility or liability to Buyer for any cancellation of an Agreement except for the return of any surplus funds due to Buyer. Should Seller complete the System, Buyer shall pay Seller the full Price stated in the Agreement.

18. TERMINATION FOR BREACH; NONCOMPLIANCE

In the event of a breach of the Agreement, or any portion thereof, including but not limited to Buyer's unreasonable withholding of its approval of Seller's *Pre-Shipment Run-off* (if applicable); Buyer's unreasonable withholding of Seller's certification of installation (if applicable); and/or Buyer's failure to make required payments at the time and in the manner set forth in these Terms and Conditions and/or the Project Schedule (or modified, if applicable) Seller shall have the right to cancel or terminate all or any part of the Agreement without incurring any liability to Buyer. Additionally any occurrence of breach by Buyer shall be grounds for Seller to invoke any remedies provided herein or under the Uniform Commercial Code, federal, state or other applicable law.

19. COMPLIANCE WITH LAWS

Buyer shall, at its own expense, comply with all applicable laws, regulations and other requirements of every applicable governmental authority, agency or instrumentality and assume all liabilities or obligations imposed there with respect to Buyer's performance under any agreements to which these Terms and Conditions are applicable in whole or in part and the use of Seller's Goods. Without limiting the generality of the foregoing, Buyer represents and warrants that it complies with the following laws (as amended) and any rules and regulations, if applicable, to the manufacture of Goods: (a) Federal Occupational Health and Safety Act of 1970; (b) Fair Labor Standards Act of 1938; (c) EC Directive on the Restriction on the Use of Certain Hazardous Substances in Electrical and Electronic Equipment; (d) EC Directive on Waste Electrical and Electronic Equipment; and (e) laws regarding discrimination as to age, race, color, religious creed, sex, ancestry or national origin, physical or mental disability or veteran status.

Buyer shall comply with all applicable laws and regulations with respect to the business conducted with Seller, including (without limitation) all applicable "Anti-bribery Laws," which prohibit the payment or transfer directly or indirectly of anything of value to governments, government officials, state-owned enterprises, political parties, political party officials, or to relatives or associates of such officials, in connection with obtaining or maintaining business or an improper business advantage.

The U.S. government also imposes and enforces prohibitions on the payment or transfer of anything of value (either directly or indirectly) to governments, government officials, political parties, political party officials, or to

relatives or associates of such officials, in connection with obtaining or maintaining business. This U.S. law is referred to as the Foreign Corrupt Practices Act (FCPA), and it can have application to conduct of a U.S. corporation's foreign subsidiaries, employees and agents. A summary of the law and related information can be found at <http://www.justice.gov/criminal/fraud/fcpa>. The Buyer warrants that:

- It is familiar with the provisions and restrictions contained in the FCPA.
- It shall comply with the FCPA in all respects. It shall not offer, promise, give, demand, seek or accept, directly or indirectly, any gift or payment, consideration or benefit in kind which would or could be construed as an illegal or corrupt practice.

Buyer acknowledges that the goods and technical data, if any, which are purchased or received under these Terms of and Conditions may be subject to the export controls of the U.S. Export Administration Regulation, the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Department of State and other U.S. agencies, as well as the export control regulations of foreign countries. Buyer acknowledges and agrees that the material and technical data, if any, which Buyer purchased or received under these Terms and Conditions and shall not be used for any prohibited purpose or transferred to a prohibited person or entity. Further, none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries upon which the United States maintains an embargo, or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Lists of Parties of Concern (collectively, "Designated Nationals") or for any restricted end-use. Any diversion contrary to U.S. law is prohibited.

By purchasing Goods from Seller, Buyer represents and warrants that Buyer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National, and that you shall not re-export, divert or transfer the Goods you purchase on this Website to an embargoed country, person or entity. You agree to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

Buyer further represents and warrants that Buyer shall (i) comply strictly with all legal requirements established under these controls; (ii) cooperate fully with Seller in any official or unofficial audit or inspection that relates to these controls; and (iii) not export, re-export, divert, transfer, or disclose, directly or indirectly, any purchased items or related technical information, document, or material or direct products thereof to any country, entity, person or end-user so restricted by the U.S. Export Administration Regulations or any other law or regulation, as modified by time to time, or to any national or resident thereof. Seller makes no representation that any items purchased for sale from Seller are appropriate for the use intended or available for use in other locations. Buyer is solely responsible for compliance with all applicable laws, including without limitation, export and import regulations of the United States and other countries. Upon Seller's request, Buyer shall provide information in response to any reasonable request, including a written certification, regarding compliance with applicable laws, rules or regulations.

20. CHANGES

Seller reserves the right to alter, modify, or redesign its Goods without any obligation to notify Buyer or replace previous Goods sold to Buyer.

21. LIMITATION ON CAUSES OF ACTION

Any action for breach of an Agreement by Buyer must be commenced within eighteen (18) months of the date of the alleged breach of the Agreement without regard to the date the breach is discovered. Any action not brought within eighteen (18) months by Buyer shall be barred without regard to any other limitations period set forth by law or statute.

22. COMPUTER SYSTEM SECURITY/UNAUTHORIZED DATA ACCESS.

Systems may require internet access for some operations. Buyer or Buyer's End User is responsible for obtaining internet access and payment for all usage charges related thereto. If Seller or Buyer require access to the other's computer systems to perform tasks that fall under the scope of an Agreement, access shall be granted only to the extent necessary to fulfill any required tasks.

Buyer or Buyer's End User represents that it has developed and implemented and covenants that it will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to (a) ensure the confidentiality, security, integrity and availability of its computer systems and information; (b) protect against anticipated threats or hazards to their computer systems and the confidentiality, security, integrity and availability of information; and (c) protect against unauthorized access to their computer systems and information. Buyer or Buyer's End User shall promptly notify Seller of any breach of confidentiality or disclosure of confidential information, or a breach of information security policies or procedures, or unauthorized access to its computer systems. Notice shall be provided no later than twenty-four (24) hours upon discovery of a breach.

Buyer or Buyer's End User agrees that it shall be responsible for all acts and omissions with respect to the unauthorized access to its computer systems and information, including the acts and omissions of its employees, agents and independent contractors. Buyer or Buyer's End User agrees to indemnify and hold Seller harmless, its directors, officers, employees, shareholders and agents from and against any and all third party claims of damages, liabilities, expenses, fines and losses of any type, including but not limited to reasonable attorneys' fee, in connection with or arising out of, in whole or in part, of its or its representative's breach of computer system security.

Both parties shall fully comply with the data protection and privacy legislation in all relevant countries and shall ensure that its employees, agents and contractors observe the provisions of such legislation.

23. LIMITATIONS ON LIABILITY

No claim by Buyer of any kind including, but not limited to, claims for indemnification, whether as to quality or amount of product delivered or non-delivery, shall be greater in amount than the purchase price for the Goods with respect to which damages are claimed. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS OF BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, OR LOSS OF DATA, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF THE GOODS SOLD HEREUNDER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.

24. CUSTOMER ASSISTANCE POLICY

Seller's goal is to meet Buyer's or Buyer's End User's needs and to exceed their expectations. On occasion, Buyer or Buyer's End User may ask Seller for information or advice about their use of Seller's Goods. Seller's employees respond to inquiries to the best of their ability based on information provided to them by the Buyer or Buyer's End User and the knowledge they have concerning the Goods in question. Seller's employees, however, are not in a position to verify the information provided or to evaluate the engineering requirements for the particular application and therefore any advice that they may give is for informational purposes only. ACCORDINGLY, SELLER DOES NOT WARRANT, GUARANTEE OR ASSUME ANY LIABILITY WITH RESPECT TO SUCH INFORMATION OR ADVICE. MOREOVER, PROVIDING SUCH INFORMATION OR ADVICE DOES NOT CREATE, EXPAND OR ALTER ANY WARRANTY ON SELLER'S GOODS.

Any express or implied warranty that might arise from the information or advice, including any implied warranty of merchantability or any warranty of fitness for any Buyer's or Buyer's End User's particular purpose is specifically disclaimed.

The selection and use of specific products sold by Seller is solely within the control of, and remains the sole responsibility of the Buyer's or Buyer's End User. Many variables beyond the control of Seller affect the results obtained in applying these types of fabrication methods and service requirements.

25. RELATIONSHIP OF THE PARTIES

The Buyer shall be considered an independent contractor. Seller's relationship with Buyer shall not be construed to be that of employer and employee, nor to constitute a partnership, joint venture or agency of any kind. Unless otherwise specified under the Agreement, the Buyer agrees to pay, and shall solely bear, all of its incurred expenses in connection with the Agreement. The Buyer shall have no right to enter into any contracts or commitments in the name of, or on behalf of, Seller or to bind Seller in any respect whatsoever.

26. SURVIVAL OF PROVISIONS

The provisions of these Terms and Conditions that are intended to survive termination by their nature, shall survive termination. These provisions include, but are not limited to: title and risk of loss, cancellation, warranty, confidentiality, indemnification, patent indemnity, compliance of laws, and disputes and applicable law.

27. SOFTWARE

Goods sold by Seller may include the appropriately licensed software normally provided therewith by the manufacturer. Software shall remain the property of its licensor. The terms and conditions of any software license agreement covering the software are incorporated herein by reference and supersede anything to the contrary herein. Buyer and Buyer's End User agrees to be bound by such terms and conditions, particularly those limiting the use and transfer of the software. Except as otherwise permitted therein, Buyer and Buyer's End User shall use the software only with the Goods and shall not copy, remove, sublicense, rent, transfer, assign, sell, alter, modify or encumber the software without licensor's prior written consent. Software is warranted only to the extent provided for directly by the licensor. Seller makes no warranty as to the performance of any software. Buyer and/or Buyer's End User shall be fully responsible for, and shall indemnify, hold harmless, and, if so requested by Seller, defend Seller from and against, all matters whatsoever arising out of or in connection with or relating to software, including, without limitation, the ownership, copyrights, licensing, licensing terms, licensed quantities, warranties, functionality, fitness for use, operation, installation, malicious or criminal use and/or de-installation thereof.

28. ENTIRE AGREEMENT; MODIFICATION

An Agreement is the final and exclusive statement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, relating to the subject matter hereof. The Agreement may not be varied, modified, altered or amended unless agreed to in writing by Buyer and Seller.

29. DISPUTES AND APPLICABLE LAW

In the event of any controversy, claim or dispute arising out of or relating to any agreements to which these Terms and Conditions are applicable in full or in part (a "Dispute"), Seller and Buyer shall seek to resolve the matter amicably through mutual discussions to be initiated by written notice by the aggrieved party to the other party as promptly as possible after a Dispute arises. Such discussions are to be conducted diligently in good faith by both Seller and Buyer. Such discussions may be conducted over the telephone, or at a meeting or meetings, held at the principal offices of Seller, or at such other location as the parties may agree.

If the Dispute cannot be resolved through mutual discussions as set forth above, either party may commence an action to resolve the Dispute in the Federal or State courts of Ohio. The parties shall submit to personal jurisdiction and venue in the State of Ohio, County of Cuyahoga. These Terms and Conditions and any agreements arising therefrom shall be governed and construed under the laws of the State of Ohio, as applied to contracts entered into and performed in that State, specifically excluding any conflict or choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to these Terms and Conditions or any agreements created thereby or construed therewith.

30. NO ASSIGNMENT

Buyer may not assign any of Buyer's rights or obligations under the Agreement without the express written consent of Seller.

31. SEVERABILITY

If any provision in an Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless remain in full force without being impaired or invalidated in any way.

32. ACKNOWLEDGMENT

Seller's issuance of an Order Acknowledgment, its commencement of work subject to Buyer's Purchase Order, its performance of all or a portion of the services subject to a Purchase Order, or its shipment of the Goods to Buyer, whichever occurs first, shall constitute acceptance of the Agreement and these Terms and Conditions. No text or other information set forth on any of Buyer's documents and/or Buyer's website shall add to or change an Agreement. The Agreement supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between Seller and the Buyer regarding the subject matter contained herein. It is understood that the Terms and Conditions of an Agreement are not subject to any additional or different terms so communicated to Seller by Buyer and only the Terms and Conditions of an Agreement or those incorporated herein shall apply. ANY ADDITIONAL OR DIFFERENT TERMS IN THE BUYER'S REQUEST FOR QUOTE, PURCHASE ORDER, SYSTEM DESIGN DOCUMENTATION OR BY ANY OTHER WRITTEN COMMUNICATION ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO AND REJECTION OF SUCH TERMS IS HEREBY GIVEN.