

General Terms and Conditions of Sale

1. The Agreement.

The Agreement is between Aerofilm Systems, Inc. ("Seller") and Buyer (including Buyer's representatives, agents, assigns, successors and heirs) with respect to the purchase by Buyer and sale by Seller of any of Seller's products, goods and/or services (collectively, the "Product") and shall consist only of the terms and conditions contained herein and any terms mutually agreed to, in writing, hereafter by Seller and Buyer. Seller objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's Purchase Order, or any similar document (the "PO") or in any other communication or documents by or between Buyer and Seller, including without limitation any acknowledgments, regardless of format or medium. Seller's quotation, sale, and/or acceptance of Buyer's PO for Seller's Product are expressly conditioned upon Buyer's assent to these terms and conditions. Buyer's acceptance of Seller's Product is also deemed to constitute Buyer's assent to these terms and conditions. This Agreement shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they differ from, modify, add to or detract from this Agreement, shall not be binding on Seller. There are no agreements, promises or understandings, either verbal or written that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions of this Agreement. Seller's failure or refusal to object to additional or different provisions contained in any communication from Buyer shall not be deemed a waiver of these terms and conditions. BY REQUESTING A QUOTE FROM SELLER OR PRESENTING A PO OR ANY OTHER FORM OF ORDER TO SELLER, BUYER CONFIRMS THAT THESE TERMS AND CONDITIONS OF SALE SHALL GOVERN ALL PURCHASES OF PRODUCT BY BUYER FROM SELLER (I.E. GOODS, MATERIALS AND/OR SERVICES PROVIDED TO BUYER BY SELLER), AND NO CHANGES OR ADDITIONAL OR DIFFERENT TERMS (CONTAINED IN A PURCHASE ORDER ACCEPTED BY SELLER, OR OTHERWISE) WILL CHANGE THESE TERMS AND CONDITIONS UNLESS ACKNOWLEDGED IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NO SELLER EMPLOYEE OR AGENT HAS THE AUTHORITY TO MODIFY THESE TERMS AND CONDITIONS VERBALLY. SELLER OBJECTS TO AND REJECTS ANY TERMS BETWEEN BUYER AND ANY OTHER PARTY, AND NO SUCH TERMS, INCLUDING BUT NOT LIMITED TO ANY GOVERNMENT REGULATIONS OR "FLOWDOWN" TERMS, SHALL BE A PART OF OR INCORPORATED INTO ANY ORDER FROM BUYER TO SELLER, UNLESS AGREED TO IN WRITING BY AN AUTHORIZED REPRESENTATIVE OF SELLER. Seller's issuance of an offer, quotation or other documentation to Buyer shall not require or obligate Seller to accept a PO from Buyer and Seller may refuse to accept a PO for any or no reason. In the event no order confirmation or PO is issued as part of a contemplated transaction for any reason, and Seller issues an invoice to Buyer after having performed, either completely or partially, at Buyer's specific request, the invoice shall be considered to bind Buyer to its terms and these terms absent written objection to the Invoice by Buyer within three (3) business days of the invoice date.

2. Termination; Cancellation; Changes.

The Agreement may be modified or terminated only upon Seller's written consent. Quotations without a specific period of acceptance shall be deemed to be valid for only thirty (30) days at which time they shall be deemed to have been withdrawn by Seller. Special orders are not subject to cancellation. If Buyer desires to terminate or cancel any PO and Seller agrees to such cancellation, then Buyer, in the absence of a contrary written agreement with Seller, shall be obligated to pay Seller, at Seller's election, either (i) a cancellation charge equal to Ten Percent (10%) of the total Product purchase price within thirty (30) days of Seller's acceptance of Buyer's notice of cancellation, or (ii) one-hundred percent (100%) of the expenses and costs incurred by Seller and/or Seller's supplier(s) in Seller's acquisition, production (including any special additions or modifications to the cancelled Product), and delivery of the Product through the date such cancellation is accepted by Seller, plus a reasonable profit, except that any Product order fulfilled and shipped by Seller on or prior to Seller's acceptance of such cancellation shall be deemed accepted and shall be paid for, in full, by Buyer consistent with the payment terms of Agreement. Seller may terminate this Agreement and cancel any order, or otherwise cancel any remaining work on any partially completed order, in the event of the default by Buyer under the terms of this Agreement, the filing of a voluntary or involuntary bankruptcy by or on behalf of Buyer, the dissolution of Buyer, or the assignment for the benefit of Buyer's creditors, or death when Buyer is a natural person, and upon such termination, Seller may claim the unpaid part of any Product as Seller's property for disposition by Seller without regard or provision for Buyer. Such cancellation shall not relieve Buyer of any existing obligations incurred under this Agreement or pursuant to any PO. In the event Buyer requests changes to any Product or Product order after Seller has accepted a PO, Buyer shall provide written notice of such requested changes to Seller. Seller shall be entitled to payment for any and all costs and expenses associated with such changes, which shall be included in the invoice(s) thereafter issued to Buyer. Seller shall not be obligated to perform, or otherwise liable to Buyer, as a result of the failure of Buyer to request changes in writing. Further, Seller shall not be liable to Buyer for any delays resulting from any change requests of Buyer.

3. Price; Terms of Payment.

All invoices and payments shall be in United States dollars. Any changes in rates of exchange shall be passed through to Buyer and paid by Buyer. All invoices shall be paid by Buyer in strict compliance with payment terms contained on the Quote and/or Invoice. In the absence of any specific payment terms on the Quote and/or Invoice, Buyer shall pay the price no later than thirty (30) days from Invoice date. Failure of Buyer to object to an invoice within fourteen (14) days of the Invoice date shall constitute waiver of any objections to the Invoice. Seller's receipt and deposit of any payment made with a PO shall not constitute acceptance of a PO by Seller until the PO is accepted in writing by Seller. Prices do not include sales, use, turnover, excise, property, import or other taxes, levies or duties arising out of or related to the sale or use of the Product and Buyer is, and shall remain, solely responsible for such taxes, levies, duties and charges plus any additional applicable shipping and handling charges, taxes and duties. Seller shall be entitled to collect and bill Buyer separately for any and all such taxes and charges not included on Seller's invoice, including applicable taxes, unless Buyer submits a valid tax exemption certificate, and indicates which Product(s) are covered by it. Payment terms are 30 days net from the invoice date or upon such other terms approved by Seller in writing. Payment shall not be contingent upon Buyer's ability to collect or obtain payment or funds from a third party. Buyer specifically represents and warrants that it is solvent at the time it places any PO with Seller. Any balances unpaid after ten (10) days from due date will be charged interest of 1½% per month (18% per year) from the date such payment was due. If a shipment is delayed by Seller at the request of Buyer, payment therefor shall become due on the date when Seller is prepared to make shipment thereof. Prices are F.O.B. Seller's shipping point unless otherwise agreed upon as specified on the PO or in writing related to a particular purchase of Product. Seller is entitled and hereby authorized to perform periodic credit reviews of Buyer. Whenever, in the discretion of Seller, the financial condition of the Buyer does not justify the continuation of production or shipment on the specified terms of payment, the Seller may require full or partial payment in advance or other adequate assurances of payment from Buyer and shall be entitled to terminate and cancel work on the production or delivery of Products to Buyer until such time as Buyer satisfies Seller's requests related to surety for payment. Buyer agrees to pay Seller's reasonable attorneys' fees and court costs incurred by Seller to collect payment (including all applicable interest charges and other charges) and/or to enforce any term of this Agreement. Seller may apply payments to any outstanding invoices unless Buyer provides specific written payment directions. All price quotations provided by Seller expire ninety (90) days from the date of quotations unless otherwise specifically noted on the quotation and Seller shall thereafter be entitled to pass through any changes in pricing that may have occurred between the original quotation date and such period. Inadvertent and/or clerical errors or omissions on any invoice or PO acknowledgement from Seller are subject to correction by Seller. All Buyer payments payable hereunder shall be paid without any deduction, offset or reduction for any reason.

4. Title; Risk of Loss; Delivery.

Products shall be delivered Ex Works (EXW) Seller's warehouse, storage depot or other designated Seller facility in conformity with Intercoms 2010, unless otherwise specifically agreed in writing by Seller. Upon Seller placing the Product at the disposal of Buyer, risk of loss shall pass to Buyer and, thereafter, the transport or carrier of any Product shall be deemed to be acting for and on behalf of Buyer and the terms of payment for the Product shall not be affected by any damage to or destruction of any Product sold. Seller may assist Buyer with the loading of Product into transport or carrier vehicles; provided, however, Buyer shall remain obligated for all risks related to such Product and is advised to insure against all such risks. Claims for Product damaged or lost in loading or transit are Buyer's sole responsibility. Specific transportation and shipment requirements or requests of Buyer shall by Buyer's sole responsibility and at Buyer's sole cost. Seller shall be entitled to deliver the Product in separate parts and under separate deliveries, which may be invoiced separately. Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond Seller's reasonable control. Seller shall in good faith endeavor to meet estimated delivery dates; provided, however, that in no event shall Seller be liable to Buyer for any loss or damage, including without limitation any loss of income or profits, incidental, special or consequential damages, of Buyer resulting from Seller's delayed performance in shipment or delivery of Product for any reason whatsoever. Seller reserves the right to withhold delivery of the Product, or any component thereof, if, for any reason, Buyer fails to pay to Seller any portion of the purchase price for the Product(s) in the amount(s) and at the time(s) specified in the Agreement. In such event, Buyer shall be responsible to Seller for any costs of storage or disposition of the Product and such storage shall be at the risk of Buyer. Unless otherwise identified in a Quote, quoted prices do not include the cost for export or special packaging of Products and Buyer shall assume and be responsible for those extra costs associated with such export and packaging. Unless otherwise stated in a Quote, Buyer shall pay all cost increases Seller is assessed for materials incorporated into any Product, including but not limited to fuel surcharges, to the extent such increases exceed any estimated costs used by Seller to develop a Quote by ten percent (10%) and which occurs subsequent to the issuance of a Quote, but prior to the delivery of the Product. Buyer warrants that the site where Products are to be delivered and/or installed shall be ready and adequate for delivery and receipt of the Product. Buyer shall be responsible for all costs and expenses associated with any delay and/or inability to deliver or install any Products related to Buyer, or Buyer's agent's, failure to comply with this provision. Seller in no way warrants the sufficiency of the site for the delivery of the Product referenced in a Quote. Immediately upon the earlier of (i) Buyer's receipt of any Product shipped hereunder, or (ii) notice from Seller to Buyer that the Product is available to Buyer at Seller's facility or some other agreed location (the "Inspection Date"), Buyer shall conduct an inspection of same and shall notify Seller in writing of any claims for shortages, defects or damages and shall hold the Product for Seller's written instructions concerning disposition. If Buyer shall fail to so notify Seller within five (5) days after the Inspection Date, such Product shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by Buyer. Seller shall not be responsible for claims for error or defects in Products not made within five (5) days of the Inspection Date. Under no circumstances shall Seller be liable for any damages or losses arising out of or resulting from any delay of any kind whatsoever, unless there is specific written agreement between the Seller and the Buyer to the contrary.

5. Retention of Title; Security Interest.

Seller shall remain the owner of all delivered Products for so long as Buyer (i) fails to perform and observe Buyer's obligations under this Agreement; (ii) fails to pay for the Product; or (iii) fails to pay any other amounts due Seller resulting from the failure of Buyer to comply with the terms and conditions contained in this Agreement. In addition, and not by way of limitation of the foregoing, and in the event title to any Product is deemed by law to transfer to Buyer prior to compliance with Buyer's obligations hereunder, then Buyer hereby grants to Seller and Seller hereby retains a continuing purchase money security interest in all of the Products sold and delivered by Seller to Buyer, whether presently in the possession of Buyer or hereafter acquired, and all spare parts and components thereof, together with any and all proceeds of sale or other disposition of the Products, including, but not limited to, cash, accounts, contract rights, and chattel paper, in order to secure the unpaid balance of the price of any Product(s) and all other obligations of Seller to Buyer however arising. Seller is hereby authorized by Buyer to execute for itself, and on behalf of Buyer if required, and file one or more financing statements pursuant to the Uniform Commercial Code in force in Buyer's state of business, or in any jurisdiction where a financing statement may be required to be filed to perfect Seller's interest granted herein, and in a form satisfactory to Seller to evidence Seller's security interest in the Products. Buyer shall keep the Products free from any adverse lien, security interest or encumbrance and will not store the Products or any part thereof or use the Products in violation of any statute or ordinance. In the event Buyer shall be in default under the Agreement, Seller shall have the remedies of a secured party under the Uniform Commercial Code. Seller may enter Buyer's premises and remove the Products as a secured creditor upon default by Buyer. Buyer agrees to pay Seller's reasonable attorney's fees and court costs for the collection of any amounts owing to Seller hereunder or incurred in the repossession of the Products.

6. On Call Orders.

In the event a Product involves an on-call order and no specific period has been agreed in writing within which the call should take place, the on-call period shall be considered to be the last day of the delivery period and the delivery shall actually take place within fifteen (15) business days thereafter. In the event Seller and Buyer have agreed to a specific on-call period in a PO and Invoice, and Buyer has not issued a call within such period, Seller may issue a written notice of such failure to Buyer providing not more than an additional eight (8) business days for the applicable on-call period commencing as of the days of such notice. In the event no call is thereafter issued by Buyer within such extended on-call period, Seller may elect to either deliver the Product in whatever condition and state of completion such Product is at such time, or proceed to store the ordered Product, whether complete or incomplete, at the cost, expense and risk of Buyer.

7. Descriptions and Time Study.

Any and all time study or similar information or figures provided by Seller related to any Product are estimates only and are based on Seller's then existing understanding of accuracy and finish required machinability of the material and amount of material to be removed and Buyer's operating conditions. All weights and measurements provided by Seller related to any Product are estimates and any minor deviations shall not invalidate a PO or this Agreement. Brochures, photographs and other illustrations representing the Product offered are not binding as improvements or modifications may have been made in the Product design subsequent to the publication and/or delivery of any such materials and all such materials are subject to change and modification without prior notice.



8. LIMITED WARRANTY.

Seller warrants that all Products sold are new and, upon payment in full by Buyer of the Product, shall be free and clear of any security interests or liens. THIS WARRANTY IS THE EXCLUSIVE WARRANTY AND IS NOT TRANSFERABLE. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, BY OPERATION OF LAW OR OTHERWISE, OR AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SPECIFICALLY DISCLAIMS ANY AND ALL SUCH WARRANTIES. Third party dealers are not agents of Seller and Seller has no obligation or liability arising from any warranty made by any third party dealer related to any Product(s). Buyer further represents and acknowledges that Seller has not made any representations or warranties, direct or indirect, express or implied as to any manner whatsoever, including without limitation, the design or condition of any Product, its merchantability or its viability or its fitness for any particular purpose, the quality of the material or workmanship of any Product, improper delivery, delay in delivery or conformity of any Product to the provisions and specifications of any purchase or orders relating thereto, nor shall Seller be liable for incidental or consequential damages (including strict liability in tort). Seller shall not be liable to Buyer, or any other party, for any loss, damage, injury or expense of any kind or nature caused directly or indirectly by the Product or the failure of the Product to operate properly. Seller shall be entirely free from liabilities or responsibilities of any problem due to patent infringements, trademark, design registered, marking or stamp or otherwise on the goods supplied in accordance with Buyer's instruction. Buyer hereby agrees to assume all responsibility to pay any royalty or expenses if any for any dispute resulting from such use. Seller gives no warranty, express or implied, as to the quality, finish, accuracy or tolerance, compliance with electrical, hydraulic, pneumatic or other safety codes required by any governmental or quasi-governmental body; efficiency, productivity, performance, merchantability, conditions of the Product being suitable for any particular use intended purpose or otherwise. Seller shall not be responsible for any defect in any Product that is created or originates after the Product is shipped from Seller, including any Product subjected to misuse, neglect, accident, improper handling or storage, or which has been altered or misbranded by anyone other than Seller or its authorized representative or modifications to or adaptations of the Product made by Buyer or others. Seller shall not be liable on any notice of claim for non-conforming Product which is not issued to Seller within fifteen (15) days after such Product has been received by Buyer. Seller shall then only be liable to Buyer to the extent Buyer has provided written notice of such non-conformance to Seller including therein a specific description of such non-conformance reasonably sufficient to permit Seller to attempt to cure such non-conformance and Seller fails to, within a reasonable period of time, take any such action to cure as may be required herein. Upon acceptance of a Product by Buyer, Buyer irrevocably waives any right to revoke such acceptance for any reason, whether known or unknown to Buyer at the time of acceptance. SELLER DISCLAIMS ANY AND ALL WARRANTIES AND/OR INDEMNIFICATION AGAINST INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF ANY NATURE. Seller does not warrant that the use of, or the subsequent sale of, the Product delivered hereunder will not infringe the claims of any United States or other patents covering the Product itself or the use thereof in combination with other products or other goods or as a part of another product or good.

10. Limitations of Liability.

TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER'S TOTAL LIABILITY TO BUYER, BUYER'S CUSTOMERS, OR TO ANY OTHER PERSON, RELATING TO ANY PURCHASES AND/OR PRODUCT GOVERNED BY THIS AGREEMENT, FROM THE USE OF THE PRODUCT FURNISHED, OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY SELLER (BY ANY METHOD, INCLUDING A WEBSITE), IS LIMITED TO THE PRICE OF THE PRODUCT GIVING RISE TO THE CLAIM. SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, CONSEQUENTIAL OR PENAL DAMAGES (INCLUDING, WITHOUT LIMITATION, BACK-CHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING, LOSS OF BUSINESS, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED GOODS, DAMAGE TO ASSOCIATED GOODS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF PRODUCT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCT, FACILITIES OR SERVICES, DOWNTIME, OR CLAIMS FROM BUYER'S CUSTOMERS OR OTHER PARTIES). IF SELLER FURNISHES BUYER WITH ADVICE OR OTHER ASSISTANCE WHICH CONCERNS ANY PRODUCT SUPPLIED HEREUNDER, OR ANY OTHER PRODUCT OR GOOD IN WHICH ANY SUCH PRODUCT MAY BE PLACED OR TO WHICH SUCH PRODUCT MAY BE COMBINED, AND WHICH IS NOT REQUIRED PURSUANT TO THIS AGREEMENT, THE FURNISHING OF SUCH ADVICE OR ASSISTANCE WILL NOT SUBJECT SELLER TO ANY LIABILITY, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS. In no event shall Seller be liable to Buyer for any claims first asserted to or against Seller arising more than twelve (12) months following the Inspection Date (as defined herein above).

11. Safety.

Buyer shall require all Buyer agents, representatives and employees to use all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by Seller and related to any Products. Buyer shall not remove or modify any such device, guard or sign. It is Buyer's responsibility to provide all the means that may be necessary to effectively protect all Buyer agents, representatives and employees from bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Products and Seller shall have no responsibility to Buyer, its agents, representatives or employees for any such injury, liability or damage. If Buyer fails to comply with such provisions of this Section or the applicable manuals, standards or regulations aforementioned, and in addition to any other indemnification obligations contained herein, Buyer shall indemnify and save Seller harmless from and against any and all claims, losses or damages arising therefrom. It is the responsibility of Buyer to comply with any and all local ordinances and codes related to any use or installation of the Products.

12. Buyer's Indemnification.

Buyer shall indemnify, defend and hold Seller and its respective officers, directors, employees and agents harmless from and against all damages arising out of, in connection with or resulting from any claim or allegations with respect to the (i) written and graphic content of any product labels, inserts or stickers, promotional materials, advertisements, and or websites, except to the extent caused by or attributable to the grossly negligent acts of Seller; (ii) sales of Product sold by Buyer after receipt of the Product by Buyer; (iii) Buyer's failure to warehouse and distribute Product as per the shipping and storage conditions applicable to such Product or specified in written Product materials; (iv) damaging or tampering with the Product by anyone other than Seller, its employees, agents, contractors, licensees, or invitees; (v) any material breach of this Agreement by Buyer; (vi) the negligence or willful misconduct of Buyer or its agents or employees; (vii) any claim of infringement by the Product or the trademarks or any intellectual property rights or trade secrets of a third party other than those arising from the portions of the Product created solely by Seller; (viii) any suits, losses, claims demands, liabilities, costs and expenses (including attorneys' fees and any other professional fees) that Seller may sustain or incur as a result of any claim against Seller based on negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Buyer, its officers, agents, employees, successors or assigns, by Buyer's customers, by end users, or by other third parties, including without limitation governmental authorities or entities related to alleged violations of any applicable federal or state law or statute, arising out of, directly or indirectly, the use of Seller's Products, or by reason of Buyer's failure to perform its obligations contained herein. Buyer shall be obligated to notify Seller within fifteen (15) days of Buyer's receipt of or knowledge of any accident or incident involving a Product which results in personal injury or damage to property, or is threatened to result in such injury or damage, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident or incident and shall make available to Seller all statements, reports, and tests made by Buyer or at Buyer's request by others, or made available to Buyer by others. The furnishing of such information and notice to Seller shall not in any way constitute any assumption of any liability for such alleged accident or incident by Seller.

8. Force Majeure.

Seller's failure to deliver a Product by reason of any of the following and such event shall not constitute an event of default or breach of the Agreement: strikes, picket lines, boycott efforts, fires, floods, freeze, accidents, war (whether or not declared), acts of terrorism, revolution, riots, insurrections, acts of God, acts of government (including without limitation any agency or department of the United States of America or any other country or nation), acts of the public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain materials or labor, or other causes which are reasonably beyond the control of Seller. Buyer acknowledges and understands that the production and/or delivery of any Products may be delayed or otherwise impacted by export permitting requirements of foreign governments, and Seller shall not be liable for any delays caused by such permits.

9. Confidentiality.

Any specifications, samples, designs, drawings, manuals, programs, prices, trade secrets, patents, financial data, or other information that Buyer or Seller (the "Disclosing Party") identifies as or otherwise deems confidential (the "Confidential Information") and discloses to the other Party ("Receiving Party") in connection with this Agreement or any PO shall remain the exclusive property of the Disclosing Party and shall, along with any information derived from the same, be kept confidential by the Receiving Party and its employees and agents and shall not, without the Disclosing Party's prior written consent, be disclosed to any third party or used except for purposes of the PO. Notwithstanding the foregoing, such information shall not be deemed confidential to the extent that the Receiving Party can demonstrate by written record that it was previously known by the Receiving Party, became generally available to the public through no fault of the Receiving Party, was disclosed to the Receiving Party by a third party without breach of any confidentiality obligation, or is specifically required to be disclosed by law or legal process. Buyer and Seller agree that the covenant of confidentiality and nondisclosure set forth above shall survive termination of this Agreement and shall remain in effect for so long as the Confidential Information remains confidential. Copyright in all material made available by Seller shall remain in Seller at all times.

14. Compliance with Laws.

Buyer agrees to comply with all applicable export laws, assurances, codes and license requirements, and controls of the United States and other jurisdictions as well as all other applicable laws, codes, and government regulations in connection with the Buyer's use and resale of Products including Buyer's acceptance of responsibility for the payment of any applicable taxes or duties.

15. Governing Law; JURY TRIAL WAIVER; CLASS ACTION WAIVER.

Any controversy or claim by and between Seller and Buyer arising out of or related in any way to this Agreement, a Quotation, or the provision of Product(s) thereunder, shall be construed and governed by the laws of the State of Indiana, including Article 2 the Uniform Commercial Code as codified in Indiana Code, notwithstanding conflicts of law principles. Any action or claim arising from or related to this Agreement, a Quotation, or the provision of Product(s) thereunder, shall be instituted and litigated exclusively in the state courts located in Hamilton County, Indiana. Buyer and Seller hereby irrevocably consent to the exclusive jurisdiction of and exclusive laying of venue in the state courts of Hamilton County, Indiana without regard to any forum non conveniens claim or defense, and regardless of the party's present or future domicile. In the event Seller retains an attorney to pursue the non-payment of an invoice and/or to enforce any of terms of this or any other agreement between the parties, or in any appeal therefrom, it is agreed that Seller shall be entitled to all attorney's fees, court costs, and other costs of collection. THE PARTIES HEREBY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY COURT AND IN ANY ACTION OR PROCEEDING AS TO ALL MATTERS AND THINGS ARISING OUT OF OR RELATING, DIRECTLY OR INDIRECTLY, TO THIS AGREEMENT AND THE RELATIONS BETWEEN THE PARTIES HEREUNDER. EACH PARTY WAIVES THE RIGHT TO LITIGATE IN COURT OR ARBITRATE ANY CLAIM OR DISPUTE AS A CLASS ACTION, EITHER AS A MEMBER OF A CLASS OR AS A REPRESENTATIVE, OR TO ACT AS A PRIVATE ATTORNEY GENERAL.

16. Miscellaneous.

- a. Failure of Seller to insist upon strict performance of any provisions of this Agreement or to exercise any rights hereunder shall not be construed as a waiver or relinquishment of such rights or the waiver of future performance of any such term or condition or the future exercise of such right.
- b. All rights and remedies under this Agreement are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity.
- c. Any waiver of a default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter.
- d. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, and successors in interest.
- e. In the event any term, provision, undertaking or restriction contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable (in whole or in part), the remainder of the terms, provisions, undertakings and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated.
- f. Any notice or request required or permitted to be given in connection with this Agreement shall be sent by mail, prepaid, return receipt requested, by fax, with receipt confirmed, or by express delivery service to the address set forth on the PO or invoice or to any other business address furnished in writing by the intended recipient to the sender. The date of notice shall be deemed to be the date on which such notice has been sent by fax, received by mail, or by express delivery service.
- g. Paragraph headings are for convenience only and are not to be construed as part of this Agreement.
- h. The entire Agreement is embodied in this writing. There are no understandings, agreements, representations, or warranties, either oral or written, relative to the Products, including statements made in or conduct implied from past dealings that are not fully expressed herein. No statement subsequent to the acceptance of the PO purporting to modify these terms and conditions shall be binding unless consented to in writing by a duly authorized officer of Seller in a document making specific reference to this transaction. THESE TERMS AND CONDITIONS AND THE PRICES SET OUT IN A QUOTE SPECIFICALLY RECOGNIZE THE ALLOCATION OF THE RISKS OF PERFORMANCE OF THE PARTIES AS WELL AS THE LIMITATION OF LIABILITY AND DAMAGES AND THE RECOVERY OF COLLECTION COSTS, AND THE PARTIES EXPRESSLY AGREE THAT THESE LIMITATIONS ON REMEDIES, RESPONSIBILITY FOR COLLECTION COSTS, AND OBLIGATIONS TO INDEMNIFY ARE ESSENTIAL PARTS OF THE AGREEMENT BETWEEN THEM AND ARE SPECIFICALLY BARGAINED FOR.
- i. Buyer represents and warrants that, unless it is an individual, Buyer is duly organized, validly existing and in good standing, and that Buyer has the power and authority to enter into this Agreement and that the person executing this Agreement on behalf of Buyer has the full power and authority to bind Buyer. If more than one Buyer is identified in this Agreement or in a PO, the liability of each shall be joint and several.