



For the following legal entities:

Nexteer Industria e Comercio de Sistemas Automotivos Ltda.

# General Terms and Conditions of Sale

[These T&Cs apply to all sales by the Nexteer entities listed above]

## GENERAL TERMS AND CONDITIONS OF SALE

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

These General Terms and Conditions of Sale ("General Terms") apply to all proposals and quotations submitted by the following Nexteer entities: Nexteer Industria e Comercio de Sistemas Automotivos Ltda. ("Seller"), to all purchase orders received by Seller, and to all sales of goods and services sold by Seller ("Goods"), except as otherwise specifically agreed to by Seller. A written quotation issued by Seller is an offer to sell. Buyer shall be deemed to have accepted the provisions of these General Terms and an agreement shall be formed by any of the following: (a) signing and returning to Seller a copy of any quotation; (b) sending to Seller a written acknowledgment of the quotation; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of the Goods (including instructions to bill and hold) following receipt of any quotation; (d) failing to cancel a pending purchase order within ten (10) days after receiving, or being put on notice of, these General Terms; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer's acceptance of these General Terms. All sales by Seller consist only of these General Terms and those in other documents which are referred to herein or are attached hereto or in a document provided or signed or issued by Seller and referencing the transaction (all of which constitute the "Agreement"). Seller objects to all terms proposed by Buyer. THE AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAWS OF BRAZIL. The U.N. Convention on the International Sales of Goods shall not apply. THE COURTS OF PORTO ALEGRE, BRAZIL SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT, UNLESS WAIVED IN A WRITING SIGNED BY SELLER AND SUBJECT TO ANY RIGHT OF ARBITRATION WHICH MAY BE PROVIDED BY THE AGREEMENT. The parties stipulate to the convenience of Porto Alegre, Brazil courts as to all litigation. Any declaration of unenforceability of a provision shall be as narrow as possible and shall not affect the enforceability of the other provisions. A tribunal with jurisdiction shall reform a provision of the Agreement, at the request of Seller, to the extent minimally required for enforcement.

### 2. Integration and Modification.

**A. Formation and Revocation.** The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of Seller's quotation (according to its terms), Seller's actions in reliance on Buyer's oral acceptance of a written or oral quotation, or Buyer's receipt of the Goods, will constitute a binding contract under the terms of the Agreement.

**B. Complete Integration.** The Agreement is a final, complete and exclusive statement of the Agreement of the parties. An order or an amendment submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to or inconsistent with these General Terms), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is given that Seller objects to any such terms or conditions in Buyer's purchase order or other document or communication. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions.

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

**D. Parties.** The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be also for the benefit of Seller's affiliates, agents, employees, contractors, and

suppliers. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

**E. Acknowledgments.** Buyer and Seller acknowledge that: (i) they are merchants in respect to the Goods produced by Seller; (ii) they have had an opportunity to review the Agreement; and (iii) the provisions of the Agreement are reasonable when considered as a whole.

**F. Directed Source Supplies.** Buyer may direct Seller to obtain components or services from third parties ("Directed Source Supplies") for use in the provision of the Goods. Seller shall not be responsible to Buyer for any warranty or other claims arising from Directed Source Supplies or from the failure of the third party to timely provide Directed Source Supplies.

**3. Authority of Seller's Agents.** No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement. An affirmation, waiver, representation or warranty shall not be deemed to be part of the basis of the Agreement and shall not be enforceable, unless it is expressly included within the Agreement.

### 4. Prices, Payment and Risk of Loss.

**A. Prices.** Prices contained in individual written quotations or proposals are firm only for a period stated therein and otherwise for thirty (30) days from the date of the quotation. After the firm price period, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. Prices do not include taxes and Buyer shall pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt from such taxes. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt of all invoices rendered by Seller for any such items Seller may pay.

**B. Risk of Loss and Title.** The Agreement is for a shipment contract and the Goods shall be delivered F.O.B. Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods shall remain with Seller until Buyer pays for the Goods in full.

**C. Price Adjustments.** If any delay in delivery beyond the date of delivery scheduled at the time of entry of the order is requested or otherwise caused by Buyer, Seller shall adjust the price under the provisions of this subsection. Seller may unilaterally adjust the price to cover Seller's increased cost of performance due to a delay in delivery schedule, increases in the costs of labor, materials, production or transportation, change in the law or other conditions beyond Seller's reasonable control after the date of any quotation. Prices may be changed by Seller to Seller's prices charged to other customers on the date of delivery. Seller and Buyer will equally share, 50%/50%, all value-added or value-engineering or other savings that are the result of joint engineering efforts aimed at cost reduction whether these changes occur before or after the start of production. Prices for Goods and tooling are valid only for volumes quoted, with the ability to provide additional volume of 15% for short-term surge requirements of not more than 30 days within any 365-day period, and any demand for additional volume beyond 30 days are subject to additional tooling charges or price adjustment.

**D. Changes at Buyer's Request.** Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, treating, coating, plating, material or process capability data, logistics requests including but not limited to Advanced Shipping Notices if Buyer requires with shipment, and other performance by Seller, required by changes requested by Buyer to the Goods, schedule or any other performance by Seller after the date of any quotation. Seller is not obligated to perform any such changes, but shall be compensated for them if Seller complies with such requested changes.

**E. Shipping and Packaging.** Except as otherwise provided in the Agreement, Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included in the price, any increase in rates for such services becoming effective after the date the price is quoted to Buyer shall be added to the price. All Goods shall be packed for shipment by Seller in accordance with its standard practices. It is Buyer's responsibility whether or not Seller arranges shipping to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods.

Buyer shall pay Seller for such additional procedures and materials. Buyer shall pay Seller for additional handling charges for small, expedited or other shipments outside Seller's normal and ordinary course of business.

**F. Terms.** Unless Seller expressly agrees in a signed writing: (i) payment terms for all Goods produced for Buyer; shall be net 30 days from delivery EXW (Seller's facility) (INCOTERMS 2010), (ii) payment terms for all (a) engineering changes, and (b) fixtures, gauges, tooling and any other related property that, when fully paid for, becomes Buyer's Property (See Section 20), shall be 50% billable upon receipt of purchase order, 50% with submission of PPAP.

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

**H. Export/Import Fees.** All export and import permits and licenses and the payment of all export and import duties and customs fees shall be the responsibility of Seller, if Seller is obligated by the Agreement to deliver the Goods within its home jurisdiction. All export and import duties, fees, permits, licenses, etc. for Goods to be delivered outside of Seller's home jurisdiction shall be the responsibility of Buyer.

**I. Invoices.** Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer shall pay all invoices net 30 days after the date of shipment. Seller may change any payment term in the Agreement to Buyer on seven (7) days' written notice.

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

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

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

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

**N. Right of Offset.** Seller may offset or recoup any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller against any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer. Buyer waives any right of offset or recoupment and shall pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts under written protest shall not constitute a waiver by Buyer of its claims.

**O. Allocation of Payments.** Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.

**P. Exchange Rate.** goods ordered under the Agreement which are procured by Seller, in whole or in part (i.e., components that are incorporated into Goods), from sources outside of Seller's home jurisdiction are predicated on the rate of exchange in force at the time of the quotation (or Order if there is no quotation). If the rate of exchange between the currency of the Seller's home jurisdiction and the currency of the country from which the goods are procured by Seller (in whole or in part) varies between the date of the quotation (or Order if there is no quotation) and delivery of the Goods, the price of the Goods shall be increased or decreased accordingly to compensate Seller for such variation in the rate of exchange.

**Q. Retention.** If retention of any portion of the price is permitted under the Agreement, it shall be paid upon the earlier of written acceptance of the Goods and thirty (30) days from substantial completion of Seller's obligations.

**R. Samples.** Samples of Goods and sample test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or written agreement with Buyer.

## **5. Delivery.**

**A. Shipping Dates.** Shipping dates are estimates based on Seller's present engineering and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller's books. Standard lead times vary from approximately 4 to 16 weeks, and all shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary to provide the Goods and/or to grant any credit terms in the Agreement.

**B. Method and Cost of Shipment.** Seller shall deliver the Goods by tendering the Goods on its dock for placement in the possession of Buyer's designated carrier. Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost. On Buyer's request, Seller shall obtain and send to Buyer documents necessary to enable Buyer to obtain insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all transportation costs and handling and other charges incidental to transportation. Buyer shall pay all expedite fees unless delay was exclusively due to the fault of Seller. Buyer is responsible for making any claim against the carrier and other handlers of the Goods after delivery to Buyer as provided above.

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

**A. Delayed Shipment.** If shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for Goods shall be due and payable thirty (30) days after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer shall accept shipment immediately.

**B. Delayed or Failed Delivery.** All inspection, delivery and other dates for Seller's performance are estimates only. In addition, Seller shall not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order; (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; (v) failure of Seller's suppliers to perform. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of thirty (30) days, Buyer may, at its option, terminate the Agreement as to the undelivered goods or waive such delay and establish a new delivery schedule.

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

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

**E. Storage.** If Buyer requests storage of Goods prior to final delivery, Seller will attempt to provide or arrange such storage, but a reasonable charge for storage as computed by Seller plus all expenditures incurred for space, insurance, and handling will be charged to Buyer. Invoices for Goods stored at Buyer's request will be provided at the beginning of the storage period and periodically thereafter, and payment will be due net 30 days from the date of invoice.

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

**A. Testing.** If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been

specified in the Agreement. On request, Seller will quote to Buyer additional charges required to conduct any additional procedures requested by Buyer which may be acceptable to Seller.

**B. Rejection.** All manuals, drawings, specifications, technical documentation, samples, prototypes and Goods provided by Seller shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven (7) days of receipt or other reasonable time established by Seller. Buyer shall have seven (7) days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, notice must be given to Seller so that it will arrive no later than ten (10) days after receipt of the item by Buyer. Failure to so act shall constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. **ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED.** Buyer may reject the Goods only for material non-conformities and all non-material non-conformities shall be resolved under the express warranty. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer shall return them to Seller, express, collect, within three days after such request. A failure to so return shall constitute an irrevocable acceptance. No attempted revocation of acceptance shall be effective, and Buyer shall be limited to any available remedies specifically provided in the Agreement. There shall be no limitation on the period of time in which Seller may cure any non-conformity or breach, provided it continues to make reasonable efforts to cure.

**C. Inspectors.** If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon notification by Seller that the Goods are ready for inspection or testing, Buyer shall provide at the place of manufacture, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check the Goods for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven (7) days after receiving notice from Seller, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense.

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

**E. Delivery Shortages.** Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven (7) days of receipt.

**F. Expenses.** Any expense incurred by Buyer in the inspection or testing of the Goods shall be paid by Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

## **8. Installation.**

**A. General.** All Goods shall be assembled and installed by and at the expense of Buyer.

**B. Assumption of Risk.** Buyer assumes all risks of using the Goods alone and in connection with other equipment and goods. Seller has no responsibility to determine the adequacy of the foundation, utilities, skills of Buyer's staff, or any other matter.

**C. Risks.** Buyer assumes all risk of using the Goods in any location and in connection with other equipment or improvements.

## **9. General Express Warranties.**

**A. General.** Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods to the extent manufactured by Seller shall be free from defects in materials (unless material supply is directed by Buyer) and workmanship, excluding design, at the time of delivery, and shall repair or replace Goods that fail due solely to manufacturing defects in materials (unless material supply is directed by Buyer) and workmanship, which are discovered within the period of twenty-four (24) months from the delivery date to Buyer. Under no circumstances

shall the warranty period extend beyond twenty-four (24) months from the date of delivery of the alleged non-conforming or defective Goods to Buyer. When Buyer purchases to his own specifications, Seller will not be responsible for the design and fitting of Goods, and/or the function of Goods. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Because the Goods may be subject to a wide variety of use, installation, maintenance and cleaning, the warranty is only against such defects and not against any other failures such as, but not limited to, those due to normal wear and tear, normal maintenance and unknown causes. Perishable items are excluded from this warranty against defects.

**B. Nonmaterial Changes.** Seller warrants to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated herein and Seller's published and internal standards. Seller may, in its discretion, also rely on any generally accepted industry standards.

**C. Warranty Requirements.** Seller's warranties shall apply only if the Goods: (i) have been installed, maintained and used in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods; and (v) have been fully paid for.

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

**10. Patent Warranties.** Seller disclaims any implied warranty of non-infringement. Buyer shall defend and indemnify Seller from any claim which asserts that the Goods or their inherent methods of operation, infringe any United States patent. Seller shall notify Buyer promptly of any known assertions of patent infringement and provide Buyer with assistance and information requested by Buyer for Buyer's defense of Seller.

**11. Disclaimer and Limitation of Express Warranties.** There are no express warranties other than those contained in the Agreement and they are not assignable. Any representations as to performance and other matters, except as contained in the Agreement, were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein. Seller does not warrant any portion of the Goods not conceived, designed, developed or manufactured by Seller (whether or not specified by Buyer), but Seller shall assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. Seller is not responsible for any errors or omissions or for any loss or damage resulting from any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information. Such information provided by Seller is intended for general information only. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures unless specifically contained in the Agreement.

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

**A. General.** Defective or non-conforming Goods or parts thereof discovered during the express warranty period shall be repaired, or replaced by Seller without any additional charge and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller shall determine upon examination to be defective or not in conformity with the express warranties contained herein. Seller shall also reimburse Buyer for any labor costs incurred to remove the defective or non-conforming Good(s) from the vehicle and install the replacement Good(s) in an amount not to exceed three times the price paid by Buyer for the Goods that fail due to a defect covered by Seller's express warranty. Goods cannot be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine whether the failure is due to a non-conformity or defect attributable to Seller. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price. Seller may provide such repairs itself or through its third party contractors. Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations) exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR EXEMPLARY,

PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOSS PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise. The replacement or repair of Goods by Seller does not give rise to any new warranty, and the warranty period provided for herein shall not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer.

**B. Buyer's Obligations.** Buyer must contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods. If requested by Seller, Buyer shall issue a new purchase order or amendment to Seller for replacement parts, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer must comply with Seller's return instructions (including return of the Goods) within thirty (30) days or the claim shall be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying and packing returned Goods. Goods returned without compliance with the above procedures shall be returned to the Buyer at Buyer's cost.

**C. Defense and Indemnification.** Buyer shall defend and indemnify Seller from all liability for claims, damages, losses and expenses incurred: (i) as a result of the use or disclosure of Seller's confidential or proprietary information (except in the performance of the Agreement) by Buyer or its contractors; and (ii) as a result of the advice furnished by Buyer to, and relied on by, Seller or Seller's contractors.

**D. Prior Written Consent.** Seller shall not be liable for any costs related to a recall, service campaign or similar action without its prior written consent. Seller's maximum obligation in any such activity (including the provision of replacement Goods and all other costs recoverable under this Agreement) shall not exceed five percent (5%) of Seller's average annual sales to Buyer of the specific Good.

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

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

**13. Disclaimer of Implied Warranties. SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.** There are no warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon Seller's skill nor judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in the Agreement. Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer's furnishing or approval of drawings and/or prototypes constitutes Buyer's acceptance and waiver of any claim against Seller alleging a failure by Seller to consider information provided by Buyer. Any modifications of drawings, prototypes and other work of Seller after approval by Buyer shall be at Buyer's expense at Seller's normal rates for services and materials. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement.

**14. Design, Parts, Service and Training Provided by Seller.** All design, application engineering, parts, labor, service, if any, provided by Seller or its agents and contractors (including those provided under purchase orders subsequent to the Agreement) related to the Goods (whether or not covered by warranty) are subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Buyer shall pay Seller for all non-warranty work in advance or upon such other terms as may be agreed. Seller may have access to the Goods during or after installation of the Goods. Seller is not under any duty to inspect the

Goods for any defects or any improper use or modification of the Goods nor to correct or advise Buyer of any such condition, use or modification which is observed. Any notification which may be given is voluntary and subject to all limitations and disclaimers in the Agreement.

**15. Responsibility for Safety.**

**A. Buyer's Obligations.** Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safety under all circumstances. BUYER MUST INSTALL AND USE THE GOODS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE. It is Buyer's or other user's responsibility to provide all proper dies, devices, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, setup, or service of the Goods. Buyer should comply with all applicable safety standards, laws and regulations, and other sources to insure the safe use of the Goods.

**16. Indemnification.**

**A. Third Parties.** Buyer shall indemnify Seller from any and all third party claims, damages and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller.

**B. Buyer's Indemnity for Unsafe Use.** Buyer shall notify Seller promptly, and in any event within thirty (30) days, of any alleged accident or malfunction involving Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods and Buyer's reports regarding the Goods for Seller's inspection. If Buyer fails to comply with the obligations set forth in this subsection including, but not limited to, the requisite notice and cooperation, all warranties of Seller shall become automatically void and Buyer shall indemnify and save Seller from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of the Goods and such alleged accident or malfunction regardless of whether such Goods are defective and non-conforming.

**17. Security Interest.** In addition to any security interest granted by other law, Buyer grants a security interest to Seller in all Goods and Buyer's Property, and documents related thereto, and proceeds and products from Buyer's Property, to secure all obligations of Buyer to Seller, whether or not arising under the Agreement. Seller may file a financing statement and at Seller's request, Buyer shall sign financing statements and other documents, evidencing and confirming the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Buyer shall provide a lien waiver from all third parties to whom the Goods may be delivered. Buyer shall provide a landlord's waiver of any lien rights at the premises to which the Goods are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others and take other actions to repossess or render inoperable all Goods in which it has a security interest. In case of a default by Buyer, Buyer irrevocably appoints Seller as its agent to obtain possession of the Goods and documents related thereto. Seller may install and activate procedures or devices to make the Goods or Software non-operative upon Buyer's default. The Goods shall be and remain strictly personal property and retain their character as such, no matter whether on permanent foundation or in whatever manner affixed or attached to building or structure, or for what purpose the Goods may be used. Buyer shall maintain the Goods in a segregated area and not co-mingle any Goods which are not fully paid. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate or grant a security interest in any Goods which are subject to the Agreement if payment therefor shall not have been made in full to Seller. Buyer shall immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which has not been paid to Seller.

**18. Proprietary Information.**

**A. Buyer's Rights to Confidentiality.** Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer or Seller to be confidential or a trade secret unless clearly and

conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

**B. Seller's Rights to Confidentiality.** All proposals, plans, pricing, cost build-up and other information furnished by Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any third party or used by Buyer except as may be necessary for use of the Goods.

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

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

**E. Buyer's Obligations.** Buyer shall treat as confidential any business proposal from Seller and all technology which shall be made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to Intellectual Property (defined in Section 20), drawings, schematics, specifications, bills of material, pricing, cost build-up, test results, analysis, recommendations, models, and designs, and Buyer shall use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer shall not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology and information. Buyer shall maintain, for Seller's inspection, written records which shall include the names and address of such employees and contractors granted such access. Buyer shall indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer.

**19. Intellectual Property.** Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations hereunder shall remain the exclusive property of Seller and its licensors, as the case may be. Nothing in this Agreement shall be deemed to grant Buyer any license, ownership or any other rights in such Intellectual Property. Any transfer or licensing of rights in Intellectual Property from Seller to Buyer will be documented in a separate signed agreement. The term "Intellectual Property" shall include without limitation all of the following: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in progress, research and development information; and (v) all other proprietary rights relating to the foregoing.

**20. Buyer's Property.** Buyer's Property is defined as property fully paid for by Buyer and furnished to Seller. Buyer shall insure all Buyer's Property (including materials, fixtures, tooling and other property) against all risks and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use or storage of such property.

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

**22. Applicable Regulations.** Buyer shall not engage in any transaction with respect to the Goods, by way of resale, lease, shipment or otherwise, which violates any applicable statute or regulation.

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

**24. Breach and Cancellation.**

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

**B. Compensation.** Seller shall be awarded interest, consequential and incidental damages and costs (such as interest and actual attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.

**C. Security.** Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment. If such security is not posted, Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.

**D. Cumulative Rights and Limitations.** All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

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

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

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

**H. Termination by Seller.** This Agreement is one of indefinite duration and is terminable by Seller upon providing Buyer with commercially reasonable notice but, under no circumstances, will Seller be required to give Buyer more than four (4) months' notice of termination.

**25. Consequential, Incidental, and Other Damages.** BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, SPECIAL, RELIANCE, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED BY LAW OR OTHERWISE. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder, and under no circumstance shall Buyer recover more than the purchase price. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR SUCH OTHER EVENT GIVING RISE TO THE CLAIM.

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

**27. Force Majeure.** Seller shall not be responsible for any delay or failure in any performance due, without limitation, to acts of God, war, warlike conditions, blockade, embargoes, riots, governmental restriction, labor disturbances, unavailability of anticipated usual means of supplies, transportation or loading facilities, wrecks, epidemics, quarantine, fire, flood, earthquake, explosion, a failure or refusal to perform by a sub-supplier of Seller, any unforeseen change in circumstances, or any other causes beyond the reasonable control of the Seller.

**28. Commercial Activity; Absence of Immunity.** Buyer represents it is subject to civil and commercial law with respect to its obligations and the making and performance by it of the Agreement constitute private and commercial acts rather than public or governmental acts. Buyer represents that it and its property are not entitled to immunity on the grounds of sovereignty or otherwise from the jurisdiction of any court or from any action, suit, set-off or proceeding, or service of process in connection otherwise, arising under the Agreement.

**29. Limitations of Actions.** A proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the Agreement cannot be filed nor maintained by Buyer unless: (i) it is commenced within one year after the cause of action has accrued; (ii) Buyer has given timely written notice to Seller of the details of its claim as provided herein and has allowed Seller a commercially reasonable time to cure; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of warranty or any other provision of the Agreement shall accrue no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required by the Agreement.

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

**31. Assignment.** No right or interest in the Agreement may be assigned by Buyer without the prior written consent of the Seller. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this section.