

ELLWOOD GROUP

TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS.** As used in these Terms and Conditions of Sale (these “Terms”): (a) the “Sales Sheet” is the Quotation or Sales Order Acknowledgment, as applicable, accompanying or incorporating by reference these Terms; (b) this “Agreement” is the collective terms and conditions of the Sales Sheet and these Terms; (c) “Seller” is the corporate entity identified as the seller on the Sales Sheet and shall also include, where appropriate, all employees, agents, and representatives of Seller for purposes of the limitations on liability and remedies in Section 9 hereof and for purposes of Section 10 hereof; (d) “Buyer” is the party identified as the buyer on the Sales Sheet; (e) “Goods” are the goods identified on the Sales Sheet that are to be sold by Seller to Buyer; (f) “Services” are the services identified on the Sales Sheet that are to be sold by Seller to Buyer; (g) “Serviced Articles” are the tangible items on which Services will be performed; (h) “Third Party” shall include every person, government, or other entity other than Seller and Buyer and (i) terms such as “herein,” “hereof,” and the like shall mean this Agreement in its entirety. Whenever a term defined by the Pennsylvania Uniform Commercial Code (the “Code”) is used in these Terms and not otherwise defined in these Terms, the definition contained in the Code shall control.

2. EXCLUSIVE TERMS, CONDITIONS, LIMITATIONS OF CONTRACT AND MODIFICATIONS.

(a) If the applicable Sales Sheet is a Quotation: This Agreement constitutes an offer by Seller to sell the Goods and Services described or referenced in the Sales Sheet (the “Offer”) and is *not* an acceptance of any offer of Buyer. Acceptance by Buyer of this Agreement, which, upon acceptance, constitutes the formation of a contract for Seller to sell and Buyer to buy Goods and Services (“Contract”), is expressly and exclusively limited to the terms, conditions, and limitations hereof or referenced in this Agreement.

If the applicable Sales Sheet is a Sales Order Acknowledgment: This Agreement acknowledges that Seller has received Buyer’s order for Goods and/or Services. The terms, conditions, and limitations of sale applicable to this Agreement are (i) if a Seller quotation was sent, those set forth in Seller’s quotation and any terms and conditions accompanying same or referenced therein and those set forth in this Agreement, which is deemed to restate the relevant terms, conditions and limitation of sale set forth in the quotation and the terms and conditions accompanying same or referenced therein

except that any additional or different terms in this Agreement shall take precedence over Seller’s quotation or (ii) if a Seller quotation was not sent, those set forth in this Agreement, and Buyer’s acceptance of this Agreement is expressly and exclusively limited to such terms, conditions and limitations. Acceptance by Buyer of this Agreement constitutes the formation of a contract for Seller to sell and Buyer to buy Goods and Services (“Contract”).

(b) This Agreement is not an acceptance of any offer or counter-offer of Buyer. This Agreement also serves as a written objection to any additional, different, or inconsistent terms, conditions, or limitations contained in or incorporated by reference in any forms, emails, purchase order, click-through terms on Buyer’s website or other document of Buyer, including, without limitation, any such documents previously received from Buyer or any response from Buyer to this Agreement. If, notwithstanding the foregoing, (i) the applicable Sales Sheet is either a quotation or a sales order acknowledgment and this Agreement is deemed by a court or arbitrator to be an acceptance of an offer or counter-offer by Buyer, then such acceptance is expressly made conditional on Buyer’s assent to the terms, conditions, and limitations set forth in this Agreement or (ii) the applicable Sales Sheet is a sales order acknowledgment and this Agreement is deemed by a court or arbitrator to constitute an offer or counter-offer by Seller, then acceptance by Buyer of such offer is expressly limited to the terms, conditions, and limitations set forth in this Agreement. Except as set forth in Section 3 below, assent or acceptance of the terms, conditions and limitations set forth in this Agreement in any case shall be deemed to occur and a Contract formed upon any of the following: (A) Buyer providing such acceptance or assent in writing; (B) Buyer receiving and retaining this Agreement for ten days without objection or (C) Buyer accepting delivery of any of the Goods or Serviced Articles, making full or partial payment or furnishing to Seller specifications, drawings, delivery dates, material or tooling, or Buyer otherwise indicating acceptance of the terms hereof.

(c) In any case, the terms, conditions, and limitations set forth in this Agreement are the only terms, conditions, and limitations to which Seller will agree and supersede all prior statements, proposals, negotiations, representations, and agreements (other than, if the accompanying Sales Sheet is a sales order acknowledgment, those set forth in any prior Seller quotation, if such quotation is deemed to constitute

the offer by Seller which Buyer is deemed to have accepted) and shall constitute the entire agreement and Contract between Seller and Buyer. Electronic commerce transactions between Buyer and Seller will be solely governed by the terms and conditions of this Contract, and any terms and conditions on Buyer's website or other internet site or contained in emails will be null and void and of no legal effect on Seller.

(d) The terms, conditions, and limitations set forth in this Agreement can be modified, altered, or added to only by a subsequent written instrument signed by an authorized officer of Seller which shall set forth with particularity and not through incorporation by reference the precise terms, conditions, and limitations modified, altered, or added to with specific written reference to the terms, conditions, and limitations of this Agreement which are modified, altered, or added to. No prior inconsistent course of dealing, course of performance, or usage of trade, if any, shall constitute a waiver of or serve to explain or interpret the terms, conditions, or limitations herein.

3. **DURATION OF OFFER (applicable to Sales Sheet Quotations only).** The Offer shall expire at the option of Seller unless an acceptance is received at Seller's headquarters within 30 days from the date of the Sales Sheet. Acceptance will be deemed to occur upon the first of (a) Buyer signing and delivering this Agreement to Seller; (b) Buyer notifying Seller by telephone or otherwise to commence production; (c) Buyer issuing a purchase order in response to the Offer; (d) Buyer making any full or partial payment; or (e) Buyer furnishing to Seller specifications, drawings, delivery dates, material, or tooling, or Buyer otherwise indicating acceptance of the terms hereof. The Offer is subject to change or revocation by Seller at any time prior to acceptance.

4. **PRICES.** The prices and charges invoiced shall be Seller's prices and charges delivered in writing to Buyer by Seller or set forth or referenced in the Sales Sheet. If no prices or charges are provided by Seller or set forth on the Sales Sheet, the prices and charges for the Goods and Services will be Seller's list price for such Goods and Services in effect at the time of Delivery.

5. **TERMS OF PAYMENT.**

(a) All payments shall be in United States currency unless otherwise specified in writing by Seller.

(b) The net amount due shall be paid in full in accordance with the terms of payment set forth or referenced in the Sales Sheet. In the absence of such

provisions in, or referenced in, the Sales Sheet, the net amount due shall be paid in full within 30 days of the date of invoice with a discount of ½% if paid within 10 days of the date of invoice. Amounts unpaid after 30 days after the due date shall accrue interest, compounded semiannually, at the annual rate of 18%, or the maximum legal rate, if less. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees.

(c) The price is payable on the terms set forth herein without deduction, set-offs, counterclaims, backcharges, or any other charges or claims of Buyer of whatsoever nature, and the obligations of Buyer to make timely payment to Seller shall remain unimpaired regardless of disputes which may arise between Buyer and Seller or any Third Parties.

6. **PAYMENT OF FREIGHT, TRANSPORTATION, TAXES, AND OTHER GOVERNMENTAL CHARGES BY BUYER.**

Unless otherwise specified or referenced in the Sales Sheet or otherwise agreed by Seller in writing, the price of the Goods and Services covered by this Agreement does not include present or future freight charges and transportation and delivery costs, if applicable, nor does it include transportation taxes and sales, use, excise, or any similar tax or other governmental charge upon or with respect to the sale, purchase, provision, manufacture, processing, fabrication, delivery, storage, use, consumption, or transportation of such Goods, Services and Serviced Articles. The amount of any freight charges, transportation and delivery costs, and transportation taxes, and any present or future sales use, excise, gross receipts, or any similar tax or other governmental charge applicable to this Agreement and to the sale and/or furnishing of the Goods and Services required by this Agreement shall be deemed extra charges and shall be paid by the Buyer, or in lieu thereof in the case of taxes, Buyer shall provide Seller with a tax exemption certificate acceptable to applicable taxing authorities. If, for any reason, any such certificate is not accepted by such authorities or such acceptance is revoked, Buyer shall indemnify and hold Seller harmless as provided in Section 10 hereof. Whenever applicable, such tax or taxes or other governmental charges will be added to the invoice as a separate charge to be paid by Buyer. All licenses and permits shall be secured by Buyer at Buyer's expense unless the responsibility is assumed in writing by Seller.

7. **DELIVERY, FORCE MAJEURE, RISK OF LOSS, TITLE, INSPECTION AND REJECTION.**

(a) Unless otherwise specified or referenced in this Quotation, all deliveries shall be Ex Works (Incoterms 2010), Seller's facility. Freight, transportation and delivery charges shall be arranged and paid by Buyer to ultimate points of destination within the continental United States. Goods and Serviced Articles will be deemed delivered by Seller upon Seller's completion of the delivery obligations under ExWorks (Incoterms 2010) (completion of such being "Delivery" and the date upon which Delivery occurs, the "Delivery Date").

(b) Buyer shall remove the Goods or Serviced Articles from Seller's facility within 30 days after Delivery. Unless otherwise specified or referenced in the Sales Sheet, if Seller fails to accept delivery and remove the Goods or Serviced Articles within such period of time, (i) Seller may, at its discretion use commercial carriers or its own trucks for shipment or store the Goods or Serviced Articles until Buyer picks them up and (ii) Buyer must promptly reimburse Seller for any such shipping or storage costs and any other costs, damage or expense incurred by Seller.

(c) Estimated Delivery Dates are provided to Buyer on the basis of Seller's best estimate for informational purposes only and are not guaranteed. Any failure by Seller to meet any estimated Delivery Date will not constitute a breach of this Agreement. Without limiting the foregoing, Seller shall not be liable for loss or damage resulting from delay or failure of Delivery or performance due to Seller's other production requirements or plant conditions; to strike, differences with workmen, lockout, or any labor shortage or difficulty; to fire, flood, accident, quarantine restrictions, earthquake, tornado, epidemic, or other casualty or act of God; to war, riot, civil disobedience, or other emergency, or acts of civil or military authorities; to compliance with orders, priorities, or requests of any government agencies or courts or arbitrators; to embargoes; to failure of suppliers of Seller to meet delivery schedules, or any shortage of raw materials however caused; to inability or delay in obtaining labor or materials; to inability or delay in obtaining cars, trucks, fuel, or machinery necessary for transportation; or to any cause, condition, or contingency beyond the reasonable control of Seller, whether similar to those enumerated or not. Upon the occurrence of any of the previously described events, Seller may apportion its production and all stock material among its customers in such manner as it may consider equitable.

(d) Risk of loss and, with respect to Goods, title shall pass to Buyer upon Seller's Delivery of the applicable Good or Serviced Article.

(e) Seller shall retain a purchase money security interest in all Goods and Serviced Articles until the complete purchase price and all additional costs and charges, as adjusted, are paid by Buyer, and may make any Third Party notification or filing deemed necessary to protect and perfect such interest.

(f) Buyer shall pay all insurance costs associated with shipping, and Buyer shall be responsible for filing and pursuing claims with carriers for loss or damage in transit.

(g) Buyer shall be responsible for obtaining all necessary transportation licenses and permits, at Buyer's expense.

(h) Buyer shall inspect the Goods and Serviced Articles within 30 days after Delivery and shall only be entitled to reject Goods or Service Articles that do not conform to the limited warranty set forth in Section 9. Buyer shall notify Seller in writing of any rejected Goods or Serviced Articles within such time period; otherwise, Buyer will be deemed to have waived any nonconformity with the limited warranty in Section 9 that was or could have been identified during such inspection period. All claims for shortages must be made in writing within fifteen (15) days after Delivery and specify with particularity the exact shortage complained of.

8. **PACKAGING REQUESTS; LOADING.** Seller will use reasonable means to comply with any packaging requests made in writing by Buyer, provided, however, that any costs due to compliance with such requests shall be deemed extra charges to be paid by Buyer. If no such requests are made by Buyer, Seller shall use its standard packaging for the method of transportation contemplated for such Goods and Serviced Articles. Buyer shall be responsible for loading the goods and all costs associated therewith.

9. **LIMITED WARRANTY; LIMITATIONS OF WARRANTY; LIMITATION ON DAMAGES.**

(a) Warranty.

Seller warrants that all Goods sold and Serviced Articles serviced pursuant hereto will conform to the express specifications set forth or referenced in the Sales Sheet, for a period of 1 year from the Delivery Date, subject to

commercial tolerances and except as provided in this section.

THIS 1-YEAR WARRANTY AS TO CONFORMITY TO THE EXPRESS SPECIFICATIONS SET FORTH OR REFERENCED IN THE SALES SHEET IS IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE GOODS AND SERVICES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE DISCLAIMED. **NO PROMISE MADE BY ANY EMPLOYEE, AGENT, OR REPRESENTATIVE OF SELLER SHALL CONSTITUTE A WARRANTY OR GIVE RISE TO ANY LIABILITY OR OBLIGATION.**

SELLER SHALL HAVE NO LIABILITY WITH RESPECT TO GOODS OR SERVICED ARTICLES FURNISHED PURSUANT HERETO EXCEPT FOR BREACH OF ITS 1-YEAR WARRANTY OF CONFORMITY TO THE EXPRESS SPECIFICATIONS SET FORTH OR REFERENCED IN THE SALES SHEET. BUYER'S SOLE REMEDY FOR BREACH OF WARRANTY, INCLUDING REJECTIONS UNDER SECTION 7(h), SHALL BE STRICTLY AND EXCLUSIVELY LIMITED TO THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR SERVICED ARTICLES OR, AT SELLER'S OPTION, TO A REFUND OF THE PORTION OF THE PURCHASE PRICE ALLOCABLE TO SUCH NONCONFORMING GOODS OR SERVICED ARTICLES. **IN NO EVENT SHALL SELLER BEAR THE COSTS OF REMOVAL AND/OR REINSTALLATION OF NONCONFORMING GOODS OR SERVICED ARTICLES.**

THE WARRANTY SET FORTH IN THIS SECTION IS CONDITIONED UPON (A) PROPER STORAGE, INSTALLATION, USE, OPERATION AND MAINTENANCE OF THE GOODS AND SERVICED ARTICLES AND (B) MODIFICATION OR REPAIR OF GOODS AND SERVICED ARTICLES ONLY AS AUTHORIZED BY SELLER IN WRITING. FAILURE TO MEET ANY SUCH CONDITIONS RENDERS THE WARRANTY IN THIS SECTION 9 NULL AND VOID. SELLER IS NOT RESPONSIBLE FOR NORMAL WEAR AND TEAR.

The foregoing, together with Section 12 hereof, constitutes a final expression by Seller of its warranty. Such warranty cannot be modified or

supplemented unless modified or supplemented in writing by Seller.

(b) Limitations on Damages.

IN NO EVENT SHALL THE LIABILITY OF SELLER HEREUNDER EXCEED THE PURCHASE PRICE OF THE GOOD OR SERVICE. IF BUYER PLACES MULTIPLE ORDERS UNDER THIS CONTRACT, THE LIABILITY OF SELLER SHALL NOT EXCEED THE PURCHASE PRICE OF THE INDIVIDUAL GOOD OR SERVICE THAT IS THE SUBJECT OF DISPUTE.

EXCEPT FOR SELLER'S OBLIGATION, IN ACCORDANCE WITH SECTION 9(a), TO REPAIR OR REPLACE GOODS OR SERVICED ARTICLES THAT DO NOT CONFORM TO THE LIMITED WARRANTY IN SECTION 9(a) OR, AT SELLER'S OPTION, TO A REFUND OF THE PORTION OF THE PURCHASE PRICE ALLOCABLE TO SUCH NONCONFORMING GOODS OR SERVICED ARTICLES, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE, OR OTHER DAMAGES, INCLUDING WITHOUT LIMITATION, FOR LOST PROFITS OR REVENUES, DIMINUTION IN VALUE, DOWNTIME, COSTS OF REPLACEMENT GOODS OR SERVICES, OR FOR CLAIMS OF BUYER'S CUSTOMERS OR OTHER THIRD PARTIES IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, CONTRIBUTION, INDEMNITY, INFRINGEMENT, STATUTE, OR OTHERWISE NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10. INDEMNIFICATION. Buyer shall indemnify, defend and save Seller harmless with respect to:

(a) all demands, claims, actions, or judgments of a Third Party against Seller, directly or indirectly, for any consequential, material, special, liquidated, punitive, or other damages, regardless of whether such demand, claim, action, or judgment is based on theories of contract, tort, negligence, strict liability, warranty, indemnity, contribution, statute, or otherwise, including without limitation, all demands, claims, actions, and judgments relating to injury to and/or death of any and all persons and for loss of and/or damage to property arising from use, handling, repair, adjustment, operation, modification, or

conversion of Goods or Serviced Articles covered by this Contract; and

(b) all demands, claims, actions, or judgments of a Third Party against Seller, directly or indirectly, based on a theory of infringement or violation of patents, trademarks, trade names, trade secrets, copyrights, or the like when such demand, claim, action, or judgment is based in whole or in part directly or indirectly, on Seller's compliance with specifications provided by Buyer.

This indemnification and promise to save Seller harmless extends to instances where Seller is alleged or found to be negligent and includes, without limitation, reasonable attorneys' fees and all other expenses incurred by Seller in connection therewith. Notwithstanding Buyer's obligation to defend Seller, if Seller, at its option, chooses to defend such a demand, claim, action, or judgment, Buyer agrees to cooperate with and assist Seller in its defense in whatever reasonable ways Seller chooses.

11. BUYER PROPERTY; TECHNICAL DATA, ADVICE, SPECIFICATIONS; SELLER PROPERTY.

(a) Buyer shall promptly provide any and all Buyer or Third Party information and materials that Seller requests or requires for provision of the Goods and Services hereunder. Buyer shall, at its expense, arrange for shipment of any items on which Services are to be performed to Seller's facility. Seller shall not assume any risk of loss with respect to such items until Seller receives such items at its facility.

(b) Any technical data, production data, production estimates, design and performance figures, mechanical properties, advice, drawings, and specifications furnished by Seller with respect to Goods supplied and the use of such items is given without charge, and Seller assumes no obligation or liability for any damages, consequential, incidental, special, liquidated, punitive, or otherwise for such data, estimates, figures, advice, drawings, and specifications given or results obtained irrespective of whether claims or actions with respect to such are based upon contract, tort, negligence, strict liability, warranty, contribution, indemnity, infringement, statute, or otherwise. All of such data, estimates, figures, properties, advice, drawings, and specifications shall be given and accepted at Buyer's risk. Any such data, estimates, figures, properties, advice, drawings, and specifications shall remain the exclusive property of Seller, are given to Buyer for use only in connection with the Goods and Serviced Articles supplied, and may not be used for any other

purpose, and shall not be disclosed by Buyer or its agents or employees without the written consent of Seller.

(c) Except as may be required by law or court order or except to the extent publically available through no fault of Buyer, Buyer agrees to keep and maintain confidential any and all proprietary information received from Seller, including, without limitation, all business and marketing information, pricing information, data, drawings, processes, designs and reports and other technical information, and to not make use of such information, without the prior written consent of Seller, except in connection with this Contract.

(d) Except for developments, inventions, discoveries, designs and improvements created for Buyer's exclusive use, Seller shall own all rights, title and interest in or to any developments, inventions, discoveries, designs or improvements created during, or that arise out of, the performance of this Contract, including without limitation, all improvements, modifications and efficiencies to Seller's manufacturing process.

12. CLAIMS.

(a) In order to insure prompt inspection by Buyer and to estimate improper methods of storage and other abuse of Goods sold and except as otherwise required by Section 7(h), Seller must be notified in writing concerning the nonconformity of the Goods to the Contract as soon as practicable but in no event later than thirty (30) days after Buyer discovers or should have discovered such nonconformity, subject, moreover, to the 1-year period of warranty set forth above. Such written notice shall set forth with particularity the nature and extent of the nonconformity complained of. Immediate written notice must be given to the carrier's agent at destination in the event of damage or loss in transit.

(b) Failure to furnish such written claim within the period of time prescribed in Section 7(h) or Section 12(a), as applicable, shall terminate all liability of Seller. Seller must be given the opportunity upon written demand to inspect the Goods claimed to be nonconforming to this Contract.

(c) Goods which do not conform to the Contract shall be returned to Seller upon receipt of Seller's authorization to do so and at Seller's expense.

(d) Buyer must demonstrate to the reasonable satisfaction of Seller that any alleged nonconformity to the Contract was solely caused by a breach by Seller of the 1-year warranty as to the conformity to

the express specifications set forth above. In no event shall any claim of Buyer be set-off against outstanding or subsequent invoices of Seller without Seller's written consent.

13. CHANGES, TERMINATION, OR CANCELLATION.

(a) Upon formation of the Contract, Seller shall have the right to change, terminate, or cancel the Contract because of any circumstances set forth in Section 7(c) hereof or other circumstances which may be deemed by Seller to require allocation of production or delivery by Seller, including but not limited to the effect of any laws, ordinances, regulations, directives, or administrative or other governmental actions, the compliance with which Seller shall deem to require such change or cancellation. No such change or cancellation by Seller shall be deemed to be a breach of any provision, term, condition, or covenant of the Contract.

(b) After formation of the Contract, the Contract shall not be changed or modified by Buyer except with Seller's written consent, which consent shall be deemed to be conditioned upon compliance with the terms and conditions hereof and any adjustments to the purchase price and estimated Delivery Dates determined in Seller's discretion.

(c) After formation of the Contract, Buyer may not terminate the Contract without Seller's prior written consent. Unless otherwise agreed by Seller, upon cancellation by Buyer or Buyer's failure to furnish data or specifications when requested or required, Buyer shall pay Seller all costs incurred by Seller in performing under the Contract plus an amount for lost profits equal to fifteen percent (15%) of the Contract price (which, unless Buyer is able to demonstrate a larger lost profit percentage, Buyer and Seller agree to be a reasonable estimate of such lost profits given the complexity in calculating such amount). If Buyer insists on termination of the Contract without Seller's consent or if Buyer fails to furnish data or specifications when requested, such shall be a breach of this Contract, and, in addition to the amounts payable under this subsection, Buyer shall be entitled to any other damages available under this Agreement, at law or in equity.

14. BUYER'S RESPONSIBILITY, ANTICIPATORY BREACH, AND DEFAULT IN PAYMENT.

(a) If Seller has any doubt as to Buyer's responsibility, or if Buyer fails to fulfill the terms and conditions of payment herein or referenced in this Agreement, Seller may decline to make any further

Delivery hereunder, except upon receipt of satisfactory security including but not limited to full or partial prepayment.

(b) In the event of anticipatory breach by Buyer or if the financial condition of Buyer at any time does not, in the reasonable judgment of Seller, justify continuance of the work to be performed by Seller hereunder on the terms of payment originally specified, Seller may require full or partial payment in advance and, in the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled to cancel any agreement between Buyer and Seller (including this Agreement) and any work then outstanding and, in addition to payment of the purchase price for Goods and Services completed prior to cancellation, Buyer shall reimburse Seller for any losses, expenses, and charges incurred as a result of such cancellation.

(c) If Buyer shall fail to make payments on this Agreement or any other agreement between Buyer and Seller in accordance with the terms hereof or thereof, Seller may defer further Deliveries until such payments are made or, at its option, cancel the Contract with respect to any balance. If pursuant to this provision, Seller shall defer any Deliveries or cancel in whole or in part the Contract then, in addition to payment of the purchase price for Goods and Services completed prior to cancellation or deferral, Buyer shall be liable for and reimburse Seller for all losses, expenses, and damages, including any and all direct and consequential damages, incurred by Seller as a result of such deferral or cancellation.

15. NO WAIVER. Failure by Seller to enforce any of the terms, conditions, and limitations of this Agreement shall not constitute a waiver thereof or a waiver of any other terms, conditions, or limitations herein or referenced in the Sales Sheet, and the failure of Seller to exercise any rights arising from default of Buyer or otherwise shall not constitute a waiver of such right or any other right. The terms, conditions, and limitations herein or referenced in the Sales Sheet may be enforced and rights of Seller enforced at any time in whole or in part.

16. BINDING AGREEMENT. Any goods delivered shall be subject only to the terms, conditions, and limitations contained herein or referenced in the Sales Sheet. Without limiting the provisions of Section 2, by acceptance of goods by Buyer, Buyer consents to and accepts or reaffirms, as applicable, all of the terms, conditions, and

limitations contained herein or referenced in the Sales Sheet.

17. **NO ASSIGNMENT.** Buyer may not, by operation of law or otherwise, assign its rights or delegate its obligations hereunder to any Third Party without the prior written consent of Seller, and any such purported or attempted assignment or delegation shall be null and void.

18. **APPLICABLE LAW AND JURISDICTION; SAVINGS CLAUSE.** The local law of the Commonwealth of Pennsylvania, excluding the United Nations Convention on Contracts for the International Sales of Goods, shall apply in interpreting the terms, conditions, and limitations of this Agreement and shall apply to all questions arising in connection with this Agreement, the acceptance hereof, the sale of goods covered hereby, the Contract, and any claims related to the foregoing. Any proceeding arising out of this Agreement, the acceptance hereof, the sale of goods covered hereby, the Contract, or any claims relating to the foregoing may be brought by Buyer only in the Court of Common Pleas of Lawrence County, Pennsylvania, or the United States District Court for the Western District of Pennsylvania. If any clause or provision of this Agreement is held in violation of applicable law, this Agreement shall be interpreted as if such provisions are in full force and in effect to the extent legally permitted or, if such clause or provision is prohibited in its entirety, it shall be null and void, and the Agreement as so modified shall remain in full force and effect.

19. **STATUTE OF LIMITATIONS.** SELLER AND BUYER AGREE THAT UNLESS A SHORTER PERIOD OF TIME IS OTHERWISE SET FORTH IN THIS AGREEMENT, ANY ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS CONTRACT OR THE SALE OF GOODS OR SERVICES MUST BE BROUGHT WITHIN ONE YEAR OF THE DATE ON WHICH THE GOOD OR SERVICED ARTICLE IN QUESTION WAS DELIVERED TO BUYER OR THE DATE ON WHICH THE EVENT GIVING RISE TO THE ACTION OCCURRED, WHICHEVER IS EARLIER.

20. **INTERNATIONAL TRADE.** Buyer acknowledges and agrees that its use, reexport and other transfer of items hereunder are subject to U.S. export control laws and regulations including without limitation the Export Administration Regulations, the International Traffic in Arms Regulations, regulations promulgating financial transaction restrictions administered by the United States

Department of the Treasury, Office of Foreign Asset Controls or any of the laws, rules and regulations regarding prohibited and restricted parties, the International Emergency Economic Powers Act, the United States Export Administration Act, the United States Arms Export Control Act, the United States Trading with the Enemy Act, and all regulations, orders and licenses issued thereunder (collectively the "Export Laws"). Buyer shall comply strictly with all such Export Laws and Buyer shall assist Seller in complying with all such Export Laws. Buyer represents that it is not, and to the best of its knowledge its customers, its customer's end-users and its agents are not, subject to any U.S. or other government sanction, restriction or rule that would prohibit the sale, export or extension of credit with respect to the purchase, of the Goods or Serviced Articles hereunder. Upon Seller's request, Buyer shall provide all end-user and end-use information that it can obtain with commercially reasonable efforts. Seller makes no representation with respect to the country of origin, qualification for duty preference (or similar program), specific harmonized tariff schedule number, export jurisdiction, U.S. munitions list category, export control classification number, export authority or any other international trade or export matter relating to any Good or Serviced Article. Seller retains all of its duty drawback rights, and any attempt by Buyer to transfer or claim such rights will be null and void. Buyer shall not, itself or through any Third Party, designate Seller as the U.S. "principal party in interest" or file electronic export information with the U.S. Bureau of Census in Seller's name unless otherwise agreed in writing by Seller. Seller shall not be the importer of record with respect to any transaction governed by this Contract (unless Seller otherwise agrees in writing). In the event Buyer, through any act or omission of Buyer, or any third party acting on Buyer's behalf, breach any of the above provisions with respect to Seller's duty drawback rights, "principal party in interest", filing of electronic export information in Seller's name, and/or importer of record designation, then Buyer shall immediately take such actions as may be necessary to correct such breach including without limitation making such filings as may be necessary or advisable to correct such breach and cooperating with Seller's efforts to correct such breach in a prompt and timely manner, at Buyer's sole cost and expense.

21. **CUMULATIVE REMEDIES.** Seller's rights and remedies set forth in this Agreement are in addition to any other rights and remedies that may be available to Seller under other provisions of this Agreement, at law or in equity.

22. **SEVERABILITY.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal or unenforceable, such provision shall be modified to effect the original intent of the parties as closely as possible in accordance with applicable law.