

**LINCOLN ELECTRIC AUTOMATION SYSTEMS GROUP**  
**TERMS AND CONDITIONS RELATING TO THE SALE OF GOODS**

Effective Date: April 2016

**Contents**

1.	DEFINITIONS.....	3
2.	SCOPE OF THE TERMS AND CONDITIONS.....	4
3.	SYSTEM BUILD PROCEDURE [This Section Applies to Systems and Environmental Products Only].....	5
A.	Project Schedule and System Design.....	5
B.	Buyer Change Orders .....	5
C.	System Run-off .....	6
D.	Installation and Other Services By Seller.....	6
4.	SYSTEM PRICE AND PAYMENTS.....	6
5.	SYSTEM SHIPPING AND DELIVERY.....	7
6.	SYSTEM POST-INSTALLATION SERVICE AND SUPPORT .....	8
7.	SYSTEM TRANSFER OF TITLE AND RISK OF LOSS .....	8
8.	BUYER'S PROPERTY FOR THE SYSTEM .....	8
9.	PURCHASE MONEY SECURITY INTEREST FOR GOODS .....	8
10.	COMPONENT PARTS AND CONSUMABLES.....	8
A.	Purchase of Component Parts and Consumables .....	8
B.	Delivery of Component Parts and Consumables.....	9
C.	Title and Risk of Loss .....	9
11.	STATEMENT OF WARRANTY .....	9
A.	Limited System Warranty .....	9
B.	Limited Warranty for Component Parts.....	10
C.	Limited Warranty for Consumables.....	11
D.	Service Warranty .....	11
E.	Warranty Limitations .....	11
12.	CONFIDENTIALITY.....	12
13.	INTELLECTUAL PROPERTY OWNERSHIP .....	12
14.	INTELLECTUAL PROPERTY INDEMNITY.....	12
A.	By Seller.....	12
B.	By Buyer.....	13
15.	INDEMNIFICATION AND INSURANCE .....	13

16. FORCE MAJEURE..... 13

17. CANCELLATION OF ORDERS BY BUYER ..... 14

18. TERMINATION FOR DEFAULT ..... 14

19. COMPLIANCE WITH LAWS..... 15

- It is familiar with the provisions and restrictions contained in the FCPA. .... 15
- It shall comply with the FCPA in all respects ..... 15

20. CHANGES ..... 16

21. LIMITATION ON CAUSES OF ACTION..... 16

22. COMPUTER SYSTEM SECURITY/UNAUTHORIZED DATA ACCESS. .... 16

23. LIMITATIONS ON LIABILITY ..... 16

24. CUSTOMER ASSISTANCE POLICY ..... 17

25. RELATIONSHIP OF THE PARTIES ..... 17

26. SURVIVAL OF PROVISIONS ..... 17

27. SOFTWARE ..... 17

28. ENTIRE AGREEMENT; MODIFICATION ..... 18

29. DISPUTES AND APPLICABLE LAW ..... 18

30. NO ASSIGNMENT ..... 18

31. SEVERABILITY ..... 18

## 1. DEFINITIONS

- **“Agreement”** means these Terms and Conditions Relating to the Sale of Goods (“Terms and Conditions”) together with the Order Acknowledgment (defined below). Notwithstanding the foregoing, if no Order Acknowledgment is issued, Seller’s Final Proposal (as identified by Seller) or sales invoice(s), together with these Terms and Conditions, shall comprise the entire Agreement.
- **“Buyer”** means the person or entity who is buying, or who is contracting to buy the Goods and/or Services.
- **“Component Parts”** means those constituent parts integrated into the System by Seller.
- **“Consumables”** means any material that is consumed within the welding/cutting or other processes.
- **“End User”** means the person or entity who ultimately uses or possesses the Goods without any intention of resale. The End User may be the Buyer.
- **“Goods”** means any saleable item manufactured by Seller and/or listed in Seller’s Product List for delivery, sale, or use as the context requires. Goods include System, Component Parts, and Consumables.
- **“Limited System Warranty”** is the limited warranty provided by Seller and set forth in Section 3.A hereof.
- **“Order Acknowledgment”** means a written document, as may be amended from time to time, generated by Seller that sets forth the terms for the sale of Goods and/or Services as agreed by Buyer and Seller. The Order Acknowledgment includes and incorporates Seller’s Final Proposal by reference.
- **“Price”** means the amount agreed to by Seller and Buyer for the Goods and/or ancillary Services as further outlined in an Agreement.
- **“Product List”** means the comprehensive listing of all Goods and/or ancillary Services offered for delivery, use or sale by the Seller.
- **“Project Schedule”** means the approved timetable, as amended from time to time, established between the Buyer (defined above) and Seller utilizing the designs, resources and processes required to manufacture a System and to provide Services.
- **“Purchase Order”** means a document generated by Buyer authorizing the purchase of Goods and/or Services by Buyer.
- **“Request for Quote”** means Buyer’s request to Seller for information pertaining to the purchase of Goods and/or Services.
- **“Seller”** means Lincoln Electric Automation Systems Group.
- **“Seller’s Final Proposal”** means the last modified proposal generated by Seller itemizing all Goods and/or Services to be offered for sale to the Buyer. All terms set forth in Seller’s Final Proposal, as determined by Seller, shall be incorporated into the Order Acknowledgment and/or Agreement. For purposes of clarification, Seller’s Final Proposal may be referred to and used interchangeably with Seller’s final quote or Seller’s final presentation.

- **“Services”** means the installation and repair of the Goods by Seller and any related Services, including but not limited to education, programming, training, and/or start-up and production support provided by Seller with respect to the operation of the Goods pursuant to an Agreement.
- **“System”** means automation products sold by Seller that are built to Buyer’s specifications. Depending on the System, typical components can include but are not limited to: a power source, a welding torch, a wire feeder, robots, tooling, positioners, welding fixtures, environmental products, a torch cleaner, calibration units, or advanced training products.
- **“System Design”** means the engineering and other technical specifications that are the basis for a System; including but not limited to a complete listing of all System components, a set of assembly and component drawings with welding notations, dimensions, tolerances and/or any other technical specifications, instructions or plans that are required for the System to be built.
- **“System Run-off”** means any process as determined by Cleveland Automation, by which it tests the Goods at its facility, prior to shipment to the Buyer, to ensure the Goods are operating in accordance with the agreed upon System Design specifications.

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

These Terms and Conditions apply to any purchase or request for Goods or Services by Buyer to Seller. Buyer's purchase and/or acceptance of Seller's Goods and/or Services constitutes Buyer's unconditional acceptance of these Terms and Conditions. All sales by Seller of any Goods and/or Services are governed by and made expressly conditioned on Buyer's acceptance of these Terms and Conditions. No conditions, usage of trade, course of dealing, understanding, or agreement purporting to modify, explain, or supplement these Terms and Conditions shall be binding unless made in writing and signed by Seller. No other terms and no modification of these Terms and Conditions shall be binding or enforceable unless expressly agreed to in writing by Seller. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED IN BUYER'S PURCHASE ORDER OR ANY OTHER FORM ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS, AND NOTICE OF SELLER'S EXPRESS OBJECTION TO AND REJECTION OF SUCH TERMS IS HEREBY GIVEN. Seller's failure to object to any conflicting, contrary, or additional conditions in Buyer's Request for Quote or Purchase Order, shall not be deemed an acceptance of such conditions or a waiver of any of the provisions hereof. In the event there is an irreconcilable conflict between Seller's Order Acknowledgment, Seller's Final Proposal, or Seller's invoice(s) and these Terms and Conditions, the Order Acknowledgment, Seller's Final Proposal, or Seller's invoice(s) shall prevail and control to the extent of such irreconcilable conflict.

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

### **3. SYSTEM BUILD PROCEDURE [This Section Applies to Systems and Environmental Products Only]**

#### **A. Project Schedule and System Design**

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

After the Project Schedule timeline is established, but prior to the commencement of System production, Seller shall work with Buyer to develop a mutually agreed upon System Design consistent with Buyer's required specifications. System Design specifications shall include, but are not limited to, a system layout document that shows the proposed general system layout, along with any pertinent system parameters, such as positioner specifications that will require approval by the Buyer. A system user manual shall be shipped with the completed System, when applicable. Seller reserves the right, without liability to Buyer, to modify any aspect of Seller's Final Proposal, the Project Schedule, and/or the Price, upon notice to Buyer, should Buyer provide any new and/or additional information or special requirements not incorporated into Seller's Final Proposal prior to the development of the System Design.

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

#### **B. Buyer Change Orders**

Following Seller's receipt of Buyer's approval or Buyer's Deemed Approval of the System Design, no changes shall be made to the System Design, Seller's Final Proposal, and/or Project Schedule without the express written approval of Seller. To request a change to an approved System Design, Seller's Final Proposal, and/or Project Schedule, Buyer must submit a request for change ("**Request for Change**" or "**RFC**") to Seller, in writing, prior to completion of System Run-off.

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

Seller shall notify Buyer if any requested RFC will result in any modifications to the scope of the project, Project Schedule, System Design, milestones, key System production dates, and/or Price and shall detail the costs associated with the implementation of the approved changes, if any. Such costs may include, but are not limited to, the addition of any Component Parts, labor, Services, or other Goods not previously quoted in an Order Acknowledgment, Seller's Final Proposal, or sales invoice(s), as well as any previously purchased Goods that can no longer be used due to the changes.

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

**C. System Run-off**

Seller shall conduct System Run-off prior to shipment of the System to the Buyer. Upon completion of System Run-off, Seller shall provide Buyer with the results verifying that the System meets the specifications and requirements set forth in the System Design and/or Project Schedule (or as modified, if applicable). Provided that Buyer has made all required payments and unless otherwise indicated in an Agreement, upon Seller's completion of the System Run-off, Seller shall authorize System shipment to Buyer's designated facility. Buyer's failure to accept shipment of the System following Seller's System Runoff shall constitute a material breach and shall be grounds for Seller to invoke the remedies provided for in these Terms and Conditions or by applicable law.

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

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

**4. SYSTEM PRICE AND PAYMENTS**

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

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

Standard payment terms for System[s] are as follows:

- 60% of the Price at the time of the acceptance of the Agreement.
- 40% of the Price due within 30 days of System Run-off.

Standard payment terms for Goods other than System[s] are as follows:

- Net 30 days from the date of Seller's invoice.

All payment terms are subject to credit review and approval. Payments are due as outlined above or upon cancellation of an Agreement. Seller does not provide any cash discounts. Alternative payment terms may be offered at Seller's sole discretion, however, additional charges may apply.

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

Any additional taxes, charges, or fees not included in the Agreement, may be invoiced separately to Buyer. Unless otherwise agreed, Buyer shall pay Seller for such additional taxes, charges, or fees within thirty (30) days from the date of Seller's invoice(s).

Buyer's failure to perform its payment obligations under the Agreement shall constitute a material breach and shall be grounds for Seller to invoke the remedies provided for in these Terms and Conditions or by applicable law. Additional fees may apply for Systems for which performance has been suspended.

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

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

## **5. SYSTEM SHIPPING AND DELIVERY**

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

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

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

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

## **6. SYSTEM POST-INSTALLATION SERVICE AND SUPPORT**

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

## **7. SYSTEM TRANSFER OF TITLE AND RISK OF LOSS**

Title and risk of loss of the System shall transfer from Seller to Buyer upon tender of the System to the first transportation carrier.

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

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

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

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

## **10. COMPONENT PARTS AND CONSUMABLES**

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

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

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

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

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

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



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

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

The Seller shall be entitled to make partial deliveries.

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

## **C. Title and Risk of Loss**

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

# **11. STATEMENT OF WARRANTY**

## **A. Limited System Warranty**

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

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

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

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

This Limited System Warranty is void if the System (including, but not limited to, System programming) or any Component Parts have been subjected to improper installation, improper care, or abnormal operations, or if repairs

or alterations have been undertaken by anyone other than Seller or a Seller Approved Service Facility (“ASF”). Warranty coverage is available only to the initial End User and is non-transferrable. Any subsequent purchaser interested in transferring warranty coverage must contact Seller to determine whether warranty coverage may be transferred and if an additional charge will be required for such transfer. A separate written agreement will be required for this coverage.

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

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

#### **B. Limited Warranty for Component Parts**

Component parts manufactured by Seller are warranted by Seller and are covered under Seller’s Limited Warranty for Component Parts to be free from defects in workmanship and material subject to the terms and restrictions of that individual Component Part’s warranty. Warranty periods vary by Component Part. All third-party OEM Component Parts are warranted by the third-party OEM and are therefore expressly excluded from Seller’s Limited Warranty for Component Parts. If OEM Component Parts are found to be defective or non-conforming and are covered by an OEM warranty, Seller shall assist Buyer in identifying any defects and shall work with local distributors or OEMs to ensure that the OEM Component Parts are repaired or replaced as required, subject to the terms and restrictions of the OEM’s warranty. The sole warranty obligation of Seller for any Component Parts not manufactured by Seller is to use commercially reasonable efforts to assist the End User in obtaining any available OEM warranty coverage.

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

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

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

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

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

### **C. Limited Warranty for Consumables**

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

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

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

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

### **D. Service Warranty**

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

### **E. Warranty Limitations**

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

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

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

## **12. CONFIDENTIALITY**

"Confidential Information" means all information, know-how, trade secrets, or other material disclosed by Buyer to Seller and Seller to Buyer. Both Buyer and Seller shall treat each other's Confidential Information as confidential; shall not use such Confidential Information except in connection with the Agreement; and shall not disclose such Confidential Information to any third party who has not executed an agreement to maintain the confidentiality of the Confidential Information with restrictions at least as restrictive as those set forth herein. Without limiting the definition of "Confidential Information," all technical, business, sales, distribution channel, financial, marketing, pricing, planning, competitor information and the lists of customers who have purchased Goods from Seller are considered Confidential Information.

Confidential Information does not include information that is: (i) generally known and available in the public domain; (ii) was known to recipient prior to the date of disclosure; (iii) was received from a third party without any obligation of confidentiality; or (iv) was independently developed without reliance on Confidential Information. Given the nature of the Confidential Information and the likely consequences of its unauthorized use or disclosure, monetary damages would not be an adequate remedy for its unauthorized disclosure, and both Seller and Buyer reserve the right to seek and obtain injunctive relief, in addition to any other remedy that may be available, in any proper forum.

## **13. INTELLECTUAL PROPERTY OWNERSHIP**

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

## **14. INTELLECTUAL PROPERTY INDEMNITY**

- A. By Seller.** Seller agrees to defend any suit, proceedings or counterclaim against Buyer for the infringement of any United States Letters Patent by: (1) any Goods, of whatever kind, or any parts thereof, made to Seller's design or specifications, but only in the form, state or condition supplied under the Agreement; or (2) any use of such Goods where the Goods constitute a material part of any patented method of such patent and are not a staple article or commodity of commerce suitable for substantial non-infringing use. Such defense is conditioned upon Seller being: (1) notified promptly in writing of any charges of infringement; (2) given authority to direct and control the defense of such charge or suit; and (3) furnished such information and assistance, at Seller's expense, as may be necessary for such defense. Seller shall pay all costs and damages awarded therein against Buyer. If at any time, such Goods or any part

thereof, or their use, are considered by the Seller to constitute infringement, Seller may, at its own expense: (1) procure for the Buyer the right to continue using such Goods; (2) modify them so they become non-infringing; or (3) remove them and refund the purchase price and the transportation costs thereof, if any. The foregoing states the entire liability of the Seller for patent infringement by the Goods or their use.

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

## **15. INDEMNIFICATION AND INSURANCE**

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

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

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

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

## **16. FORCE MAJEURE**

Seller shall not be liable to Buyer for any delay in any performance or for failure to perform, and any such delay or failure shall for all purposes be excused, when such delay or failure is directly or indirectly caused by governmental laws or regulations (whether or not valid), acts of war, acts of government, acts of God, acts of terrorism, sabotage, civil disturbances, strikes or other labor disturbances, equipment failure, the inability to procure raw materials, power, equipment, labor or other supplies

on an economical or other basis, explosions, accidents, transportation delays or shortages, floods, landslides, epidemics, or any other similar or dissimilar events that are beyond the reasonable control of Seller, in any of the foregoing cases whether or not foreseeable (any of the foregoing, a "**Force Majeure Event**"). In expansion and not limitation of the foregoing, a Force Majeure Event shall be deemed to delay or prevent performance if it directly or indirectly causes the timely performance by Seller of any of its obligations to be commercially impracticable. Seller shall not be denied relief hereunder if it fails to avoid or resolve any Force Majeure Event, except to the extent that it fails to employ commercially reasonable efforts to avoid or resolve such event, which efforts shall not be required to include the expenditure of funds. Upon the occurrence of any event or circumstance referenced above, Seller shall have the right to allocate Goods among its customers in its sole discretion. This paragraph shall be effective and apply even if the Force Majeure Event invoked by Seller had been in effect on the date of acceptance of the Agreement. This Section 16 supplements, and does not replace, any remedies available to Seller under applicable law.

#### **17. CANCELLATION OF ORDERS BY BUYER**

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

#### **18. TERMINATION FOR DEFAULT**

If, at any time, Buyer: (a) fails to perform any obligation or comply with any of the terms set forth in the Agreement, (b) unreasonably withholds approval of Seller's System Run-Off; (c) fails to post security or execute documentation required for a Purchase Money Security Interest within fifteen (15) days after Seller has requested the same; (d) interrupts or suspends the manufacture or assembly of the System for a period of thirty (30) days or more, regardless of whether such days are consecutive; (e) fails or refuses to furnish required items including, but not limited to, security or progress payments, equipment, jigs, tools, drawings, fixtures, dies, molds, patterns, materials, or designs; (f) makes an assignment for the benefit of creditors, (g) ceases doing business as a going concern, or (h) becomes insolvent, or if a voluntary or involuntary petition for bankruptcy is filed by or against Buyer or a trustee, receiver, or liquidator is appointed to Buyer, then Seller shall have the right to exercise any one or more of the following non-exclusive remedies: (i) Seller may suspend performance on the System until such failure or breach is cured; (ii) Seller may cancel or terminate all or any part of the Agreement without incurring any liability to Buyer; and/or (iii) Seller may exercise any other right or remedy provided by the Agreement, under the Uniform Commercial Code, under federal, state or other applicable law, or in equity. If Seller terminates the Agreement, or if Seller agrees to Buyer's request to cancel an Agreement pursuant to Section 17, Buyer shall be liable to Seller for (i) the sales Price for all work completed up to and including the date of cancellation/termination, (ii) any and all costs incurred by Seller as a result of such cancellation, including without limitation the costs of any engineering studies, labor, materials, administrative costs, lost profit, the costs of settling and paying claims arising out of the termination of work under Seller's subcontracts or vendor contracts, and any accounting, legal, and clerical costs arising out of such cancellation (collectively, "**Cancellation Costs**"), and (iii) a cancellation fee equal to ten percent (10.0%) of the total Price set forth in the Agreement ("**Cancellation Fee**"). Seller may apply all amounts previously paid by Buyer to Seller to cover all Cancellation Costs and Cancellation Fees due and invoice Buyer for any remainder, to be paid by Buyer within ten (10) days of the date of the invoice. If the amounts paid by Buyer up to the date of cancellation/termination exceed the Cancellation Costs and Cancellation Fee, Seller shall pay the remainder to Buyer within a reasonable time of such cancellation/termination. Seller shall have no responsibility or liability to Buyer for any cancellation of an Agreement except for the return of any surplus funds due to Buyer. Should Seller complete the System, Buyer shall pay Seller the full Price stated in the Agreement.

## 19. COMPLIANCE WITH LAWS

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

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

The U.S. government also imposes and enforces prohibitions on the payment or transfer of anything of value (either directly or indirectly) to governments, government officials, political parties, political party officials, or to relatives or associates of such officials, in connection with obtaining or maintaining business. This U.S. law is referred to as the Foreign Corrupt Practices Act (FCPA), and it can have application to conduct of a U.S. corporation's foreign subsidiaries, employees and agents. A summary of the law and related information can be found at <http://www.justice.gov/criminal/fraud/fcpa>. The Buyer warrants that:

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

Buyer acknowledges that the Goods and technical data, if any, which are purchased or received under this Agreement may be subject to the export controls of the U.S. Export Administration Regulation, the U.S. Department of Treasury Office of Foreign Assets Control, the U.S. Department of State, and other U.S. agencies, as well as the export control regulations of foreign countries (collectively, "**Controls**"). Buyer acknowledges and agrees that the material and technical data, if any, that Buyer purchased or received under this Agreement shall not be used for any prohibited purpose or transferred to a prohibited person or entity. Further, none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries upon which the United States maintains an embargo, or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Lists of Parties of Concern (collectively, "**Designated Nationals**") or for any restricted end-use. Any diversion contrary to U.S. law is prohibited. By purchasing Goods from Seller, Buyer represents and warrants that Buyer is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National, and that it shall not re-export, divert, or transfer the Goods to an embargoed country, person, or entity. Buyer agrees to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. Buyer further represents and warrants that Buyer shall (i) comply strictly with all legal requirements established under these Controls; (ii) cooperate fully with Seller in any official or unofficial audit or inspection that relates to these Controls; and (iii) not export, re-export, divert, transfer, or disclose, directly or indirectly, any purchased items or related technical information, document, or material or direct products thereof to any country, entity, person or end-user so restricted by the Controls or any other law

or regulation, as modified by time to time, or to any national or resident thereof. Seller makes no representation that any items purchased for sale from Seller are appropriate for the use intended or available for use in other locations. Buyer is solely responsible for compliance with all applicable laws, including without limitation, export and import regulations of the United States and other countries. Upon Seller's request, Buyer shall provide information in response to any reasonable request, including a written certification, regarding compliance with applicable laws, rules, or regulations.

## **20. CHANGES**

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

## **21. LIMITATION ON CAUSES OF ACTION**

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

## **22. COMPUTER SYSTEM SECURITY/UNAUTHORIZED DATA ACCESS.**

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

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

Buyer and/or End User agrees that it shall be responsible for all acts and omissions with respect to the unauthorized access to its computer systems and information, including the acts and omissions of its employees, agents, and independent contractors. Buyer and/or End User shall indemnify and hold harmless Seller and its directors, officers, employees, shareholders, and agents from and against any and all claims of damages, liabilities, expenses, fines, and losses of any type, including but not limited to reasonable attorneys' fees, in connection with or arising out of, in whole or in part, its or its representative's breach of computer system security or of any provision of this Section 22.

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

## **23. LIMITATIONS ON LIABILITY**

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS OF BUSINESS OPPORTUNITIES, DAMAGE TO GOOD WILL OR REPUTATION, OR LOSS OF DATA, ARISING



OUT OF OR AS A RESULT OF THE SALE, DELIVERY, SERVICING, USE, OR LOSS OF THE GOODS SOLD HEREUNDER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION, SHALL SELLER BE LIABLE TO BUYER FOR ANY DAMAGES IN AN AMOUNT THAT EXCEEDS THE PRICE PAID BY BUYER FOR THE GOODS OR SYSTEM GIVING RISE TO SUCH DAMAGES.

#### **24. CUSTOMER ASSISTANCE POLICY**

Seller's goal is to meet Buyer's or End User's needs and to exceed their expectations. On occasion, Buyer or End User may ask Seller for information or advice about their use of Seller's Goods. Seller's employees respond to inquiries to the best of their ability based on information provided to them by the Buyer or End User and the knowledge they have concerning the Goods in question. Seller's employees, however, are not in a position to verify the information provided or to evaluate the engineering requirements for the particular application and therefore any advice that they may give is for informational purposes only. ACCORDINGLY, SELLER DOES NOT WARRANT, GUARANTEE, OR ASSUME ANY LIABILITY WITH RESPECT TO, SUCH INFORMATION OR ADVICE. MOREOVER, PROVIDING SUCH INFORMATION OR ADVICE DOES NOT CREATE, EXPAND, OR ALTER ANY WARRANTY ON SELLER'S GOODS. Any advice or assistance provided by Seller to Buyer is provided only as a courtesy, and Seller makes no warranty, express or implied, as to its accuracy or completeness, or the results to be obtained from such advice or assistance. Buyer is solely responsible for determining whether the Goods are suitable for Buyer's intended use and for obtaining any necessary governmental registrations and approvals for Buyer's production, marketing, sale, use, and/or transportation of the Goods.

#### **25. RELATIONSHIP OF THE PARTIES**

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

#### **26. SURVIVAL OF PROVISIONS**

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

#### **27. SOFTWARE**

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

including, without limitation, the ownership, copyrights, licensing, licensing terms, licensed quantities, warranties, functionality, fitness for use, operation, installation, malicious or criminal use, and/or de-installation thereof.

### **28. ENTIRE AGREEMENT; MODIFICATION**

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

### **29. DISPUTES AND APPLICABLE LAW**

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

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

### **30. NO ASSIGNMENT**

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

### **31. SEVERABILITY**

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