



TERMS AND CONDITIONS OF SALE

Except as otherwise agreed by Inventus Power™, Inc. ("Seller") in writing, the following terms and conditions will apply to all orders received and all sales made by Seller.

1. **GENERAL:** These terms and conditions as amended by the terms agreed to by the Seller and Buyer and contained in the Seller's order acknowledgment, constitute the sole and entire agreement between Seller and the Buyer for the sale of the goods and/or services as described in the said Seller's order acknowledgment with respect to the goods or services purchased by the Buyer (the "Buyer"). Any term or condition contained on any printed form of Buyer, including but not limited to any order, confirmation or other document, which is in any way inconsistent with or in addition to the terms and conditions contained in this Agreement is hereby expressly rejected. Buyer, by accepting any goods or services from Seller, making any payments or ordering any goods or services having previously received these terms and conditions, will be deemed to have assented to these terms and conditions. If Buyer objects to any of the terms or conditions hereof, such objection must be made in writing and received by Seller within ten (10) calendar days after placing an Order. Failure to so object shall be conclusively deemed to be acceptance of the terms and conditions hereof.
2. **TAXES:** Except as otherwise expressly stated herein, the prices do not include any federal, state or local sales, use, goods and services, excise or other similar taxes applicable to goods or services involved in this transaction. All such taxes shall be paid by Buyer, unless Buyer provides Seller with evidence satisfactory to Seller of exemption from such taxes. When Seller is required by law or regulation to collect such taxes, Seller will add such taxes to the sale price of the goods or services.
3. **PRICES:** The sale price(s) for goods delivered hereunder ("Products") as stated on Seller's order acknowledgment will include such services, factory tests and inspections as described in the Seller's order acknowledgment. The prices set forth herein are not subject to trade or other discounts. All quotations of Seller expire thirty (30) calendar days from the date thereof. All prices are subject to change without notice, although the Seller will honor prices on accepted orders, unless the Parties agree to a Change Order.
4. **DELIVERY, TITLE PASSAGE AND INSURANCE:**
 - 4.1 **Delivery.** Delivery or shipping dates are approximate only and merely represent Seller's best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transaction(s) covered by this Agreement, except with respect to Buyer's obligation to make all related payments. Seller shall not be liable for any failure to meet any specific shipping or delivery date. Seller's obligations hereunder will be dependent upon Seller's ability to obtain the necessary raw materials. Seller will not be liable for any loss or expense (incidental, indirect, economic, consequential or otherwise) incurred by Buyer as a result of any delay or failure in delivery for any reason other than arbitrary refusal by Seller to perform. Seller reserves the right to make partial deliveries and ship approximately ten (10) calendar days in advance of shipping date. Seller is not responsible for any charges, fees or damages relating to Seller's decision to hold shipment due to an issue with the Buyer's credit rating. Any prepaid freight will be invoiced to Buyer at published rates.
 - 4.2 **Title.** Except as where otherwise agreed and expressly stated in the Seller's order acknowledgment, all deliveries hereunder will be EX-Works Seller's plant via a carrier selected by Buyer at its option, or otherwise by Seller, freight collect, to Buyer and will be packed in Seller's standard commercial shipping packages. In all such cases title and risk of loss will pass to Buyer in accordance with the ICC INCOTERMS 2010. Buyer shall reimburse Seller for any and all costs of storage incurred by Seller after the date that Seller is prepared to make shipment. Seller may ship orders in installments.
 - 4.3 **Insurance.** Buyer will pay, or reimburse Seller for, all insurance on the Products shipped in accordance with the applicable ICC INCOTERM, and to the extent not otherwise expressly stated, the applicable Incoterm shall be EX Works Sellers Facility. Buyer shall pay transportation expenses and maintain, at its expense, insurance on the products from time of tender until Seller's receipt of payment in full for such products, naming Seller as an additional named insured. Buyer must file any claims for shipping shortages directly with shipping carrier.
 - 4.4 **Re-export of Products.** Any or all products may be subject to US export or resale restrictions or regulations, and Buyer acknowledges that it will comply with all applicable regulations or restrictions. Country of Origin information provided to Seller is subject to information provided by its suppliers and is, where applicable, located on the products themselves or the supplier's innermost packaging thereof.

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5. PAYMENT TERMS:

Except as otherwise expressly stated herein, all Products shall be shipped on payment terms of cash in advance. Orders, shipments and deliveries shall at all times be subject to the approval of Seller's credit department, which may at any time decline to accept, ship or deliver any order or perform any work except upon receipt of payment or security or upon other terms and conditions satisfactory to Seller's credit department, in its sole discretion. Where satisfactory account credit has been established, Seller shall invoice Buyer at the time of shipment of each installment, and payment terms shall be net thirty (30) calendar days from date of shipment, unless otherwise agreed. All payments shall be in U.S. Dollars. Buyer shall make all payments as provided herein without regard to whether Buyer has made or may make any inspection or use of any Products. No discounts or setoffs shall be made by Buyer against any invoices unless approved in writing in advance by Seller. Any invoiced amount which is not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month or the highest rate then permitted by law, whichever is less, until paid in full. No payment by Buyer or receipt by Seller of an amount less than the entire amount of an invoice will be deemed to be other than on account of the earliest due amount, nor will any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction, and Seller may accept such check or payment without prejudice to Seller's right to recover the balance of any amount due or pursue any other remedy provided for in these Terms and Conditions of Sale. Seller reserves the right to modify terms prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of Buyer's creditworthiness or should Buyer fail to fulfill any obligation when due. Seller reserves the right to exercise any of its lawful remedies if Buyer does not make payments when due. Buyer shall promptly reimburse Seller for all costs and expenses, including reasonable attorneys' fees, incurred by Seller in collecting sums due it hereunder.

Seller is authorized to apply toward any monies due Seller hereunder any sums now or hereafter owed by Seller or any affiliate of Seller to Buyer or any affiliate of Buyer.

6. **FORCE MAJEURE:** Seller shall not be liable for delay in performance or nonperformance of any of its obligations hereunder, in whole or in part, if such performance is rendered impracticable by the occurrence of any condition beyond the control of either Seller or Seller's suppliers, including without limitation war, sabotage, embargo, riot, terrorism, or other civil commotion, failure or delay in transportation, act of any government or any court or administrative agency thereof (whether or not such action proves to be invalid), labor dispute (whether or not involving Seller's employees), accident, fire, explosion, flood, earthquake or other casualty, shortage of labor, fuel, energy, raw materials or machinery or technical failure. If any such contingency or condition occurs, Seller may allocate production and deliveries in any reasonable manner in its sole discretion. If, as a result of any such contingency, Seller's performance is delayed by more than six (6) months, Seller reserves the right to cancel any order, without liability.

7. LIMITED WARRANTY:

- 7.1 Except as stated in Seller's order acknowledgment to Buyer, Seller warrants to Buyer that the Products (1) shall be free of defects in materials and workmanship for twelve (12) months from the date of manufacture (the "Warranty Period"); and (2) shall be free of liens and encumbrances (other than Seller's lien) when shipped to Buyer.
- 7.2 Seller warrants those products designed and assembled by it against defects in material and workmanship occurring under normal use caused solely by faulty assembly or customization for one (1) year from the date of manufacture. All other products, and the components and materials utilized in any assembled or customized products, are covered by, and subject to, the terms, conditions, and limitations of the respective manufacturer's standard warranty, which warranty is expressly in lieu of any other warranty, express or implied. Seller shall not be liable for any conditions attributable to (i) improper installation or testing, (ii) inadequate or improper maintenance or storage, (iii) normal wear and tear, (iv) failure to provide a suitable operating environment, (v) use of the Product for purposes other than that for which it was designed, (vi) failure to monitor or operate the Product in accordance with applicable Seller specifications and good industry practice, (vii) unauthorized attachment, removal or alteration of any part of the Product, (viii) unusual mechanical, physical electrical stress, extreme environmental conditions or chemical exposure, (ix) modifications or repairs done by other than Seller, (x) mishandling during shipment of the Product, (xi) any defects or performance failures resulting from product components from a third party that are integrated into Seller manufactured battery packs, including but not limited to battery cells, (xii) any defects caused or resulting from components or materials provided to Seller by suppliers mandated or designated by Buyer; (xiii) the incompatibility, improper design, manufacture, installation, operation or maintenance of products, accessories, equipment or materials not supplied by Seller or, (xiv) any other abuse, misuse, neglect or accident.
- 7.3 In no circumstance shall Seller have any liability or obligation with respect to expenses, liabilities or losses associated with the installation or removal of any Product or the installation or removal of any components for inspection, testing or redesign occasioned by any defect or by repair or replacement of a Product. The conditions of any tests by Buyer on any Products shall be mutually agreed upon, and Seller shall be notified of, and may be represented at, all tests.
- 7.4 Buyer's exclusive remedy, if any, under these warranties is limited, at Seller's election, to any one of (a) refund of Seller's purchase price, (b) repair by Seller or the manufacturer of any products found to be defective, or (c) replacement of any such product. **Buyer acknowledges that except as specifically set forth or referenced in this paragraph, THERE ARE NO REPRESENTATIONS OR**

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WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY SELLER OR ANY OTHER PERSON, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE AND ANY SUCH WARRANTIES ARE SPECIFICALLY DISCLAIMED BY BUYER. SELLER ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR MANUFACTURER'S PRODUCT SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO SELLER BY OR ON BEHALF OF BUYER.

8. EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY AND INDEMNITY:

8.1 Buyer shall notify Seller in writing promptly (and in no case later than ten (10) calendar days after discovery) of the failure of any Product to conform to the warranty set forth above. The notice shall describe in commercially reasonable detail the symptoms associated with such failure, and shall provide Seller the opportunity to inspect such Products as installed, if possible. The notice must be received by Seller during the applicable warranty period for such Product. Unless otherwise directed in writing by Seller, Seller will issue a Return of Merchandise Authorization (RMA) within thirty (30) calendar days after the Buyer's notice. Buyer shall package the allegedly defective Product in its original shipping carton(s) or a functional equivalent and shall ship it to Seller at Seller's expense. Buyer must prepay shipping charges.

8.2 Within a reasonable time after receipt of the allegedly defective Products and verification by Seller that the Products fail to meet the warranty set forth above, Seller shall correct such failure at Seller's option by either (i) modifying or repairing the Products, or (ii) replacing the Products. Such modification, repair or replacement and the return shipment of the Products with minimum insurance to Buyer shall be at Seller's expense. Buyer shall bear the risk of loss or damage in transit, and may insure the Products. Buyer shall reimburse Seller for transportation costs incurred for Products returned but found by Seller not to be defective. Modification or repair of Products may, at Seller's option, take place either at Seller's facilities or at Buyer's premises. If Seller is unable to modify, repair or replace Products to conform to the warranty set forth above, then Seller shall, at Seller's option, either refund to Buyer or credit to Buyer's account the purchase price of the Products less depreciation calculated on a straight-line basis over Seller's stated Warranty Period.

8.3 THE REMEDIES SET FORTH IN THIS PARAGRAPH 8 SHALL BE SELLER'S SOLE AND EXCLUSIVE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS, THEIR FITNESS OR PURPOSE, THEIR MERCHANTABILITY, THEIR NON-INFRINGEMENT, OR OTHERWISE. SELLER'S LIABILITY FOR ANY CLAIMED BREACH OF WARRANTY SHALL BE LIMITED TO A REFUND OF THE PURCHASE PRICE OF THE PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS BY BUYER OR FOR ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, INDIRECT OR INCIDENTAL DAMAGES OR LOST PROFITS. SUCH LIMITATION UPON SELLER'S LIABILITY SHALL SURVIVE EVEN IF ANY OF BUYER'S LIMITED OR EXCLUSIVE REMEDIES ARE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

8.4 Buyer assumes the risk and agrees to defend and indemnify Seller and its Affiliates and their respective directors, employees, officers, agents and contractors against and hold Seller and its Affiliates and their respective directors, employees, officers, agents and contractors harmless from any and all liability, claims, losses, costs or expenses (including reasonable legal fees) relating to or resulting from (i) any breach by Buyer of any representation, warranty or other obligation of Buyer under these terms and conditions of sale, (ii) any negligent or willful acts, errors or omissions by Buyer or its Affiliates or their respective directors, officers, employees, agents or contractors (iii) any actual or alleged violation or infringement upon any US patent, US copyright or any other intellectual property, trade secret or confidential information of any third party arising from compliance with Buyer's designs, specifications or instructions, (iv) any unauthorized modification, alteration, adaptation or use of the Products and/or installation of any device, instrument or equipment part thereof in or on the Products, the use or combination of which has not been approved, including, without limitation, any such damage, injury or contamination whatsoever arising out of any use in connection with any nuclear facility or activity, military application or medical device, (v) assessing the suitability for Buyer's intended use of the Products, (vi) developing or selecting any component, product and/or system and the respective design or drawing related thereto, and (vii) determining the compliance of Buyer's use of the Products with applicable laws, regulations, codes and standards. Seller retains and accepts full responsibility for all warranty claims (per the Warranty provided in these Terms and Conditions) relating to, or arising from, Buyer's products which include or incorporate Products or components manufactured or supplied by Seller. Buyer is solely responsible for any and all representations and warranties regarding the products made or authorized by Buyer. Buyer will defend and indemnify Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors and hold Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors harmless from any liability, claims, loss, cost or expenses (including reasonable legal fees) attributable to Buyer's products or representations or warranties concerning same.

9. LIMITATION OF SELLER'S LIABILITY AND LIABILITY CAP: Except as provided for in Paragraph 8.2 above, Seller will have no liability or obligation to Buyer or any other person for any claim, loss, damage, or expense caused in whole or in part, directly or indirectly, by the inadequacy of any of the Products for any purpose, by any deficiency or defect in any of the Products, by the use or

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performance of any the Products or any failure or delay in Seller's performance hereunder, whether in contract, strict liability, tort or otherwise, even if Buyer's exclusive remedy fails in its essential purpose.

IN NO EVENT WILL BUYER BE ENTITLED TO OR SELLER BE LIABLE TO BUYER OR ANY OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, TORT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY NATURE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR BUSINESS INTERRUPTION COSTS, LOSS OF REVENUES, PROFITS OR SAVINGS, LOSS OF DATA, LOSS OF GOODWILL, REPROCUREMENT, REMOVAL OR REINSTALLATION COSTS, OVERHEAD OR INJURY TO REPUTATION OR LOSS OF CUSTOMERS, OR FOR ANY CLAIMS ASSERTED AGAINST BUYER BY A THIRD PARTY ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN CONNECTION WITH THE MANUFACTURE, DELIVERY, SALE, USE OR DEFECT OF PRODUCTS SOLD BY SELLER TO BUYER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN NO EVENT WILL SELLER BE LIABLE FOR ANY PERSONAL INJURIES OR DEATH ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN CONNECTION WITH THE MANUFACTURE, USE OR DEFECT OF ANY SUCH PRODUCTS. NOTWITHSTANDING ANYTHING ELSE CONTAINED IN THESE TERMS AND CONDITIONS, BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM WILL NOT EXCEED BUYER'S PURCHASE PRICE (PLUS SHIPPING CHARGES AUTHORIZED BY SELLER FOR RETURN THEREOF) FOR THE PRODUCT GIVING RISE TO SUCH CLAIM, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY OR OTHERWISE.

SELLER'S LIABILITY FOR A CLAIM RAISED RELATING TO ANY SALES OR ORDERS MADE PURSUANT TO THESE TERMS AND CONDITIONS OF SALE, WHETHER FOR BREACH OF THESE TERMS AND CONDITIONS OF SALE, IN TORT OR ANY OTHER LEGAL THEORY, WILL BE LIMITED TO THE LESSER OF: (A) THE AMOUNT PAID TO SELLER FOR ANY SALES OR ORDERS MADE PURSUANT TO THESE TERMS AND CONDITIONS OF SALE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM IN RESPECT TO EACH EVENT GIVING RISE TO CLAIM(S), AND (B) 1,000,000 ONE MILLION US DOLLARS. LIABILITY, OTHER THAN AS OTHERWISE PROHIBITED BY LAW, WILL BE LIMITED AS SET FORTH HEREIN, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

10. **MEDICAL APPLICATIONS:** In connection with any anticipated use of Products by Buyer in medical applications, Buyer acknowledges and agrees that:
 - 10.1 Seller's Products are manufactured under normal industrial conditions, which may not satisfy the requirements applicable to products manufactured for certain medical applications. It is the Buyer's sole responsibility, when and if, contemplating medical uses of Seller's Products, to verify and ensure compliance with all applicable laws, regulations, codes and standards, including but not limited to the U.S. Federal Food, Drug and Cosmetic Act and the Food and Drug Administration (FDA). Seller's Products may be designed, manufactured, tested or qualified, in accordance with Buyer's specifications for Buyer's intended use in certain medical applications (including life support systems), and Seller specifically and expressly excludes any responsibility to seek, apply for or secure any rulings from the FDA or any other federal, state, or local government agency as to the safety, effectiveness or appropriateness of its Products for such applications. Buyer and their intended users and such persons intending to evaluate or to use Seller's Products for medical purposes must rely on their own medical and legal judgment without any representation on Seller's part.
 - 10.2 Buyer will indemnify, defend, and hold harmless Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors from and against any and all losses, claims, damages, liabilities, and expenses (including reasonable attorneys' fees) arising out of or based upon any bodily injury or property damage arising from Buyer's incorporation of Products as part of any product made by Buyer for medical applications, including without limitation cardiac pacemakers, defibrillators, electrodes, leads, and programmers, and components therefore. Seller shall give Buyer written notice of any such claim and shall cooperate in the defense of such claim at Buyer's expense.
11. **CERTAIN PROHIBITED APPLICATIONS:** Unless otherwise agreed in writing by Seller, Buyer acknowledges that products sold by Seller are not intended for and will not be used in life support systems, human implantation, medical devices (as defined by the Food and Drug Administration), nuclear facilities or systems or any applications where product failure could lead to loss of life or catastrophic property damage, and Seller disclaims any and all responsibility whatsoever with respect to any such use. Buyer will indemnify and hold Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors harmless from any and all losses, claims, damages, liabilities, and expenses (including reasonable attorneys' fees) resulting from Buyer's breach of the provisions of this paragraph.
12. **VALUE-ADDED SERVICE:** The performance of any value-added service shall void the manufacturer's warranty and render products non-returnable. Orders incorporating such services are, accordingly, non-cancelable and the products are non-returnable. Any third party value-added service provider is deemed to be an agent of Buyer.

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13. **PRODUCTS DISTRIBUTED BUT NOT MANUFACTURED BY SELLER:** Buyer acknowledges that Seller is not a manufacturer of certain products distributed by Seller. Seller will transfer to Buyer whatever transferable warranties and indemnities, if any, Seller receives from manufacturers of such products, including any transferable warranties and indemnities regarding intellectual property infringement. Seller authorizes Buyer, at Buyer's sole expense, to assert to the maximum extent permitted by law and for Buyer's account, all rights and powers of Seller under any applicable manufacturer's warranty on any such product. In addition, for the reasons set forth above, Seller does not independently indemnify or hold Buyer harmless from potential claims related to such products not manufactured by Seller, which are not caused by negligence or fault on the part of Seller or its employees, such as product liability claims based on allegations of defective design or negligent manufacture or testing, or patent or trademark infringement claims.
14. **SOFTWARE:** Any third party software included in or relating to products is supplied by their respective manufacturers. Seller makes no representation or warranty with respect thereto and will have no liability in connection therewith. Buyer agrees to comply with the manufacturer's requirements with regard to proprietary and similar rights in and to such software including any requirement to enter into a separate license agreement and prohibitions against duplicating or disclosing the same, and will indemnify Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors against and hold it harmless from any and all liability, cost or expense (including reasonable attorneys fees) arising from a breach or purported breach of such requirements.
15. **PRODUCT CHANGES:** Seller reserves the right to change, improve or add or discontinue any Products at any time. To the extent applicable, Seller will provide Buyer a reasonable opportunity to make purchases of Products prior to such discontinuation.
16. **PATENTS:**
- 16.1 Seller agrees to indemnify Buyer and hold Buyer harmless from any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any of the Seller's Product constitutes direct infringement of any issued United States patent, provided Seller is informed by Buyer in writing within ten (10) calendar days after receipt by Buyer and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to settle or defend such suit or proceeding. In the event such Product or any part thereof is, in such suit, held to constitute infringement and the use of such Product or part thereof is enjoined, Seller shall, by its own election and at its own expense, either (a) procure for Buyer the right to continue using such Product, or modify it so that it becomes non-infringing, (b) replace the Product with a non-infringing Product or (c) remove such Product, or part thereof, and grant Buyer a credit thereon and accept its return.
- 16.2 Seller shall not be obligated to settle or defend any suit or proceeding, or be liable for any costs or damages, if the Buyer is in breach of any term herein or if the alleged infringement arises out of compliance with Buyer's specifications or any addition to or modification of the Product after delivery thereof or from use of the Product or any part thereof in conjunction with other goods or in the practice of a process. Seller's obligations hereunder shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged infringement unless Seller thereafter gives Buyer express written consent for such continuing alleged infringement. Seller shall not be bound in any manner by any settlement hereunder made without its prior express written consent, **NOR SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS ARISING OUT OF PATENT INFRINGEMENT. SELLER'S LIABILITY HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE ALLEGEDLY INFRINGING PRODUCT. IF INFRINGEMENT IS ALLEGED PRIOR TO COMPLETION OF DELIVERY OF A PRODUCT, SELLER MAY DECLINE TO MAKE FURTHER SHIPMENTS WITHOUT BEING IN BREACH OF THIS AGREEMENT. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ANY AND ALL REPRESENTATIONS, WARRANTIES, OR CONDITIONS EXPRESS OR IMPLIED, IN REGARD THERETO.** Buyer agrees, at its expense, to settle or defend, indemnify Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors and hold Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors harmless from any and all claims and to pay costs, expenses (including reasonable attorneys fees) and damages finally awarded in any suit or proceeding against Seller based on an allegation that any Product furnished hereunder according to designs or specifications furnished by Buyer infringes any patent, provided Buyer is promptly notified in writing of such suit or proceeding and is given all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to defend or settle any such suit or proceeding.
17. **PROPERTY FURNISHED BY BUYER:** If Buyer furnishes any components, tools, dies, jigs or other property, equipment, material, or facilities to Seller in connection with the performance of this Agreement, Buyer shall bear all risk of loss or damage with respect to such property, equipment, material, or facilities and shall indemnify Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors and hold Seller and its Affiliates and their respective directors, employees, officers, agents, and contractors harmless from and against all loss, cost, expense (including reasonable attorneys fees) or liability arising in connection with its use of any such property, equipment, material, or facilities. Seller shall not be responsible for any delay in performance or nonperformance hereunder or the failure of any Product to conform to applicable specifications resulting, in whole or in part, from Seller's use of property, equipment, material, or facilities furnished by Buyer.

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- 18. PROPRIETARY INFORMATION:** As used herein, the term "Proprietary Information" includes any information, documentation, methods, know-how, process, procedure, material or apparatus, of a confidential or proprietary nature obtained from Seller and any information obtained from Seller which is not readily available to Seller's competitors and which, if known by a competitor of Seller, might lessen any competitive advantage of Seller or give such competitor a competitive advantage. Seller retains ownership of all Proprietary Information, whether written, oral, electronic, visual, graphic, photographic, observational or otherwise, and all documentation which contains Proprietary Information. Buyer shall not disclose, duplicate or reproduce any Proprietary Information, in whole or in part, nor shall Buyer use any Proprietary Information other than in the course of performing its obligations hereunder. Buyer shall take all reasonable steps to prevent the disclosure, duplication or reproduction of any Proprietary Information. Buyer shall limit access to the Proprietary Information to those employees of Buyer with a valid need to know. Notwithstanding the foregoing, Buyer shall not be required to refrain from disclosing or using any Proprietary Information which has become known to Buyer if the original source of such Proprietary Information was not Seller or any person or party affiliated with Seller or having a relationship of confidentiality with or an obligation of confidentiality to Seller. Upon request of Seller or termination of this Agreement, Buyer shall immediately return any Proprietary Information.
- 19. CANCELLATION**
- 19.1** Neither this Agreement nor any release hereunder is subject to cancellation by Buyer except upon (a) written request of Buyer, and (b) written approval of Seller. Buyer agrees to pay Seller for all of Seller's out-of-pocket costs associated with the cancellation of the order including, but not limited to: (i) raw materials, (ii) work in process, (iii) inventory carrying costs, (iv) scrapping and disposal fees, (v) value added taxes (VAT), customs duties, export licenses, tariffs and other customary fees paid to governmental or quasi-governmental authorities, and (vi) direct and indirect expenses, prior commitments in reliance on such Order, and Seller's profits, which shall be no less than twenty five percent (25%) of such costs. In no case will the cancellation charge be less than Seller's actual costs (including overhead and other indirect costs). The amount of cancellation charge to be charged to Buyer shall be determined at the sole discretion of Seller and may equal 100% of the amount of the order at the time of Seller's receipt of Buyer's request for cancellation. Buyer is entitled to receive a written notice from Seller setting forth how the cancellation charge was calculated. Upon payment of the cancellation charge, Buyer shall be entitled to receive all raw materials and work in process, and Seller agrees to ship such goods to Buyer at Buyer's expense.
- 19.2** Seller reserves the right, by written notice of default, to cancel any order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Buyer, the filing of a voluntary petition in bankruptcy by Buyer, the filing of an involuntary petition to have Buyer declared bankrupt, the appointment of a receiver or trustee for Buyer, the execution by Buyer of an assignment for the benefit of creditors, the discontinuance of business by Buyer, the sale by Buyer of the bulk of its assets other than in the usual course of business or due to a significant credit rating reduction.
- 20. RESCHEDULES:** Buyer may only reschedule an order with Seller's written consent. Orders scheduled to ship within a forty five (45) day window are considered frozen, and are not subject to reschedule. Changes to Orders which are submitted to Seller and provide for Product to ship between forty six (46) and ninety (90) days may affect no more than 50% of such Order (measured by quantity) and shall only be made through the end of the calendar quarter following the quarter in which the Order was placed. If such change accelerates a delivery time, Seller shall use commercially reasonable efforts to meet such delivery time and change, subject to the availability of any and all materials used to produce the Product. Conversely, Seller shall accept no more than one (1) change per Order that provides for the extension of a delivery date, whereby Seller must hold or store Product. In such event, Seller will notify Buyer of the storage of the Products and all risks of loss will pass to Buyer at the time the Products are placed in storage. The maximum postponement for any shipment will be thirty (30) days. Buyer shall be responsible for any and all expenses incurred by Seller for delay in shipment/delivery, including a ten percent (10%) penalty based on total amount of the order or portion of the order rescheduled. Buyer agrees to pay all expedite fees and other costs associated with the rescheduled date. Seller also may, at its sole option, submit its invoice for said rescheduled, delayed or stored Products to Buyer and Buyer will pay as set forth herein and reimburse Seller for all storage expenses. Notwithstanding the foregoing, payment for Product shall be due no later than thirty (30) days after the date upon which Seller ships the Product or the date upon which Seller stores such Product pursuant to a change as set forth in this Section.
- 21. RESALE OF PRODUCTS:** Buyer agrees that it shall not resell any Products purchased from Seller unless Buyer is an authorized distributor of Seller's Products. Seller shall not be obligated to provide any warranty service or other technical support for any Products not purchased directly from Seller or an authorized distributor of Seller.
- 22. NO LICENSE:** Neither this Agreement nor purchase of any Products hereunder shall be construed to confer upon Buyer or its customers any license under any patent or other proprietary rights of Seller. Tooling, set-up, fitting-up, drawings, design information, non-recurring engineering, and partial preparation charges when invoiced cover only part of the cost thereof to Seller. Buyer does not acquire any right, title or interest in any tooling, set-up, fitting-up, drawings, design information, or invention or other intellectual property resulting therefrom, which remain the sole property of Seller.

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23. **NON-WAIVER OF DEFAULT:** No failure by Seller to insist on strict performance of any term or condition hereof shall constitute a waiver of such term or condition or any breach thereof, nor shall such failure in any way affect Seller's legal remedies with respect to any default by Buyer hereunder.
24. **LEGAL ACTION:** Any lawsuit or other action brought by Buyer against Seller, whether based on contract, tort or any other legal theory of recovery, must be commenced within one (1) year from the date when the alleged cause of action accrued.
25. **APPLICABLE LAW; VENUE:** This Agreement and the sale of goods and services hereunder shall be governed by and construed in accordance with the laws of the State of Illinois, excluding laws directing the application of the laws of another jurisdiction, and Buyer hereby attorns to such exclusive jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not, for any purpose, govern or apply to the sale of goods and services or any transactions, performance or disputes hereunder. All legal proceedings arising under this Agreement or in respect of the sale of the Products will be initiated and maintained solely and exclusively in any state court located in DuPage County or federal court located in Cook County, Illinois. The parties hereby irrevocably consent to such jurisdiction and venue.
26. **SEVERABILITY:** If any term, covenant or condition of these Terms and Conditions, or the application thereof to any person or circumstance, shall, to any extent, be invalid, illegal or unenforceable, the remainder of these Terms and Conditions or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of these terms and conditions shall be valid and shall be enforced to the fullest extent permitted by law.
27. **ASSIGNMENT:** Buyer may not transfer or assign this Agreement or any interest herein, by operation of law or otherwise, without the prior express written consent of Seller. Any attempted transfer or assignment without such consent shall be void. Seller may assign its rights and delegate its duties hereunder. Notwithstanding, these Terms and Conditions shall be binding upon and insure to the benefit of the parties hereto and their respective successors and permitted assigns.
28. **ENTIRE AGREEMENT:** This Agreement supersedes all prior written and oral agreements and understandings between Seller and Buyer with respect to the Products and services specified herein. No representation or statement not contained herein shall be binding upon Seller as a representation, warranty or condition or otherwise.
29. **MODIFICATION:** No addition to or waiver, modification or cancellation of any provision hereof shall be binding upon Seller unless in writing and signed by a duly authorized representative of Seller.
30. **NOTICES:** All notices and other communications hereunder shall be in writing and shall be mailed by first-class, registered, express or certified mail, postage prepaid, to the parties hereto at their respective designated addresses, subject to the right of either party to change such address upon ten (10) calendar days prior written notice.
31. **EXPORT CONTROL:** Buyer acknowledges that Products, software, and technical information provided under this Agreement are subject to U.S. and other export laws and regulations. Buyer agrees not to export, re-export, transfer, or transmit the Products, software, or technical information except in compliance with all such laws and regulations. This sale is subject to any applicable governmental approvals and, at Seller's request, Buyer agrees to sign written assurances and other export-related documents as may be required for Seller to comply with US export laws and regulations.
32. **SOLVENCY:** Buyer hereby represents and warrants to Seller that Buyer is solvent (on a balance sheet basis) and has the unrestricted ability to pay its debts in the ordinary course of business as and when they are due and payable. Buyer acknowledges and agrees that, contemporaneously with the receipt by Seller from Buyer of any order or request to purchase products, goods, or services, (i) Buyer shall be deemed to have remade and reaffirmed in writing Buyer's solvency representation and warranty set forth above, and (ii) such written solvency representation and warranty, in addition to being remade as set forth herein, shall be deemed for all purposes to be incorporated into said order or request as if it was fully set forth in writing therein, it being the express intention of the parties to grant to Seller the maximum right of reclamation available at law or in equity either under applicable state law (i.e. the Uniform Commercial Code) or in any bankruptcy or solvency proceeding.
33. **ATTORNEY'S FEES:** If Seller institutes a lawsuit or any other action against Buyer to collect any monies due Seller hereunder or pursuant to any order for materials or services or based on any breach by Buyer of any provision of these terms and conditions or if Seller successfully defends against a lawsuit or any other action instituted by Buyer against Seller hereunder, whether based on contract, tort or any other theory, then Seller shall be entitled to, and Buyer shall reimburse Seller for, Seller's costs and expenses, including without limitation, attorneys' fees and costs, paid or incurred in connection with any such collection efforts, lawsuit or action.
34. **NO REVERSE ENGINEERING:** Buyer covenants and agrees that it shall not, nor shall it knowingly permit any third party (including any employee, agent or representative) to: (i) cause or permit the copying, duplication or reproduction of any Proprietary Information

TERMS AND CONDITIONS OF SALE

or Seller's intellectual property and Products; (ii) translate, adapt, vary or modify the Proprietary Information or Seller's intellectual property and Products, including without limitation, any tangible embodiment thereof; or (iii) disassemble, decompile, decompose, reverse engineer or otherwise analyze for the purpose of duplicating, reproducing, copying, creating derivative works of, or otherwise "knocking off", any Proprietary Information or Seller's intellectual property and Products which is in a finished, completed, final or tangible form (including without limitation, samples or prototypes or products produced by virtue of such Proprietary Information or Seller's intellectual property and Products).

- 35. NON SOLICITATION OF CUSTOMERS AND EMPLOYEES:** To protect Seller's interest in the Proprietary Information and in Seller's current and prospective customers, during the term of this Agreement and for a period of twelve (12) months following the termination of Buyer's contract with Seller for any reason, Buyer will not, individually, or in association or in combination with any other person or entity, directly or indirectly, as proprietor or owner, or officer, director or shareholder of any corporation, or as an employee, agent, independent contractor, consultant, advisor, joint venture, partner or otherwise, whether or not for monetary benefit, except on behalf of Seller, solicit, sell to, provide services to, or assist the solicitation of, sale to, or providing to, or encourage, induce or entice any other person or entity to solicit, sell to or provide services to, any person or entity who is or was a customer of Seller at any time during the twelve (12) months immediately prior to termination of Buyer's contract with the Seller (or whom the Seller has within six (6) months of the termination of Buyer's contract with Seller solicited to become a customer of Seller), for the purpose of (a) providing such customer with any product or service which directly competes with the products or services provided by Seller to that customer or is in substitution for in replacement of such products or services; (b) altering, modifying or precluding the development of such customer's business relationship with Seller; or (c) reducing the volume of business which such customer transacts with Seller.

To further protect the Seller's interest in its Proprietary Information and in Seller's relationships with its employees and contractors, for a period of twelve (12) months following the termination of Buyer's contract with Seller, for any reason, Buyer will not, individually or in association or in combination with any other person or entity, directly or indirectly, encourage, induce or entice any employee or independent contractor of Seller to terminate or modify such person's or entity's employment, engagement or business relationship with Seller.