



("Seller")

GENERAL TERMS AND CONDITIONS OF SALE

1. Applicable Law and Jurisdiction.

These general terms and condition apply to all proposals and quotations submitted by Seller, to all purchase orders received by Seller, and to all goods and services sold by Seller, except as otherwise specifically provided in a document issued by Seller. This sale or any sale resulting here from consists only of these General Terms and Conditions of Sale and those in other documents which are referred to herein or are attached hereto or in a document subsequently signed by Seller and referencing this transaction (all of which constitute the "Agreement"). The agreement shall be governed, construed and enforced under the law of the Province of Ontario including the Personal Property Security Act ("PPSA") and when deemed applicable by Seller, under the Law of the State of Michigan including the Uniform Commercial Code. Any services to be provided hereunder, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included in a construction project), shall be considered ancillary to a sale of goods and the PPSA shall apply to all goods and services to be provided hereunder ("Goods"). The courts of Ontario shall have exclusive jurisdiction over the parties and the claims arising under or related to the agreement, unless waived by Seller and subject to any right of arbitration which may be provided by the agreement. The parties stipulate to the convenience of Ontario courts in general, as to all litigation. Any declaration of unenforceability of a provision shall be as narrow as possible and shall not affect the enforceability of the other provisions. A tribunal with jurisdiction may reform a provision of the Agreement, at the request of Seller, to the extent minimally required for enforcement.

2. Formation, Integration and Modification.

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

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without liability until it is approved by the Seller at its home office. Notice of such approval may be furnished to the Buyer in the form of an acknowledgment, shipment, or other form of express approval.

- B.** An order submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with these Terms and Conditions), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless the Seller otherwise advises Buyer in writing) notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other writing. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the agreement by filling such order or by failing to further object to Buyer's terms or conditions.
- C.** The Agreement is a final, complete and exclusive statement of the Agreement of the parties. The Seller is willing to negotiate written changes to these Terms and Conditions signed by Seller, but Seller reserves the right to make an adjustment in the price of the goods to cover Seller's estimated cost of such changes. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in writing and signed by Seller's authorized employee at its home office. Notwithstanding anything to the contrary in the Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement shall affect the Buyer's liabilities to Seller accrued prior thereto. Seller may correct unilaterally mathematical and typographical errors in the agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing; or custom in the trade shall not modify or waive any right of Seller.
- D.** The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be for the benefit of Seller's agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers shall also apply.
- E.** Goods quoted to Buyer are subject to prior sale or other commitment.
- F.** Buyer and Seller acknowledge that:

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They are merchants in respect to the Goods and;

They have had an opportunity to review the Agreement and;

The provisions of the Agreement are reasonable when considered as a whole.

G. Buyer may not resell the Goods under any brand name other than the Seller's.

3. Authority of Seller's Agents.

No agent, employee, or representative of the Seller has any authority to bind the Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement. Unless an affirmation, waiver, representation, or warranty is expressly included within the Agreement, it is not a part of the basis of the Agreement and it is not enforceable.

4. Prices, Payment and Risk of Loss.

A. Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices contained in individual written quotations or proposals are firm only for a period of 30 days from the date of the quotation. Beyond the 30 day period the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. Prices do not include taxes and Buyer shall pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt there from. All prices are stipulated on our quotes with the applicable currency of either Canadian or United States dollars and must be paid in the currency stipulated on our quotes, and invoice, at the location specified in Seller's invoice. Buyer shall pay all government fees levied on the installation and inspection of the Goods. Buyer shall pay upon receipt all invoices rendered by Seller for any such items Seller may pay.

B. The Agreement is for a shipment contract and the Goods shall be delivered F.O.B. Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary.

C. If any delay in delivery beyond the date of delivery scheduled at the time of entry of the

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order is requested or otherwise caused by the Buyer, the Seller shall adjust the price under the provisions of this subsection. Seller may unilaterally adjust the price to cover Seller's increased cost of performance due to increases in the costs of materials or transportation, change in the law, or other conditions beyond Seller's reasonable control after the date of any quotation.

- D.** Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, and other performance by Seller, required by changes requested by Buyer to the Goods, schedule, or any other performance by Seller after the date of any quotation. Seller is not obligated to perform any such changes, but shall be compensated for them if Seller complies with such requested changes.
- E.** Except as otherwise provided in the Agreement, Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included in the price, any increase in rates becoming effective after the date the price is quoted to the Buyer shall be added to the price.
- F.** If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or a documentary letter of credit approved by a Canadian Bank acceptable to Seller or other financial security for such payment or other obligations. In addition, all amounts owed by Buyer to Seller shall be accelerated and payable immediately if Buyer fails to make any payment on time and as otherwise required or if Buyer sells or transfers the line of business for which the Goods are purchased or is a participant in a merger.
- G.** All export and import permits and licenses and the payment of all export and import duties and customs fees shall be the responsibility of Seller, if Seller is obligated by the Agreement to deliver the Goods within Canada or the United States. All export and import duties, fees, permits, licenses, etc. for Goods to be delivered outside of Canada, or the United States, shall be the responsibility of the Buyer.
- H.** Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer shall pay all invoices net 30 days after the date of shipment. Seller may change any payment term to Buyer on seven days written notice.

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- I. Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale and the Buyer shall pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future shall be considered an installment delivery. A failure to pay for an installment within the time for payment is a material anticipatory breach of other installments by Buyer.
- J. All amounts not paid to Seller when due shall incur a carrying charge of 1.0% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.
- K. All amounts due on installation or other event which requires the action or cooperation of Buyer which Buyer fails to supply timely shall become due upon such failure.
- L. If the Agreement permits or requires the use of a letter of credit, the letter of credit must be assignable, irrevocable, confirmed by a Canadian bank and must be acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading. Buyer shall pay all costs related to the letter of credit.
- M. Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and shall pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues.
- N. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.

5. Delivery.

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

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proposed in the Agreement.

- B. Seller shall deliver the goods by tendering the Goods on its docks for placement in the possession of a carrier and, without liability, shall make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. Seller will generally follow the Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost. On Buyer's request, Seller shall obtain and send to Buyer documents necessary to enable the Buyer to obtain insurance. The Seller is not responsible to prepay transportation or insurance costs. The Buyer shall pay all handling and other charges incidental to transportation. Buyer is responsible for making any claim against the carrier and other handlers of the Goods after delivery.

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

- A. If shipment of any item or other performance by Seller is delayed at the request of or due to the fault of the Buyer, the Seller may at its option hold the item at the place of manufacture at the risk and expense of the Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for an item shall be due and payable 30 days after the Buyer is notified that the item is ready for shipment. If the Seller is unwilling to accommodate the Buyer by holding such item, the Buyer shall accept shipment immediately.
- B. All inspection, delivery, and other dates for Seller's performance are estimates only. In addition, the Seller shall not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from:
 - (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order;
 - (ii) shortages of raw materials or labor;
 - (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at the Seller's or its supplier's plant or elsewhere (whether or not beyond the Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance;

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(iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise. If one or more deliveries hereunder are delayed by reason of anyone or more of such occurrences for a period of 30 days, the Seller may, at its option, terminate the Agreement as to the undelivered goods or waive such delay and establish a new delivery schedule.

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

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

7. **Inspection. Testing and Rejection.**

A. If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. On request Seller will quote to Buyer additional charges required to conduct any additional procedures requested by Buyer which may be acceptable to Seller.

B. All drawings, specifications, technical documentation, samples, prototypes and Goods shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven days of receipt or other reasonable time established by Seller. Buyer shall have seven days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, notice must be given to the Seller so that it will arrive no later than 10 days after receipt of the item by the Buyer. Failure to so act shall constitute an irrevocable acceptance by the Buyer of the item. Any objection and/or rejection by the Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. All defect(s) and non-conformities which are not so specified are waived. If the Buyer rejects any tender of the Goods and if requested by Seller, Buyer shall return them to the Seller, express, collect, within three days after such request. A failure to so return shall constitute an irrevocable acceptance. No attempted revocation of acceptance shall

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be effective, and Buyer shall be limited to any available remedies specifically provided in the Agreement for breach of warranty. Seller shall have a reasonable period of time to cure any non-conformity.

- C. If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon notification by Seller that the Goods are ready for inspection or testing, the Buyer shall provide at the place of manufacturer, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check them for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven days, then the Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and are otherwise covered by Seller's warranty, will be at the Buyer's expense.
- D. Buyer shall provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If the Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Buyer for testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the Goods include the necessary fixtures and tooling, the inspection and/or testing at the place of manufacture may be performed on production or other equipment similar to, but other than, that identified to the Agreement.
- E. Any claim by the Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to the Seller within seven days of receipt.
- F. Any expense incurred by Buyer in the inspection or testing of Goods shall be paid by the Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or nonconformity.

8. **Installation.**

- A. All Goods shall be assembled and installed by and at the expense of the Buyer. Seller may furnish, upon request and without additional cost or liability to Seller, written instructions for installing, maintaining, and operating the Goods. At Buyer's request and

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cost, Seller may furnish personnel and equipment to assist in the installation and/or startup of the Goods. Buyer shall pay Seller its prevailing per diem rates for such personnel and equipment plus reasonable transportation, food, lodging and other travel expenses. Buyer shall have competent supervisory, maintenance and operating personnel present when Seller's personnel are performing such services.

- B. Buyer assumes all risk of using the Goods in its location and in connection with other equipment. Seller has no responsibility to determine the adequacy of the foundation, utilities, skills of Buyer's staff, or any other matters.

- C. If a standard foundation drawing is supplied, it may include only plan and elevation views. Due to many variations in soil type, adjacent equipment, workmanship foundation depth, etc. any foundation drawing is a suggestion only. The foundation (whether or not constructed with Seller's drawing) is not warranted and Seller shall not be responsible for any defects in the foundation or consequences which may result from an inadequate foundation.

9. Software License.

The Seller grants the Buyer, for its internal use [and for use in the vehicle in which the Goods are installed] only, a nonexclusive perpetual license ("License") of all user manuals, software programs, firmware, and storage media ("Software") provided by the Seller in conjunction with the Goods with which the Software is provided, for the sole purpose of the operation of the Goods. This License terminates automatically if Buyer is in default of its obligations. The Software may be provided in machine readable object code only. Licensee may make and keep one copy of the object code, if provided by Seller, for backup purposes. When making a copy, the Buyer shall reproduce all Seller's copyright or patent notices in all forms originally included in the Software. Buyer shall not make any effort to obtain or reproduce the Software's source code. Title and all ownership rights to the Software remain with Seller, its licensors, or its suppliers. The Software is the proprietary information and trade secret of the Seller or its licensors, whether or not any portion thereof is or may be validly copyrighted or patented. The License may not be assigned nor transferred by Buyer except as a part of a transfer of the Goods without the written consent of Seller which may be withheld. The Software is provided for the Buyer's internal use only and the Buyer shall maintain the confidential nature of the Software and related materials and protect them against disclosure or improper use. Buyer shall pay all taxes based on the Software or use of the Software,

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however designated or levied, except those based on Seller's net income. These provisions take precedence over any government procurement policy, regulation, or contract clause relating to rights in computer software. All disclaimers and limitations applicable to the Goods apply to the License.

10. General Express Warranties.

- A. Seller warrants to the Buyer only, subject to the disclaimers and limitations of the Agreement that Goods [to the extent manufactured by Seller] shall be free from failure due to manufacturing defects in materials and workmanship which are discovered within the period of 12 months from the [installation date] [delivery date to the original retail purchaser] or [for 2,000 hours of actual operation], whichever is shorter. This is not a warranty of performance, but a limited warranty as to the condition of the Goods [at delivery] [at the beginning of the warranty period.] Because the Goods may be subject to a wide variety of use, installation, maintenance and cleaning, the warranty is only against such defects and not against any other failures such as, but not limited to, those due to wear and tear, normal maintenance and perishable items are excluded from this warranty against defects.
- B. Seller warrants to Buyer that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated herein and Seller's published and internal standards; however, Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is nonmaterial. Seller may, in its discretion, also rely on any generally accepted industry standards.
- C. Seller's warranties shall apply only if the Goods:
 - (i) Have been installed, maintained, and used in conformity with instructions furnished by Seller from time to time, if any;
 - (ii) Have been subjected to normal use for the purpose for which Goods were designed;
 - (iii) Have not been subjected to misuse, negligence, or accident; and,
 - (iv) Have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods.

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11. Patent Express Warranties.

Seller shall defend and indemnify Buyer from any claim which asserts that the Goods or their inherent methods of operation, intrinsically, infringe any Canadian patent, except as to a claim based on Buyer's use of the Goods as a step in an overall process or as an element in an overall combination. Seller's obligation shall not apply to a claim based on Goods or portions thereof specified, designed, or manufactured by Buyer. Buyer shall notify Seller promptly of any assertions of patent infringement and provide Seller with assistance and information requested by Seller for its defense, or shall have no further obligation to defend or indemnify. Seller shall defend with its counselor or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to prosecute or settle such claims. Seller's exclusive obligation to indemnify as to Goods declared to infringe is limited to the acquisition of a license, the replacement of goods with non-infringing goods, the modification of the Goods so that they are non-infringing, or the return of the purchase price and shipping costs in exchange for the Goods, as Seller may elect. This Section states the Seller's entire and exclusive obligation regarding patent infringement and remedies therefore, and Buyer waives all other rights.

12. Disclaimer and Limitation of Express Warranties.

There are no express warranties other than those contained in the Agreement. Any representations as to performance and other matters, except as contained in the Agreement, were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein. Seller does not warrant any portion of the Goods not manufactured or not furnished by Seller (whether or not specified by Buyer), but Seller shall assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. Seller is not responsible for any errors or omissions or for any loss or damage resulting from reliance on catalogues, brochures, price lists or other information provided to Buyer from the Seller, including, without limitation, any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information. Such information provided by the Seller is intended for general information only. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines, or procedures unless specifically contained in the Agreement.

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13. Disclaimer of Implied Warranties.

The Seller disclaims all implied warranties (other than good title) including but not limited to those of fitness for a particular purpose, merchantability, and non-infringement. There are no warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon the Seller's skill or judgment to select or furnish Goods for any particular purpose beyond the specific express warranties in the Agreement. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement.

14. Parts, Service and Training Performed by Seller.

All warranty and non-warranty parts, labor, service, software, and training, if any, provided by the Seller or its agents and contractors (including those provided under purchase orders subsequent to the Agreement) related to the Goods are subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Buyer shall pay Seller for all non-warranty work in advance or upon such other terms as may be agreed. The Seller may have access to the Goods during or after installation of the Goods. The Seller is not under any duty to inspect the Goods for any defects or any improper use or modification of the Goods nor to correct or advise the Buyer of any such condition, use or modification, which is observed. Any notification which may be given is voluntary and subject to all limitations and disclaimers in the Agreement.

15. User's Responsibility for Safety.

- A. It is Buyer's or other user's responsibility to provide all proper dies, devices, tools, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, setup, or service of the Goods. Buyer should comply with manuals furnished by Seller, ANSI Safety Standards, OSHA and similar state regulations, and other sources to insure the safe use of the Goods.
- B. Seller believes that the Goods will be in substantial compliance with the general requirements of federal OSHA regulations directly associated with operator safety and noise level control. The technical detail of the complete OSHA regulations and many

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additional references to other standards render it impracticable to provide complete compliance unless Buyer requests compliance with specific sections or paragraphs of OSHA or other standards and such standards are included in Seller's quotation. Because of changes which occur in OSHA, state codes, local codes and user safety programs, Seller must be advised by Buyer or other users if they desire specific modifications in the Goods required for compliance. A quotation will be submitted for such requested modifications.

- C. Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safety under all circumstances. Buyer must install and use the goods in a safe and lawful manner in compliance with applicable health, safety, and environmental regulations and laws and general industry standards of reasonable care.

16. Indemnification.

- A. Buyer shall indemnify the Seller from any and all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of the Buyer or its employees, customers or agents, or the Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against the Seller.
- B. Buyer shall use and shall require its employees to use all safety devices and guards furnished with or intended to be used with the Goods, and to follow proper safe operating procedures in accordance with general industry standards and as set forth in manuals and instruction information furnished by Seller. If Buyer fails to comply with the obligations set forth in this subsection, Buyer shall indemnify and save Seller harmless from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of the Goods and all warranties of Seller shall become automatically void. Buyer shall notify Seller promptly, and in any event within 30 days, of any accident or malfunction involving Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods

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and Buyer's reports regarding the Goods for Seller's inspection. If Buyer fails to provide such notice and cooperation to Seller, Buyer shall indemnify Seller from any claims arising from such accident or malfunction whether or not the Goods are non-conforming or defective.

17. Cancellation and Breach.

- A.** Buyer may cancel its order for the Goods prior to their completion by immediate payment to Seller of Seller's cost of manufacture and liquidated damages (including labor, engineering, materials, equipment time, and overhead) computed using Seller's standard internal costing procedures, plus 15% of the sale price of the Goods. Cost of manufacture shall include all materials or services which Seller has ordered and which cannot be canceled and all costs incurred in canceling material and service orders which can be canceled. Seller may retain without cost all materials and partially completed Goods on canceled orders. The parties acknowledge the great difficulty of proving damages for the cancellation of products such as the Goods and the reasonableness of this liquidated damages provision.
- B.** If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if an action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, the Seller may cease performance of its obligations, recover Goods in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.
- C.** Seller shall be awarded interest, consequential and incidental damages and costs (such as interest and actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.
- D.** The Seller may require that the Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to the Buyer's ability to make prompt payment, and if such security is not posted Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.
- E.** All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

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- F. Seller shall not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.
- G. Seller's failure or delay in enforcement of any provision shall not constitute a waiver of a breach or of the provision itself.

18. Consequential. Incidental. And Other Damages.

Buyer and third parties shall not be entitled to any consequential, punitive, exemplary, or incidental damages. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of the Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder, and under no circumstance shall Buyer recover more than the purchase price.

19. Security Interest.

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

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which are the subject to the Agreement if payment therefore shall not have been made in full to Seller. Buyer shall immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which have not been paid to Seller.

20. Buyer's Property.

Buyer shall insure all materials, fixtures, tooling, and other property delivered to Seller against all risks and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use or storage of such property.

21. Solvency of Buyer.

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

22. Proprietary Information.

- A. Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.
- B. All proposals, plans and other information furnished by the Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any third party or used by Buyer except as may be necessary for the selection or use of the Goods.
- C. Any design, invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by

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Seller shall be the property of Seller and Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from the Buyer in the performance of the Agreement, except as provided in subsection A.

- D. Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.
- E. Buyer shall treat as confidential all technology which shall be made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, and specifications, bills of material, test results, analysis, recommendations, models, and designs. Buyer shall not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer shall maintain, for Seller's inspection, written records which shall include the names and address of such employees and contractors granted such access. Buyer shall indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors.

23. Time for Bringing Action.

Any proceeding by the Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the payment cannot be filed nor maintained unless:

- (i) it is commenced within one year after the cause for action has accrued;
- (ii) Buyer has given timely written notice to Seller of its claim as provided herein; and
- (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of the Agreement shall occur no later than shipment of the Goods whether or not installation or other post shipment services are required by the Agreement.

24. Arbitration.

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All controversies and claims arising out of or relating to the Agreement, or the breach thereof, shall be settled solely by arbitration held in Windsor, Ontario. Seller may elect to institute, prior to formation of an arbitration panel, with an action for a claim and delivery or replevin action to enforce its interests in the Goods. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereof. No demand for arbitration hereunder may be filed by Buyer as a claim or counterclaim if Buyer has not given timely written notice of its claim to Seller or if more than one year has expired from the date of the cause of action accrued, as provided in the Agreement. The arbitrator(s) may enter an interim award that the Goods be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller. Upon the filing of a demand for arbitration by Seller or Buyer, the Buyer shall deposit with the arbitrator(s) the unpaid balance of the purchase price to be held in an interest bearing account. If such deposit is not made, the arbitrator(s) shall enter a final award against the Buyer in the amount of the unpaid purchase price and other amounts owed by Buyer to Seller under the Agreement. The arbitrator(s) shall be bound by the terms of the Agreement and shall not apply any principles of equity nor allow any claims not permitted by the Agreement. The arbitrator(s) may include the arbitration fees in an award.

27. Assignment.

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

28. Claims.

Communications concerning disputed debts or other claims, including an instrument tendered as full satisfaction of a debt or claim must be delivered to the President of the Seller.

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