

# SCHULER INCORPORATED –TERMS AND CONDITIONS OF SALE



Member of the ANDRITZ GROUP

**SELLER'S ACCEPTANCE OF ANY PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON PURCHASER'S ASSENT AND ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS, WHICH MAY BE ADDITIONAL TO OR DIFFERENT FROM THOSE STATED OR REFERENCED IN PURCHASER'S PURCHASE ORDER. THE FOLLOWING TERMS AND CONDITIONS OF SELLER ARE THE ONLY TERMS AND CONDITIONS UPON WHICH SELLER WILL ACCEPT ANY PURCHASE ORDER AND THAT APPLY TO THE CONTRACT, AS HEREAFTER DEFINED:**

7145 Commerce Boulevard  
Canton, MI 48187  
Telephone: 734-207-7200  
Telefax: 734-207-7222

- APPLICATION:** These Terms and Conditions of Sale (hereafter, "Terms and Conditions") apply to a sale of any Goods and/or furnishing any Services, as applicable, by Schuler Incorporated (hereafter, "Seller"), as seller, to a person or legal entity purchasing Goods or Services from Seller (hereafter, "Purchaser"), as buyer. In addition to capitalized terms defined elsewhere in these Terms and Conditions, for purposes of these Terms and Conditions: the term "affiliate" shall mean, with respect to either Seller or Purchaser, an entity under common control with, in control of, or controlled by, Seller or Purchaser, as applicable; the term "Goods" shall mean the spare, service, or replacement parts or components, new tooling, machinery or equipment, production parts, or other goods identified in the Purchase Order, as modified by Seller's Acceptance; the term "Services" shall mean installation of new equipment or machinery, any engineering, design or development services related to Seller's manufacture or sale of production parts or components or any new tooling, machinery or equipment, or the services identified in the Purchase Order, as modified by Seller's Acceptance; and the term "Purchase Order" shall mean a purchase order, release, Contract, award letter, kick-off letter, correspondence or other writing received by Seller from Purchaser (whether in paper or electronic format) requesting Seller to manufacture and/or sell Goods and/or furnish Services to Purchaser.
- QUOTATIONS:** These Terms and Conditions also apply to any quotation issued by Seller (whether in paper or electronic format) to Purchaser in connection with any proposed sale of Goods or furnishing of Services (hereafter, "Quotation"). With respect to any Quotation, Purchaser shall be deemed to have accepted these Terms and Conditions upon the issuance to Seller (whether in paper or electronic format) of a Purchase Order that is based in whole or in part on that Quotation. Any Quotation issued to Purchaser involves Seller's interpretation of the Purchaser's needs. Purchaser is responsible for correctness of all information provided to Seller, and Seller makes no representation as to the accuracy of its interpretation of Purchaser's information. A Quotation is provided to Purchaser for informational purposes only, and any information in a Quotation is subject to change without notice prior to Seller's acceptance of a Purchase Order based on the Quotation. Without limiting the generality of the foregoing, the prices quoted by Seller are subject to change without notice based upon, without limitation, currency fluctuations from and after date of the Quotation and prior to the acceptance of the Purchase Order by Seller. A Quotation is for Purchaser's use only, may not be used by Purchaser for any other purpose or disclosed by Purchaser to any third party without Seller's written consent. To the extent a Quotation includes or references any terms or conditions that are additional to or different from those contained in these Terms and Conditions with respect to any particular Goods or Services, the terms and conditions of the Quotation shall control, supersede and replace the inconsistent terms and conditions of these Terms and Conditions with respect to such Goods and/or Services, as may be applicable.
- ACCEPTANCE OF ORDERS:** Seller's acceptance of any Purchase Order is expressly conditioned upon Purchaser's assent and acceptance of these Terms and Conditions, which may be additional to or different from those stated or referenced in a Purchase Order. These Terms and Conditions are the only terms and conditions upon which Seller will accept any Purchase Order and that apply to the Contract. Each Purchase Order is an offer to purchase Goods and/or Services identified in the Purchase Order, and is subject to prior approval and acceptance by Seller. Seller may accept a Purchase Order by issuing a written, signed acceptance or order acknowledgment document ("Acceptance") or by commencing performance under the terms of the Contract. To the extent Seller's Acceptance includes or references any terms or conditions that are additional to or different from those contained in the Quotation or these Terms and Conditions with respect to any particular Goods or Services, the terms and conditions of the Seller's Acceptance shall control, supersede and replace the inconsistent terms and conditions of the Quotation and/or these Terms and Conditions with respect to such Goods and/or Services, as may be applicable. "Contract" means the Contract between Purchaser and Seller regarding the sale of Goods and/or furnishing of Services, and consists of the Purchase Order that was approved and accepted by Seller (as modified by these Terms and Conditions and only to the extent the Purchase Order identifies the Purchaser and the type, quantity, price and delivery dates for Goods and/or Services to be sold or furnished by Seller), an Acceptance delivered to Purchaser by Seller, these Terms and Conditions and information and terms and conditions contained in any other Seller proposals, Quotations, or Seller's documents incorporated by reference in the Seller's Acceptance. Any reference to a Purchase Order in the Acceptance shall be for reference purposes only and shall not be deemed to include any terms or conditions of Purchaser included or referenced in the Purchase Order. Each Purchase Order approved and accepted by Seller shall be governed exclusively by this Contract, whether or not it references this Contract or the Quotation on the face of such Purchase Order. The Contract constitutes the entire Contract between the parties with respect to the transaction(s) covered by it and is effective upon, and Purchaser shall be deemed to have accepted these Terms and Conditions by, Purchaser's (1) written acceptance, (2) ordering Goods or Services from Seller in any manner, or (3) paying for any Goods or Services, or by Seller's (4) commencement of manufacture or procurement of any Goods or any part thereof for the Purchaser or (5) commencement of performance of Services, whichever occurs first. Purchaser acknowledges that it alone has selected the type and quantity of Goods and Services being purchased from Seller. If Seller at any time discovers, whether before or after providing its Acceptance to Purchaser or commencing its performance, any issue(s) that may impact the nature, quantity or price of any Goods or Services, Seller shall notify Purchaser in writing of such issue(s) and adjust its scope of work and the price accordingly, and these adjustments shall automatically become a part of the Contract regardless of whether Purchaser issues a new or amended Purchase Order that reflects the adjustments.
- PURCHASER'S TERMS AND CONDITIONS EXCLUDED:** To the extent any Purchase Order or any Purchaser's terms and conditions include or reference any terms or conditions that are additional to or different from those contained in these Terms and Conditions, these Terms and Conditions shall control, supersede and replace the Purchaser's additional and/or different terms and conditions, as may be applicable, and all such Purchaser's terms and conditions are hereby objected to and rejected without further notification and are not part of the Contract. The Contract excludes any and all codes, guides, policies and procedures of Purchaser, and any amendments or modifications to any of them, which may impose additional costs or obligations on Seller. No modification or waiver of any of these Terms and Conditions and no additional or different terms and conditions shall be effective unless and to the extent expressly agreed to in a writing signed by an authorized corporate officer of Seller. Purchaser's receipt of any of Seller's documents which include or incorporate these Terms and Conditions shall be deemed Seller's express perpetual objection to any additional and different terms and conditions of Purchaser, without any further notification.
- PRICES:** Stated prices apply only to the specific quantities of Goods and Services described in the Seller's Acceptance, as applicable. Prices do not include sales, use, excise, license, property, privilege or other taxes, export or import fees (including without limitation costs incurred for export packing and for duties, tariffs, licenses and other governmental impositions), shipping or transportation costs or any insurance charges, and Purchaser shall pay all such taxes, fees, costs and charges. The price of the Goods includes raw materials and third party components at current market costs; however, the parties agree that the price of the Goods shall adjust for any increase in the cost of raw materials and/or third party components purchased by Seller in connection with selling the Goods and/or furnishing the Services to Purchaser, whether the increase in the cost occurs before or after Seller's Acceptance or commencement of Seller's performance. All amounts are payable in U.S. Dollars unless otherwise specified in the Purchase Order. If a Purchase Order indicates that the purchase price includes duties, tariffs, licenses and other governmental impositions, the purchase price is based upon the amount of those duties, tariffs, licenses and other governmental impositions as of the date of the Purchase Order and in the event of any increase in those costs, the purchase price shall be increased equivalently. Seller makes no representation or warranty that the purchase price for the Goods or Services does not exceed the price charged to any other customer of Seller for the same or similar goods or services.
- DELIVERY:** The dates for delivery of Goods and performance of Services as set forth on the Purchase Order are estimates, and neither time nor quantity shall be deemed of the essence and may be deviated from by a reasonably longer period at Seller's discretion without liability. Seller shall not be liable for delay due to force majeure as described herein. Seller's obligation to deliver Goods and/or perform Services is conditional on the timely receipt by Seller of documents and information necessary for the completion of the Purchase Order, any down payment, Purchaser's compliance with the Contract, and Purchaser's maintaining credit satisfactory to Seller. Seller may suspend or delay performance or delivery at any time pending receipt of assurances, including full or partial prepayment or payment of any amounts owed, adequate to Seller in its sole and absolute discretion, of Purchaser's ability to pay. Failure to provide such assurances shall entitle Seller to terminate any and all Purchase Order(s), in whole or in part, without further liability or obligation to Purchaser. Seller may also require Purchaser to pay for shipments C.O.D. or Cash in Advance in the event Seller does not receive adequate assurances of payment, in its sole and absolute discretion. Except as otherwise specified in the Purchase Order, as modified by Seller's Acceptance, all shipments shall be delivered EXW (Incoterms 2020) Seller's facility and Purchaser shall arrange for and pay all costs and expenses of shipping the Goods. If Seller is responsible for shipping of the Goods, all deliveries shall be via common carrier or some other reasonable means chosen by Seller. Risk of loss and damage to the Goods shall pass to Purchaser at the EXW Seller's facility. Shipments will not be insured except at Purchaser's written request and expense. Nothing herein shall be construed as limiting Seller's right to stop the Goods in transit and repossess same if payment of the purchase price, as required under the Contract, has not been made to Seller. Standard packing for domestic shipment is included in the quoted price. Partial shipments shall be allowed. Purchaser must accept delivery when Seller has completed its work on the Goods. Seller is not responsible to use any expedited shipping for any reason.
- PAYMENT:** Except as otherwise provided in the Quotation, Purchaser will be invoiced for the Goods upon EXW delivery of the Goods or any part of the Goods for shipment to Purchaser and will be invoiced for the Services upon substantial completion of the Services. Unless otherwise stated, full payment will be due upon Purchaser's receipt of the invoice. Title remains with Seller until full payment is received from Purchaser. No discounts may be taken without a prior written Contract of Seller. Each shipment of Goods shall be considered a separate and independent transaction and payment thereof shall be made accordingly. Seller reserves the right to charge Purchaser interest at a rate of one-half (1.5%) per month (or the maximum rate permitted by law, if less) on any payments that were not made timely until the entire unpaid balance is paid in full. Seller may include and charge this interest, in whole or in part, on any invoice or a statement of a past due balance issued to the Purchaser, but a failure to do so shall not be a waiver of Seller's right to charge this interest at a later time. Payment of such interest shall not operate to release Purchaser from its obligation to make payments on their due date. Purchaser shall immediately reimburse Seller for the costs and expenses (including, without limitation, investigation, legal actions or proceedings, and attorneys' fees, whether legal action is actually commenced) incurred by Seller in enforcing its rights and remedies under the Contract and of collection of any overdue amount owed by Purchaser to Seller, and such costs and expenses shall also be subject to the interest charges. Purchaser's payment obligations are not subject to any setoffs, claims, conditions or contingencies and shall survive expiration or termination of the Contract or any Purchase Order for any reason. If Purchaser fails to make any payments in accordance with terms hereof, Seller may defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance or Seller may terminate the Order without further obligations to Buyer.

8. **SECURITY INTEREST:** Purchaser hereby grants Seller a purchase money security interest in the Goods wherever located, including all substitutions, replacements and proceeds thereof, including insurance proceeds, to secure Purchaser's obligation to pay the purchase price and any other charges owed to Seller by Purchaser, and agrees that these documents shall be effective as a security Contract between Seller and Purchaser as to the Goods. Purchaser further agrees that Seller may (but is not obligated to) take any actions it deems appropriate to evidence and perfect such security interest, including but not limited to requiring a separate security Contract and filing Uniform Commercial Code financing statements. Purchaser authorizes Seller to file such financing statements, and Purchaser shall execute a written security Contract in favor of Seller in the form prepared by Seller and presented to Purchaser. While subject to Seller's security interest, Purchaser will keep the Goods free and clear from any and all other liens, claims, taxes and encumbrances.
9. **FINANCIAL STATEMENTS; INSURANCE:** During the period of Seller's performance under the Contract and while the Goods are subject to Seller's security interest, Purchaser will deliver to Seller such financial statements as Seller may from time to time request. During any period in which Seller has a security interest in the Goods, Purchaser shall keep the Goods insured against all risks of loss or damage from every cause whatsoever for not less than the replacement value thereof. The insurance shall be in form and amount, and from an insurer, suitable to Seller and shall name Seller as loss payee under physical damage coverage as its interest may appear and as additional insured under liability coverage. Each insurer shall agree that it will give Seller not less than thirty (30) days written notice before the policy shall be altered or canceled.
10. **INSTALLATION:** The prices stated in this Order do not include installation or service by Purchaser, unless otherwise specified. If such services are required, Purchaser agrees to pay Seller's current prevailing rate per hour per man, plus additional expenses including but not limited to travel time, transportation, room and board.. A four (4) hour minimum charge shall apply.
11. **CHANGE AND CANCELLATION:** Following Acceptance by Seller:
- Purchaser may not cancel or change the Contract or any Purchase Order, adjust the type, volume, delivery terms or price of any Goods or Services, or cancel, suspend or reschedule any performance or deliveries by Seller, without Seller's prior written consent, which consent may be withheld or conditioned in Seller's sole and absolute discretion. Any agreed upon changes shall be affected by a written change order.
  - Any request by Purchaser for changes to the Goods or scope of Services shall be subject to the Seller's written Contract and shall entitle Seller to modify the price of the Goods and/or Services and any other terms of the Contract affected by such change, including without limitation delivery dates, transportation terms and packaging requirements. Purchaser shall pay any additional costs incurred by Seller in connection with any change requested by Purchaser, interruption of production caused directly or indirectly by the Purchaser or other action, omission, breach or default of Purchaser.
  - In event of any cancellation or termination of any Purchase Order for any reason, Purchaser, in addition to and not to the exclusion of Seller's other remedies and remedies at law, equity, or under this Contract, shall pay to Seller on Seller's demand the following amounts which shall be invoiced by Seller: (i) the contract price for all Goods and Services which have been completed in accordance with this Contract, (ii) for Seller's work-in-process and raw materials purchased by Seller in furnishing the Goods and/or Services, in the amount equal to 120% of Seller's actual full cost including burden and overhead costs as determined by Seller in accordance with Seller's standard accounting practices, plus a charge for any packing and storage, less, however, any amounts received from the Seller's sale of the Goods or material to others, (iii) Seller's actual costs of settling all claims with subcontractors and suppliers utilized in connection with the Contract, (iv) Seller's actual cost to store the items to be purchased and, if necessary, relocate production to an alternate source; (v) any unamortized tooling costs, development/design costs, engineering costs, start-up costs, program capital costs and supplies that are unique to the Goods purchased, (vi) Seller's expected profit from the performance of the Contract, and (vii) Seller's incidental and consequential damages resulting from the termination or breach by Purchaser, including, but not limited to, any costs and expenses incurred by Seller associated with securing protection against currency fluctuation, costs for advance purchasing of essential items and technical support, attorneys' fees and other professional fees incurred by Seller as a result of the termination or breach. Upon an agreed cancellation or termination of any Purchase Order, all work on the Purchase Order or a part thereof that was canceled or terminated shall be stopped as promptly as is reasonably possible by Seller.
12. **INSPECTION, ACCEPTANCE AND REJECTION:** Purchaser shall inspect all Goods upon receipt and notify Seller within ten (10) days after receipt of Goods of any shortage, damage, defects, non-conformities or other issues affecting the Goods. Purchaser shall be deemed to have received and accepted the Goods in a condition, quantity and quality required by the Contract upon the earlier of (i) the expiration of the ten (10) days' notice period described above without Seller's receipt of the written notice from Purchaser, (ii) Purchaser's written acceptance of the Goods, (iii) the Goods becoming operational and performing their normal functions according to manufacturer specifications, or (iv) payment for the Goods. All sales of Goods are final and Goods cannot be returned without Seller's prior written authorization determined in Seller's sole and absolute discretion. Purchaser may not reject any Goods after acceptance. Purchaser shall inspect Seller's Services upon Seller's completion of same and notify Seller within ten (10) days after Seller's completion of the Services of any deficiencies or other issues with the way Seller performed the Services. Seller shall be deemed to have provided the Services and Purchaser shall be deemed to have accepted the Services required by the Contract upon the earlier of (i) the expiration of the ten (10) day notice period described above without Seller's receipt of the written notice from Purchaser, (ii) Purchaser's written acceptance of the Services, (iii) Purchaser's use of the results of the Services, or (iv) payment for the Services. Purchaser may not reject any Services after acceptance.
13. **TOOLING** (if applicable): Unless supplied by Purchaser or until purchased by Purchaser from Seller, Seller shall own all tools, jigs, dies, gauges, fixtures, molds, and patterns ("Tools") necessary for the production of the Goods. The cost of changes to the Tools necessary to make design and specification changes shall be paid for by Purchaser. Seller shall have no repair, replacement, or insurance requirements for the Purchaser's Tools, and Purchaser, at its expense, shall be solely responsible for such matters. Seller shall provide ordinary repair and maintenance for its Tools over the useful life of the Tool, not to exceed 5 years. Purchaser shall pay, or reimburse Seller if it pays, all personal property taxes and other charges or expenses that Seller pays or incurs related to the Purchaser's Tools. Seller may move and relocate all Tooling used in the production of the Goods, and Seller shall notify Purchaser of any change in the location of any Purchaser owned Tools. Provided Purchaser is not in default under the Contract, Seller shall make those Tools which are special for the production of the Goods available to Purchaser for purchase at a mutually agreeable price, provided, however, that this Contract shall not apply if such Tools are used to produce Goods that are the standard stock of Seller or Seller manufactures like Goods for others or otherwise uses the Tools in connection with other Tools or processes.
14. **LIMITED WARRANTY:** Subject to the other terms of these Terms and Conditions, Seller warrants to Purchaser:
- That at the time of delivery the Goods will be free from defects in materials and workmanship (hereafter, "Goods Warranty"), except to the extent Purchaser furnishes raw materials, no warranty is given for those materials. This limited warranty is for the benefit of the Purchaser only and is not transferable. With respect to the Services, that it will perform the Services in a prompt, professional and workmanlike manner (hereafter, "Services Warranty").
  - The Goods Warranty shall be effective for a period of time expressly stated in the Seller's Quotation and, if no warranty period is expressly stated in the Quotation, then for a period of one (1) year from the EXW date of delivery of the Goods to Purchaser. The Services Warranty shall be effective for a period of time, if any, expressly stated in the Seller's Quotation and, if no warranty period is expressly stated in the Quotation, then for a period of one (1) year from the date the Services are provided to Purchaser. The warranty period, if any, for the Goods Warranty and for the Services Warranty shall each be referred to, as applicable, as the "Warranty Period."
  - Limited Warranty on Presses and Subassemblies – Seller provides the original Purchaser with the following limited warranty: (i) One (1) year mechanical, electrical, pneumatic and hydraulic parts warranty to repair, or at Seller's sole option, replace any mechanical, electrical, hydraulic part that is found, to the satisfaction of Seller, after examination by Seller's property authorized representative, to be defective in material or workmanship under normal use, within one (1) year of the original date of delivery; (ii) Ninety (90) day electrical parts warranty to repair, or at Seller's sole option, replace any electrical part that is found, to the satisfaction of Seller, after examination by Seller's property authorized representative, to be defective in material or workmanship under normal use, within ninety (90) days of the original date of delivery. This limited warranty excludes electrical equipment Seller purchases from a third party. This limited warranty is for the benefit of the original Purchaser only and is not transferable. It applies to only those items that Seller has replaced or repaired. Seller will provide all parts necessary to correct such defects, and will furnish labor and travel costs and expenses to destinations within the continental United States. The original purchaser will be responsible for the cost of rigging, freight, handling, removal, dismantling, and reassembling the warranted equipment as necessary for the repair or replacement. This warranty applies only to parts and equipment that are new or have been repaired to at least a Factory-Reconditioned Standard set forth by Seller. Repairs specified by Purchaser to a standard less than Factory Reconditioned Standard shall automatically disqualify from all coverage set forth in this limited warranty. These warranties do not apply to equipment that has been altered by other than an authorized service employee of Seller or to parts of components not manufactured or designed by Seller, nor do they apply to parts subject to wear or consumption, such as filters, clutch and brake linings, wear surfaces (gib, bearing, etc.) lubricants and relays. Replacement or repair by Seller of any parts or components shall not extend the term of any warranty provided hereunder. In no event is Seller liable for auxiliary equipment (i.e., feeds, controls, etc.) purchased by the customer or installed on Seller's press. All items purchased by Seller are warranted only insofar and to the extent that the manufacturer of these items warrants them to Seller. "Normal use" shall mean use within rated capacities, at the correct regulated noise-free voltage with normal maintenance and operation in accordance with the applicable Seller's service and operation manuals. Rated capacities shall mean operation within tonnage and reverse load (snap through) ratings of the press and proper centering and distribution of the load within the die space area.
  - EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE CONTRACT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, IN CONNECTION WITH OR REGARDING ANY GOODS OR SERVICES FURNISHED PURSUANT TO THE CONTRACT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR ANY PARTICULAR USE OR PURPOSE, WARRANTIES TO THE SUITABILITY, RELIABILITY, DURABILITY, CONDITION, PERFORMANCE, RESULTS TO BE DERIVED FROM SELLER'S PERFORMANCE, SELLER'S CAPACITY, TITLE OR QUALITY, OR OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE HEREBY DISCLAIMED. ORAL STATEMENTS ARE NOT WARRANTIES AND SHALL NOT BE RELIED ON BY PURCHASER AND ARE NOT PART OF ANY CONTRACT BETWEEN THE PARTIES. SUBJECT TO THE PROVISIONS OF THE CONTRACT, PURCHASER ACCEPTS GOODS AND SERVICES IN THEIR "AS IS" "HOW IS" CONDITION.
  - For manufactured Goods - Purchaser must contact Seller and obtain a return material authorization (RMA) number prior to returning any Goods to Seller for any reason. Upon receipt and inspection of returned Goods, Seller will report its findings to Purchaser. Seller will, within a reasonable time, in its sole discretion and election, either repair, replace or issue a credit for the purchase price of any Goods found by Seller to be defective if such Goods are returned by Purchaser and received by Seller prior to expiration of the Warranty Period with written information including the type of Goods, RMA number, original purchase order and invoice number, date code, and a reasonable description of the defect. Failure to comply with these

requirements shall nullify and void this limited warranty. Purchaser shall pay for all transportation and repair or replacement charges in the event Seller determines that the Goods are not defective or not returned within the Warranty Period.

- (f) For Goods consisting of Equipment - Purchaser must contact Seller's warranty service department prior to the expiration of the Warranty Period with written information including the type of Goods, original Purchase Order and invoice number, date code, and a reasonable description of the defect. Seller will within a reasonable period of time inspect the Goods, and if found to be in need of service covered by the limited warranty, Seller will, within a reasonable time, in its sole discretion and election, either repair Goods or replace that portion of the Goods found by Seller to be defective. Failure to comply with these requirements shall nullify and void this limited warranty. Purchaser shall provide Seller with access to the premises at which the Goods are to be serviced. Purchaser shall provide or ensure the availability of adequate utilities (including electricity, gas and water) and the necessary equipment and devices (including cranes, rigging and hoists) at the premises, as necessary for Seller to service the Goods, at Purchaser's cost.
- (g) No allowance will be made for repairs made by Purchaser. The Goods Warranty and the Services Warranty cover the Seller's scope of work under the Contract only. Neither the Goods Warranty nor the Services Warranty covers, and Seller shall not be responsible for, (i) normal maintenance or items consumed during normal operation, (ii) normal wear and tear, (iii) use under circumstances exceeding the recommended limitations or application or for any unintended purpose, (iv) failure to observe operating or installation instructions, excessive loading, or use of unsuitable media, (v) the influence of chemical or electrolytic action, (vi) improper building or erection work not undertaken by Seller, (vi) abuse, mishandling, misuse, unauthorized or inappropriate repair or alteration of the Goods, (vii) improper installation, (viii) lack of proper maintenance, (ix) negligence, willful or intentional misconduct and/or willful or intentional damage to, or other problems with, the Goods caused by Purchaser or anyone under Purchaser's direction or control, (x) items and services identified in the Quotation, Acceptance or any other document that Purchaser is responsible to provide in connection with the Contract, (xi) any expansion, change, deterioration or other damage of or to the material resulting from any welding services, (xii) adverse effects of integration of Goods with any third party components, equipment, tooling or dies, or (xiii) accidents or damage to the Goods caused by natural causes such as fire, storm, or flood or other causes beyond the reasonable control of Seller.
- (h) Neither the Goods Warranty nor the Services Warranty extends to any product or part which has been manufactured using engineering specifications or data submitted by Purchaser or any product or part, including without limitation any electrical or electronic components or software or equipment, supplied by or on behalf of Purchaser or Purchaser's affiliate. Seller does not warrant consumable products or parts which have a life under normal usage shorter than the applicable Warranty Period. If the Goods or Services relate to re-manufacturing or refurbishment work, neither the Goods Warranty nor the Services Warranty extend to or cover, and Seller shall not be responsible for, any latent defect that was not actually discovered by Seller or any defect of any product or part attributable in whole or in part to engineering or design specifications which were inherent to the equipment being re-manufactured or refurbished prior to either its delivery to Seller or Seller's commencement of work at Purchaser's premises. Expendable items such as bulbs, filters, fuses, inserts and the like are excluded from all warranties.
- (i) Samples, descriptions, drawings, literature, representations, and other information concerning Goods contained in any materials of Seller or statements made by Seller's employees or representatives, or produced or acquired by Seller in performing its obligations under the Contract, constitute Seller's Confidential Information (as defined in these Terms and Conditions), are Seller's property and are provided to Purchaser for general informational purposes only, are not binding upon Seller and are not a representation or warranty by Seller. Purchaser acknowledges that Seller is not aware of any specific intended use of the Goods by Purchaser or any end user customer, and therefore Seller DOES NOT WARRANT THE GOODS FOR FITNESS FOR ANY PARTICULAR PURPOSE. No warranty is given as to the design of the Goods furnished by Purchaser.

#### 15. CLAIMS FOR BREACH OF WARRANTY, PURCHASER'S SOLE REMEDY:

- (a) Purchaser must notify Seller of any claim for breach of the Goods Warranty or the Services Warranty promptly following discovery of the claim and in any event prior to the expiration of the applicable Warranty Period. Seller shall have no liability for any damages suffered by Purchaser or any third party in connection with any failure or delay in notifying Seller of any warranty claim. Purchaser shall follow Seller's instructions in resolving the warranty claim, including without limitation, providing reasonably-detailed information and documents to Seller of the facts and circumstances giving rise to the claim and allowing Seller's employees and representatives entry to Purchaser's premises to investigate and remedy the claim as Seller deems appropriate.
- (b) With respect to the allegedly defective or non-conforming Goods, Purchaser must contact Seller and obtain a return material authorization (RMA) number prior to returning any Goods to Seller for any reason. All Goods authorized by Seller to be returned must be accompanied by an RMA number, original Purchase Order and invoice numbers, date code, and a reasonably-detailed description of the defect or non-conformity. Upon receipt and inspection of returned Goods, Seller will report its findings to Purchaser. Purchaser shall pay for all transportation and repair or replacement charges in the event Seller determines that the Goods are not defective or conforming or were not returned as required by these Terms and Conditions.
- (c) SELLER WILL, WITHIN A REASONABLE TIME, IN ITS SOLE AND ABSOLUTE DISCRETION AND ELECTION, AND AS PURCHASER'S SOLE REMEDY IN CONNECTION WITH THE DEFECTIVE OR NON-CONFORMING GOODS OR SERVICES, REPAIR, REPLACE, OR ISSUE A CREDIT FOR THE PURCHASE PRICE OF THE GOODS OR SERVICES, AS APPLICABLE, FOUND BY SELLER TO BE DEFECTIVE OR NON-CONFORMING. THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS SELLER IS WILLING TO REPAIR OR REPLACE THE DEFECTIVE PRODUCTS.
- (d) Repair or replacement parts furnished by Seller pursuant to the Goods Warranty which prove defective in material or workmanship during either (i) a period of ninety (90) days from the date of delivery of same to the Purchaser or (ii) the remainder of the original Warranty Period for the Goods for which Seller furnished repair or replacement parts, whichever is longer, will be repaired or replaced, IN SELLER'S SOLE AND ABSOLUTE DISCRETION AND ELECTION, AND AS PURCHASER'S SOLE REMEDY, by Seller, EXW Seller's facility; provided that Purchaser sends Seller a prompt written notice of the defect during such a time period and establishes that the part has been properly installed, maintained and operated and is not subject to any exclusions from warranty coverage as described in the Contract.
- (e) Purchaser's repair, replacement, or other correction of or to any defective or non-conforming Goods or Services without Seller's prior written consent shall automatically void Seller's warranty. Under no circumstances shall Seller be responsible for Purchaser's costs, expenses, or other damages resulting directly or indirectly from any rejection, repair, replace, or correction of any Goods or Services.
- (f) Neither Purchaser nor any affiliate of Purchaser has the right to deduct, setoff, or recoup from Seller or any Seller's affiliate any amounts owed to Seller or any Seller's affiliate or for Purchaser's or any Purchaser's affiliate's actual or alleged claim(s) against Seller or any Seller's affiliate (including attorney fees and costs of enforcement), without providing prior written notice and having to go through legal process.

**16. LIMITATION ON DAMAGES:** THE MAXIMUM LIABILITY, IF ANY, OF SELLER FOR ANY DAMAGES SUFFERED BY PURCHASER OR ANY THIRD PARTY WITH RESPECT TO ANY PURCHASE ORDER OR ANY GOODS OR SERVICES PROVIDED BY SELLER IS LIMITED TO AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE FOR THE GOODS OR SERVICES WITH RESPECT TO WHICH THE LIABILITY AROSE. IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY IN CONNECTION WITH OR IN ANY WAY RELATED TO THE CONTRACT, WHETHER ARISING FROM THE FURNISHING OF SERVICES, THE SALE OF GOODS, ANY DEFECT OR NON-CONFORMITY OF THE GOODS OR SERVICES, ANY USE OR INABILITY TO USE ANY GOODS OR THE RESULTS OF ANY SERVICES, ANY DELAY OR FAILURE TO PROVIDE ANY GOODS OR SERVICES, OR OTHERWISE, UNDER ANY CIRCUMSTANCES OR LEGAL THEORY (WHETHER TORT, CONTRACT, PRODUCT LIABILITY, WARRANTY, RECALL, INDEMNIFICATION OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, NON-ECONOMIC, OR PUNITIVE DAMAGES, LOSS OF PROFITS, LOSS OF INCOME OR REVENUE, LOSS OF GOODWILL, LOSS RELATED TO PRODUCTION OR SALES INTERRUPTION, LOSS OR DAMAGE TO PURCHASER'S PREMISES OR ANY EQUIPMENT, SYSTEM OR COMPONENT THEREIN, OR LOSS RELATED TO ANY GOODS OR SERVICES NOT FURNISHED OR APPROVED BY SELLER, WHETHER OR NOT FORESEEABLE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR (I) LOSS OF USE OR DOWNTIME RELATED TO ANY EQUIPMENT SUBJECT TO A WARRANTY CLAIM, (II) ANY ATTORNEYS' OR OTHER COSTS AND EXPENSES OF PURCHASER INCURRED IN CONNECTION WITH THE CONTRACT, OR (III) ANY OTHER COSTS, INCLUDING WITHOUT LIMITATION THE COSTS OF SHIPPING OR INSTALLATION. THE PARTIES ACKNOWLEDGE AND AGREE THIS LIMITATION OF DAMAGES PROVISION SET FORTH IN THIS PARAGRAPH 16 SURVIVES BETWEEN SELLER AND PURCHASER EVEN IF THE EXCLUSIVE REMEDY SET FORTH ABOVE IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

**17. LIMITATIONS OF ACTIONS:** Except as otherwise provided in these Terms and Conditions, all claims against Seller must be made in writing and received by Seller, as soon as possible and in any event within thirty (30) days from the date when the Purchaser knew or should have known, whichever is earlier, of the breach, loss or damage, and the failure to provide Seller a timely notice shall be a complete defense to any claim, suit or action asserted or commenced by Purchaser with respect to such claim. All legal actions against Seller must be filed and properly served on Seller within one (1) year of the delivery of the Goods (or the applicable portion of the Goods) or the completion of the Services, as applicable, and thereafter shall be forever barred; provided that if Seller, pursuant to the warranties provided in Section 15 of these Terms and Conditions, is replacing any Goods or performing warranty Services at the point of expiration of the one (1) year limitations period, the period shall be extended for those specific Goods and/or Services for a period of ninety (90) days after delivery of the replacement Goods or completion of the warranty Services.

**18. TERMINATION, DEFAULT AND REMEDIES:** This Contract and any Purchase Order that is a part of or subject to this Contract may only be terminated for cause, and neither party may terminate the Contract or any Purchase Order that is a part of or subject to the Contract for convenience, at will or without cause. For purposes of the Contract, "cause" means a breach of a party's material obligations under the Contract that has not been cured within thirty (30) days following a written notice by the non-breaching party specifying the nature of the breach, provided, however, that if a party commences efforts to cure the breach but is unable to complete the cure within the period of time stated herein, the parties shall in good faith discuss and agree upon a reasonable extension necessary to complete the cure, provided that the curing party exercises reasonable and diligent efforts to complete the cure as soon as possible. Notwithstanding the foregoing, the Contract may be terminated by Seller at any time upon written notice to Purchaser if (a) the Purchaser becomes insolvent, makes an assignment for the benefit of creditors or is unable to meet its obligations as they become due, (b) a petition in bankruptcy or insolvency is filed by or against the Purchaser, (c) any amounts due to the Seller by the Purchaser are unpaid, or (d) Seller reasonably believes that Purchaser will not be able to pay Seller the amounts due hereunder. Seller shall not be responsible or liable for any delay or failure of performance that caused by Purchaser or anyone under Purchaser's direction or control. No termination by Seller shall prejudice Seller's rights to any amounts due under this Contract or any other rights or remedies of Seller. In the event of any breach of the Contract by Purchaser, in addition to any other rights or remedies available to it, Seller may suspend performance of this Contract until Purchaser's breach has been cured. Further, to the extent Purchaser's breach of any of its obligations under this Contract causes any delay, or Seller agrees to a Purchaser's request for

suspension, rescheduling or other delay, in Seller's performance of Seller's obligations, the time period for Seller's performance shall be extended by the period of such a delay, and the Seller shall not be considered in breach of this Contract as a result of same, and further provided that Purchaser shall be liable to Seller for Seller's actual and reasonable costs and expenses incurred as a result of such a delay. Purchaser may not terminate the Contract or any Purchase Order that is a part of or is subject to the Contract, in whole or in part, as a result of any change of control of Seller. Purchaser may not remove any property from Seller's premises without Seller's prior written consent signed by an authorized corporate officer of Seller.

19. **DRAWINGS, ETC.:** Seller has no obligation to provide Purchaser or any third party designated by Purchaser with any drawings, layouts, diagrams, specifications, software or other material or information acquired or developed by Seller in any way or at any time. All drawings, layouts, diagrams, specifications, software and other material or information acquired or developed by Seller or furnished to Purchaser by Seller concerning the Goods and Services is and shall remain the exclusive property of Seller, and Purchaser agrees to treat all such materials and information as confidential and proprietary to Seller unless prior written permission to the contrary is given by Seller. Technical information and data furnished by Purchaser to Seller in connection with Goods or Services are disclosed on a non-confidential basis unless otherwise required by the Purchaser and agreed to in writing by the Seller. Any software included in the Goods and/or Services sold or provided by Seller remains the exclusive property of the Seller, and no ownership in the software is sold or transferred to Purchaser. Seller provides Purchaser with a limited, non-exclusive, non-transferable license to use the software with the specific Goods in which the software is installed and which were sold to Purchaser by Seller. This license shall not entitle the Purchaser to modify or alter the software, and the Purchaser shall not use any such software with any other equipment or machinery. None of the software associated with Goods sold to Purchaser shall be designated as works made for hire, and Seller claims the exclusive copyright in all such software. Software updates and maintenance must be purchased separately by Purchaser.
20. **SELLER'S RECORDS:** Seller will maintain such records as it deems appropriate in its sole and absolute discretion. Seller shall have no obligation to provide to Purchaser any information or documents related to the cost of Goods or Services, or any financial, business or other documents related to its business or performance under the Contract. Any Purchaser's visit to Seller's premises must be limited to Seller's performance of its obligations under the Contract and completed during the term of the Contract, and only upon a reasonable (at least 48 hours) prior written notice, at reasonable times and at Seller's usual place of business, subject to Seller's normal confidentiality and safety restrictions, and without interruption to Seller's business operations.
21. **POINT OF OPERATION SAFEGUARDS OR ELECTRICAL EQUIPMENT:** If the Goods include installation of point of operation safeguards or electrical equipment, Seller shall supply Seller's stock parts and equipment, unless Purchaser and Seller agree otherwise and such requirements are specified in the Contract. If Purchaser purchases the equipment directly from a third party, Purchaser shall comply with Seller's detailed specifications for the purchase and, to the extent Seller has agreed to install such equipment for Purchaser, then Seller shall install such equipment at Purchaser's sole cost and expense. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, IN CONNECTION WITH OR REGARDING ANY POINT OF OPERATION SAFEGUARDS OR ELECTRICAL EQUIPMENT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR ANY PARTICULAR USE OR PURPOSE, WARRANTIES TO THE SUITABILITY, RELIABILITY, DURABILITY, CONDITION, PERFORMANCE, RESULTS TO BE DERIVED FROM SELLER'S PERFORMANCE, SELLER'S CAPACITY, TITLE OR QUALITY, OR OTHER WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE HEREBY DISCLAIMED. ORAL STATEMENTS ARE NOT WARRANTIES AND SHALL NOT BE RELIED ON BY PURCHASER AND ARE NOT PART OF ANY CONTRACT BETWEEN THE PARTIES.
22. **REPLACEMENT PARTS:** Replacement parts are built and furnished to Purchaser based on Seller's engineering records, unless otherwise specified by Purchaser in writing prior to placement of the order.
23. **MODIFICATIONS:** Purchaser agrees that Seller does not warrant and Seller shall not be liable for any loss, cost, damage, expenses, or claims of any sort whatsoever, including without limitation those arising from, relating to or in connection with personal injury, death, or property damage, due to or on account of any/all modifications of any Goods or the software, hardware and/or accompanying documentation related to the Goods manufactured or supplied by Seller, and/or included in the Seller's scope of supply, unless such modifications are made by Seller or are made in strict compliance with Seller's written directions or the pre-production plans or designs approved in writing by Seller.
24. **PRODUCT DESIGN:** Seller is not responsible for and expressly disclaims any liability, responsibility, or warranty for the design or any portion of the design of the Goods which is based upon the designs or specifications furnished, approved, and/or required by Purchaser. All prices are based upon the design for the Goods as approved by Purchaser, and any change in the design requested by Purchaser or, if required for the manufacturing of the Goods, by Seller, may result in a modification to the price and/or other terms of this Contract, and Seller has no obligation to proceed with implementing the change until and unless the parties agree to the new price and terms, as applicable.
25. **INTELLECTUAL PROPERTY:** Seller and Seller's affiliates, as applicable, retain all rights, title and interest in and to all Intellectual Property Rights, and none of these rights, title or interest, express or implied, shall transfer in any way to Purchaser, in whole or in part, for any reason or in any way. Purchaser agrees not to contest or assist anyone else to contest Seller's or Seller's affiliates' ownership of Intellectual Property Rights, and has no right to transfer, in whole or in part or directly or indirectly, any Intellectual Property Rights to any third party. Except as provided in Section 19, nothing herein shall grant to Purchaser any right or license to or in any Intellectual Property Rights. To the extent that Purchaser attempts to impose or automatically obtain a license with respect to any Intellectual Property Rights, whether by law or contract, such attempt and license are hereby rejected and objected to by Seller without further notification, and any right or license to Purchaser with respect to any Intellectual Property Rights must be documented in a separate written Contract between the parties signed by an authorized corporate officer of Seller. For purposes of the Contract, "Intellectual Property Rights" means the rights to, in, and under any and all methods, inventions, discoveries, developments, improvements, ideas and innovations, whether patentable or not, patents (pending patent applications and issued patents), creative works, works of authorship (in whatever medium), trade secrets, know-how, utility models, drawings, specifications, copyrights (registered and unregistered), and/or industrial design rights (registered and unregistered), including all rights in and to any applications, renewals, extensions and restorations of any of the foregoing, and improvements to any of the foregoing, which was or were created before, on or after the date of the Contract anywhere in the world, conceived, written, designed, developed, invented, derived, made or otherwise produced by Seller or Seller's affiliates, in whole or in part.
26. **CONFIDENTIALITY/NON-USE:**
- (a) **Confidential Information.** Each party shall keep confidential the terms and conditions of this Contract and all technical and business information disclosed to that party ("Receiving Party") by the other party ("Disclosing Party") or developed by the Receiving Party from such information ("Confidential Information"). Confidential Information may include, but is not limited to, proprietary materials, technical know-how, technical specifications, software code, manners of conducting business and operations, strategic business plans, systems, results of testing, financial information, customer lists and other customer information, product information, concepts, and compilations of data. Confidential Information does not include information that: (a) is in the public domain, other than by a breach of this clause by the Receiving Party; (b) the Receiving Party can show was received from an independent third party lawfully in possession of the information and under no obligation of confidentiality to the Disclosing Party regarding the information; or (c) the Receiving Party can show was independently developed by the Receiving Party without use of the information obtained from the Disclosing Party.
- (b) **Non-Use; Return.** Each Party will use the other's Confidential Information only to perform its obligations under, and for the purposes of, this Contract. The Receiving Party may not, without the prior written consent of the Disclosing Party, disclose the Confidential Information to any person or entity except (i) to such of its officers, employees, consultants and advisors to whom disclosure is necessary and who have been made aware that the Confidential Information is confidential and are bound to treat it as such, or (ii) to the extent it is legally required to do so. The Receiving Party: (i) will maintain the confidentiality of the Disclosing Party's Confidential Information in the same manner in which it protects its own information of like kind, but in no event will either Party take less than commercially reasonable precautions to prevent the unauthorized use or disclosure of the Confidential Information. Upon request by the Disclosing Party, the Receiving Party will promptly return or destroy the original and all copies of Confidential Information received and if so requested, certify such destruction. Because the breach of either party's obligations with respect to the other party's Confidential Information may cause irreparable harm in an amount not easily ascertained, any such breach, whether threatened or actual, will give the non-breaching party the right to seek equitable relief to enjoin or restrain the disclosure or use of such Confidential Information.
27. **ASSIGNMENT:** Purchaser shall not, without Seller's prior written consent, assign or transfer the Contract or any interest therein, or any rights or obligations under the Contract, in whole or in part, either voluntarily or by operation of law. Seller may assign, subcontract or delegate some or all of its obligations under this Contract to one or more third parties, including without limitation to any of its affiliates without a prior consent from Purchaser.
28. **PURCHASER'S USE AND OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA):** It is Purchaser's responsibility to provide all proper devices, tools and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Seller's product. The operator's manual or machine manual, ANSI Safety Standards OSHA regulations and other sources should be consulted to implement the above. Seller considers that it is in substantial compliance with the general requirements of OSHA directly associated with Operator Safety and Noise Level Control. The technical detail of OSHA and many additional references to other standards render it impossible to state compliance or objection unless specific sections or paragraphs of OSHA are identified by the Purchaser or user. Because of changes which occur in OSHA, state codes, local codes and company safety programs, Seller must be advised by Purchaser or user if they feel modifications in the machine are required for compliance. A Quotation will be submitted for changes.
29. **WORK AT PURCHASER'S PREMISES:** If the Contract requires Seller to install the Goods and/or furnish Services at Purchaser's premises:
- (a) Purchaser shall provide Seller with access to the premises at which the Goods are to be installed or Services are to be furnished, to allow Seller to meet the schedule stated in the Contract, and if no schedule is specified, to allow Seller to promptly install the Goods and/or furnish Services, as applicable, and shall ensure the use of all necessary cranes at its premises to facilitate Seller's work.
- (b) Purchaser shall provide at its cost and expense all proper devices, tools and means which may be necessary or appropriate to protect against damage to property or injury to person arising from installation, operation or repairs of the Goods or any equipment for which the Goods are intended and/or provision of the Services at Purchaser's premises. Purchaser shall indemnify and hold Seller harmless from and against all liabilities, claims, expenses, and costs based upon damage to property or injury to or death of any person arising out of or in any way connected with the installation, operation or repairs of Goods at or upon Purchaser's facilities.
- (c) Purchaser shall at its cost and expense properly prepare and make its premises available for delivery, installation and testing of the Goods and the performance of Services in accordance with the applicable schedule specified in the Contract and other instructions provided by Seller. Purchaser shall ensure the use of all necessary cranes at its premises to facilitate Seller's work.

- (d) Purchaser shall at its cost and expense provide or ensure the availability of adequate utilities (including electricity, gas and water) and other connections, items and services, as applicable, at the premises, as necessary for Seller to install the Goods and provide the Services at Purchaser's premises, at Purchaser's cost.
- (e) If appropriate in light of the nature of the Goods, and subject to the schedule specified in the Contract, Seller may separately install components of the Goods, in which case installation and acceptance shall be determined separately with respect to each component.
- (f) Seller is not responsible to examine the Purchaser's premises or advise Purchaser of any unsafe condition.
- (g) Purchaser shall be responsible for any and all additional costs incurred by Seller by reason of Purchaser's failure to provide access to Purchaser's premises or to comply with any of its other obligations under this Section, including but not limited to storage and shipping costs, and travel, meals and lodging for Seller's personnel.

**30. INDEMNIFICATION:**

- (a) By Purchaser: In addition to other indemnification obligations of Purchaser under the Contract, Purchaser shall indemnify and hold Seller and Seller's affiliates, and each of their respective officers, directors, agents, representatives and employees ("Indemnified Party") harmless from and against any and all demands, claims, suits, liabilities, damages, judgments, costs and expenses, including reasonable attorney fees, made against and/or incurred by any Indemnified Party related to or arising out of (i) the Purchaser's performance under the Contract, (ii) any Purchaser's breach of the Contract or any representations, warranties or covenants contained in the Contract, (iii) any willful act(s) or negligence of the Purchaser or any of its dealers, officers, directors, agents, representatives, employees or subcontractors, or (iv) any damage to property or injury to or death of any person arising out of or in any way connected with the installation, operation or repairs of Goods or any equipment for which the Goods are intended or the provision of any Services at or upon Purchaser's premises. The Purchaser and the Indemnified Party (if other than Purchaser) may participate in the defense or settlement of any such claim at its own expense.
- (b) By Seller: Under no circumstances shall Seller or any Indemnified Party be required to indemnify, defend or hold Purchaser, any affiliate of Purchaser, or any of their respective dealers, officers, directors, agents, representatives or employees. Subject to the foregoing, to the extent Seller is required by law to indemnify Purchaser or any of the above-referenced persons or entities, then (i) Seller shall have the right to defend and settle claims subject to Seller's indemnity in its sole and absolute discretion and (ii) Seller's indemnification obligation shall be limited to Seller's then existing insurance coverage and the extent of Seller's legal fault in causing the injury, death, or damage that triggered Seller's indemnification obligation, and further provided that Seller shall not be responsible or liable to the extent the injury, death, or damage is attributable to the negligence or intentional conduct of Purchaser or any of its dealers, officers, directors, agents, representatives, employees or subcontractors.

**31. FORCE MAJEURE:** Any delay or failure of Seller to perform its obligations under this Contract shall be excused if, and to the extent that, it is caused by an event or occurrence beyond reasonable control of Seller, whether or not foreseeable, including without limitation, acts of God, acts of any governmental authority (whether valid or invalid), epidemics, fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns), inability to obtain power, material, equipment, labor or transportation, or court injunction or order (any such event, "force majeure"). Purchaser may not terminate or modify the Contract or any Purchase Order that is a part of or is subject to this Contract, in whole or in part, while an event of force majeure continues so long as Seller resumes performance within a reasonable time after the event of force majeure no longer affects its performance.

**32. INTERNATIONAL SALES:**

- (a) This Contract and all purchase orders issued under it shall be governed by the Uniform Commercial Code as adopted in the State of Michigan and not the United Nations Convention for the International Sale of Goods.
- (b) It shall be Purchaser's responsibility to inform and instruct Seller regarding the packaging and marking of all Goods so as to comply with the applicable law of the destination country if other than Seller's country.
- (c) Purchaser shall be responsible for any necessary export or import licenses, and for any documentation, costs and fees that may be necessary for the Goods to be shipped internationally.
- (d) Purchaser shall be responsible for the payment of all export and import duties, tariffs and taxes (including those of Seller's country), and for any additional costs associated with clearance of the Goods through foreign and U.S. Customs.

**33. INSURANCE:** Seller shall maintain such insurance coverage as it determines in its sole and absolute discretion. Seller is not required to name Purchaser or any other person or entity requested by Purchaser as an additional insured or a loss payee, or to waive the right of subrogation or other recovery against Purchaser or any other party, on any of Seller's insurance policies.

**34. RELATIONSHIP:** Each party is an independent contractor and is not an agent, employee, or legal representative of the other and persons engaged by each of them shall not be employees, legal representatives or agents of the other party. Neither party is authorized to do business in the other party's name or to obligate the other party in any way. No provision contained in this Contract may be interpreted as creating a joint venture or partnership between the parties. Seller and its affiliates are in the business of, among other things, designing, building and selling goods and providing services identical or similar to those being provided to Purchaser under the Contract, and nothing in the Contract or other documents issued or referenced by Purchaser shall be deemed or interpreted as restricting or prohibiting Seller's or its affiliates' ability to do so.

**35. COMPLIANCE WITH LAWS, EXPORT CONTROLS:** Purchaser shall comply with all laws, rules and regulations applicable to its business and the performance of its obligations under the Contract. To the extent applicable, each party will comply with all applicable export control laws of the United States, including rules, regulations, orders, conventions, ordinances and standards, in relation to that party's obligations under the Contract.

**36. NOTICES:** Any notice or other communication to a party required or permitted hereunder shall be made in writing and shall be delivered in person, or sent by first-class mail, overnight courier, fax or electronic mail, addressed to the address of the party set forth in the Purchase Order or to such other address as such party shall have communicated in writing to the other. Any such notice shall be interpreted to have been given when personally delivered, or given one day (excluding weekends or public holidays at the point of receipt) after the date of transmission if sent by fax or electronic mail, or after the date sent by a nationally recognized overnight courier, or given three (3) days (with similar exclusions) after the date of forwarding by first-class mail.

**37. MISCELLANEOUS:** This Contract constitutes the entire Contract between Seller and Purchaser with respect to this subject matter, and supersedes all prior understandings and Contracts. Any objection, payment, Contract or other attempt by any party purporting to amend, add to or modify this Contract shall not apply or be binding upon the other party unless and to the extent expressly approved in writing signed by authorized corporate officers of both parties. No waiver of any breach of any provision of this Contract shall constitute a waiver of any preceding or succeeding breach of the same provision. No extension of the time for performance of any obligation or other act shall be deemed to be an extension of the time for the performance of any other obligation or any other act. Section headings in these Terms and Conditions are inserted for convenience or reference only, shall not be deemed to be a part of the Contract for any other purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions herein. Under no circumstances is the performance or failure to perform by Seller or the receipt of any payment by Seller, is to be construed as Seller's acceptance of any of Purchaser's terms or conditions. Except where otherwise provided in the Contract, each of the rights and remedies reserved Seller in this Contract shall be cumulative, and the assertion by Seller of any right or remedy shall not preclude the assertion of any other rights or the seeking of any other remedies. The Contract is intended solely for the benefit of Seller and Purchaser and their permitted successors and assigns, and no other person or entity shall have any rights under or in connection with the Contract.

**38. DISPUTE RESOLUTION:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan without regard to conflicts-of-law principles that would require the application of any other law. Subject to the arbitration provisions below, the party's consent to the exclusive jurisdiction of the appropriate federal court in the U.S. District Court for the Eastern District of Michigan, Southern Division or of the state courts in Wayne County, Michigan, for any legal or equitable action or proceeding arising out of, or in connection with, this Agreement. Each Party specifically waives all objections to venue in such courts. All disputes arising under or in connection with this Agreement or any other document pertaining to this Agreement shall be finally settled by arbitration in Southfield, Michigan, before a single arbitrator appointed by the American Arbitration Association ("AAA") which arbitration shall be conducted under AAA's commercial arbitration rules then in effect at the time of this Agreement provided, however, that discovery shall be permitted in accordance with the United States Federal Rules of Civil Procedure. The decision of the arbitrator shall be final and binding upon both Parties, shall not be appealable, and judgment on the award rendered may be entered in any court of competent jurisdiction. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages. Each party will bear equally the costs and expenses of AAA and of the arbitrator. Each party will bear its own costs and expenses. The failure by one party to pay its share of arbitration fees constitutes a waiver of such party's claim or defense in the arbitration. All arbitration proceedings shall be confidential, except to the extent that disclosure is necessary to enforce an arbitration award in a court of competent jurisdiction. EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**39. ACKNOWLEDGMENT:** The parties acknowledge and agree that the provisions of the Contract that limit liability, disclaim warranties, or limit consequential damages or other damages or remedies are essential terms of and are fundamental to the parties' understanding regarding allocation of risk. Accordingly, such provisions shall be severable and independent of any other provisions of the Contract and shall be enforced to the fullest extent permitted by law. Without limiting the generality of the foregoing, THE PARTIES AGREE THAT ALL LIMITATIONS OF LIABILITY, DISCLAIMERS OF WARRANTIES, CONSEQUENTIAL OR OTHER DAMAGES OR REMEDIES SHALL REMAIN FULLY VALID, EFFECTIVE AND ENFORCEABLE IN ACCORDANCE WITH THEIR RESPECTIVE TERMS, EVEN UNDER CIRCUMSTANCES THAT CAUSE ANY EXCLUSIVE REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE, regardless of the form of action, including actions in contract, tort (including negligence), and strict liability.

**40. SURVIVAL:** The provisions of Sections 1 – 10, 11(b), 11(c), 12 – 19, 21 – 26, 28, and 30 – 38 shall survive the expiration or termination of the Contract for any reason.