BCN TECHNICAL SERVICES INC. – TERMS AND CONDITIONS

SALE OF SPARE PARTS AND SERVICES

Sellers’ Acceptance of any Purchase Order is expressly conditioned upon the Acceptance and Agreement of the following Terms and Conditions, which may be additional to or different from those stated or referenced in a Purchaser’s Order, unless otherwise specified in writing by Seller:

1. APPLICATION: These Terms and Conditions of Sale of Parts and Services (hereinafter, “Terms and Conditions”) apply to sales to any Good(s) and/or the furnishing of any Services, as applicable, by BCN Technical Services Inc., a Division of Clearinghouse Services, Inc. “Supplier,” “Sellers,” or “Seller,” as seller, to any entity which accepts, orders, or orders for or on behalf of, or on or for its behalf, the purchase of any parts or products identified in the Purchase Order, as modified by Seller’s Acceptance, provided hereunder for that purpose. 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 or other goods identified in the Purchase Order, as modified by Seller’s Acceptance, provided hereunder for that purpose. Seller’s Acceptance, provided hereunder for that purpose. “Goods” do not include any prototype or production parts or components, or any new testing, machinery or equipment; the term “Purchase Order” shall mean a purchase order, release, agreement, 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 Services to Purchaser.

2. 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 [hereinafter, “Quotation”]. With respect to any Quotations issued hereunder and not otherwise modified in writing by Seller, Purchaser shall be deemed to accept the quoted price or the terms and conditions of the Quotation 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 for informational purposes only, and any information in a Quotation is subject to change without prior notice to Purchaser’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, Purchaser authorizes Seller to file such financing statements, and Purchaser shall execute a written security agreement in favor of Seller in accordance with the Uniform Commercial Code, as adopted in the state or country in which the Goods are delivered. These Terms and Conditions shall control, supersede and replace all previous Quotations, Statements, or any other terms and conditions contained in any purchase orders, Statements of work, or agreements made prior to the issuance of the Quotation and any and all prior statements, communications, negotiations, or agreements between Purchaser and Seller with respect to the Goods or Services to be furnished by Seller.

3. ACCEPTANCE OF ORDERS: Seller’s acceptance of any Purchase Order is expressly conditioned upon Purchaser’s acceptance and acceptance of these Terms and Conditions, which may be additional to or different from those in any Quotations. These Terms and Conditions are the only terms and conditions that will apply to any Quotation which, unless otherwise specified in writing by Seller, will be deemed accepted or rejected by Seller. Each Quotation is for delivery of and payment for Goods and/or Services to Purchaser, 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 Agreement. To the extent Seller’s Acceptance includes or references 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 all previous Quotations, Statements, or any other terms and conditions contained in any purchase orders, Statements of work, or agreements made prior to the issuance of the Quotation and any and all prior statements, communications, negotiations, or agreements between Purchaser and Seller with respect to the Goods or Services to be furnished by Seller. These Terms and Conditions and all documents incorporated by reference in the Quotation, Statement of Work, or Agreement shall control, supersede and replace all previous Quotations, Statements, or any other terms and conditions contained in any purchase orders, Statements of work, or agreements made prior to the issuance of the Quotation and any and all prior statements, communications, negotiations, or agreements between Purchaser and Seller with respect to the Goods or Services to be furnished by Seller. Each Quotation is for delivery of and payment for Goods and/or Services to Purchaser, and is subject to prior approval and acceptance 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 for reference purposes only and shall not be deemed to include Purchaser included or referenced in the Purchase Order. Each Purchase Order shall be governed by the terms and conditions herein and in the Quotation, as applicable.

4. 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 Agreement. The Agreement excludes any and all codes, guides, policies and procedures of Purchaser, and any amendments or modifications to any of them. Neither Purchaser’s terms and conditions nor the terms and conditions of any purchase orders, Statements of work, or agreements made prior to the issuance of a Quotation shall be effective unless and to the extent expressly agreed to in a writing signed and accepted by Seller. Purchaser’s terms and conditions and any 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 further notification.

5. 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 duties, duties, tariffs, duties, taxes, 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 express or implied warranties with respect to such Goods and/or Services, as may be applicable.

6. 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 reasonable period.

7. PAYMENT: Except as otherwise provided in the Quotation, Purchaser will be invoiced for the Goods upon delivery of the Goods or any part of the Goods to common carrier 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. No discounts may be taken without a prior written agreement. 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 (0.5%) 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. Seller shall immediately reimburse Seller for the costs and expenses (including, without limitation, costs and expenses of shipping, insurance, duties and taxes of any kind, and any other costs and expenses of shipping the Goods in transit and repossession of the purchase price, as required under the Agreement, has not been made to Seller. Standard packing for domestic shipment is included in the quoted price. Partial shipments of Goods may be made when Seller determines that they will not be delivered to Purchaser within 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 representations or warranties that the purchase price for the Goods or Services delivered to Purchaser will not exceed the quoted price.

8. SECURITY INTEREST: Purchaser hereby grants Seller a security interest in the Goods wherever located, including all substitutions, replacements and proceeds thereof, including insurance proceeds, to secure the payment of the purchase price and all other amounts owing to Seller under this Agreement as a security agreement pursuant to agreement and in addition to any other security interest. Seller may upon Seller’s security interest, Seller will not be limited to requiring a separate security agreement and filing Uniform Commercial Code financing statements. Purchaser authorizes Seller to file such financing statements, and Purchaser shall execute a written security agreement in favor of Seller in accordance with the Uniform Commercial Code, as adopted in the state or country in which the Goods are delivered. While subject to Seller’s security interest, Seller may sell or otherwise dispose of the Goods to the extent necessary to perfect the security interest. Seller may upon receiving a written notice from Purchaser, without any further notification. Any and all rights and remedies under the Agreement 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, credits, claims or contingencies and shall not be subject to any agreement or swearing of any kind, as may be applicable.

9. FINANCIAL STATEMENTS: INSURANCE: During the period of Seller’s performance under the Agreement, 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

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its interest may appear and as additional insured under liability coverage. Each insurer shall agree, by endorsement upon the policy issued by it and furnished to Seller, that it will give Seller not less than thirty (30) days written notice before the policy shall be altered or canceled.

10. INSTALLATION: The prims stated in this Order do not include installation or 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:
(a) Purchaser may not cancel or change the Agreement or any Purchaser Order, adjust the type, volume, delivery terms or price of any Goods or Services, or cancel, suspend or rescind 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.
(b) Any request by Purchaser for changes to the Goods or scope of work shall be subject to the Seller’s written agreement and shall entitle Seller to modify the price of the Goods and/or Services and any other terms and conditions of this Agreement. Seller agrees to make all changes without limitation delivery dates, in which case Seller 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.
(c) In event of any cancellation or termination of any order, Purchaser, in addition to not to the exclusion of Seller’s other remedies and remedies at law, equity or under this Agreement, shall pay to Seller on demand the following amounts which shall be invoiced by Seller: (i) the contract price for all Goods and Services which have been completed in furnishing the Goods and/or Services, in the amount equal to 120% of Seller’s actual full 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, (ii) Seller’s actual out-of-pocket costs for storing the Goods on behalf of Purchaser against a letter of credit in connection with the Agreement, (iii) Seller’s actual out-of-pocket costs for storing the materials and equipment utilized in connection with the Agreement, (iv) Seller’s actual out-of-pocket cost to up 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, startup costs, program capital costs and supplies that are unique to the Goods purchased, (v) Seller’s expected profit from the performance of the Agreement, and (vi) Seller’s incidental and consequential damages resulting from the termination or breach by Purchaser, including, but not limited to, any and all costs and expenses incurred in connection with securing protection on all or any part of the Goods, equipment, and technical support, attorney’s fees and other professional fees incurred by Seller as a result of the termination or breach. Upon an agreed cancellation or termination of any Order, all work on the Purchaser 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 OF GOODS: Purchaser shall inspect all Goods upon receipt and notify Seller within ten (10) days after receipt of any 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 Agreement 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 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.

13. INSPECTION, ACCEPTANCE AND REJECTION OF SERVICES: Seller’s Inspections shall inspect all Services within ten (10) days after completion of all Services and notify Seller within ten (10) days of 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 Agreement 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.

14. LIMITED WARRANTY:
(a) Subject to the other terms of these Terms and Conditions, Seller warrants to Purchaser:
   i. With respect to the Goods, that at the time of delivery the Goods will be free from defects in materials and workmanship (hereafter, “Goods Warranty”). This limited warranty is for the benefit of the Purchaser only and is not transferable.
   ii. With respect to the Services, that it will perform the Services in a prompt, professional and workmanlike manner (hereafter, “Services Warranty”).
(b) The Goods Warranty shall be effective for a period of time specified in the Goods Warranty, and, if no warranty period is expressly stated in the Quotation, then for a period of one (1) year from the 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. 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.”
(c) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, IN CONNECTION WITH OR REGARDING ANY GOODS OR SERVICES. ANY GOODS OR SERVICES PURCHASED OR PROVIDED TO SELLER, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR ANY PARTICULAR PURPOSE OR USE, INCLUDING ANY IMPLIED 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 AGREEMENT BETWEEN THE PARTIES. SUBJECT TO THE PROVISIONS OF THE AGREEMENT, PURCHASER ACCEPTS GOODS AND SERVICES IN THEIR “AS IS” “HOW IS” CONDITION.
(d) No warranty can be made for repairs made by Purchaser. The Goods Warranty and the Services Warranty cover the Seller’s scope of work under the Agreement only. Neither the Goods Warranty nor the Services Warranty extends to or cover, 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 attack, (vi) improper building or erection work not undertaken by Seller, (vii) abuse, mishandling, misuse, unauthorized or inappropriate repair or alteration of the Goods, (viii) improper installation, (ix) lack of proper maintenance, (x) negligence, willful or intentional misconduct and/or willful or intentional damage to, or other actions, including without limitation any electrical or electronic components or software or equipment, supplied by or on behalf of Purchaser or Purchaser’s third party, as applicable, (xi) items and services identified in the Quotation, Acceptance or any other document that Purchaser is responsible to provide in connection with the Agreement, (xii) any expansion, change, deterioration or other damage of or to the material resulting from any welding services, (xiii) adverse effects of integration of Goods with any third party components, equipment, tooling, dies or, (xiv) 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.
(e) Neither the Goods Warranty nor the Services Warranty extends to any part which has been manufactured using engineering specifications or data supplied 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 third party, as applicable, which normal usage shorter than the Goods Warranty Period; if the Goods Warranty extend to cover, and Seller shall not be responsible for, any latent defect that was not actually discovered by Seller or any defect or 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 bolts, filters, fuses, inserts and the like are excluded from all warranties.
(f) Samples, descriptions, drawings, literature, representations, and other information concerning Goods contained in any materials or statements made by Seller’s employees or representatives, or its or acquired by Seller in performance of its obligations under the Agreement, 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’s end user customer. No warranted to the design of the Goods purchased by Purchaser.

15. LIMITED WARRANTY PRICES AND SUBASSEMBLIES: Purchaser provides the original Purchaser with the following limited warranty:
(a) (One (1) year mechanical, electrical, pneumatic and hydraulic parts warranty. Purchaser warrants to the original purchaser to repair, or at Purchaser’s sole option, replace any mechanical, electrical, hydraulic part that is subject to the satisfaction of Purchaser, after examination by Purchaser’s property authorized representative, to be defective in material or workmanship under normal use, within one (1) year of the original sale date.
(b) Ninety (90) day electrical parts warranty. Purchaser warranties to the original purchaser to repair, or at Purchaser’s sole option, replace any electrical part that is found, to the satisfaction of Purchaser, after examination by Purchaser, to be faulty in material or workmanship under normal use, within ninety (90) days of the original date of delivery. This limited warranty excludes electrical equipment purchased by Purchaser purchased from a third party.

16. 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

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21. **LIMITATION ON DAMAGES**

**(d)** LIMITATION ON DAMAGES

TO PURCHASER OR ANY THIRD PARTY IN CONNECTION WITH OR IN ANY WAY RELATED TO THE AGREEMENT, WHETHER ARISING FROM THE FURNISHING OF SERVICES, THE SALE OF GOODS, ANY DEFECT OR NON-

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

PRODUCT DESIGN

or other costs and expenses of Purchaser incurred in connection with the Agreement, or (iii) any other costs, including without limitation the costs of shipping or installation.

22. **LIMITATIONS OF ACTIONS**

IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall Seller shall have a

LIMITATIONS OF ACTIONS

subject to the Agreement, in whole or in part, as a result of any change of control of Seller. Purchaser may not remove any property from

TERMINATION, DEFAULT AND REMEDIES

Goods or performing of any work or any work or all work, or (iii) any other costs, expenses or other damages to any party or to any person or entity of any losses or expenses of Seller in connection with the Agreement or any other rights or remedies of Purchaser. In the event of any breach of the Agreement by Purchaser, in addition to any other rights or remedies available to it, Seller may suspend performance of this Agreement until Purchaser’s breach has been cured.

23. **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 Agreement. If Purchaser purchases the equipment directly from a third party, Purchaser shall comply with Seller’s specified

POIN'T OF OPERA TION SAFEGUARDS OR ELECTRICAL EQUIPMENT

that Seller provides, however, if the Purchaser is unable to complete the cure within the time period 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 efforts to complete the cure as soon as possible. Notwithstanding the foregoing, if Purchaser’s attempt to cure a defect or non—

ABSOLUTE DISCR.

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 the amounts due hereunder. Seller shall not be responsible or liable for any delay or failure of performance of Purchaser by Purchaser or anyone under Purchaser’s direction or control. No modification of this Agreement by Purchaser

Non-Use; Return

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 Agreement.

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

S longevity of that party’s obligations or with respect to any third party’s obligations may cause irrevocable harm in an amount not easily quantified, any such breach, whether tortious 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.

Confidentiality/Non-Use

(a) Confidential Information: Each party shall keep confidential the terms and conditions of this Agreement 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 information, production and business process information and know-how, and any other information that the Disclosing Party designates as confidential or any confidential information does not exceed a period of five (5) years from the date such Confidential Information is received by the Receiving Party. By the Receiving Party, the Receiving Party can show that it had received an independent third party lawfully in possession of the information and under obligation of confidentiality to the Disclosing Party regarding the information or for other reasons as determined by the Disclosing Party. The confidentiality information is not to be used or disclosed in any other information, or used for any other purpose than the business operations of the Receiving Party or without the express written consent of the Disclosing Party.

(b) Non-Use: Return. Each Party will use the other Party’s Confidential Information only to perform its obligations under, and for the purposes of, this Agreement. 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 that it maintains the Confidential Information, and (ii) will not disclose the Confidential Information to third parties in any manner in which it protects the Confidential Information that is not subject to a confidentiality agreement. The Receiving Party shall further destroy or retain the unauthorized use or disclosure of the Confidential Information. Upon request by the Disclosing Party, the Receiving Party will promptly destroy or return 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 irrevocable harm in an amount not easily quantified, any such breach, whether tortious 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.
28. ASSIGNMENT: Seller shall not, without Seller's prior written consent, assign or transfer the Agreement or any interest therein to the Purchaser or any interested parties under the Agreement, in whole or in part, either voluntarily or by operation of law. Seller may assign, subconstract or delegate any or all of its obligations under this Agreement to one or more third parties, including without limitation to any of its affiliates without a prior consent from Purchaser.

29. 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. Such modifications will be submitted for changes.

30. WORK AT PURCHASER’S PREMISES: If the Agreement 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 Agreement, 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 repair of the Goods or any equipment for which the Goods are intended and/or provision of the Services at Purchaser’s premises.
   (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 Agreement and other instructions provided by Seller.
   (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 Agreement, Seller may separately install components of the Goods, in which case installation and acceptance shall be accomplished separately with respect to each component.
   (f) Seller is not responsible to examine the Purchaser’s premises or advise 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.

31. INDEMNIFICATION:
   (a) By Purchaser: In addition to other indemnification obligations of Purchaser under the Agreement, 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 all and any and all 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 Agreement, (ii) any Purchaser’s breach of the Agreement or any representations, warranties or covenants contained in the Agreement, (iii) any willful acts) or negligence of the Purchaser or any of its dealers, officers, directors, agents, representatives, employees or subcontractors, or (iv) any damages, injuries or death to or by its property or to or by its personnel or to or by any in any way connected with or arising out of or in any way connected with the installation or operation of the 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/or settle, with the consent of the Seller to Seller’s indemnity in its sole and absolute discretion and (ii) Seller’s indemnification obligation to Seller’s indemnity is its sole and absolute discretion.

32. FORCE MAJEURE: Any delay or failure of Seller to perform its obligations under this Agreement shall be excused if, and to the extent that, it is caused by an event or occurrence beyond reasonable control of Seller, including without limitation, acts of God, acts of any governmental authority (whether valid or invalid), 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 Agreement or any Purchase Order that is a part of or is subject to this Agreement, 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.

33. INTERNATIONAL SALES:
   (a) This Agreement 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.

34. 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.

35. 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 Agreement 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 hereunder. Seller, or any of its dealers, officers, directors, agents, representatives or employees. Seller shall be indemnified by Purchaser, or any other party, if a claim is made against the Seller or its affiliates of aort errors in the Agreement, or any other document issued or referenced by Purchaser shall be deemed to be restricting or prohibiting the Seller’s or its affiliates’ ability to indemnify Seller in connection with the Agreement.

36. 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 Agreement. 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 party’s obligations under the Agreement.

37. 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 specified 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 considered to have been given when personally delivered; or given on any 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.

38. MISCELLANEOUS: The Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Michigan, United States of America, without reference to its conflict of law principles. This Agreement constitutes the entire Agreement between Seller and Purchaser with respect to this subject matter, and supersedes all prior understandings and agreements. Any objection, payment, agreement or other attempt by any party purporting to amend, add to or modify this Agreement 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 Agreement 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 Agreement for any 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, to be construed as Seller’s acceptance of any of Purchaser’s terms or conditions. Except where otherwise provided in the Agreement, each of the rights and remedies reserved to Seller in this Agreement 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 Agreement is intended solely for the benefit of Seller and Purchaser, and the permitted assertion by Seller of any right or remedy shall not preclude the assertion of any other rights or obligations of Seller.

39. DISPUTE RESOLUTION: Michigan shall be the exclusive jurisdiction for all claims, disputes or proceedings related to this Agreement. The parties agree that the Barry County Circuit Court and the Federal District Court for the Western District of Michigan are convenient forums and the parties stipulate that the referenced venues are convenient and acknowledge that all decisions issued by the forum court, including without limitation, all injunctions and other decrees shall be binding and enforceable in all jurisdiction and countries.

40. ACKNOWLEDGMENT: The parties acknowledge and agree that the provisions of the Agreement that limit liability, disclaim warranties, or limit consequential damages or other damages or remedies are essential terms of and necessary for the maintenance of the parties’ respective rights and the prevention of liability. A breach of this Section 40 shall be deemed to be a material breach of any other provisions of the Agreement 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. All claims subject to arbitration shall be arbitrated on an individual basis in contract, tort (including negligence), and strict liability.

41. SURVIVAL: The provisions of Sections 1 – 10, 11(b), 11(c), 12 – 20, 22 – 27, 28(b), 29, and 31 – 38 shall survive the expiration or termination of the Agreement for any reason.