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 A PURCHASE ORDER. THE FOLLOWING TERMS AND CONDITIONS ARE THE ONLY TERMS AND CONDITIONS UPON WHICH SELLER WILL ACCEPT ANY PURCHASE ORDER AND THAT APPLY TO THE AGREEMENT, AS HEREFORER DEFINED:

1. ACCEPTANCE OF ORDERS; Terms and Conditions of Sale (hereafter, “Terms and Conditions of Sale”) apply to any sale of any Goods, as applicable, by BCN Technical Services, Inc., a Delaware corporation (hereafter, “Seller”), to a person or legal entity purchasing Goods 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 “affidavit” 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 any prototype or production parts or components, or any new tooling, machinery or equipment or other goods identified in the Purchase Order, as modified by Seller’s Acceptance; the term “Services” shall include installation of new equipment or machinery, or any engineering, design or development services related to Seller’s manufacture or sale of prototype or production parts or components or any new tooling, machinery or equipment, as identified in the Purchase Order, as modified by Seller’s Acceptance; and 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 relating to or referencing the sale of Goods or Services.

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 (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. Seller 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 the date of 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 the Quotation and/or these Terms and Conditions, as applicable. “Acceptance” means the agreement 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 Seller’s Acceptance identifies the Goods, 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 incorporated by reference to Purchaser, as applicable. An Acceptance by Seller shall be deemed to include all terms or conditions of the Quotation included in the Purchaser’s Request for Proposal or Request for Quotation that are accepted by Seller 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 Agreement, whether or not it references this Agreement or the Quotation on the face of such Purchase Order. The Agreement constitutes the entire agreement 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 (1) there is no guarantee of the type, quality and quantity of Goods and/or Services or the purchase price or 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 Agreement regardless of whether Purchaser issues a new or amended Purchase Order that reflects the adjustments.

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 applicable, and all such Purchaser’s Terms and Conditions are hereby objected to and rendered null and further notice of or accept ance thereof shall be the terms and conditions of the Agreement. The Agreement excludes any and all codes, guides, policies and procedures of Purchaser, and any amendments, modifications or additions to any of them, which may impose additional costs or obligations on Seller. No modifications 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 rejection to any additional or different terms of conditions and any additional of Purchaser, without any further notice.

5. PRICES: Stated prices apply only to the specific quantities of Goods and Services described in Seller’s Acceptance, as applicable. Prices do not include sales, use, excise, license, property, privilege or other taxes, export or import duties, value added or excise tax, freight, insurance, handling, packaging, storage, inspection or equipment charges incurred by Seller (including any inspection or equipment charges incurred by Seller upon request), shipping or transportation costs or any insurance charges, and Purchaser shall pay all such taxes, fees, costs and charges. The price for the Goods is based on contract manufactures for rates of delivery specified. 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. Any increase in costs shall be recorded as an adjustment to Purchaser’s performance. All adjustments shall be based upon a change in the market price of the Goods or the Services incurred by Seller in connection with the delivery of the Goods or Services under 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 Quotation and in the event the price is 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.

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 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 Agreement, and Seller’s managing 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 Orders, in whole or in part, without further obligation or liability to Purchaser. Seller may also require Purchaser to pay for shipments C.O.D. or Cash in Advance in 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 and delivery shall be via common carrier or some other reasonable means chosen by Seller. All arrangements for and payment 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. Title and risk of loss and damage to the Goods shall pass to Purchaser at the F.O.B. Seller’s facility upon delivery of such Goods to the common carrier. 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 Agreement, has not been made. Standard packing for domestic shipment is included in the quoted price. Partial shipments shall be allowed. Purchaser must accept delivery when Seller has completed work on the Goods. Seller is not responsible to use any expedited shipping for any reason.

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 discount may be taken without a prior written agreement 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 ([1/2]%) per month (or the maximum rate permissible 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, costs and expenses of investigation, costs and expenses of legal actions or proceedings and attorneys’ fees and expenses, whether or not legal action is actually commenced) incurred by Seller in enforcing its 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, claims, conditions or contingencies stated in the Agreement or any other document. Any failure by the Agreement to make any payment in accordance with the 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 Seller’s purchase money interest in the Goods in connection with the purchase price and any other charges owed to Seller by Purchaser, and agrees that these documents shall be effective as a security agreement 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 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 the form of a financing statement. Seller shall have a security interest in all of Purchaser’s assets, claims and other property.

9. FINANCIAL STATEMENTS; INSURANCE: Purchaser shall 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 shall be endorsed, named or completed insured under all 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 cancelled.

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
11. PAYS, all personal property taxes and
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

10. SELLER'S OBLIGATION TO CUSTOMER. SELLER OBLIGATES HERSELF TO CUSTOMER UNDER ANY AGREEMENT FOR THE SALE OF GOODS OR SERVICES TO CUSTOMER AND CUSTOMER AGREES TO ACCEPT GOODS OR SERVICES FROM SELLER ON THE Terms AND CONDITIONS SET FORTH HEREIN OR AS MODIFIED BY CUSTOMER WRITTEN AGREEMENTS AS TO TERMS AND CONDITIONS OF SALE OR SERVICE.  THESE TERMS AND CONDITIONS WILL GIVE CUSTOMER THE SPECIFIC RIGHTS TO WHICH CUSTOMER IS ENTITLED UNDER THE AGREEMENT.  THE CUSTOMER'S RIGHTS MAY NOT BE ALTERED OR ENLARGED BY ANY TERMS OR CONDITIONS OF SELLER OR ITS CUSTOMERS, WHETHER WRITTEN OR ORAL.  UNLESS AGREED TO IN WRITING, SELLER HAS NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY STATED IN THE AGREEMENT.

9. SELLER'S LIMITATION OF LIABILITY. SELLER LIMITS ITS LIABILITY FOR ANY DAMAGE, LOSS, OR HARM TO PERSONS OR PROPERTY, INCLUDING DEATH, RESULTING FROM OR ARISING OUT OF ANY ACT, OMISSION, OR FAILURE TO PERFORM ANY OF ITS OBLIGATIONS UNDER ANY AGREEMENT TO CUSTOMER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, TO THE EXTENT EXPRESSLY STATED IN THE AGREEMENT OR TO CUSTOMER'S EXACT LIMITATION OF LIABILITY.  CUSTOMER'S RIGHT TO COMPENSATION FOR ANY SUCH ACT, OMISSION, OR FAILURE IS LIMITED TO THE AMOUNT CUSTOMER IS SPECIFICALLY AGREED TO PAY FOR THE GOODS OR SERVICES.  CUSTOMER AGrees THAT SELLER IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, including, without limitation, loss of income, profits, or goodwill, even if SELLER has been advised of the possibility of such damages.  CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY CLAIMS, ACTIONS, OR SUITS ARISING OUT OF ANY ACT, OMISSION, OR FAILURE TO PERFORM ANY OF ITS OBLIGATIONS UNDER ANY AGREEMENT TO CUSTOMER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, AND CUSTOMER WILL DEFEND AND HOLD HARMLESS SELLER FROM ANY SUCH CLAIMS, ACTIONS, OR SUITS.
16. CLAIMS FOR BREACH OF WARRANTY, PURCHASER’S SOLE REMEDY:

(a) Purchaser must notify Seller of any claim for breach of the Goods 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, the securing of any necessary right to the Goods and/or information from third parties, and the delivery of the Goods in accordance with the Warranty Claim Instructions. Failure to notify Seller in accordance with the terms and conditions of this Section may result in the loss of any claim for breach of warranty.

(b) Seller, at its sole option and expense, shall repair or replace the Goods that are found to be defective and shall deliver the repaired or replaced Goods to Purchaser in accordance with the Seller’s procedures. If Seller determines that it is more economical for Seller to repair or replace the Goods, Seller shall make such repair or replacement. Seller shall not be liable for any delay in repairing or replacing the Goods that is caused by Purchaser’s failure to provide the Goods to Seller in the condition required by Seller for repair or replacement.

17. LIMITATION ON DAMAGES:

Selling shall have no LIABILITY OR OBLIGATION FOR ANY DAMAGES SUFFERED BY PURCHASER OR ANY THIRD PARTY WITH RESPECT TO ANY PURCHASE ORDER OR ANY GOODS OR SERVICES PROVIDED BY SELLER IN EXCESS OF THE PURCHASE PRICE THAT PURCHASER ACTUALLY PAYS SELLER FOR THE GOODS OR SERVICES WITH RESPECT TO WHICH THE LIABILITY AROSE. SELLER SHALL NOT BE LIABLE TO PURCHASER OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, NON-ECONOMIC OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS RELATED TO PRODUCTION OR SALES INTERRUPTION, LOSS OR DAMAGE TO PURCHASER’S PROFITS OR ANY EQUIPMENT, SYSTEM OR COMPONENT THEREIN, OR LOSS RELATED TO ANY GOODS OR SERVICES NOT FURNISHED OR APPROVED BY SELLER, 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 Agreement, or (iii) any other costs, including without limitation the costs of shipping or installation.

18. 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, except as provided in Section 15.19, shall be barred; provided, however, that if Purchaser’s right to file suit against Seller is governed by warranty laws or statutes, any applicable limitations period shall be extended by the period of any delay by Purchaser or any person or entity under Purchaser’s direction or control. No termination by Seller shall prejudice Seller’s rights to any amounts due under this Agreement or any other rights or remedies of Seller. In the event of any breach of this Agreement, Purchaser’s right to terminate the Agreement in addition to any other remedies available to Purchaser under this Agreement has been terminated. Further, to the extent Purchaser’s breach of any of its obligations under this Agreement causes any delay, or Seller agrees to Seller’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 delay, and the Seller shall not be considered in breach of this Agreement as a result of same, and further provided that Purchaser shall be liable to Seller for Seller’s actual and consequential damages, including but not limited to the cost of substitute goods or services, or any other damages to any third party in connection with such termination and breach.

19. AGREEMENT TO DISPUTE RESOLUTION:

(a) Any dispute which may arise between the Parties out of this Agreement shall be resolved by Seller and Purchaser, or their authorized representatives, as mutually agreed upon by the Parties.

(b) If such mutual agreement cannot be reached within thirty (30) days of receipt of a written notice of dispute by the other Party, then the dispute shall, at the request of either Party, be submitted to reconciliation (or as agreed by the Parties) in accordance with the procedures described in the Agreement and completed during the term of the Agreement, 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 course of business operations.

20. 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, shall result in a change of control of the Goods from Purchaser to Seller 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. 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 sell, assign, 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 any third party.

21. NON-USE; RETURN:

If 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 breach of any of its obligations hereunder, including prior written notice and other remedies for such breach, including irreparable harm in an amount not easily ascertained, any such breach, whether

22. CONFIDENTIALITY/NO-USE:

(a) Confidential Information: Each party shall keep confidential the terms and conditions of this Agreement and all technical and business information disclosed by the other party (“Confidential Information”)("Confidential Information" from such other party’s business information, 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, production information, the financial condition of the other party, or any other information which is considered to be confidential, secret or proprietary by the disclosing party, which is not in the public domain, and which is not publicly available through the use of a reasonable degree of care and diligence the disclosing party is obligated to make the party aware of. Confidential Information may include, without limitation, the Goods, the Goods’ design, engineering, specifications, drawings, plans, schematics, ideas and other information whether or not patentable which is disclosed to the other party in writing or in any oral or written manner. Confidential Information is disclosed to the other party in writing or in any oral or written manner. Confidential Information shall not include any information which is then or hereafter comes into the possession of the receiving party which: (i) is already known to the receiving party or is otherwise public information; (ii) the receiving party is already aware of the information in question due to a pre-existing relationship with the disclosing party; or (iii) is independently developed without reference to the disclosing party’s Confidential Information.

(b) Non-use: Each party will use the other’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, use, retain, copy, disclose, reproduce, or otherwise make available any Confidential Information or any part thereof, except to its employees, agents and contractors who have a need to know such Confidential Information in connection with the performance of the receiving party’s obligations under this Agreement. The receiving party will, within thirty (30) days of the termination of this Agreement, return to the disclosing party all copies of Confidential Information received and, for a period of five (5) years after the termination of this Agreement, will not disclose, use, copy or otherwise make available any Confidential Information received under this Agreement to any third party.

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 detailed specifications for the purchased and, to the extent Seller has agreed to such installation for purchase of Purchaser, then Seller shall install such equipment at Purchaser’s sole cost and expense. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH ANY ELECTRICAL 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.

24. UNAUTHORIZED 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
27. USE OF MERCHANDISE (if applicable - including Press, Die, Equipment Sale/Service): It is Purchaser's responsibility to provide all proper devices, tools and means which may be necessary to protect against damage to property or injury to person arising from installation, operation or repairs of the Goods at Purchaser’s premises. Purchaser shall assume the use of all necessary cranes at its premises to facilitate Seller’s work.

28. ASSIGNMENT: Purchaser shall not, without Seller's prior written consent, assign or transfer this Agreement or any interest therein, or any rights or obligations under the Agreement, 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 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 data and/or illustrations contained herein as well as specific sections to other 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 subject for the above.

30. INSTALLATION (if applicable - including Press, Die, Equipment Sale/Service): If the Agreement requires Seller to install the Goods at Purchaser’s premises:

(a) Seller shall provide Seller with access to the premises at which the Goods are to be installed, to allow Seller to meet the schedule stated in the Agreement, and if no schedule is specified, to allow Seller promptly to install the Goods, as applicable, and shall ensure the use of all necessary cranes at the premises to facilitate Seller’s work.

(b) Seller 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 at Purchaser’s premises.

(c) Seller shall at its cost and expense properly prepare and make its premises available for delivery, installation and testing of the Goods in accordance with the applicable schedule specified in the Agreement and other instructions provided by Seller.

(d) Seller 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 at Purchaser’s premises, at Purchaser’s cost.

(e) If in 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 determined separately with respect to each component.

(f) Seller is not responsible to examine the Purchaser’s premises or advise 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 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 from (i) the performance by Purchaser under the Agreement, (ii) any Purchaser’s breach of the Agreement or any representations, warranties or covenants contained in the Agreement, (iii) willful neglect or negligence of 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 occasioned by or out of or in any way connected with the operation, repair or repairs of Goods or any equipment supplied by the Indemnified Party or 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 be required to indemnify, defend or hold Purchaser, any affiliate of Purchaser, or any of their respective dealers, officers, directors, representatives or employees. Subject to the foregoing, to the extent Seller is required by law to indemnify Purchaser or any of the above-mentioned persons or entities, then (i) Seller shall have the right to settle and defend claims subject to Seller’s indemnity in its sole and absolute discretion and (ii) Seller’s indemnification obligation shall be limited to Seller’s existing insurance coverage and the extent of Seller’s 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.

32. FORCE MAJORE: 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, warstorms, 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 Purchaser Order that is a part of or 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 similar or identical to those being provided to Purchaser under the Agreement, and nothing in the Agreement 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.

36. COMPLIANCE WITH LAWS, EXPORT CONTROLS: Purchaser shall comply with all laws, rules and regulations applicable to 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 that 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 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 considered to have been given when personally delivered, or given on 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 if the party designated to receive has failed to provide prior written notice to the other of a change in address. Notices sent by electronic mail shall be deemed given on the day sent.

38. MISCELLANEOUS: This 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 by authorized corporate officers of both parties. No 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 act 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 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, 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 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 their permitted successors and assigns, and no other person or entity shall have any rights under or in connection with the Agreement.

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 directions issued by the forum court, including without limitation, all injunctions and other decrees shall be binding and enforceable in all jurisdictions of such forum.

40. ACKNOWLEDGMENT: The parties acknowledge and agree that the provisions of the Agreement that limit liability, disclaim warranties, or limit consequential damages or other remedies are essential terms of and are necessary to the understanding and the agreement of the parties. Accordingly 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 EFFECTIVE, VALID AND ENFORCEABLE IN ACCORDANCE WITH THEIR RESPECTIVE PROTECTIONS, 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.

41. SURVIVAL: The provisions of Sections 1 – 10, 11(b), 11(c), 12 – 20, 22 – 27, 28(g), 29, and 31 – 39 shall survive the expiration or termination of the Agreement for any reason.

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