

**SIGMATRON INTERNATIONAL, INC.**  
**TERMS AND CONDITIONS OF SALE**

1. **DEFINITIONS.**

“**Buyer**” means the purchaser identified by Seller in a Contract and all others liable as a purchaser under the Contract, and their agents, successors and permitted assigns.

“**Buyer’s Obligations**” means those actions and deliveries required to be made by or on behalf of Buyer for Seller to manufacture and sell the Goods, and include providing Seller, on a timely basis, forecasts, final design and test specifications, equipment, hardware, software, production tooling and retooling, test equipment, and responses to Seller’s requests for substitutions, approvals or other communications.

“**Change**” occurs when Buyer delays releases under orders or forecasts or alters drawings, specifications, bill of material items, approved vendors, instructions for work, methods of shipments, packaging, schedules, place of delivery, inspection requirements or any other term of an order or forecast.

“**Component Obsolescence**” occurs when any Materials (including safety stock, MOQ Items, NCNR Items and Long Lead Items) becomes excess or obsolete by action of any of Seller’s vendors and as a result, directly or indirectly, Seller is unable to use any Materials or assemble or ship the Goods.

“**Confidential Information**” is defined in Section 27.

“**Contract**” means these terms and conditions, other terms and conditions included in Seller’s Quotation, invoice or acknowledgment of Buyer’s order, any attachments and schedules thereto and other writings annexed or referenced by Seller, and any future amendments or modifications of any of the foregoing agreed to by Seller.

“**DFM**” means design for manufacturing Services.

“**DFT**” means design for test Services.

“**E&O Event**” occurs when Seller determines, in its discretion, that any finished Goods, WIP or Materials are excess or obsolete as a result, directly or indirectly, of a Change, Component Obsolescence, termination, expiration or cancellation of an order or forecast, discontinuance of Goods, unavailability of any Materials, an event indicating insolvency described in the last sentence of Section 23 or otherwise.

“**Goods**” means the products to be sold by Seller to Buyer and identified in the Contract and includes any safety stock that is expressly agreed to by Seller. References to “Goods” in Sections 8, 11, 13, 14, 21, 22, 23 and 27 are deemed to also refer to any Materials or Slow-Moving Inventory that Seller sells to Buyer.

“**Long Lead Items**” is defined in Section 4.

“**Materials**” means any parts, components, supplies or raw materials used or incorporated by Seller to manufacture and assemble the Goods, and include bill of material items, MOQ Items, Long Lead Items and NCNR Items.

“**Materials Cost**” is the unit price of any Materials.

“**MOQ Items**” is defined in Section 4.

“**NCNR Items**” is defined in Section 4.

“**Seller**” means SigmaTron International, Inc.

“**Seller’s Costs**” include all costs associated with Seller’s purchase, receipt, and storage of Materials prior to production that would have been included in the cost of goods sold of the Goods, including costs such as freight in, duty, inspection, warehousing, purchasing, and interest.

Acknowledging the difficulty to calculate all such costs with precision, Seller estimates Seller's Costs as being equal to 15% of the Materials Cost. Seller's Costs do not include any profit.

“**Services**” means the design, engineering or testing support services identified in the Contract and includes any deliverables that Seller is required to provide to Buyer that are related to the Services and identified in the Contract.

“**Slow-Moving Inventory**” means (a) any Goods or WIP, or (b) or any Materials which Seller acquired to fulfill either Buyer's purchase orders or binding forecasts or both, in each case that remain in Seller's inventory for more than one-hundred and twenty (120) days.

“**Third Party Costs**” are any costs charged Seller by third parties, such as cancellation fees.

“**WIP**” means work in process.

2. **QUOTATIONS.** Seller's Quotation is valid for 30 days after issuance. In addition to other conditions stated on a Quotation, prices and lead times quoted by Seller are conditioned on (a) orders being placed for quantities quoted; (b) kinds and quantities of Materials being available as quoted; (c) Buyer's design not preventing 100% first pass if assembled to current revision of IPC Standard A-610 (currently rev E and any future revisions thereto) Class 2; and (d) Buyer's timely performance of Buyer's Obligations. Quotations are subject to adjustment or cancellation by Seller after receipt of Buyer's order. Seller also reserves the right to increase prices if specifications are not defined at time of the Quotation, if specifications change, or if any costs incurred by Seller increase.

3. **FORECASTS; ORDERS.**

(a) Buyer will provide Seller binding forecasts, at a minimum, on a rolling 12 month basis with monthly updates, and such additional forecasts that Seller may request. Forecasts will be sent to Seller in electronic form and include the following information: (a) quantity of each Good or Service; (b) requested delivery date; and (c) any other information required by Seller.

(b) Buyer may also submit purchase orders for Goods or Services for Seller's approval as described in Section 7.

(c) From time to time, Buyer may direct Seller, either orally or in writing, to order Materials not covered by a purchase order or forecast. Seller will indicate to Buyer if Seller agrees to buy such Materials and the terms of Buyer's financial responsibility to pay Seller for Materials so ordered. Unless other terms are agreed to by Seller in writing, Seller will invoice Buyer for such Materials at any time even if Buyer has not issued a purchase order. The terms of payment are net cash payable in United States funds within 30 days from Seller's invoice date, even if Seller has agreed to different payment terms for other invoices.

4. **ORDERING OF MATERIALS; PPV; SLOW-MOVING INVENTORY.**

(a) Buyer bears the risk of availability and cost of Materials.

(b) Seller will order bill of material items from approved vendors and other Materials, in its discretion, to cover all shipments under Buyer's purchase order (whether or not considered

a firm order by Buyer) and forecast (for the entire forecasted period) on receipt of Buyer's purchase order or forecast, and Buyer is responsible to pay Seller for all Materials so ordered by Seller.

- (c) Seller also will be required to place orders for Materials in accordance with vendor requirements including minimum order quantities ("**MOQ Items**") and lead-times that may extend beyond the order or forecasted period ("**Long Lead Items**"), and Materials that are not cancellable or returnable or cannot be readily used for other purposes ("**NCNR Items**"), and Buyer is responsible to pay Seller for all Materials so ordered by Seller.
- (d) In addition to any other rights and remedies, Seller has the right to invoice Buyer for Slow-Moving Inventory, in the same amounts described in Sections 5(a)(i) to (iv). Title to the Slow-Moving Inventory passes to Buyer on Seller's issuance of its invoice. Buyer must take delivery of the Slow-Moving Inventory, at its cost; provided, however, that if Buyer promptly requests in writing, Seller may agree to store the sold Slow-Moving Inventory for Buyer, as customer owned inventory, for so long as Buyer has a continuing business relationship with Seller but in no event longer than 3 months ("**Maximum Holding Period**"). At the end of the Maximum Holding Period, Seller will, at Buyer's option, scrap in place any Slow-Moving Inventory still held by Seller or ship such Slow-Moving Inventory to Buyer, at Buyer's cost. ALL WARRANTIES WITH RESPECT TO SLOW-MOVING INVENTORY ARE DISCLAIMED, AS MORE FULLY DESCRIBED IN THESE TERMS AND CONDITIONS.
- (e) Buyer's financial liability for Materials ordered by Seller or Slow-Moving Inventory as described in this Section 4 is unconditional. Seller will invoice Buyer at any time even if Buyer has not issued a purchase order. The terms of payment are net cash payable in United States funds within 30 days from Seller's invoice date, even if Seller has agreed to different payment terms for other invoices.
- (f) If the purchase price being charged Seller for any Materials exceeds the cost for such Materials as quoted by Seller to Buyer, Seller will not buy the subject Materials unless Buyer has approved the purchase price variance (the "**PPV**"). Seller is entitled to invoice Buyer for all approved PPV immediately. The terms of payment are net cash payable in United States funds within 10 days from Seller's invoice date, even if different payment terms apply to other invoices, including those described in Section 4(e). Notwithstanding any term, condition, contract or law that may provide otherwise, (a) Buyer's financial liability to pay Seller the approved PPV is unconditional and not subject to any offset, claim, counterclaim or deduction whatsoever, including with respect to any other liability to Seller, and (b) any lien or security interest on or other right to claim or acquire the subject Materials or Goods is irrevocably waived and disclaimed.

## 5. **CHANGES; DELAYS.**

- (a) Buyer may reschedule all or a part of a scheduled shipment of Goods from the original requested delivery date communicated to Seller one time for not longer than 15 days. Requested delivery dates include Buyer order requested delivery dates and forecast order requested delivery dates. All rolling forecasts are assumed to have an order requested

delivery date of the first of the month for each month's forecast. Weekly forecasts are assumed to have a requested delivery date of the first business day of each week's forecast. After the end of this allowance period, Seller will ship the Goods according to the Contract or as Buyer directs and invoice Buyer (even if Buyer has not issued a purchase order) for:

- i. the price for finished Goods, including safety stock, affected by the delay;
- ii. the Materials Cost plus Seller's Cost plus a percentage of value add above Materials Cost based on the percentage of completion for WIP associated with the delayed Goods or safety stock not yet built;
- iii. the Materials Cost plus Seller's Cost for Materials (including MOQ Items, Long Lead Items and NCNR Items) associated with the delayed Goods or safety stock not yet built; plus
- iv. Third Party Costs associated with the delay.

(b) The terms of payment are net cash payable in United States funds within 30 days from Seller's invoice date, even if Seller has agreed to different payment terms for other invoices.

(c) Once Seller begins to fill Buyer's order, including by ordering Materials, any Change requested by Buyer, other than the one-time delay described in Section 5(a), requires Seller's written consent. Seller must timely receive all documents and other information related to a Change request, for Seller's approval in its discretion. If any Change (including the one-time delay described in Section 5(a)) increases the costs for Seller to manufacture and assemble the Goods or perform the Services, in addition to any other rights and remedies of Seller, the price for the Goods or Services will be increased accordingly, effective immediately.

(d) Buyer's obligations under this Section 5 arise whether or not the Change results in an E&O Event.

6. **E & O EVENTS.** As a result of an E&O Event, Buyer will pay Seller for: (a) the price for finished Goods, including safety stock, subject to the affected order or forecast; (b) the Materials Cost plus Seller's Cost plus a percentage of value add above Materials Cost based on the percentage of completion for WIP subject to the affected order or forecast; (c) the Materials Cost plus Seller's Cost for Materials (including MOQ Items, Long Lead Items and NCNR Items) subject to the affected order or forecast; plus (d) Third Party Costs resulting from the E&O Event.

7. **ACCEPTANCE.** Seller's offer to sell the Goods or perform the Services is expressly conditioned on each of the terms and conditions of the Contract and Buyer's timely performance of Buyer's Obligations. Buyer is deemed to accept Seller's offer and to have placed an order as of the first to occur of any of the following: (a) Buyer issues a purchase order or otherwise indicates to Seller, either in writing or orally, that Buyer accepts Seller's Quotation; (b) Buyer directs Seller to order Materials; (c) Buyer instructs or requests Seller, either in writing or orally, to begin filling the order (including by ordering Materials) or performing the Services, or to ship any of the Goods or Service deliverables; or (d) Buyer accepts, agrees to pay for or pays for all or any part of the Goods or Services. Each of Buyer's orders for Goods or Services is subject to

Seller's approval, which is deemed to occur as of the first to occur of any of the following: (x) Seller accepts the order in writing; (y) Seller begins acquiring Materials, filling the order or performing the Services; or (z) Seller ships the Goods or the Service deliverables.

8. **SHIPMENT TERMS; TITLE.** Buyer is responsible for all insurance, hoisting, rigging, transportation and shipping costs and all packing and crating other than Seller's standard commercial packing. Unless Buyer specifically instructs Seller in writing otherwise as to routes, carrier or other incidents of transportation, Seller is authorized to ship the Goods and Service deliverables in any manner that it considers reasonable or customary. Railway or carrier weights at point of shipment shall govern in the event of any disagreement between Seller and Buyer regarding same. Once Seller delivers to the common carrier at Seller's dock, title and all risk of loss, damage to, delay in shipment or non-delivery of the Goods or Service deliverables pass to Buyer regardless of any breach of the Contract by Seller or nonconformities in the Goods or Service deliverables.
9. **PRICES AND OTHER CHARGES.** All prices and shipments are F.O.B. Seller's dock. Prices are exclusive of, and Buyer must pay separately, all taxes, tariffs, custom clearances and duties incurred by Seller or which Seller is obligated to collect, special tests or inspections, broker, laboratory and agency fees including manufacturing site visits, set-up, tooling and non-recurring engineering charges, and will indemnify and save Seller, its successors and assigns harmless from any such amounts, including interest and penalties. Without limiting the foregoing, Buyer will pay all tariffs incurred by Seller announced by the United States Trade Representative under Section 301 of the Trade Act of 1974, as amended. If Buyer claims an exemption from the imposition of any taxes, it will furnish Seller with certificates of resale or such other proof of such claim acceptable to applicable taxing authorities.
10. **PAYMENT.** Unless otherwise agreed by Seller in writing, terms of payment are net cash payable in United States funds within thirty (30) days from Seller's invoice date. Seller shall invoice (a) on the date of shipment or performance; (b) upon the occurrence of an E&O Event or a Change that is not an E&O Event; (c) as described in these Terms; and (d) in all other cases, at least monthly. Amounts not paid when due shall bear a finance charge of 1% per month or fraction thereof. Seller shall be entitled to all costs of collection and enforcement, including reasonable fees and expenses of attorneys, accountants, and paralegals.
11. **FORCE MAJEURE.** Seller shall endeavor promptly to fill Buyer's orders and perform Services, but Seller shall not be responsible for loss, damage, delay or failure if due to or arising from inability to obtain Materials, fires, labor strikes, disputes or similar action of any kind, accidents, breakdowns of machinery, perils of the sea, governmental action including federal or state legislation or any regulations or orders thereunder, failure of manufacturers, subcontractors or suppliers to provide goods or services as agreed or contemplated by past dealings, failure to obtain import, export or other licenses, transportation difficulties of any kind, acts of God, acts of Buyer, war, civil commotion or any other contingencies reasonably beyond Seller's control, whether or not presently occurring or contemplated. In the event of any such delay, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay. By consenting to or accepting delivery of the Goods or performance of the Services, Buyer

waives any and all claims against Seller for damages by reason of any delay, whether subject to Seller's control or not.

12. **INSTALLMENTS.** Seller reserves the right to make delivery or perform Services in installments. All such installments shall be separately invoiced and paid for when due, without regard for subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries or performance.
13. **ASSURANCES.** Seller's production work, shipments, deliveries and performance are at all times subject to the approval of Seller and Buyer's timely performance of Buyer's Obligations. At any time, Seller may stop performance or work in process, refuse to make shipments, or instruct the common carrier or other third person in custody or possession of the Goods or Service deliverables to hold, store or return them to Seller if Buyer fails to timely perform Buyer's Obligations, to make any payment owed to Seller when due, or to provide adequate written assurances when requested by Seller upon Seller's reasonable insecurity about Buyer's ability to pay for the Goods or Services.
14. **INDEMNITY.** Buyer will indemnify and save harmless Seller, its successors, assigns, customers and agents against all loss, damages, liability, claims, demands and actions for (a) actual or alleged infringement of any United States or foreign Letters Patent, trademarks, copyrights, or other proprietary rights related to the sale or use of the Goods or Service deliverables or performance of the Services; and (b) the design application and all liability including product liability that may result from the design, sale, use, or manufacture of the Goods or Service deliverables or performance of the Services in conformance with Buyer's specifications. Seller shall promptly notify Buyer as to any actual or threatened suit and Buyer shall either (i) upon written notice to Seller within thirty (30) days of Seller's notice, assume full control of the defense thereof; or (ii) pay or reimburse Seller for all of the Seller's actual costs and expenses, including attorneys' fees, in the defense of such action.
15. **WARRANTY.** With respect to Goods sold to Buyer, Seller warrants to Buyer that (a) the Goods will be manufactured according to Buyer's specifications provided to Seller under the Contract and, for twelve months from the date of delivery, the Goods will be free from defects in workmanship under the current revision of IPC Standard A-610 (currently rev E and any future revisions thereto) Class 2; and (b) Seller will test all Goods to Buyer's test specifications. With respect to Services performed for Buyer, Seller warrants to Buyer that Seller will perform the Services in a workmanlike manner, subject to Buyer's review, validation and approval.
16. **DESIGN.** Buyer assumes responsibility for the design of the Goods and Service deliverables and performance of the Services in conformance with Buyer's specifications, including final verification and testing of all Goods and Services. Buyer must timely supply Seller with test equipment, hardware and software. Production tooling, retooling, test equipment, hardware and software and agency and laboratory fees for any Goods or Services sold to Buyer are Buyer's responsibility, as is the suitability of circuitry, software and mechanical designs supplied to Seller. Any increase in test/programming time that impacts Seller's performance is at Buyer's sole cost and risk, and may increase the price of the Goods.

17. **TECHNICAL ADVICE.** Seller may, upon Buyer's request and on such terms as agreed by Buyer and Seller, furnish technical advice with reference to the use or installation of the Goods if and to such extent as Seller has such advice available, but there is no obligation for Seller to furnish such advice, and if any advice or assistance is furnished, it shall be given and accepted at Buyer's risk, and Seller shall not be responsible or liable for the advice or assistance given or the results thereof. SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO ITS TECHNICAL ADVICE, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
18. **DFM AND DFT.** If requested by Buyer and on such terms as agreed by Buyer and Seller, Seller will review the design specifications and prototype of the Goods and provide suggestions for Buyer's consideration on DFM and DFT. Implementation of any such suggestions provided by Seller is optional and in the sole discretion of Buyer. To the extent Buyer chooses to implement Seller's suggestions for DFM and DFT, except as otherwise provided in the Contract, the rights incorporated in the Goods sold shall be the property of Buyer. SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO ITS SUGGESTIONS RELATING TO DFM AND DFT, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
19. **MATERIALS AND INFORMATION DISCLAIMER.** SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO ALL MATERIALS, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Seller's sole obligation relating to Materials is to order Materials that are consistent with Buyer's specifications. SELLER MAKES NO REPRESENTATION OR WARRANTY THAT THE MATERIALS SO ACQUIRED BY SELLER CONFORM TO BUYER'S OR THE VENDOR'S SPECIFICATIONS OR EXPECTATIONS. At Buyer's request, Seller will provide Buyer with such information Seller receives from vendors related to Materials' specifications, uses or conformance with legal or other requirements, including lead-free or ROHS information, and will assign to Buyer all assignable vendor warranties for the Materials.
20. **KNOW-HOW.** Any ideas, know-how, intellectual property and other information owned or acquired by Seller or resulting from its performance under a Contract remain Seller's exclusive property and Buyer acquires no rights thereto unless specifically provided in a writing signed by Seller.
21. **DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY.** IF THE GOODS OR SERVICES FAIL TO CONFORM TO SELLER'S EXPRESS WARRANTY IN SECTION 15, THEN SELLER'S ONLY LIABILITY AND RESPONSIBILITY SHALL BE, AT ITS OPTION IN ITS SOLE DISCRETION, TO REPAIR OR REPLACE THE NON-CONFORMING GOODS OR SERVICE DELIVERABLES OR TO CREDIT BUYER'S ACCOUNT FOR SO MUCH OF THE PURCHASE PRICE AS IS APPLICABLE TO THE NON-CONFORMING GOODS OR SERVICE DELIVERABLES. SELLER'S LIABILITY UNDER ITS EXPRESS WARRANTY IN SECTION 15 IS CONDITIONED ON, AND BUYER SHALL BE DEEMED TO HAVE WAIVED AND RELEASED SELLER FROM ALL WARRANTY LIABILITY UNLESS (a) SELLER IS NOTIFIED IN WRITING OF ANY DAMAGES TO, LOSS OF,

DEFECT OR SHORTAGE IN, OR ANY OTHER CLAIM CONCERNING THE NON-CONFORMING GOODS OR SERVICE DELIVERABLES PROMPTLY UPON DISCOVERY, AND IN NO EVENT LATER THAN TEN (10) DAYS AFTER DELIVERY OR PERFORMANCE FOR CLAIMS WHICH COULD HAVE BEEN DISCOVERED BY INSPECTION UPON DELIVERY OF THE GOODS OR PERFORMANCE OF THE SERVICES AND IN NO EVENT LATER THAN NINETY (90) DAYS AFTER DELIVERY OR PERFORMANCE FOR CLAIMS WHICH COULD NOT HAVE BEEN DISCOVERED BY INSPECTION UPON DELIVERY OR PERFORMANCE; (b) THE NON-CONFORMING GOODS OR SERVICE DELIVERABLES ARE RETURNED TO THE SELLER, POSTAGE AND SHIPMENT COSTS PREPAID, PROVIDED THAT BUYER SHALL NOT RETURN ANY OF THE GOODS OR SERVICE DELIVERABLES TO SELLER UNTIL SELLER HAS ADVISED BUYER OF THE DISPOSITION TO BE MADE OF THE GOODS OR SERVICE DELIVERABLES, AND (c) SELLER'S EXAMINATION OF THE GOODS OR SERVICE DELIVERABLES REVEALS TO THE SATISFACTION OF SELLER THAT THE CLAIMED DEFECT EXISTED AND WAS NOT THE RESULT OF ACCIDENT, MISUSE, NEGLIGENCE, ALTERATION, OR IMPROPER REPAIR, INSTALLATION, HANDLING, OPERATION OR TESTING. UPON ACCEPTANCE OF SUCH CLAIMS, SELLER WILL REIMBURSE REASONABLE COSTS OF TRANSPORTATION FOR THE RETURNED GOODS OR SERVICE DELIVERABLES. Any damage, loss, or shortage occurring in transit shall be settled by Buyer with the carrier without offset of the purchase price of the affected items. In its notice to Seller of any claim concerning the Goods or Services, Buyer shall state in full particulars in support of its claim including a description of the alleged defect and the original purchase order number(s) of the Goods or Services. Buyer shall set aside, protect and hold any items that are the subject of its claim, without further processing, until Seller has an opportunity to inspect them and advise Buyer of the disposition, if any, to be made of them.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE CONTRACT OR IN WRITING FURNISHED BY SELLER TO BUYER ACCOMPANYING DELIVERY OF THE GOODS OR SERVICE DELIVERABLES, SELLER DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, OR OBLIGATIONS ON ITS PART TO BUYER OR ANY OTHER PERSON, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. SELLER NEITHER ASSUMES NOR AUTHORIZES BUYER OR ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF THE GOODS OR PERFORMANCE OF THE SERVICES. WITHOUT LIMITATION OF THE FOREGOING, SELLER DOES NOT AUTHORIZE, AND SPECIFICALLY PROHIBITS, BUYER OR ANY OTHER PERSON FROM MAKING ANY REPRESENTATIONS OR WARRANTIES ON SELLER'S BEHALF WITH RESPECT TO THE SALE OF THE GOODS OR PERFORMANCE OF THE SERVICES.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF USE, OR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OR FOR COSTS OF REMOVAL OR SHIPMENT, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY OR BUYER'S REMEDY EXCEED THE PURCHASE PRICE OF THE

DEFECTIVE GOODS OR SERVICES. EVEN IF SELLER'S WARRANTY OR ANY OTHER OBLIGATION OF SELLER APPLICABLE TO THE GOODS OR SERVICES FAILS OF ITS ESSENTIAL PURPOSE, SELLER'S ONLY LIABILITY AND RESPONSIBILITY SHALL BE, AT ITS OPTION IN ITS SOLE DISCRETION, TO REPAIR OR REPLACE THE NON-CONFORMING GOODS OR SERVICE DELIVERABLES OR TO CREDIT BUYER'S ACCOUNT FOR SO MUCH OF THE PURCHASE PRICE AS IS APPLICABLE TO THE NON-CONFORMING GOODS OR SERVICE DELIVERABLES. THE PRICES STATED FOR THE GOODS OR SERVICES ARE BASED UPON AND IN CONSIDERATION FOR LIMITING SELLER'S LIABILITY. NO CLAIM OR ACTION ARISING OUT OF THE CONTRACT, BUYER'S ORDER OR OTHER DOCUMENT PERTAINING TO THE GOODS OR SERVICES, WHETHER IN CONTRACT, TORT OR OTHERWISE, MAY BE BROUGHT BY BUYER MORE THAN TWELVE MONTHS AFTER THE DATE OF SHIPMENT OF THE GOODS OR PERFORMANCE OF THE SERVICES.

22. **APPLICABLE TERMS.** The Contract contains all terms and conditions relating to Seller's sale of the Goods or performance of the Services and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations, warranties and communications, written or oral. Buyer is hereby notified of Seller's objection to any terms or conditions contained in Buyer's request for quotation, purchase order, forecast or any other communications for Materials, Goods or Services that are inconsistent with the Contract and to any additional provisions proposed by Buyer, including in a request for quotation, purchase order, forecast or other communications, and such provisions shall not become a part of the Contract unless accepted in writing by Seller. Neither Seller's subsequent lack of objection to any such provisions, nor Seller's actions, including the shipment of Goods or the performance of Services, shall constitute or be deemed an agreement by Seller to any such provisions.
23. **SOLVENCY OF BUYER.** By placing an order, Buyer warrants and certifies to Seller that it is solvent, that it is able and intends to pay each of its obligations when due, that all checks, drafts and other items tendered to Seller will be honored in accordance with their terms, that all financial data and statements heretofore furnished by Buyer to Seller are accurate, complete and not misleading, and that no material adverse change in the financial affairs or condition of Buyer has occurred which has not been disclosed by Buyer to Seller. On Seller's reasonable request, Buyer will certify to Seller each of the matters set forth above in a writing signed by a financial officer of Buyer. Buyer's solvency is a condition of Seller's acceptance of Buyer's order, inducing Seller to ship the Goods or perform the Services. In the event of any proceedings, voluntary or involuntary, in bankruptcy, or insolvency by or against Buyer, or in the event of the appointment, with or without the Buyer's consent, of an assignee for the benefit of creditors, receiver or equivalent, then Seller shall be entitled to elect to cancel any unfulfilled part of an outstanding order or forecast without any Seller liability whatsoever, provided that any such cancellation shall in no way relieve Buyer of Buyer's responsibility to pay for that part of the order that was fulfilled and Buyer's responsibility under Section 6.
24. **CONDITIONS NOT WAIVED.** Seller's failure to enforce or declare a default or breach with respect to any particular term or condition of the Contract shall not constitute a waiver of Seller's right to enforce or be protected by any other term or condition or, on a subsequent or other occasion, that particular term or condition.

25. **INVALID TERM.** The invalidity of any term of the Contract shall not affect any other of its terms.
26. **NON-ASSIGNMENT.** Buyer may not assign its rights under the Contract without the written consent of Seller and any such purported assignment shall, at the election of Seller, be of no effect.
27. **CONFIDENTIALITY.** “**Confidential Information**” means information the discloser considers confidential or proprietary, including processes, trade secrets, inventions and other know-how and financial, organizational, sales, manufacturing, technical and other non-public information. Confidential Information does not include information that (a) is in the public domain at the time it is disclosed, (b) is known to recipient at the time of disclosure without a breach of a confidentiality obligation, (c) was developed independently by recipient having no substantive knowledge of discloser’s data, or (d) is disclosed pursuant to a requirement of law or an order of a court or other governmental agency of competent jurisdiction, if recipient first notifies discloser and cooperates in discloser’s efforts to limit or contest such disclosure. Confidential Information may not be used or disclosed by the recipient except to perform its obligations under the Contract. The confidentiality obligation survives the Contract, delivery of Goods or performance of Services, and Confidential Information that is a trade secret is subject to the confidentiality obligation until it is no longer a trade secret. In the event of any actual or threatened unauthorized use or disclosure, the discloser may seek, in addition to any other remedies available to it, equitable remedies against the other to prevent or restrain any violation. To the extent inconsistent with this section, the terms of a signed confidentiality agreement signed by Buyer and Seller control.
28. **GOVERNING LAW AND VENUE.** The Contract shall be construed in accordance with and governed by the internal law and not the conflict of law rules of the State of Illinois. Any action brought on any matter relating to the Contract shall be instituted and maintained only in a state or federal court of general jurisdiction in Cook County, Illinois, and each of Buyer and Seller waives any objection it may have to either the jurisdiction or venue of such court. Buyer and Seller irrevocably submit to jurisdiction and venue of such court.
29. **INTERPRETATION.** As used herein, “include”, “includes” and “including” are deemed to be followed by “without limitation.” References to the singular include the plural.
30. **ELECTRONIC TRANSMISSIONS.** Delivery of a Quotation, order or other document or of approval, notice or other communication by facsimile, .pdf or other similar method of electronic transmission to a pre-approved address or account is effective delivery.
31. **INDEPENDENT CONTRACTOR; BENEFIT.** The relationship between Seller and Buyer is solely that of independent contractors and neither one is an agent, employee, co-employer or joint venturer of the other. The Contract is for the benefit of Seller and Buyer only. There are no intended third party beneficiaries to the Contract and Seller and Buyer are responsible for their own legal costs.