



1. GENERAL

These Terms and Conditions of Sale (these “Terms”) govern and control the sale of any products (the “Products”) and related services (the “Services”) by SDI LaFarga, LLC and/or, where applicable, any of its subsidiaries (collectively, “Seller”) to any buyer purchasing the Products and/or Services from Seller (“Buyer”) and each of Seller’s and Buyer’s respective rights and obligations regarding the sale and purchase of the Products and/or Services. Buyer and Seller may be referred to in these Terms individually as a “party” or jointly as the “parties”.

These Terms (including any written agreement entered into between the parties for the sale and purchase of Products and/or Services) and the Basic Purchase Order Terms (as defined hereinafter) are the only terms that shall apply to Buyer’s purchase of the Products and/or Services from Seller. Unless the context requires otherwise, all references in this document to “Terms”, “these Terms”, “hereof”, “hereunder”, “herein” and words of similar import shall be deemed to include any supply, sale, tolling, or similar written agreement entered into between the parties for the sale and purchase of Products and/or Services (unless otherwise expressly stated in such written agreement) and shall be deemed to be references to these Terms and Conditions of Sale and such written agreement taken together. To the extent that the terms set forth in these Terms conflict or are otherwise inconsistent with the terms of such written agreement (not including these Terms), the terms of such written agreement shall govern and control. Without limitation of the foregoing, any additional, contrary or different terms contained in any purchase order or other similar document or communication from Buyer to Seller pertaining to the sale/purchase of Products and/or Services (a “Purchase Order”), and any attempt to modify, supersede, supplement or otherwise alter these Terms, will not modify these Terms or be binding on Seller and will not become part of these Terms, and these Terms shall supersede any and all such additional, contrary or different terms contained in any such Purchase Order, unless such terms have been fully approved in a signed writing by an authorized representative of Seller. Seller’s acceptance of Buyer’s Purchase Orders is expressly made conditional on Buyer’s acceptance of these Terms, whether different from or in addition to those of the Buyer’s Purchase Order or any other document. These Terms prevail over any of Buyer’s general terms and conditions of purchase regardless whether or when Buyer has submitted its Purchase Order or such terms. If Buyer’s Purchase Order limits Seller’s acceptance to its terms, then such Purchase Order is rejected and shall constitute an offer by Seller on (and limited to) the terms and conditions set forth in these Terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. Waiver by Seller of any breach, remedy or provision of these Terms shall not be construed to be a waiver of any succeeding breach or any other provision or legal remedy of Seller. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Seller. No failure by Seller to exercise, or delay by Seller in exercising, any right, remedy, power or privilege arising from these Terms operates, or may be construed, as a waiver thereof by Seller. No single or partial exercise by Seller of any right, remedy, power or privilege hereunder precludes any other or further exercise by Seller thereof or the exercise of any other right, remedy, power or privilege. These Terms and all accepted Purchase Orders shall be construed in accordance



with the laws of the State of Indiana, United States of America without regard to conflict of law principles.

2. PURCHASE ORDERS; PRICE AND PAYMENT

Buyer may place an order for Products and/or Services by issuing a Purchase Order in written form via facsimile, e-mail, US mail or other electronic means acceptable to Seller. Each Purchase Order shall be deemed to incorporate these Terms with or without reference in such Purchase Order to these Terms. Each Purchase Order shall set forth the Products to be purchased, quantities, part numbers (if applicable), descriptions, applicable prices, delivery location, and requested delivery dates (collectively, the “Basic Purchase Order Terms”; for the avoidance of doubt, the term “Basic Purchase Order Terms” does not include any general terms or conditions of any Purchase Order, other than these Terms).

Buyer’s Purchase Orders are not binding upon Seller until accepted by Seller in its sole discretion. No Purchase Order submitted by Buyer shall be deemed accepted by Seller unless and until either such Purchase Order is confirmed in writing by Seller or Seller delivers the Product specified in such Purchase Order to Buyer (whichever occurs first).

Seller may modify any Purchase Order where necessary as follows: (a) substituting the latest or correct part number or part description for the part number or part description set forth on the Purchase Order; (b) correcting to reflect Seller’s prices then in effect as applicable to the Purchase Order; (c) substituting an estimated delivery schedule which is reasonable (considering Seller’s stock availability and lead time); and (d) correcting any stenographical or typographical error.

Prices for Products and, if applicable, Services will be specified by Seller in a sales quote, Seller’s sales contract, or Purchase Order. Notwithstanding the foregoing, prices will be subject to increase in the event of an increase in Seller’s costs, circumstances beyond Seller’s reasonable control, or as otherwise contemplated herein.

Seller’s weights shall govern provisional and final settlement.

Credit is extended at the sole discretion of Seller. If credit has been extended, the amount of credit may be changed or credit withdrawn by Seller at any time, in its sole discretion.

Any discounts stipulated in relation to the Price of the Products are conditional upon the payment for the Products being made strictly in accordance with these Terms and to Buyer’s entire account for all Products purchased from Seller being current.

Buyer agrees to pay the net amount of each invoice without offset or deduction by the date specified by Seller in such invoice.

Buyer shall notify Seller in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within three (3) days from the date of Buyer’s receipt of such invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notification of dispute, and shall pay all undisputed amounts due under such invoices within the period specified above. The parties shall seek to resolve any such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under these Terms and the



outstanding Purchase Orders during any such dispute, including Buyer's obligation to pay all due and undisputed invoice amounts in accordance with the terms hereof and thereof.

Overdue payments shall bear interest from the due date until paid at a rate of 5.0% (.05) per month or the maximum legal rate, whichever is less.

Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

3. DELIVERY, TITLE, AND RISK OF LOSS

Unless otherwise expressly agreed by both parties in writing, all shipments of Products shall be DAP (Buyer's dock) (Incoterms 2010), using Seller's standard methods for packaging and shipping/transporting such Products, with Seller selecting the carrier. Seller shall not be liable for loss or damage attributed to negligence in selection of the carrier.

Title and risk of loss to the Products shipped under any Purchase Order will pass to Buyer upon Seller's delivery thereof to Buyer's dock (DAP (Buyer's dock) (Incoterms 2010)), unless otherwise agreed to by the parties in writing.

Wherever transportation rates and carrier's liability for damage depend upon the value of the shipment as declared by shipper, Seller will declare such value as will entitle Seller to have the Products shipped at the lowest permissible rates.

Buyer will furnish destination instructions for all Products as part of a Purchase Order for such Products as promptly as possible. In the absence of destination instructions in a Purchase Order, Seller will not be required to ship to Buyer any Products covered by such Purchase Order.

Seller shall use commercially reasonable efforts to initiate shipment and schedule delivery as close as reasonably possible to the requested delivery date. Buyer hereby acknowledges that any shipping and delivery dates provided by Seller are estimates only, are subject to availability of finished Products, will not operate to bind Seller to ship or make deliveries on such dates, and Seller will not be liable for failure to deliver on such dates (provided, Seller will use commercially reasonable efforts to inform customer of delivery status). Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for the Products shipped, in accordance with the payment terms specified in these Terms, whether such shipment is in whole or partial fulfillment of a Purchase Order. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.

If Seller delivers to Buyer a quantity of Products of up to 10% more or less than the quantity set forth in the applicable Purchase Order, Buyer shall not be entitled to object to or reject the Products or any portion of them by reason of the surplus or shortfall and shall pay for such Products the price set forth in the applicable Purchase Order adjusted pro rata.

4. LIMITED WARRANTIES AND DISCLAIMERS

Seller warrants to Buyer that at the time of delivery, the Products will be free from material defects in workmanship and materials under normal use and will conform substantially to Seller's applicable specification (the "Product Warranty"). AS BUYER'S SOLE AND



EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE PRODUCT WARRANTY, Seller will, at its sole option, refund the purchase price paid by Buyer for, or repair or replace, the Product which fails to conform to the Product Warranty (a "Defective Product"), upon return thereof (Buyer shall use Seller's designated carrier for all authorized returns of allegedly Defective Products and all such returns shall be subject to the requirements of Section 9 for RMAs). Seller shall not be liable for a breach of the Product Warranty unless and until Buyer notifies Seller in reasonable detail of any Product being a Defective Product in writing within sixty (60) days of delivery of such Product, Seller is given a reasonable opportunity after receiving such notice to examine such Products (and Buyer returns such Products to Seller's place of business, at Buyer's expense and risk of loss (the return shipping/transportation costs will be reimbursed by Seller if it is determined by Seller that the Products are indeed Defective Products and that the claimed defect or non-conformity has not been caused or contributed to by any of the Warranty Exceptions), for the examination to take place there), and Seller verifies Buyer's claim that the Products are indeed Defective Products and that the defect or non-conformity has not been caused or contributed to by any of the Warranty Exceptions (as defined below). The Product Warranty does not apply to any Product that (a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, improper use, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller, (b) has been reconstructed, repaired or altered by Buyer or any of its affiliates, agents, representatives, contractors, or employees, or (c) has any stage of processing performed on it which causes the defect (collectively, the "Warranty Exceptions").

EXCEPT FOR THE PRODUCT WARRANTY, NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES, AND SELLER HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS OR SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION, MARKETING OR PROMOTIONAL MATERIALS, OR ADVICE GIVEN BY SELLER OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE PRODUCT WARRANTY PROVIDED HEREIN.

In furtherance and not in limitation of the foregoing and notwithstanding anything to the contrary, under no circumstances shall Seller be liable for any costs associated with reworking, remanufacturing or scrapping goods in which any Product supplied by Seller was incorporated, for any costs associated with production stoppages, machinery breakdown or recall campaigns, or for any troubleshooting, administrative or engineering charges.

5. INSPECTION

Buyer shall inspect the Products within five (5) days of delivery ("Inspection Period"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Products" means only the following: (i) product shipped is different than identified in Buyer's Purchase Order; or (ii)



product's label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, (x) replace such Nonconforming Products with conforming Products, or (y) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at Seller's expense and risk of loss, the Nonconforming Products to Seller's facility. If Seller exercises its option to replace Nonconforming Products, Seller shall, after receiving Buyer's return of Nonconforming Products, ship to Buyer, at Seller's expense and risk of loss, the replaced Products to the destination specified by Buyer. Buyer acknowledges and agrees that the remedies set forth in this Section 5 are Buyer's exclusive remedies and Seller's sole liability for the delivery of Nonconforming Products. Buyer shall use Seller's designated carrier for all authorized returns of Nonconforming Products and all such returns shall be subject to the requirements of Section 9 for RMAs.

6. EXCUSABLE PERFORMANCE

Seller is excused from performing any of its obligations under these Terms or any Purchase Order, Seller shall not be liable or responsible to Buyer, and Seller shall not be deemed to have defaulted under or breached its obligations hereunder or any Purchase Order, if its performance or fulfillment of its obligations hereunder or thereunder or any term thereof is prevented, hindered or delayed by delays of suppliers, acts of God, nature, governments or their agencies, terrorism, war or sabotage, compliance in good faith with any applicable foreign or domestic governmental regulation or order (whether or not it proves to be invalid), fires, riots, inability to supply or obtain labor, products, materials, raw materials, supplies, fuel or utilities, labor disputes, work stoppages, lockouts, delays in transportation, earthquakes, floods, storms or other severe weather conditions, power shortages or power failures, epidemics, pandemics, and governmental orders or actions in response thereto, or any other acts, events, or circumstances beyond the reasonable control of Seller (an "Event"). To the extent an Event delays Seller's performance, such performance shall be extended for as many days beyond the due date as is required to obtain removal of such delay; provided, however, that if Seller is unable to perform any of its obligations under any Purchase Order due to an Event for more than thirty (30) consecutive days, it may in its sole option terminate, without liability or penalty, any Purchase Order or obligation in whole or in part.

In the event there is a Product shortage, Seller may ration and distribute such Products as it deems appropriate.

If Seller's performance of its obligations under any Purchase Order or these Terms is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under such Purchase Order or these Terms or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

7. TAXES AND EXPORTS

Buyer is solely responsible for, and shall pay and shall hold Seller harmless from, any and all taxes, with respect to, or measured by, the manufacture, sale, shipment, delivery, use or Price



of the Products or Services (including interest and penalties thereon); provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, or gross receipts.

8. FINANCIAL RESPONSIBILITY OF BUYER

Buyer's solvency is a condition of Seller's performance.

Each Buyer's issuance of a Purchase Order to Seller will constitute Buyer's representation and warranty that Buyer is solvent and is able to pay for the Products identified in such Purchase Order in accordance with the terms of these Terms. Buyer shall furnish Seller with statements accurately and fairly evidencing Buyer's financial condition as Seller may, from time to time, reasonably request. Buyer shall be in compliance with all obligations to Buyer's creditors as and when such obligations are due and owing in the ordinary course of Buyer's business. Buyer shall notify Seller, in writing, immediately of any and all events that have had or may have a material adverse effect on Buyer's business or financial condition, including any change in management, sale, lease or exchange of a material portion of Buyer's assets, a change in control of Buyer, or the breach of any loan covenants or other material obligations of Buyer to its creditors.

If, at any time, Seller determines that Buyer's financial condition or creditworthiness is inadequate or unsatisfactory or Buyer has breached any of these Terms or any other agreement with Seller, then in addition to Seller's other right under these Terms, at law or in equity, Seller may without liability or penalty, take one or more of the following actions: suspend or change credit terms, fix a limit on credit, require progress payments, accelerate the due date of all amounts owing by Buyer to Seller, demand payment in full of any outstanding balance, modify the payment terms for outstanding and future purchases, including requiring Buyer to pay for Products on a cash in advance or cash on delivery basis, delay or withhold any further shipments of Products to Buyer, stop delivery of any Products in transit and cause such Products in transit to be returned to Seller, reject any Purchase Orders received from Buyer, cancel or terminate any previously accepted Purchase Order or agreement, or repossess all Products previously delivered, which Products shall become the absolute property of Seller subject to credit therefor. No action taken by Seller under this paragraph (nor any failure of Seller to act under this paragraph) constitutes a waiver by Seller of any of its rights and remedies under these Terms, including its right to enforce Buyer's obligation to make payments as required hereunder.

To secure Buyer's prompt and complete payment of the purchase price of the Products and performance of any and all other present and future indebtedness, obligations and liabilities of Buyer to Seller, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Indiana Uniform Commercial Code. Seller may file a financing statement for such security interest and Buyer shall execute such statements or other documentation necessary to perfect Seller's security interest in such Products. Buyer



also authorizes Seller to execute, on Buyer's behalf, such statements or other documentation necessary to perfect Seller's security interest in such Products. Seller shall be entitled to all applicable rights and remedies of a secured party under applicable law. As to each Product, Seller's security interest shall terminate when Seller has received all amounts due to Seller for that Product.

Notwithstanding any other provision of these Terms, Seller reserves the right in its absolute discretion from time to time to require payment in full of the price of the Products before delivery of all or any of the Products.

Each Purchase Order shall be treated as a separate transaction, but if Buyer shall fail to pay any amounts when due or otherwise fulfill the payment terms of any Purchase Order, Seller may, without prejudice to any other remedy available to Seller under these Terms or at law or in equity (which Seller does not waive by the exercise of any rights hereunder), suspend the delivery of any Products or performance of any Services and/or cancel any Purchase Order. Buyer shall be liable to and shall reimburse Seller for all costs, expenses, and fees, including attorneys' fees, which Seller incurs in connection with collecting any late payments or on any overdue account of Buyer. In addition to any right of setoff or recoupment provided by law, Buyer agrees that all its accounts with Seller will be administered on a net settlement basis and that Seller may set off debits and credits, including Seller's attorneys' fees and costs of enforcement, against any of Buyer's accounts regardless of basis for such debits and credits and without advance notice. In this paragraph, "Seller" includes Seller's parent, subsidiaries and other affiliates, and "Buyer" includes Buyer's parent, subsidiaries and other affiliates.

9. CANCELLATIONS AND RETURNS

Due to raw material and manufacturing plant scheduling, Buyer may not cancel any Purchase Order that has been accepted by Seller, except if (a) Buyer provides a written notice of cancellation at least thirty (30) days prior to the scheduled ship date stated in such Purchase Order, (b) the Products ordered under such Purchase Order were not manufactured as special or customized items, and (c) Seller consents in writing to such cancellation (a "Permitted Order Cancellation"). Each Permitted Cancellation Order will be subject to a cancellation fee of 15% of the total invoice amount relating to the affected Products and Buyer may receive only credit with respect to any Products covered by a Permitted Order Cancellation with respect to which a payment has been made by Buyer. Seller reserves the right to allocate sales of Products among its customers in its sole discretion.

Return of any Product must be authorized by Seller. All sales of Products are final, non-refundable, and non-returnable, except with respect to Nonconforming Products and Defective Products, which can be returned, subject to the terms and conditions set forth in Sections 4 and 5 above. Inspection and acceptance of Products shall be Buyer's responsibility. Seller will issue a formal Return Material Authorization (RMA) tag to support all authorized returns. All Products authorized to be returned must be returned to Seller on the original pallets, undamaged and in the original packaging. Products not eligible for return shall be returned to Buyer, freight collect.

10. BOXING CHARGES



No charge will be made for packing or casing any material shipped in standard packages. Where special cases are required, or other than standard packing is necessary, the expense involved shall be charged to Buyer. Excess transportation charge for shipments requiring special equipment in handling or transporting or resulting from other special requests for delivery of Products, including, without limitation, any requests for expedited delivery, installment deliveries, and for the use of any packaging, boxing, and/or shipping materials other than Seller's standard boxing, packaging and shipping materials, shall be the sole responsibility of Buyer and will be charged to Buyer in addition to the total price for such Products.

11. CHANGES — PROCESS, MATERIAL AND PRODUCT DESIGN

Seller continually develops and uses new processes, materials and product designs in an effort to improve its Products, while maintaining conformity to specifications. If Buyer's applications of the Products rely upon any performance, dimensional or constant criteria other than as required by the applicable specifications, Buyer must conduct regular testing or evaluation of those specific Products. Seller makes no warranty or representation of any nature that any Product shipped hereunder conforms to any Product of like description as may have previously been delivered to Buyer.

12. LIMITATION OF LIABILITY

IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, ENHANCED, DELAY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DIRECT OR INDIRECT PROFITS, REVENUE, OR USE, LOSS OF DATA, OR DIMINUTION IN VALUE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE, WHETHER OR NOT SELLER OR ANY OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL SELLER'S AGGREGATE LIABILITY (WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE) ARISING OUT OF OR RELATED TO THESE TERMS, THE PRODUCTS, AND/OR SERVICES EXCEED THE TOTAL OF THE AMOUNTS ACTUALLY PAID BY BUYER TO SELLER FOR THE PRODUCTS AND SERVICES SOLD HEREUNDER IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY PRODUCTS IN THE PRACTICE OR ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE PRODUCTS.



Products sold by Seller are not designed, intended or authorized for use in life support, life sustaining, medical, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Buyer uses or sells the Products for use in any such applications: (a) Buyer acknowledges that such use or sale is at Buyer's sole risk; (b) Buyer agrees that Seller is not liable, in whole or in part, for any claim or damage arising from such use; and (c) Buyer will indemnify, defend and hold Seller harmless from and against any and all claims, damages, fines, sanctions, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

13. CONFIDENTIALITY

Buyer will not disclose to third persons, will not use, or permit to be accessed or used, and will protect and safeguard, with at least the same degree of care as Buyer would protect its own confidential information and trade secrets (but in no event with less than a commercially reasonable degree of care), the confidentiality of, any proprietary or confidential information of Seller concerning its business, operations, Products and otherwise, including, without limitation, pricing information, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, discounts, rebates, trade secrets, information and materials comprising or relating to Seller's intellectual property rights, and other sensitive or proprietary information, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure and as established by documentary evidence is publicly known or in the public domain through means that do not involve a breach by Buyer of its obligations set forth herein. Upon Seller's request, Buyer shall promptly return all Confidential Information and copies thereof that Buyer or its representatives have received from Seller or its representatives. Buyer acknowledges that due to the unique nature of Seller's Confidential Information, Seller will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. Accordingly, in addition to any other remedies that may be available in law, in equity or otherwise, Seller shall be entitled to injunctive relief for any violation of this Section 13. Buyer shall be responsible for any breach of this Section 13 caused by any of its affiliates or representatives, including any of their respective employees.

14. INTELLECTUAL PROPERTY

Buyer hereby acknowledges and agrees that: (a) except to the extent provided in a separate written agreement between Buyer and Seller, Seller (or its licensors) will retain all intellectual property rights used to create, embodied in, used in and otherwise relating to the Products and/or Services and any of their component parts; (b) any and all intellectual property rights owned by or licensed to Seller, including those contemplated by the foregoing clause (a) ("Seller's Intellectual Property Rights") are the sole and exclusive property of Seller or its licensors; (c) Buyer shall not acquire any ownership interest in any of Seller's Intellectual Property Rights under these Terms; (d) any goodwill derived from the use by Buyer of Seller's Intellectual Property Rights inures to the benefit of Seller or its licensors, as the case may be; (e) if Buyer acquires any intellectual property rights in or relating to any product (including any



Product) purchased hereunder (including any rights in any trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either party; and (f) Buyer shall use Seller's Intellectual Property Rights only in accordance with these Terms and any instructions of Seller.

Buyer shall not take any action that may interfere with any of Seller's rights in or to Seller's Intellectual Property Rights, including Seller's ownership or exercise thereof, challenge any right, title or interest of Seller in or to Seller's Intellectual Property Rights, make any claim or take any action adverse to Seller's ownership of Seller's Intellectual Property Rights, engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Products or any Seller trademark, or alter, obscure or remove any of Seller's trademarks or trademark or copyright notices or any other proprietary rights notices placed on the Products, marketing materials or other materials that Seller may provide.

Buyer agrees that Seller may refer to Buyer by name, logo, trade name, service marks and trademarks and may briefly reference Buyer's business in Seller's marketing, promotional and other related materials and on Seller's web site, and Buyer hereby grants Seller a limited license to do so.

15. TERMINATION

In addition to any remedies that may be provided under these Terms or available to Seller at law, in equity or otherwise, Seller may terminate any Purchase Order and/or these Terms with immediate effect upon written notice to Buyer if Buyer: (a) fails to pay any amount when due hereunder or thereunder; (b) has breached or not otherwise performed or complied with any terms, provisions, representations, warranties, agreements, covenants, or conditions hereof or thereof, in whole or in part; (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors; or (d) breaches or fails to perform any other agreement between Seller and Buyer. Seller may also terminate these Terms for any reason (with or without cause) at any time upon 60 days' prior written notice to Buyer.

Buyer may terminate any Purchase Order upon a material breach thereof by Seller if Seller does not cure such breach within 60 days after receipt of a written notice from Buyer specifying the breach.

All Purchase Orders outstanding at the time of the termination of these Terms shall remain in effect and shall be performed in accordance with and subject to the terms and conditions hereof (all of which shall survive with respect to such Purchase Orders), except for Purchase Orders terminated pursuant to this Section 15. Upon the termination of any Purchase Order and/or these Terms, all indebtedness of Buyer to Seller under such Purchase Order and hereunder, as applicable, of any kind (including all amounts due to Seller for Products ordered on or prior to the effective date of such termination), shall become immediately due and payable to Seller, without further notice to Buyer, Seller shall be relieved of any further obligation to Buyer under such terminated Purchase Order and/or these Terms, and Buyer shall reimburse Seller for all of its costs and expenses incurred by Seller prior to the effective date of such termination, its termination costs and expenses, and a reasonable allowance for



profit. Seller shall not be liable to Buyer for any damage of any kind (whether direct or indirect) incurred by Buyer by reason of the termination of any Purchase Order and/or these Terms pursuant to this Section 15.

16. EXPORT/IMPORT CONTROL COMPLIANCE

The sale, resale or other disposition of Products and any related technology or documentation may be subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other jurisdictions. Buyer is solely responsible for complying with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export or import any Products to any country to which such export or transmission is restricted or prohibited. Buyer understands and acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

17. ADDITIONAL TERMS

The provisions of these Terms and the Basic Purchase Order Terms constitute the entire agreement between Buyer and Seller with respect to the subject matter contained herein and therein and supersede any prior oral or written communications, understanding, representations, proposals or agreements with respect to such subject matter. Seller may revise these Terms from time to time; provided that such revised versions shall only apply to Purchase Orders placed once the same have been communicated to Buyer. Buyer may not assign or delegate any of its rights or obligations hereunder or under any Purchase Order, in whole or in part, without prior written consent of Seller (any attempted assignment or delegation by Buyer without such consent will be void and Seller may immediately terminate these Terms for cause). If any provision of these Terms is held invalid, unenforceable or in conflict with any law by a court of competent jurisdiction or arbitration tribunal, such provision shall be deemed severed from these Terms and the validity of the remainder of these Terms shall not be affected thereby. The provisions of these Terms relating to confidentiality, non-disclosure, intellectual property, disclaimers, limitation of liability, payment, and any other provisions that must or by their nature are reasonably intended by the parties to survive the expiration or termination of these Terms or any accepted Purchase Order to give effect to their meaning, including, without limitation, Sections 4, 12, 13, 14 above and this Section 17, shall survive the expiration or termination of these Terms or any accepted Purchase Order.

The parties consent and submit to the jurisdiction and venue of the state and federal courts located in the State of Indiana for any dispute relating to the terms, interpretation or performance hereof or Purchase Order(s) (other than claims for preliminary injunctive relief or other pre-judgment remedies). Notwithstanding the foregoing, Seller shall have the right to seek injunctive or prejudgment relief in any court of competent jurisdiction to prevent or enjoin the misappropriation, misuse, infringement or unauthorized disclosure of Seller's Confidential Information or Seller's Intellectual Property Rights. No Federal Acquisition Regulations shall be construed to apply to Seller without its written agreement thereto. Subject to the terms and conditions hereof, any legal action or any other proceeding by Buyer under these Terms must be commenced no later than one (1) year after the alleged breach or other event giving rise to Buyer's claim occurs, or Buyer becomes aware of the existence (or facts and circumstances



giving rise to the existence) of such claim, whichever occurs first, or they will be deemed to have been waived by Buyer in all respects and for all purposes.

Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (i) if by facsimile, hand delivery or by delivery service, upon receipt thereof; or (ii) if mailed, three days after deposit in the U.S. mail, postage prepaid. All notices shall be addressed to the parties primary business address or at such other addresses as either party may in the future specify in writing to the other.

BUYER SHALL BE DEEMED TO HAVE ACCEPTED THESE TERMS AND THESE TERMS SHALL BE EFFECTIVE UPON THE EARLIER OF (1) BUYER'S ISSUANCE OF A PURCHASE ORDER, (2) BUYER'S ACCEPTANCE OF THE PRODUCTS AND/OR SERVICES, OR (3) THE DATE OF THE WRITTEN AGREEMENT BETWEEN BUYER AND SELLER FOR THE SUPPLY, SALE, AND PURCHASE OF PRODUCTS AND/OR SERVICES.