

TERMS AND CONDITIONS OF SALE

1. **Acceptance and Complete Agreement.** All orders (“Orders”) placed for products (the “Products”) and/or services (the “Services”), as applicable, furnished by Knappco, LLC (“Seller”) to the purchaser thereof (“Buyer”) are subject to the terms and conditions set forth herein and any Schedules attached hereto (collectively, these “Terms”), the sales quotation for the Products or Services given by Seller (the “Offer”), the written order acknowledgment from Seller accepting Buyer’s written Order for the Products or Services (the “Order Acknowledgment”) and any confidentiality and/or nondisclosure agreement executed between Seller and Buyer (the “NDA”). These Terms, the Offer, the Order Acknowledgment and the NDA are hereafter collectively referred to as the “Contract,” whether or not specifically referred to. If any provision in the Order Acknowledgment is inconsistent with these Terms, the provision of the Order Acknowledgment shall govern. No additional or different terms or conditions or any modifications, changes or amendments to the Contract shall be binding upon Seller unless specifically agreed to in writing by an authorized representative of Seller. Seller hereby objects to, and rejects, any additional or different terms already or hereafter proposed by Buyer, but not expressly set forth in the Contract, whether contained in any documentation or communication from Buyer or otherwise, including, without limitation, any terms set forth in any Order, acknowledgement, statement of terms and conditions or any other such document or communication. Seller’s failure to further object to any of the provisions contained in any documentation of Buyer’s or any communication of any kind from Buyer shall not be deemed a waiver of the terms of the Contract or as an acceptance by Seller of any deviation from the terms of the Contract. SELLER’S ACCEPTANCE OF ANY OR ALL OF BUYER’S ORDERS FOR PRODUCTS OR SERVICES IS EXPRESSLY CONDITIONAL UPON BUYER’S ASSENT TO THE TERMS OF THE CONTRACT REGARDLESS OF ANY TERMS CONTAINED IN ANY OF BUYER’S COMMUNICATIONS OR DOCUMENTS. Sales literature, price lists, illustrations, drawings, samples, photographs or descriptions and other documents issued by Seller in relation to the Products and Services are subject to alteration without notice and are intended as a guide only and shall not be binding on Seller. The Contract constitutes the entire agreement between Seller and Buyer with respect to the topics in the Contract, superseding all prior oral or written communications, representations, agreements and negotiations.

2. **Delivery Times.** All quoted delivery dates for Products and Services are estimates only and Seller shall not be liable for any failure to deliver the Products or perform the Services, as applicable, at the specified time or on the specified date unless agreed in writing between the parties. Delivery dates for Services are based on standard working days and may be subject to change based on current shop loading, availability of parts, and Buyer’s timely completion of its obligations (including obtaining any necessary approvals) hereunder. Seller reserves the right to make delivery in installments and all such installments, when separately invoiced, shall be paid for when due per Seller’s invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. Seller will attempt to comply with reasonable requests by Buyer for changes in delivery dates, but Seller shall be under no obligation to do so. Additional charges may apply for changes in delivery dates or times, at Seller’s discretion.

3. **Shipping and Delivery.**

3.1. Unless otherwise specified in the Order Acknowledgment or agreed in writing by Seller, all Products shall be delivered Free Carrier (FCA, Incoterms 2020) Seller’s facility or another location designated by Seller.

3.2. Products will be packaged in accordance with Seller’s standard packaging specifications applicable at the time of shipment, unless otherwise provided in the Order Acknowledgment. Unless otherwise stated by Seller, the price includes standard bulk packaging for domestic shipment. Upon Buyer’s request, Seller may agree to provide special packaging, marking or forms, in each case, subject to additional charges and Seller’s prior written consent.

3.3. Buyer shall be responsible for all shipping charges, including, but not limited to, shipping, transportation, duties and insurance costs. Any prepayment by Seller of certain shipping or handling charges will be added to Buyer’s invoice.

4. **Risk and Title.**

4.1. Title to all Products shall transfer to Buyer upon delivery of such Products to a shipper or freight carrier, as applicable, for transportation to Buyer (the “Delivery”) and upon such Delivery, Buyer shall bear all risk of loss. Subsequent to Delivery, Seller shall not be responsible or liable for the security, safeguarding or insurance of the Products so transferred, or for any loss of or damage to the Products.

4.2. Risk of loss in connection with any work performed by Seller as part of any Services shall pass to Buyer proportionately as Seller completes the work under the applicable Order. Title to any finished goods delivered or installed as a result of any Services shall not pass to Buyer until such time as Seller has been paid all sums due for the Services pursuant to the Terms.

5. **Storage.** Any of the Products whose manufacture, installation or shipment is delayed (a) by the acts or omissions of Buyer or (b) at Buyer’s request, may be placed in storage by Seller (at Seller’s sole option) at Buyer’s risk and at Buyer’s cost and expense (including insurance). Storage fees will be assessed from the originally-scheduled shipment date (or the date the Products were ready to ship if a shipment date had not been scheduled) until the Delivery. The storage fee rate for finished Products that are prevented from shipping will be provided to Buyer. The storage fee will be added along with the actual freight and handling and applicable taxes to the final invoice for the Products. All charges for storage are per Product and may vary based on the type of Product stored.

6. **Orders and Price.**

6.1. All prices and delivery quotations made by Seller in the Offer are conditioned upon these Terms. No Order shall be binding upon Seller until received in writing and accepted by an authorized representative of Seller through Seller’s issuance of a written Order Acknowledgment. All Orders are subject to a \$50 minimum order policy. Any amendment to an Order made by Buyer shall be binding on Seller only if confirmed in writing by Seller and additional costs, if any, for such amendment shall be borne by Buyer. Any Contract resulting from acceptance of any Order placed with Seller may only be modified or rescinded by a written document signed by the duly authorized representative of both parties.

6.2. All information, prices and specifications shown in Seller’s advertisements, catalogues, brochures, product and price lists, website or otherwise are indicative, subject to change without notice and shall under no circumstances bind Seller.

6.3. All prices and special terms quoted by Seller will expire thirty

(30) calendar days from the date such pricing or terms were originally proposed by Seller in the Offer unless otherwise specified or extended in writing by Seller and are subject to changes in market conditions. The price of the Products or Services will be Seller's quoted price in the Offer or, where no price has been quoted (or a quoted price is no longer valid), the price current at the date of the Order Acknowledgment by Seller.

6.4. Seller reserves the right, by giving notice to Buyer at any time before Delivery or the completion of Services, as applicable, to increase the price of Products or Services to reflect any factor beyond the control of Seller, such as, without limitation, any foreign exchange fluctuation, currency regulation, or other market fluctuation; alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture; any change in delivery dates, quantities or specifications for the Products or Services which is requested by Buyer or any delay caused by any instructions of Buyer or failure of Buyer to give Seller adequate information or instructions. Seller also reserves the right to make changes to quoted prices for pricing errors, clerical errors, or other errors or omissions.

6.5. Prices are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions which are not part of the original price quotation in the Offer. If the prices are based on the purchase of a particular quantity of Products and Buyer fails to purchase that quantity which would justify the pricing granted, Buyer will, at Seller's option, pay Seller the difference between the stated prices and Seller's standard prices for such Products in the quantity actually purchased by Buyer.

6.6. Unless otherwise expressly provided in the Order, prices for Services do not include costs of labor to perform site-specific training, training required by Plant Access Councils, additional manpower needed for safety reasons (including, without limitation, fire watch or a site safety manager), any lift equipment for person or materials, background checks, or any other costs not expressly included pursuant to the Order.

7. Payment.

7.1. Unless otherwise provided in the applicable Offer, Order Acknowledgment, or other communication or document issued by Seller, Products are invoiced upon Delivery, shipment or at the time Seller puts the Products at Buyer's disposal, whichever occurs earlier. Services are invoiced upon completion, unless otherwise provided in the applicable Offer, Order Acknowledgment, or other communication or document issued by Seller. If Delivery of any Product or completion of any Service is delayed by Buyer, the date of notice of readiness for Delivery or performance of the Services shall be deemed to be the date of Delivery or completion of the Services, as applicable, for invoice purposes. Unless otherwise provided in the applicable Order Acknowledgment, terms of payment are net thirty (30) calendar days from the date of Seller's invoice and shall be made in U.S. dollars, provided that Seller reserves the right to modify its credit terms from time to time. All Orders are subject to Seller's credit approval process. If Buyer is not offered credit or if its creditworthiness changes, in each case, as determined by Seller in its sole discretion, then Seller may demand advance payment for Products or Services or other means of financial security, which may include a letter of credit or prepayment by credit card.

7.2. Any late payments are subject to a finance charge of the lesser of 1.5% per month (18% per annum) or the maximum amount allowed by law, computed on all unpaid amounts and calculated on

a day to day basis until the actual date of full payment. All payments due to Seller shall be made in full without any set-off or deduction to the amounts shown on the relevant invoice. If Seller receives partial payment in an amount less than the full amount of any invoice, such receipt shall neither constitute a waiver of Seller's right to collect the balance nor an accord and satisfaction, notwithstanding Seller's endorsement of a check or other instrument. Buyer shall have no right to withhold any amount due to Seller under the Contract because of a claim Buyer may have against Seller. If Seller engages counsel in respect of any late payment or default, Buyer will pay, in addition to the balance then due and owing, all collection costs, court costs, administrative costs, investigation costs, reasonable attorneys' fees and all other incidental costs, charges or expenses incurred in the collection of past due amounts or otherwise resulting or arising from any breach by Buyer of the Contract. In addition to all other remedies available under the Contract or at law (which Seller does not waive by the exercise of any rights under the Contract), Seller shall be entitled to withdraw credit or suspend or cancel the delivery of any Products or provision of any Services, under this Contract or any other agreement between the parties, if Buyer fails to pay any amount when due hereunder and such failure continues for five (5) calendar days following written notice to Buyer thereof.

8. **Taxes and Other Charges.** Unless otherwise specified or required by law, all prices will be quoted and billed exclusive of customs, duties or taxes and Buyer shall be responsible for all such applicable duties and taxes (exclusive of taxes on Seller's income). If exemption from such taxes is claimed, Buyer must provide a certificate of exemption at the time its order is submitted to Seller and Buyer will indemnify Seller for any unpaid taxes, as well as any penalties and interest, in the event such exemption is not applicable.

9. Loss or Damage in Transit; Returns.

9.1. Seller's responsibility for damaged Products ceases upon Delivery and all claims for loss or damage occurring after Delivery must be filed by Buyer with the carrier.

9.2. In the event of (a) shortage, (b) excess deliveries, (c) wrong product, (d) visible damage, (e) concealed damage or (f) loss occurring prior to acceptance by the carrier, a claim must be made in writing by Buyer against Seller. All claims against the carrier or Seller under this Section 9 must be made within five (5) days after Buyer's receipt of the Products. Buyer's failure to timely make any such claim shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims against Seller are subject to Buyer's compliance with Seller's return merchandise authorization policy, which will be provided to Buyer upon request. Seller may, at Seller's option, require Buyer to (a) provide photographs or other documentation of such claim and (b) make the Products (including packaging, wrappings and/or carton) subject to the claim available for inspection by Seller or its authorized representative in order to substantiate the grounds for rejection of the Products. All rejected Products must be returned to Seller, at Buyer's expense, prior to replacement by Seller. All returns shall be at Buyer's risk and expense and must be sent to Seller under DDP (Incoterms 2020) at the place of destination indicated by Seller.

9.3. Seller may, in its sole discretion, accept the return of Products. Returned Products must be unused, in their original packaging, and in good working condition to be eligible for return, unless otherwise provided in writing by Seller. Prior to returning any Products, Buyer shall issue a written request to Seller for a return merchandise authorization number ("RMA Number") setting forth the reason for

such request in reasonable detail. Any return of Products to Seller will be made ONLY upon Seller's assignment of a RMA Number to Buyer. Such RMA Number must be displayed prominently on the outside of the box that contains the returned Products. Any Products returned to Seller without a RMA Number will be refused and returned to Buyer at Buyer's expense. Seller may reimburse Buyer for any returned Products either as a refund to Buyer's original payment method or as Seller store credit, at Seller's sole option.

10. Substitutions; Modifications.

10.1. Seller shall have the right to deliver substitute products for the Products ordered by Buyer, provided that such substituted products do not materially differ from the ordered Products in terms of overall form, fit and performance, as determined in Seller's sole and complete discretion. Seller reserves the right at any time to make changes to Products or in the design or specifications of the Products, without liability or obligation to implement such change to any Products previously manufactured and further reserves the right to discontinue any Product at any time.

10.2. Drawings, specifications, product finishes and color shades in Seller's literature and advertisements are approximate only and do not constitute a trade description.

11. Cancellation and Termination by Buyer; Rescheduling.

Buyer's Order, after acceptance by Seller, shall not be subject to cancellation, change, or reduction in amount, nor to any suspension by Buyer of deliveries, without Seller's prior written consent. If Seller consents to a cancellation, change, or reduction of an Order, Seller may invoice Buyer for cancellation fees which may take into account (a) all expenses already incurred, including, but not limited to, expended materials, labor, production costs and work in progress; (b) outstanding commitments that cannot be cancelled, (c) all incidental costs and expenses, including, but not limited, to storage and handling fees, and (d) a cancellation fee equal to 10% of the purchase price for the cancelled Order. Buyer will pay such cancellation fees within thirty (30) calendar days of the date of Seller's invoice. Any requests by Buyer to delay the delivery of any Order beyond the originally scheduled delivery date shall be made in writing and are subject to the prior written consent of Seller, in its sole discretion. Seller reserves the right to assess Buyer a charge sufficient to cover all costs incurred by Seller due to any approved delay or Buyer's failure to take delivery on the scheduled delivery date (in addition to any storage charges described above). Any charge assessed to Buyer due to its failure to take delivery of an Order shall be in addition to, and without prejudice to, other remedies Seller may have at law or equity.

12. Cancellation and Termination by Seller; Rescheduling.

Seller reserves the right to cancel any Orders placed by Buyer or to refuse or delay shipment thereof, with no liability to Seller, if Buyer (a) fails to make any payment as provided in the Contract or under the terms of payment set forth in any invoice or otherwise agreed to by Seller and Buyer, (b) fails to meet reasonable credit or financial requirements established by Seller, including any limitations on allowable credit, (c) otherwise fails to comply with the Contract, (d) becomes debarred, suspended or identified as a denied party by any applicable government agency, (e) 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 (f) violates or is reasonably believed to have violated, applicable law, including anti-bribery, anti-corruption or anti-money laundering or privacy laws.

13. **Services.** Unless otherwise provided in a separate agreement between Seller and Buyer, where Seller provides Services, including, but not limited to, field services or other installation, testing, servicing, training, development, optimizing, integration or support in connection with the Products, the manner and means used to perform the Services are at the sole discretion and control of Seller. Seller reserves the right to subcontract the installation of Products or the performance of any Services required by the Contract. To enable Seller to provide the Services, Buyer will: (a) make all necessary preparation to the site by such date as may be specified in the Order or is reasonably required by Seller, (b) obtain all permits, licenses, and authorizations required by state, local, or other authorities to enable Seller to provide the Services, (c) provide Seller with reasonable access to Buyer's facilities, equipment and personnel, (d) promptly respond to any request for information, approvals, authorizations or decisions necessary to provide the Services, (e) promptly notify Seller of any dangerous, operational or special conditions that may affect the provision of the Services and (f) perform any other obligations designated as Buyer's responsibility as set forth in the Order or as otherwise mutually agreed by the parties in writing. Any failure by Buyer to timely perform any of its obligations hereunder or under the Order shall extend Seller's time of performance to the extent of the delay.

14. **Tooling.** Unless otherwise specified in an agreement signed by Seller and Buyer, all tooling, fixtures, equipment, tools, software and designs produced, acquired or used by Seller for the purposes of filling Buyer's Order remain the property of Seller.

15. Buyer Supplied Parts.

15.1. **Governing Provisions.** *This Section 15 contains provisions specifically and only applicable to Orders for Products for which Buyer supplies (a) parts to Seller for integration into the Products ("Buyer Supplied Parts" or "BSP") or (b) designs.*

15.2. **Buyer Supplied Parts.** Product ship dates are contingent on receipt of any and all BSP(s) on or before the BSP delivery date(s) provided in the applicable Order Acknowledgment. Any BSP delivery date missed will result in the Order being handled pursuant to Section 15.4 below.

15.3. **Buyer Design Changes.** All ship dates are based on design(s) finalized on or before the design finalization date(s) specified in the applicable Order Acknowledgment. Changes requested after that point in time will be accommodated pursuant to Section 15.4 below.

15.4. **Late BSP Delivery or Design Changes.** In the event that any BSP delivery or design change is not timely made as described in Sections 15.2 and 15.3 above, the Order shall be handled as follows: (a) Buyer may request that Seller expedite the manufacturing of the Product to meet the original shipment date, subject to Seller's acceptance of such request and Buyer's payment of rescheduling charges; or (b) the Product is placed on "Hold" and its shipment rescheduled. If a Product is placed on "Hold", the revised shipment date will be formalized by Seller after determination of the next available production slot. In the event of a design change, the next available production slot must allow completion of the design change cycle. This cycle includes the quoting of and Buyer's agreement to, the revised pricing associated with the design change, the engineering implementation of the design change and the acquisition of materials required for the design change. At Seller's election, the design change may also be implemented in the field as an aftermarket modification. Other options will be considered by specific changes on specific Products

at the time of the design change request.

15.5. **Specifications.** Quantities and sizes are subject to variation in accordance with Seller's standard practices and tolerances and the requirements of the job where the Products are to be installed.

15.6. **Installation.** If the applicable Order Acknowledgment provides for installation, Seller's obligation to deliver the Product and provide for the installation of the Product shall in no event commence until the premises is ready to receive the Product and such obligations shall be subject to all other terms of the Contract. Costs and expenses to Seller or its contractor of delays in installation due to interference by Buyer or other contractors working on the premises will be charged to Buyer and shall extend Seller's time of performance to the extent of such delay. Installation costs stated in the Contract are estimated, cover only installation of the Products specified herein and do not cover any other costs, including, but not limited to, costs of electrical work, carpentry, plumbing, sweeping, mopping, dusting or general cleanup. Seller or its contractor shall not be responsible for removing or disposing of the packing material, cartons, boxes or other containers housing the Products. Buyer must inspect and accept or reject the Product and/or Services performed by Seller within five (5) business days from the date of installation and/or completion of the Product and/or such Services shall be deemed accepted by Buyer.

16. **Limited Express Warranty.**

16.1. **Standard Product Warranty.** Except as otherwise set forth in these Terms and subject to the terms and conditions herein, Seller warrants that the Products will, when used in the manner and under the conditions for which they were designed, be free from defects in materials and workmanship for a period of twelve (12) months after shipment from the factory. Subject to the terms and conditions herein, if within the warranty period such Products shall be proved to Seller's satisfaction and in Seller's sole discretion to be non-conforming, Seller will either, in its sole discretion, repair or replace the defective Product without charge or provide a credit for the price paid to be used against future orders. Buyer must notify Seller in writing within the warranty period of any alleged defects. Seller, in its sole discretion, may require Buyer to return the allegedly defective Products or parts to its factory for verification of any claim.

16.2. **Extended Warranty Products.** Subject to the terms and conditions herein, Seller warrants that: (a) the 790 Easy Adjust Spring Products and the Lynx™ API Coupler Products will, when used in the manner and under the conditions for which they were designed, be free from defects in materials and workmanship for a period of five (5) years after shipment from the factory; and (ii) Visiflo® Products, the StandardLine™ Loading Arms Products, and the Series 8000 Endura™ Swivel Products will, when used in the manner and under the conditions for which they were designed, be free from defects in materials and workmanship for a period of three (3) years after shipment from the factory. Subject to the terms and conditions herein, if within the applicable extended warranty period such Products shall be proved to Seller's satisfaction and in Seller's sole discretion to be non-conforming, Seller will either, in its sole discretion, repair or replace the defective Product without charge or provide a credit for the price paid to be used against future orders. Buyer must notify Seller in writing within the warranty period of any alleged defects. Seller, in its sole discretion, may require Buyer to return the allegedly defective Products or parts to its factory for verification of any claim.

16.3. **Limitations of Product Warranties.** The limited warranties

contained in this Section 16 shall be valid and remain in effect only if: (a) the Products are used, maintained, installed, and stored by Buyer as required by all applicable documentation; (b) Buyer has paid Seller all sums due hereunder; (c) Buyer has not in any way altered or modified the Products, and the Products have not otherwise been repaired by any party other than Seller; (d) the claim is unrelated to normal wear and tear, corrosion or erosion, or to any Product normally consumed in operation or that has a useful life inherently shorter than the applicable standard or extended warranty period, as the case may be; (e) the claim is unrelated to the failure by Buyer to follow the most current instructions issued by Seller with respect to the proper use of the Products; (f) the claim is unrelated to Buyer's provided materials, assembly, specifications or designs (if any) for the Products or to the negligence or other act or omission of Buyer or any third party; (g) there has been no operation or use of the Products under conditions more severe than those for which the Products were specified; (h) the claim is unrelated to soft goods, seals, or gaskets; and (i) the claim is unrelated to a force majeure event or other circumstance beyond the reasonable control of Seller. Deviations from published specifications that do not materially affect performance of the Products covered hereby shall not be deemed to constitute a breach of the applicable warranty. The applicable warranty is subject to the disclaimers and exclusions set forth herein.

16.4. **DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS SET FORTH IN SELLER'S LIMITED EXPRESS WARRANTY APPLICABLE TO THE PRODUCTS, SELLER EXPRESSLY DISCLAIMS AND MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING UPON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE OR UPON ANY AFFIRMATIONS OF FACT OR PROMISES OF SELLER THAT EXTEND BEYOND SPECIFICATIONS MUTUALLY AGREED UPON IN WRITING BY SELLER AND BUYER. IN THAT REGARD, AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, BUYER AGREES AND ACKNOWLEDGES THAT IT IS ACCEPTING ANY GOODS, SERVICES AND / OR PRODUCTS HEREUNDER ON AN "AS-IS" AND "WITH ALL FAULTS" BASIS. FURTHERMORE, BUYER HEREBY EXPRESSLY AGREES AND ACKNOWLEDGES THAT SELLER SHALL HAVE NO LIABILITY OF ANY NATURE HEREUNDER BEYOND REPLACEMENT OR REPAIR OF ANY DEFECTIVE PRODUCT, OR PART, INDIVIDUAL COMPONENT OR SPOOL THEREOF, EXCEPT AS EXPRESSLY SET FORTH IN THE LIMITED EXPRESS WARRANTY AND HEREIN.**

17. **Intellectual Property Rights.** All intellectual property rights in or relating to, the Products or Services, including, but not limited to, all technical data, processes, designs, drawings, engineering data, U.S. and foreign patents, patent applications, patent rights, trademarks and service marks (including common law rights, applications and registrations therefor), works of authorship, copyrightable and un-copyrightable works (including those in computer programs, drawings, designs, documentation and

specifications), copyright registrations, trade secrets, proprietary rights in information (including in data, inventions, discoveries, know-how, formulas, processes, technical information and business information), license rights under the intellectual property rights of third parties and all other intellectual property rights whether or not subject to statutory registration or protection (collectively, “Intellectual Property Rights”), are owned by or licensed to Seller. The sale of any Products or Services to Buyer in no way conveys to Buyer, either expressly or by implication, any ownership or license whatsoever to any Intellectual Property Rights, except as may be expressly granted by Seller in the materials which accompany the Products or Services upon delivery. Buyer shall not, and shall not permit any third party to, reverse engineer, decompile, disassemble, or otherwise attempt to ascertain any algorithms, software source code, or other trade secrets underlying any of the Products or Services. Seller expressly reserves its ownership rights in and to its Products and Services and all Intellectual Property Rights therein, and asserts that additional restrictions may apply to the use of the Products or Services, as set forth in the applicable Products or Services documentation and other materials which accompany the Products or Services. Any unauthorized use of Seller’s Intellectual Property Rights, including, but not limited to its trademarks, is expressly prohibited.

17.1. Infringement Claims – Indemnification by Seller. Seller will defend, indemnify and hold harmless Buyer and its officers, directors, employees, agents and equity holders from any liabilities, losses, costs and expenses (including, without limitation, reasonable out of pocket expenses for attorneys’ fees and costs of litigation) (collectively “Losses”) arising solely out of a claim made against Buyer by an unaffiliated third party (and excluding claims described in Section 17.2) for alleged infringement of any U.S. patent, trademark or copyright existing as of the date of issuance of the related Order Acknowledgement and relating to Buyer’s lawful use of the Products purchased under the Contract in Buyer’s business. Seller’s obligations hereunder are contingent upon Buyer having made all payments to Seller then due at the time the claim arises and not otherwise being in breach of any provision of the Contract as well as Buyer’s compliance with the indemnification procedures outlined below. Seller may also, at any time, at its option: (a) procure for Buyer the right to continue to use the Products in question, free of any liability for such infringement; or (b) direct Buyer to immediately cease use of and not market or sell such Products and (i) modify the Products in question so that they become non-infringing; (ii) substitute the Products in question with functionally equivalent non-infringing Products; or (iii) in accordance with Section 9.3 above, accept the return of the Products against payment of the Products’ then-depreciated value, computed on a three (3) year straight-line depreciation schedule commencing as of the date of delivery. The obligations set forth in this Section 17.1 shall be Buyer’s sole and exclusive remedy and Seller’s entire liability for any infringement of third party intellectual property rights as described in this Section 17.1.

17.2. Infringement Claims – Indemnification by Buyer. Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents and equity holders from and against any Losses arising out of a claim made against Seller or its suppliers that any Products manufactured for or sold to Buyer infringe upon any patent, trademark, copyright or other intellectual property right, (a) if such Products were manufactured pursuant to Buyer’s designs, specifications, processes or formulas, or (b) if such claim is based

on (i) a combination of the Product with any item, product, or other material not supplied by Seller, (ii) use of the Product in a manner not intended by Seller, (iii) any modification to the Product not made or expressly authorized in writing by Seller, or (iv) use of the Product after a non-infringing substitute that would have avoided the alleged infringement was made available by Seller.

18. Other Indemnification Claims.

18.1. By Buyer. Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, employees, agents and equity holders from and against any and all Losses arising out of: (i) the use, operation or possession of the Products or Services by Buyer or its affiliates, directors, employees, agents or representatives; (ii) the negligent or willful act or negligent or willful omission of Buyer or its affiliates, officers, directors, employees, agents or representatives (including any death of or injury to any person or damage to any property arising from any of the foregoing); (iii) the alteration or modification of the Products or Services or the use or combination of the Products or Services with other products, devices or services by Buyer or its affiliates, directors, employees, agents or representatives; or (iv) any environmental, property, or toxic tort claim, lawsuit, judgment loss, liability, civil penalty or action.

18.2. By Seller. Seller agrees to defend, indemnify and hold harmless Buyer and its officers, directors, employees, agents and equity holders from and against any and all third-party claims arising solely out of: (i) Seller’s negligence in connection with the design or manufacture of the Products; (ii) any defect in the design or manufacture of the materials used in or the performance of any Products resulting in property damage or bodily injury to a third party; or (iii) Seller’s breach of any warranty as set forth in Section 16.

19. Indemnification Procedures. Promptly after receipt of any written claim or notice of any action giving rise to a claim for indemnification, (a) the indemnified party shall notify the other party and provide copies of the claim and any documents relating to the same in its possession; (b) the indemnifying party shall have sole control of the defense of any such claim and all negotiations for settlement or compromise; provided, however, that the indemnified party shall have the right to approve defense counsel selected by the indemnifying party, such consent not to be unreasonably withheld or delayed; and (c) at the indemnifying party’s reasonable request and expense, the indemnified party shall provide it with reasonable assistance for the defense of the claim. The indemnified party shall be entitled to employ counsel at its own expense to monitor the handling of the claim and neither party shall settle a claim that imposes on or restricts the operations of the other party or requires the other party to pay monies or make admissions without the written consent of such other party, which consent shall not be unreasonably withheld or delayed.

20. Confidentiality; Data Security and Data Protection.

20.1. All non-public, confidential or proprietary information of either party, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, trade secrets, business operations, customer lists, pricing, discounts or rebates, disclosed by such party (the “disclosing party”) to the other party (the “receiving party”), 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” in connection with the Contract (“Confidential Information”) is confidential, solely for the use of performing this Contract and may

not be copied or disclosed (except to the receiving party's employees, agents or contractors who have a need to know for purposes of this Contract and who are bound by obligations of confidentiality at least as restrictive as those set forth herein), unless authorized in advance by the disclosing party in writing. The receiving party shall safeguard the disclosing party's Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care. Upon the disclosing party's request, the receiving party shall promptly return or destroy all documents and other materials containing any of the disclosing party's Confidential Information, including all copies thereof (except for any electronic copies that must be retained pursuant to standard data archiving procedures, and provided that any such retained copies shall remain subject to the obligations of this Section), and the receiving party shall certify in writing its compliance with the foregoing obligations. The disclosing party shall be entitled to injunctive relief for any violation by the receiving party of this Section, without the requirement of posting a bond or other security or proving actual damages. This Section does not apply to information that is: (a) in the public domain (other than due to an improper disclosure by the receiving party); (b) known to the receiving party at the time of disclosure; or (c) rightfully obtained by the receiving party on a non-confidential basis from a third party. The parties agree that the provisions set forth in the NDA (if executed by the parties) shall supplement and be in addition to the obligations of this Section. In the event of any conflict between this Contract and the NDA, the parties agree that the NDA shall control with respect to the obligations of confidentiality of information between the parties and this Contract shall control with respect to the sale of any Products or Services.

20.2. The receiving party represents that it has developed and implemented and covenants that it will maintain commercially reasonable information security policies and procedures that include administrative, technical and physical safeguards designed to (a) ensure the confidentiality, security, integrity and availability of the disclosing party's Confidential Information provided hereunder; (b) protect against anticipated threats or hazards to the confidentiality, security, integrity and availability of such information; (c) protect against unauthorized access or use of such information and (d) ensure the proper disposal of such information. The receiving party shall promptly notify the disclosing party of any breach of confidentiality by the receiving party or any of its agents, unauthorized disclosure of the disclosing party's Confidential Information by the receiving party or any of its agents or a breach of the receiving party's information security policies or procedures impacting the disclosing party's Confidential Information. Notice shall be provided to the disclosing party no later than twenty-four (24) hours upon the receiving party's discovery of such breach of confidentiality.

20.3. Each party shall comply with applicable data protection and privacy legislation in all relevant countries and shall ensure that its employees, agents and contractors observe the provisions of that legislation.

21. **Security Interest.** Buyer hereby grants to Seller and its successors and assigns a lien on and purchase money security interest in and to all of the right, title and interest of Buyer in, to and under the Products sold and Services performed hereunder, 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, to secure payment of all obligations of Buyer under the Contract, including, but not limited to, all costs and expenses set forth in Section 6.6 hereof and Buyer authorizes Seller to take all actions necessary to perfect and/or enforce such security interests, including, but not limited to, the filing of any financing statement in accordance with the Uniform Commercial Code or other applicable law. Default in payment of such price or any part of the obligations when due shall permit Seller, in its sole discretion, to declare all obligations of Buyer immediately due and payable and in such event, Seller shall have all the rights and remedies of a secured party under applicable law. In connection with the security interest granted herein, Seller is expressly authorized, at its discretion, to file one (1) or more financing statements or other notices under applicable law naming Buyer as debtor and Seller as secured party. Buyer will execute such documents requested by Seller to record and otherwise perfect this security interest.

22. **Limitation of Liability.**

22.1. **Incidental and Consequential Damages.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER'S AGGREGATE LIABILITY WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO THE AMOUNT RECEIVED BY SELLER FOR THE PRODUCTS OR SERVICES GIVING RISE TO ANY CLAIM HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER SHALL NOT BE SUBJECT TO, AND BUYER EXPRESSLY DISCLAIMS AND WAIVES ANY CLAIM OR INTEREST IN OR TO, ANY AND ALL INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM UNDER THE CONTRACT OR THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCTS SOLD OR SERVICES RENDERED PURSUANT HERETO, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, THE NEGLIGENCE OF SELLER OR OTHERWISE AND WHETHER OR NOT SUCH LOSS WAS FORESEEABLE OR WHETHER BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

22.2. **Specifically Excluded Damages.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, SELLER SPECIFICALLY DISCLAIMS AND BUYER WAIVES ANY LIABILITY OR CLAIM FOR PROPERTY OR PERSONAL INJURY DAMAGES, PENALTIES, DAMAGES FOR LOST PROFITS OR REVENUES, LOSS OF USE OF PRODUCTS OR SERVICES OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWN TIME, SHUT DOWN OR SLOW DOWN COSTS OR FOR ANY OTHER TYPES OF ECONOMIC LOSS AND FOR CLAIMS OF BUYER'S CUSTOMERS OR ANY THIRD PARTY FOR ANY SUCH DAMAGES.

22.3. **Remedies.** THE DAMAGE LIMITATIONS PROVIDED IN THESE TERMS AND CONDITIONS AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE

BUYER'S SOLE REMEDY (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN). THIS LIMITATION ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE.

23. **Statute of Limitations.** Except as otherwise expressly provided herein, any action that Buyer may have against Seller alleging Seller's breach of any provision of the Contract must be commenced within one (1) year following Buyer's discovery of the alleged breach or such claim shall be forever barred.

24. **Modification; Waiver.** No modifications to these terms and conditions shall be enforceable except when in writing and signed by authorized representatives of both parties, unless otherwise expressly stated herein. Seller shall not be deemed to have waived any of its rights, powers or remedies under these terms and conditions or at law or in equity unless such waiver is in writing and is executed by an authorized representative of Seller. No delay or omission by Seller in exercising any right, power or remedy shall operate as a waiver thereof or of any other right, power or remedy. No waiver by Seller of any default shall operate as a waiver of any other default or of the same default or another occasion.

25. **Severability.** If any provisions of the Contract shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provisions hereof which shall be construed as if such illegal and unenforceable provision or provisions had not been inserted herein, unless such illegality or unenforceability shall destroy the underlying business purpose of the Contract.

26. **Assignability.** Buyer may not assign this Contract without Seller's prior written consent. Seller may assign this Contract to an affiliate of Seller or to an acquirer of control of all or substantially all of Seller's equity or assets.

27. **Force Majeure.** Seller shall not be liable for any loss, delay or failure to perform resulting from any circumstance, direct or indirect, reasonably beyond its control including, without limitation, pandemic, fire, flood, accident, explosion, insurrection, riots, national emergencies, war, armed conflict, acts of public enemies, acts of God, mechanical breakdown, strike or other labor trouble, plant shutdown, acts or omissions of Buyer, unavailability of or interference with the usual means of transporting the Products, any law, regulation order, recommendation or request of any governmental authority having or claiming to have jurisdiction over Seller, its subcontractors and/or its suppliers, or any supplier delays or supplier failures to deliver necessary materials or components. In addition, Seller shall be so excused in the event it is unable to acquire from its usual sources, and on terms it deems to be reasonable, any labor or material necessary for manufacturing the Products or performing the Services. In the event that there should be a shortage of any Product, Seller may apportion its available Product among itself, its affiliates and all of its customers in such equitable manner as it deems fair and reasonable. Upon giving prompt written notice to Buyer of any such causes of a delay or failure in its performance of any obligation under the Contract, the time of performance by Seller shall be extended, at Seller's option, to the extent of any delay resulting from any force majeure event.

28. **Governing Law; Exclusive Jurisdiction and Venue.** The Contract shall be governed and construed according to the laws of the State of Delaware, without reference to principles or conflicts of laws. Any action brought by either party arising out of or relating to the Contract must be brought in a U.S. District Court or state court in New Castle County, Delaware. Buyer waives any objection

to jurisdiction or venue in respect of said Courts and to any service of process issued under their authority. The U.N. Convention on Contracts for the International Sale of Goods does not apply to the Contract or these Terms.

29. **Compliance with Laws.** Buyer shall: (a) comply with all applicable laws, rules and regulations, including, without limitation, those regarding anti-corruption, anti-bribery, human rights and environmental health and safety; (b) maintain in effect all licenses, permissions, authorizations, certificates, consents, approvals and permits necessary to carry out Buyer's responsibilities and obligations under the Contract and these Terms and (c) handle, store, use and transfer the Products in compliance with the foregoing and any safety information provided by Seller. Buyer shall complete any documents and provide such information as Seller may reasonably request to ascertain Buyer's compliance with the foregoing. The Products, including any documentation and technical data related thereto, may be subject to certain: (a) U.S. or other applicable export laws, rules and regulations, including, without limitation, the U.S. International Traffic in Arms Regulations, Export Administration Regulations and Foreign Assets Control Regulations ("Export Laws") and (b) anti-money laundering laws, rules and regulations, including, without limitation, the U.S. Patriot Act ("AML Laws"). Buyer shall comply with all applicable Export Laws and AML Laws. Buyer shall not export, re-export or release any Products that are subject to Export Laws, directly or indirectly, to any jurisdiction to which or person to whom, such export, re-export or release is prohibited by any applicable Export Laws. It is Buyer's responsibility to obtain any license or other approvals and Buyer will complete any documents requested by Seller prior to exporting, re-exporting or releasing any Products that are subject to Export Laws. Seller will have no obligation to make any shipment to Buyer until it has received all such information and has obtained the applicable licenses, permits, approvals or documentation for shipment, if any. Buyer shall indemnify, defend and hold Seller, including its equity holders, directors, officers, employees, affiliates, successors and permitted assigns, harmless from and against any breach of this Section by Buyer or any of its equity holders, directors, officers, employees, affiliates, successors, permitted assigns, customers, agents, distributors, resellers or vendors.

30. **Relationship of Parties.** Nothing contained in these terms and conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these terms and conditions shall be deemed to construe either of the parties as the agent or distributor of the other party.

31. **No Third-Party Beneficiaries.** Except with respect to the indemnification obligations in favor of each party's officers, directors, employees, agents and equity holders in Sections 17 and 18, the Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

32. **Survival.** Sections 6, 9, 16-26, 28, 30, 31 and this Section 32 will survive the expiration or earlier termination of the Contract, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination.