

Servo Kinetics, Inc.
Terms and Conditions of Sale

1. Offer: Acceptance. These Terms and Conditions of Sale ("Terms") by Servo Kinetics, Inc. and each and all of its subsidiaries ("Seller") exclusively govern all sales of products or goods (the "Products") and services ("Services") by Seller to Purchaser regardless of whether Purchaser purchases such Products or Services through the medium of purchase orders, releases or other similar document (whether written, electronic or by telephone order confirmed in writing by Seller) or otherwise (in each case, the "Purchase Order"). By purchasing any Goods or Services of Seller, Purchaser agrees to all of the terms and conditions as they appear in these Terms, and acceptance of these Terms is limited to and must be made on the exact terms and conditions as they appear in these Terms. Purchase Orders, if accepted by Seller, are accepted subject to the terms and conditions set forth herein.

SELLER OBJECTS TO AND REJECTS ANY DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS PROPOSED BY PURCHASER WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS, ON PURCHASER'S WEBSITE OR OTHERWISE SUBMITTED BY PURCHASER, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE DEEMED MATERIAL ALTERATIONS AND SHALL BE VOID AND OF NO EFFECT UNLESS SET FORTH IN A SEPARATE WRITING AND APPROVED AND SIGNED BY SELLER SPECIFICALLY REFERRING TO AND AGREEING TO THE CHANGE.

If these Terms are deemed an acceptance of a prior offer by Purchaser, then such acceptance is expressly made conditional on Purchaser's assent to the additional and different terms as they appear in these Terms and such acceptance is limited to the express terms set forth in these Terms. These Terms are deemed accepted and agreed to by Purchaser upon the earliest of Purchaser signing and returning one copy of these Terms, Purchaser's issuance of a purchase order, Purchaser's failure to object in writing to such terms and conditions within ten (10) days after the receipt hereof, Purchaser otherwise notifying Seller of its acceptance or Purchaser's acceptance of the Products or Services. Stenographic and clerical errors are subject to correction by Seller. Without limiting the foregoing, in case of a conflict between these Terms and any terms or conditions contained in any forms or otherwise submitted by Purchaser, these Terms prevail. Seller and Purchaser agree that Purchaser may use its forms to order Products or Services, but none of the terms and conditions contained in such forms shall apply to the transaction between Purchaser and Seller other than the quantity specified in the forms for the Products or Services identified therein. Seller may, and reserves the right to, reject any forms or purchase orders.

2. Quotations. Quotations are only valid in writing and for thirty (30) days from the date of the quotation unless otherwise set forth in Seller's quote. All quotations by Seller are subject to change or withdrawal without prior notice to Purchaser unless otherwise specifically stated in the quotation. Subject to Seller's right to change or withdraw the quotation, the ten (10) day period referenced in Section 1 above will not affect Purchaser's right to accept the quotation during the thirty (30) day period but acceptance of the quotation will include acceptance of these Terms on the exact terms and conditions as they appear herein and in the manner set forth in Section 1 above. Quotations are made subject to approval by Seller of Purchaser's credit.

Seller shall have no obligation to sell or deliver Products or Services covered by Seller's quotation unless and until Seller issues an order acknowledgement.

3. **No Change in Terms.** Any changes to these Terms must be in writing clearly identifying the change and signed by Seller. Any such agreed upon change or modification will be subject to an adjustment in the purchase price and/or time for performance as determined by Seller. These Terms constitute firm commitments of Purchaser and are not subject to termination or cancellation or rescheduling without the written consent of Seller or as otherwise provided in these Terms.

4. **Prices.** Prices are in U.S. Dollars and are subject to change by Seller without notice. If a raw material, component, energy or service provider raises its prices or imposes a surcharge on Seller, Seller reserves the right to increase prices and/or surcharge Purchaser and Purchaser agrees to accept such price increase or surcharge. Time of payment is of the essence. All Purchase Orders are accepted subject to Seller's price in effect at time of shipment of Products or commencement of Services. Purchaser will promptly pay the price established for each shipment or service. Unless otherwise specified in these Terms, Seller reserves the right in its sole discretion to adjust prices upward in the event that the volumes purchased (or to be purchased) or serviced (or to be serviced) vary from those volumes anticipated by Seller to be purchased or serviced.

5. **Taxes.** Purchaser shall pay to Seller, in addition to the purchase price, the amount of all fees related to the purchase price, including but not limited to, duties, licenses, tariffs, and all federal, state, foreign, municipal or government tax, assessment, charge, cost and sanction. Failure by the Seller to collect any such fees, duties, licenses, tariffs or taxes shall not affect Purchaser's obligations hereunder and Purchaser shall fully defend, indemnify and hold harmless Seller with respect to such obligations.

6. **Terms of Payment.** The inspection rights granted to Purchaser in Section 14 will not affect or alter the payment terms or the timing of Purchaser's payment obligations. Unless otherwise expressly agreed to by Seller in writing, terms of payment are thirty (30) days net from the earlier of the date of Seller's invoice or the date the goods are shipped. Under no circumstances will Purchaser have a right of set-off against Seller by way of deduction, credit or otherwise. Seller shall have the right to offset its payables against its receivables related to goods or services purchased by Purchaser. Purchaser agrees to pay interest on overdue invoices at the rate of 5.0 % per month, but not higher than the highest rate permitted by law. Seller and Purchaser agree that the interest on overdue invoices represents a fair and reasonable estimate of the costs that Seller will incur by reason of any such late payment by Purchaser. Acceptance of the interest on overdue invoices by Seller shall not constitute a waiver of Purchaser's default with respect to the overdue amount, nor prevent Seller from exercising any other rights and remedies available to Seller under these Terms. If Purchaser fails to make any payment as required or if in Seller's sole judgment, the financial responsibility of the Purchaser is or becomes impaired or unsatisfactory to Seller, Seller may and reserves the right to change the terms of payment, require payment in advance or cash on delivery, accounts receivable insurance or satisfactory security or guarantee that invoices will be promptly paid when due, charge additional interest or late fees, defer or discontinue further delivery and/or terminate any

or all Purchaser Orders, without prejudice to any other lawful remedy. Without limiting the generality of the foregoing, Purchaser agrees to indemnify Seller for all costs and expenses, including reasonable attorney fees, court costs, and associated expenses incurred by Seller in connection with the foregoing.

7. **Security Interest.** In order to secure payment in full for the purchase price of the Products, Services, and other amounts due, Purchaser hereby grants to Seller a first lien on, and security interest in, Purchaser's right, title and interest in and to the :Products and all products, replacements and proceeds thereof together with all insurance proceeds with respect thereto (the "Collateral"). Purchaser and Seller each acknowledges and agrees that Purchaser's obligation has been incurred as all or part of the price of the Collateral and that the security interest of Seller shall constitute a "purchase-money" security interest. It is intended that this provision shall constitute a security agreement under the Uniform Commercial Code (the "Code") and Seller shall be entitled to all rights and protections afforded to a secured party under the Code. Purchaser hereby grants to Seller a power of attorney with full power of substitution to execute on behalf of Purchaser such UCC-1 Financing Statements or filings as may be necessary or appropriate to perfect Seller's security interest in the Products and agrees to do any other acts necessary or appropriate to perfect and maintain such security interest. In order to secure payment in full for the purchase price of the Services and other amounts due, Purchaser hereby grants Seller the right to a mechanics lien on all of the serviced real or personal property and proceeds thereof together with all insurance proceeds with respect thereto. Seller may take any actions it deems desirable or necessary with respect to such mechanic's lien and the assertion or perfection thereof and Purchaser shall cooperate with Seller with respect to the foregoing. Seller agrees that its security interest and mechanic's lien hereunder shall be automatically released and discharged in full, without further action on the part of either party, upon the payment in full of the purchase price of the Products, Services, and related charges or amounts due. Any security interest or lien retained by Seller under these Terms shall not render the Seller otherwise responsible for the Collateral or Purchaser's serviced real and personal property. The Collateral and Purchaser's serviced real and personal property shall be the responsibility of Purchaser and Purchaser shall indemnify and hold Seller harmless from any and all claims, costs, expenses (including, but not limited to, attorneys fees), damages and losses relating to the Collateral and Purchaser's serviced real and personal property.

8. **Reinstatement of Security Interest.** Notwithstanding any prior discharge of the security interest granted herein, the effectiveness of the security interest granted herein shall automatically continue or be reinstated, as the case may be, in the event that any payment received by Seller in respect of the purchase price or any other amounts owed are returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable state or federal law, in which case the security interest granted herein shall be enforceable as if the returned, disgorged or rescinded payment had not been received or given.

9. **Delivery.** Delivery and shipment dates are estimated dates only and are based upon prompt receipt of all necessary information. Estimates as to the time of delivery in quotations are based on conditions prevailing at the date of such quotations. Unless otherwise agreed in writing by Seller, all Products are sold EXW (Ex Works) point of origin. Unless otherwise

agreed in writing by Seller, Purchaser is responsible for all costs of packaging, banding, freight and transportation and an extra charge may be made for special conditions. If Seller incurs any costs or expenses related to export of the Products, Purchaser agrees to indemnify Seller for all such costs and expenses. Purchaser is responsible to return in a timely manner all packaging in good, clean and usable condition deemed returnable by Seller and shall be responsible and shall indemnify Seller for any and all costs, expenses (including, but not limited to, attorneys fees), damages and losses incurred by Seller relating to Purchaser's failure to timely return such packaging to Seller in good, clean and usable condition. Such returnable packaging shall remain Seller's property. All shipments to be made hereunder shall at all times be subject to the approval of Seller's credit department. Seller reserves the right to ship items in a single or multiple shipments.

10. Title and Risk of Loss. Products shall become the property of Purchaser upon tender by Seller at the point of origin. Goods serviced by Seller shall remain property of Purchaser at all times. Purchaser shall answer all risk and liability for loss, damage, or destruction, as well as the results of any use or misuse by third parties who may acquire or use the Products or goods serviced by Seller after tender by Seller at the point of origin.

11. Right of Reclamation. Seller may, at any time it believes in its sole discretion, that Purchaser is insolvent, demand and immediately receive the return of any Products Seller provided or is obligated to provide Purchaser and cease any further delivery of Products to Purchaser whether or not such Products were sold, commingled, or capable of being identified, traced, or matched to any particular invoice, Purchase Order, or similar document. Purchaser shall return the Products within seven (7) days of receipt of such demand. Seller and Purchaser expressly acknowledge and agree that this contractual right of reclamation is independent of and in addition to any statutory or common-law right of reclamation and is not subject to or conditioned upon any additional statutory or common law requirement, including, without limitation, that (i) Purchaser was actually insolvent when it received the Products, (ii) Seller provided Purchaser the subject Products in the ordinary course of business or on ordinary business terms, and (iii) Purchaser had the Products in its possession or subject to its control at the time it received Seller's demand for the return of the Products. In the event of a bankruptcy proceeding, Purchaser recognizes, acknowledges, and agrees that Seller shall be entitled, without challenge, defense, offset, or counterclaim, to the immediate payment in cash of the amounts subject to such reclamation demand or the immediate return of such Products, at the option of Seller.

12. Design or Engineering Changes. At the request of Seller, Purchaser will fully cooperate with Seller to implement any changes in Seller's processes and methods of manufacturing. Seller may and reserves the right to reject any of Buyer's requests for changes to this Purchase Order, including but not limited to, the specifications, samples or descriptions; time or place of delivery or performance; method of packing or shipment; or the quantity of goods or extent of services.

13. Cancellation. Seller reserves the right to cancel any Purchase Orders or terminate any agreement relating to purchase of Products or Services on not less than thirty (30) days written notice. Once Seller has either accepted a Purchase Order or has begun taking actions with

respect to such Purchase Order, such Purchase Order cannot be canceled, terminated or modified by Purchaser in whole or in part except with Seller's prior written consent.

14. Inspection. Seller grants Purchaser the right to inspect the Products and Services for a period of fifteen (15) days immediately following delivery. Purchaser must notify Seller of any Products or Services that do not conform to these Terms within the fifteen (15) day period, and afford Seller a reasonable opportunity to inspect such Products and Services and cure any nonconformity. If Purchaser fails to provide Seller with notice of nonconformity within such time period, Purchaser shall be deemed to have accepted the Products and Services. Purchaser will have no right to return any Product or serviced good without Seller's prior written authorization. Purchaser will be responsible for all costs and expenses associated with any returns of Products or serviced goods and will bear the risk of loss or damage of such Products or serviced goods, unless Seller otherwise agrees in writing or determines that the Products or serviced goods do not conform to these Terms. Seller, in its sole discretion, may reject any return of Products or serviced goods not approved by Seller in accordance with this Section.

15. Warranty. Subject to the limitations set forth in these Terms, Seller warrants to Purchaser that the Products purchased by Purchaser will be free from defects in material and workmanship. Seller warrants that it shall provide quality workmanship in the performance of Services under these Terms in accordance with industry standards, but Seller makes no guarantee as to the result of the Services. Warranty periods, which are categorized as W1, W2, and W3, shall be as follows: (W1) for general industrial grade component repairs, the earlier to occur of (i) one (1) year in service or (ii) two (2) years from the date of delivery; (W2) for new products manufactured by Seller, three (3) years from the date of delivery; (W3) for flight simulator motion system components, ten (10) years from the date of delivery for control loading and motion system actuators, three (3) years from the date of delivery for servo and abort valves, and two (2) years from the date of delivery for all other flight simulator motion system components. Seller has the right to inspect and test Products claimed to be defective at Purchaser's place of business or at Seller's option, have them reshipped to Seller for inspection and testing. Seller's expenses for such inspection, including, but not limited to, transportation and travel charges related to such inspection, shall be borne by Purchaser. In no event may Products be returned to Seller without Seller's prior written consent. Purchaser is responsible for secure packaging of returned Products such that the Products reach Seller without damage. Purchaser acknowledges and agrees that no salesman, officer, agent or other representative of Seller is authorized to make any representation or extend any warranty contrary or in addition to that set forth in this Section 15, and that any attempt to do so shall not be binding upon Seller. In no event or circumstance will anyone other than the Purchaser be considered to have any right, title or interest to assert any rights under this warranty. Without limitation, Seller **WILL NOT** be obligated in any event under this warranty for alleged defects if in Seller's sole determination, (i) the alleged defects are related to tampering, alterations, misuse, neglect or improper storage, handling or maintenance, or failure to follow all operating instructions by Seller; (ii) the alleged defects are due to causes beyond a defect in material or workmanship or the alleged defects of the Services are due to causes beyond a defect in workmanship; (iii) the alleged defects are due to Seller's compliance with Purchaser's specifications or instructions or those of a third party manufacturer; (iv) the alleged defects should have been discovered by Purchaser during the final inspection pursuant to Section 14; or (v) the alleged defects are due

to damages occurring after Purchaser's acceptance of the Products or Services. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO ANY PRODUCTS WHICH ARE NOT MANUFACTURED BY SELLER, WHETHER PURCHASED IN CONJUNCTION WITH SERVICES OR OTHERWISE, AND IN SUCH EVENT PURCHASER'S SOLE WARRANTY FOR THE PRODUCTS SHALL BE THAT PROVIDED BY THE THIRD PARTY MANUFACTURER.

16. WARRANTY DISCLAIMER. OTHER THAN AS EXPRESSLY STATED HEREIN, THE PRODUCTS AND SERVICES ARE BEING SOLD "AS IS", "WHERE IS" AND WITH ALL FAULTS AND SELLER MAKES NO REPRESENTATIONS, WARRANTIES, GUARANTEES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW, WITH RESPECT TO THE PRODUCTS OR SERVICES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY MATTER RELATED HERETO. SELLER MAKES NO WARRANTY THAT THE PRODUCTS OR SERVICES OR ANY ACTIONS TAKEN WITH RESPECT THERETO WILL NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY NOR IS SELLER MAKING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS OR SERVICES OR OTHERWISE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. PURCHASER ACKNOWLEDGES AND AGREES THAT IT HAS DETERMINED, IN ITS SOLE DISCRETION, WHICH PRODUCTS OR SERVICES TO PURCHASE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, (i) ANY SAMPLES PROVIDED BY SELLER ARE NOT AND DO NOT GIVE RISE TO ANY REPRESENTATIONS OR WARRANTIES AND (ii) SELLER FURTHER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO ANY MATERIALS REGULATED BY ENVIRONMENTAL LAWS OR REGULATIONS OR COMPLIANCE THEREWITH. THIS SECTION SURVIVES ANY TERMINATION, CANCELLATION OR EXPIRATION OF THESE TERMS OR ANY ORDER.

17. EXCLUSIVE REMEDY. PURCHASER'S SOLE AND EXCLUSIVE REMEDY, AND SELLER'S SOLE AND EXCLUSIVE OBLIGATION OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, FOR NEGLIGENCE) WITH RESPECT TO THE PRODUCTS AND SERVICES IS EXPRESSLY LIMITED TO REPAIR, REPLACEMENT, OR REFUND OF THE PURCHASE PRICE, AT SELLER'S OPTION, OF THE ALLEGEDLY DEFECTIVE PRODUCT OR SERVICE, PROVIDED SELLER IS NOTIFIED IN WRITING OF ANY CLAIMS OF DEFECTS IN MATERIALS OR WORKMANSHIP WITHIN ONE (1) YEAR FROM THE DATE OF DELIVERY OF PRODUCTS OR SERVICES. ALL ACTIONS FOR A CLAIMED BREACH OF THIS WARRANTY MUST BE BROUGHT ONE (1) YEAR FROM THE DATE OF DELIVERY OF THE PRODUCTS OR SERVICES. THIS SECTION SURVIVES ANY TERMINATION, CANCELLATION OR EXPIRATION OF THESE TERMS OR ANY ORDER.

18. NO CONSEQUENTIAL OR INDIRECT DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE FOR, AND PURCHASER WAIVES ALL CLAIMS AGAINST

SELLER FOR, ANY CLAIM OF ANY KIND (WHETHER BASED UPON NEGLIGENCE, STRICT LIABILITY, BREACH, WARRANTY OR OTHER CAUSE OF ACTION OR IN CONTRACT, TORT OR OTHERWISE) OR OTHERWISE FOR INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, WHETHER KNOWN OR UNKNOWN, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF PROPERTY OR PRODUCTION, PRODUCTION INTERRUPTION OR SHUTDOWN, INJURY OR DAMAGE TO PERSONS OR PROPERTY AND/OR COMMERCIAL LOSS EVEN IF SELLER SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. WITHOUT LIMITING THE GENERALITY OF THE LIMITATIONS AND DISCLAIMERS SET FORTH HEREIN, IN NO EVENT WILL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE RECEIVED FOR THE SPECIFIC PRODUCT OR SERVICE AS TO WHICH THE CLAIM IS MADE, AND IN THE EVENT OF REPLACEMENT OF PRODUCTS OR SERVICES, ANY COST BEYOND THE DIRECT COST OF THE PRODUCTS OR SERVICES REPLACED, INCLUDING WITHOUT LIMITATION, INSTALLATION COSTS OR OTHER ANCILLARY COSTS, SHALL BE BORNE BY PURCHASER. TIDS SECTION SURVIVES ANY TERMINATION, CANCELLATION OR EXPIRATION OF THESE TERMS OR ANY ORDER.

19. **Equipment, Material and Tooling.** Unless otherwise agreed in writing by Seller, all material, equipment, facilities, and tooling, (which term includes but is not limited to tools, jigs, dies, fixtures, gages, molds, patterns and replacements thereof), used in the manufacture of the Products shall remain the property of Seller. Any material, tooling or equipment furnished to Seller by Purchaser shall be and remain the personal property of Purchaser and are held at Purchaser's risk. Seller shall not be responsible or liable for damage thereto or loss or destruction thereof and shall have a lien thereon to secure all amounts whatsoever due from Purchaser to Seller, which lien may be enforced by sale or court action or as otherwise permitted under applicable law. Seller may take any actions it deems desirable or necessary with respect to such lien and the assertion or perfection thereof and Purchaser shall cooperate with Seller with respect to the foregoing.

20. **Intellectual Property.** All intellectual and industrial property and all rights therein relating to the Products or any Services provided by Seller or disclosed or otherwise provided to Purchaser by Seller or otherwise contained in any item or documentation relating thereto, including, but not limited to, all drawings, designs, know-how, specifications, inventions, devices, gating, developments, processes, trade secrets, copyrights, trademarks, service marks, patents and applications therefore, engineering details and other data and information, and all rights therein (collectively, "Intellectual Property") will remain the property of Seller and will be kept confidential by Purchaser pursuant to these Terms. Purchaser shall have no claim to, nor ownership interest in, any Intellectual Property and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written request from Seller. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Intellectual Property, other than the limited right to use the Seller's Products purchased from Seller. The sale of Products or Services by Seller to Purchaser does not include

any design, development or related services associated with the Intellectual Property of the Seller.

21. **Confidential Information.** Purchaser shall hold in strict confidence and not disclose or duplicate any information disclosed, demonstrated or provided by Seller or any of its affiliates or otherwise designated as being proprietary to Seller without the prior written consent of Seller except for any information which becomes generally available to the public through no act or omission of Purchaser and otherwise without breach of any agreement, limitation or restriction.

22. **Indemnification.** In addition to any other indemnification and other obligations of Purchaser hereunder, Purchaser must defend, indemnify and hold harmless Seller and its affiliates and each of their respective shareholders, members, owners, officers, directors, managers, agents, employees and representatives (the "Seller Indemnities") from and against any and all claims, sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest, costs and other expenses (including, but not limited to, investigation expenses and attorneys' fees) arising or alleged to arise out of (i) the willful misconduct of Purchaser or its personnel, (ii) Purchaser's negligence or Purchaser's use, ownership, maintenance, transfer, transportation, processing, application, sale or disposal of the Products or serviced goods, (iii) Purchaser's plans or specifications or otherwise arising or alleged to arise out of the Products ordered by Purchaser or any Services provided by Seller to Purchaser; (iv) any infringement or alleged infringement of the industrial or intellectual property rights of others arising or alleged to arise from Purchaser's plans, specifications (including, but not limited to, Purchaser's trademarks, service marks and brand names) or the production, sale or use of the Products; (v) Purchaser's violation or alleged violation of any federal, state, foreign, county or local laws or regulation, including without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices; (vi) the manufacture by Seller of the Products in accordance with Purchaser's specifications including, but not limited to, the use of materials regulated by environmental and other laws, rules and regulations; or (vii) Purchaser's breach, misrepresentation or nonperformance of these Terms. Without limiting the foregoing obligations of Purchaser, if Products are to be manufactured to Purchaser's specifications, Purchaser assumes sole responsibility for the specifications (including, but not limited to the materials to be used in accordance with such specifications). This section survives any termination, cancellation or expiration of these Terms or any order.

23. **Government Contracts.** If the Products or Services purchased by Purchaser are to be used in fulfilling a contract with the United States Government, Seller agrees to comply with the mandatory government contract provisions that are applicable to Seller under federal law and regulations, provided Purchaser shall provide written notice of the applicable provisions and Seller has accepted them in writing.

24. **Force Majeure.** Seller shall not be liable or deemed in default for any late deliveries hereunder or for any other delays or failure to perform where the late delivery, delay or failure to perform has been occasioned by acts of God, fire, embargo, labor or industry disruptions or disturbances, weather, shortage of materials, strikes, civil disorders, acts of terrorism, war, epidemics, computer malfunctions, vendor allocations, accidents, governmental, regulatory or legal action or orders, delays caused by Purchaser (including, but not limited to, Purchaser's

failure to promptly comply with the terms of payment), failure to secure materials from usual sources of supply, acts or omissions on the part of carriers, force majeure or any other circumstances beyond Seller's control not hereinabove enumerated.

25. **Successors and Assigns; No Assignment.** These Terms bind and inure to the benefit of Purchaser and Seller and their respective successors and permitted assigns. Purchaser shall not assign any interest in, nor delegate any obligation under, these Terms without the prior written consent of Seller.

26. **Entire Agreement; Modifications; No Implied Waiver.** These Terms are intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement in and of this agreement. These Terms may not be altered, modified or waived except by written agreement of Seller. Waiver by Seller of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from any default of Purchaser hereunder shall not be deemed to be a waiver of such right.

27. **Limitation of Actions.** Notwithstanding any statute of limitations to the contrary, any cause of action for any alleged breach of these Terms by Seller shall be barred unless commenced by Purchaser within one (1) year from the accrual of such cause or action; provided, however, that the foregoing shall not be construed to lengthen the one (1) year time limitation contained in Section 17.

28. **Severability.** In case any of the terms or conditions contained herein shall be held invalid, illegal, and/or unenforceable, in whole or in part, neither the validity of the remaining part of such terms, nor the validity of any other term hereof shall be affected thereby.

29. **Governing Law.** The validity, construction and performance of these Terms shall be governed by and interpreted in accordance with the laws of the State of Michigan, without regard to Michigan's choice of law provisions. ICC Incoterms 2000 apply; however, the U.N. Convention on Contracts for the International Sales of Goods does not apply to these Terms, and any term contained herein must be construed in accordance with the Uniform Commercial Code as enacted in the State of Michigan.

30. **Arbitration.** Any controversy or claim arising under or with respect to these Terms or any resulting Purchase Order shall be resolved by binding arbitration in Ann Arbor, Michigan, under the rules of the American Arbitration Association ("AAA"). Any controversy or claim referred to arbitration will be referred to (i) a single arbitrator if the parties can agree on such arbitrator within seven (7) days after notice of one party to the other of its intentions to arbitrate; or (ii) after the expiration of such initial seven (7) day period, three arbitrators as follows: both parties will within seven (7) days appoint their respective arbitrator and the two (2) arbitrators thus chosen will together, within seven (7) days of their appointment, nominate a third arbitrator. If the two (2) arbitrators fail within such seven (7) days of their selection to select a third arbitrator, then upon the written request of either party, the third arbitrator will be appointed by the AAA. If a party fails to appoint an arbitrator as required, the arbitrator appointed will be the sole arbitrator of the controversy or claim referred to arbitration. The

arbitration award shall be conclusive, final, and binding and judgment may be entered on it in any court having jurisdiction . Notwithstanding the foregoing, Seller may seek equitable relief in any state or federal court in Washtenaw County, Michigan, to enforce the provisions of these Terms, and Purchaser consents to the personal jurisdiction of such courts and waives any objection that any such court is an inconvenient forum.

31. Cumulative Remedies of Seller. All rights granted to Seller hereunder shall be cumulative and in addition to, and not in lieu of, any other rights of Seller including, but not limited to, Seller's rights arising by operation of law.

32. Survival. The provisions of these Terms that by their nature are reasonably intended to survive termination, cancellation or expiration including, but not limited to, Sections 5-9, 11, 14-22 and 24-34 survive any termination, cancellation or expiration of these Terms or any order.

33. Credits and Benefits. Credits or benefits resulting from any order by Purchaser or otherwise with respect to the Products or Services, including, but not limited to, trade credits, export credits, duty and import drawback rights, and the refund of duties, taxes, or fees, belong to Seller. Purchaser will provide all information and certificates necessary to permit Seller to receive these benefits or credits.

34. Customs Matters. The Products and Services are subject to U.S. export control laws. Purchaser is obligated by law to comply with export control laws, including but not limited to the Export Administration Regulations and the regulations administered by the Office of Foreign Assets Control. If Purchaser exports the Products or Services from the U.S. or other foreign country, Purchaser assumes responsibility for complying with any and all applicable laws and regulations and for obtaining export and import authorizations and licenses. Purchaser agrees to hold Seller harmless for any costs, fees, fines, or other liability incurred by Seller resulting from Purchaser's failure to comply with the US export control and other applicable laws.

35. Headings. The headings contained in these Terms are for convenience of reference only and shall not affect the meaning or interpretation of these Terms.