

Aviojet Terms & Conditions of Sale

ARTICLE I PRICING AND DELIVERY

1.01 **Price.** Invoices are due and payable, net thirty (30), unless a different period of time is otherwise quoted in the invoice, on the date specified on the relevant invoice ("Due Date"). So long as Purchaser makes payment within a three (3) day grace period of the Due Date, no interest will accrue to the invoice amount. If Seller does not receive payment of any amount owed by Purchaser by the Due Date, Purchaser agrees to pay a delinquency charge of 1.5% per month or the maximum rate allowed by applicable law. Purchaser agrees that if it fails to pay when due any amount owed to Seller, Purchaser shall reimburse Seller for all costs that Seller incurs to collect such unpaid amount including but not limited to costs and attorneys fees.

a) If before the completion of performance by Seller of this Agreement, or at anytime thereafter: (i) Purchaser becomes unable or refuses to make payment to Seller in accordance with any of Purchaser's obligation to Seller; (ii) a receiver or trustee is appointed for any of Purchaser's property; or (iii) Purchaser becomes insolvent or makes an assignment for the benefit of creditors without Seller's signed, written consent, or takes or attempts to take the benefit of any insolvency act, or any execution that is issued pursuant to a judgment rendered against Purchaser, Seller may, at its option in any of such events and without prejudice to any of its other remedies, retain possession of all Goods in the possession of Seller until Seller receives all payments from Purchaser and/or may terminate this Agreement by giving to Purchaser written notice of Seller's intention to do so. Seller will thereupon be relieved of any further obligations to Purchaser and Purchaser will reimburse Seller for its termination costs and expenses (including attorneys fees if required) and a reasonable allowance for profit.

b) No discount will be allowed unless specifically set forth in writing by Seller. If, in Seller's opinion, the financial condition of the Purchaser at any time does not justify continuance of production or shipment on the terms of payment specified, Seller may require full or partial payment in advance. Terms of payment may appear on the invoice.

c) All prices and risk of loss are F.O.B. Factory (origin) unless otherwise specifically set forth in writing by Seller. Prices stated are subject to change without notice in the event of alterations in specifications, quantities, designs, or delivery schedules. Seller reserves the right to cancel without liability, at any time, any contract or order or unfilled portions thereon, when performance of the same is prevented, directly or indirectly, by any cause whatsoever beyond Seller's reasonable control.

1.02 **Acceptance of Goods, Delivery, and Transportation.** Upon Purchaser's receipt of Goods, Purchaser shall immediately inspect the Goods. Purchaser will inspect all Goods within ten (10) days of receipt from Seller and will notify Seller within ten (10) days thereafter of any unserviceable Goods received which are not due to damage, shortage or errors in shipping upon which Seller shall decide in its sole discretion whether the warranty will be limited to repair or replacement or whether consideration paid by Purchaser shall be returned. Purchaser will not bring any claim relating to any defects which were or which could or should have been discovered during such inspection and about which Purchaser did not notify Seller in writing within the prescribed time. After such ten (10) day period, Purchaser shall be deemed to have irrevocably accepted the Goods, if not previously accepted. After such acceptance, Purchaser shall have no right to reject the Goods for any reason or to revoke acceptance. Purchaser hereby agrees that such ten (10) day period is a reasonable amount of time for such inspection and revocation. Purchaser shall have no right to order any change or modification to any Goods or services previously ordered by Purchaser or its representatives or to cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller. Specially fabricated or ordered items may not be cancelled or returned, and no refund will be made. Seller shall not be responsible for insuring shipments unless specifically requested by Purchaser and any insurance so requested shall be at Purchaser's expense. Seller expressly reserves the right to overship or undership Goods by up to twenty percent (20%).

1.03 **Title and Risk of Loss.** Title to any Goods sold and risk of loss of such Goods passes to Purchaser upon delivery by Seller to carrier or pickup at Seller's plant, FCA Exworks (IncoTerms 2010), and any claims for losses or damage shall be made by Purchaser directly to carrier. All Goods are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Purchaser upon tender of Goods to Purchaser, Purchaser's representative, or common carrier. The cost of any special packing or special handling caused by Purchaser's requirements or requests shall be added to the amount of the order. If Purchaser causes or requests a shipment delay, or if Seller ships or delivers the Goods erroneously as a result of inaccurate, incomplete or misleading information supplied by Purchaser or its agents or employees, storage and all other additional costs and risks shall be borne solely by Purchaser. Claims for Goods damaged or lost in transit should be made by Purchaser to the carrier, as Seller's responsibility ceases upon tender of Goods to Purchaser, Purchaser's representative or common carrier. Seller warrants to Purchaser that Seller will convey good title to all goods sold or exchanged by Seller hereunder. Seller's liability and Purchaser's sole remedy under the warranty set forth in this Agreement is limited to removing any title defect or, at the election of Seller, replacing any such goods that are defective in title.

1.04 **Disclaimer of Consequential and Incidental Damages.** IN NO EVENT SHOULD SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH. THE REMEDY UNDER THE ACCEPTANCE, RETURN AND WARRANTY PROVISIONS IS LIMITED TO REPAIR OR REPLACEMENT OR RETURN OF PAYMENT (IN SELLER'S DISCRETION) UNLESS OTHERWISE EXPRESSLY NOTED THEREIN. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY

PERSON OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED BY THE USE OF THE GOODS). PURCHASER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

1.05 **Delivery.** Seller will make a good faith effort to complete delivery of the Goods as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, public enemy, inability to obtain materials, compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it proves to be invalid, delays of carriers, contractors or suppliers, or any other causes of any kind whatsoever beyond the control of Seller. **UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR LIQUIDATED DAMAGES, LOSSES, OR EXPENSE (WHETHER OR NOT BASED ON NEGLIGENCE) ARISING DIRECTLY OR INDIRECTLY FROM DELAYS OR FAILURE TO GIVE NOTICE OF DELAY.**

1.06 **Packaging.** Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Purchaser.

1.07 **Credit Terms.** All orders and shipments shall at all times be subject to the approval of the Seller. Seller reserves the right to decline to make shipment whenever, for any reason, there is doubt as to Purchaser's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of this Agreement in whole or in part.

1.08 **Security Interest.** To secure prompt payment of the purchase price for the Goods identified on the face hereof, Purchaser hereby grants to Seller a purchase money security interest in the Goods purchased from Seller and all proceeds thereof (the "Collateral"). Purchaser agrees to execute and deliver to Seller the appropriate and applicable UCC financing statements, together with any and all other documents, and shall take such other action, as may be required to perfect Seller's security interest in the Collateral if requested by Seller.

ARTICLE II COSTS, REMEDIES, AND TERMINATION

2.01 **Costs of Collection.** If, at any time or times, Seller incurs legal expenses or other costs or expenses in connection with: (i) any litigation, contest, suit, dispute, proceeding or action in any way relating to the Collateral; (ii) any attempt by Seller to enforce any rights of Seller against Purchaser or any other person which may be obligated to Seller hereunder; or (iii) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the Collateral; then, in any such event, the expenses and costs (including attorney's fees) relating to any of the foregoing events or actions shall be payable by Purchaser on demand to Seller and shall be considered additional obligations hereunder secured by the Collateral. Seller reserves the right to revoke any credit extended to Purchaser at any time, because of Purchaser's failure to pay for any Goods when due or for any reason deemed good and sufficient by Seller.

2.02 **Remedies of Seller.** Upon default by Purchaser, Purchaser agrees to reimburse Seller all attorney fees, court and arbitration costs incurred by Seller in connection therewith. Purchaser agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law: (a) the failure of Purchaser to perform any term or condition contained herein; (b) any failure of Purchaser to give required notice; (c) the insolvency of Purchaser or its failure to pay debts as they mature, an assignment by Purchaser for benefit of its creditors, the appointment of receiver for Purchaser or for the materials covered by this Agreement or the filing of any petition to adjudicate Purchaser bankrupt; (d) the death, incompetence, dissolution or termination of existence of Purchaser; (e) a failure by Purchaser to provide adequate assurance of performance within ten (10) days after a justified demand by Seller; or (f) if Seller, in good faith, believes that Purchaser's prospect of performance under this Agreement is impaired. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Purchaser shall pay all such charges.

2.03 **Delays.** Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (a) strikes, fires, disasters, riots, acts of God, (b) acts of Purchaser, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor or supplier delay including, but not limited to failure by subcontractor or supplier to make timely delivery, or (f) any other cause of condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

2.04 **Termination, Cancellation, and Changes.** Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Purchaser's order by Seller, except with Seller's written consent and

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subject to reasonable charges for expenses incurred and work executed by Seller or its suppliers including but not limited to prorated overhead expenses, profit and cost for preparing, submitting and negotiating of Seller's termination claim. Purchaser shall be obligated to accept any portion of the Goods shipped or delivered by Seller pending Seller's written approval of cancellation. Orders for custom made material may not be cancelled after Seller has been in production unless Seller agrees in writing.

2.05 Returns.

a) New Goods. Except for claims or defects which were or which could or should have been discovered during the inspection period described in section 1.02 of this Agreement, Purchaser may return any new Goods which Seller stocks within ninety (90) days if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts; and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged; and (iii) meets all Local, State and Federal laws governing the type of product that can be sold or put into transit in the State in which the product is being returned. Purchaser's surplus job returns, and those not meeting (i), (ii) or (iii) above will be evaluated on an individual basis after Purchaser has contacted Seller's authorized representative for prior written permission and may be subject to additional costs and charges for transportation, handling, restocking, and cost of putting items in salable condition. Special orders or non-stock items may be returned if the original distributor or manufacturer will accept the return.

b) Used Goods. Except for claims or defects which were or which could or should have been discovered during the inspection period described in section 1.02 of this Agreement, Purchaser may return any used, refurbished, repair, overhauled, or new surplus Goods ("Used Goods") which Seller stocks within ninety (90) days if: (i) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged; (ii) meets all Local, State and Federal laws governing the type of product that can be sold or put into transit in the State in which the product is being returned; and (iii) the seller from which Purchaser purchased the Used Goods from accepts such return. Purchaser's surplus job returns, and those not meeting (i), (ii) or (iii) above will be evaluated on an individual basis after Purchaser has contacted Seller's authorized representative for prior written permission and may be subject to additional costs and charges for transportation, handling, restocking, and cost of putting items in salable condition. Special orders or non-stock items may be returned only if the original distributor or manufacturer will accept the return.

2.06 Set-off. Purchaser shall not be entitled to set-off any amounts due Purchaser against any amount due to Seller in connection with this Agreement.

ARTICLE III TAXES

Purchaser shall reimburse the Seller for all taxes, excises or other charges which the Seller may be required to pay to any domestic government (national state or local) upon the sale, production or transportation of the Goods sold hereunder, and for international operations (export sales). Additionally all taxes, licenses, duties, and governmental exactions by whatever name known which may be levied or assessed on or account of the Goods sold hereunder, or their documents shall be paid by Purchaser. The amount of any sales, excise or other taxes, if any, applicable to the Goods shall be added to the purchase price and shall be paid by Purchaser unless Purchaser provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the Goods, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Purchaser, who shall promptly pay the amount thereof to Seller upon demand.

ARTICLE IV INDEMNIFICATION

Purchaser shall indemnify, defend and hold harmless Seller and its officers, directors, employees, attorneys and agents from and against any and all suits, claims, demands, causes of action, liability, judgments, costs, expenses (including, without limitation, attorney's fees), and all losses and damages (including consequential and punitive damages) in connection with any injury, disease or death of persons (including, without limitation, Purchaser's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use, or repair of the Goods by Purchaser or of the information, designs, services or other work supplied to Purchaser, whether caused by the concurrent and/or contributory negligence of Purchaser, Seller, or any of their agents, employees or suppliers or arising from Purchaser's use, or from the conduct of its business or from any activity, work, or other acts or things done, permitted or suffered by Purchaser relating to this Agreement or arising from any breach or default in the performance of any obligation on Purchaser's part to be performed under the terms of this Agreement, or arising from the gross negligence or willful or criminal misconduct of Purchaser, or any officer, agent, employee, independent contractor, guest, or invitee thereof, and from all costs, reasonable attorney fees and disbursements, and liabilities incurred in the defense of any such claim or any action or proceeding which may be brought against, out of or in any way related to this Agreement. The provisions of this Section shall survive the expiration or sooner termination of this Agreement.

ARTICLE V WARRANTIES AND REPRESENTATIONS

5.01 Warranties and Representations of Seller. The Seller warrants and represents that:

- a) Except as otherwise provided in Article I, II, and V of this Agreement, the Goods are sold "AS-IS". Seller makes no warranty and disclaims all liability for goods, whether supplied by Seller or not, that were not originally manufactured by or on behalf of Seller, though Seller may, to the extent it has a right to do so, make available to Purchaser the benefit of any warranty provided by such original manufacturer. Such warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication, neglect, accident, improper installation or modification (including but not limited to use of unauthorized parts or attachments).
- b) Seller neither expressly nor impliedly warrants against defects in design, workmanship and materials of parts or materials supplied by others and utilized by the Seller in such Goods. Seller shall give the Purchaser (insofar as it is assignable) the benefits of any express written warranties given to Seller by such manufacturer or other vendors. Seller shall have no obligation to process any warranty claim against such manufacturer or supplier for the benefit of the Purchaser.
- c) Seller neither expressly nor impliedly warrants, or makes any representation whatsoever, as to service life of such Goods since conditions of usage and experienced service life are neither within the control of nor knowledge of Seller.
- d) Seller warrants to Purchaser that the new Goods sold hereunder will be in serviceable condition and will conform substantially to Seller's applicable specifications as stipulated in the order. This warranty terminates ninety (90) days after the Purchaser first operates the goods or one (1) year after the goods are delivered to the Purchaser by Seller, whichever first occurs (the "Warranty Period"). Except for claims or defects which were or which could or should have been discovered during the inspection period described in section 1.02 of this Agreement, if any of the Goods are found by Seller to be defective during the Warranty Period, such Goods will, at Seller's option, be replaced or repaired at Seller's cost or Seller will refund the purchase price or give Purchaser a reasonable allowance thereof. The parties hereto expressly agree that Purchaser's sole and exclusive remedy against the Seller shall be for the repair or replacement of the defective Goods or the refund of the purchase price or allowances thereof (at Seller's discretion). Purchaser hereby agrees that this exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to repair or replace defective Goods in the prescribed manner or refund the purchase price or give Purchaser an allowance thereof.
- e) There is no warranty or return of Used Goods or new surplus Goods sold under this Agreement except as otherwise is provided in Article I or II of this Agreement or except in the event that Seller shall obtain the benefits of any warranty given to Seller by such manufacturer or other vendors for such Used Goods or new surplus Goods.
- f) Any warranty or claim by Purchaser with reference to the Goods sold hereunder shall be deemed waived by the Purchaser unless submitted in writing to Seller within ten (10) days of the expiration of the Warranty Period.
- g) The obligations and liabilities of Seller under this warranty are expressly limited to the replacement or the repair by Seller of such Goods or the refund of the purchase price or allowances thereof (at Seller's discretion), and shall not include any removal, disassembly, failure analyzing fault isolation, inspection, retrofit or reinstallation costs incident to such correction or replacement.

5.02 Survival. The representations and warranties made by Purchaser are true and correct as of the date of this Agreement and shall be true and correct and shall survive this expiration of this Agreement.

- a) The warranty provided in this Article V, and the obligations and liabilities of Seller and the rights and remedies of Purchaser hereunder, are exclusive and in substitution for, and Seller hereby disclaims, and Purchaser hereby waives, all warranties and liabilities of Seller and all claims and remedies of the Purchaser, express or implied, arising by law or otherwise, with respect to any defect in any Goods, including without limitation, any: (a) implied warranty of merchantability or fitness for use or for a particular purpose; (b) any implied warranty arising from course of dealing or performance or usage of trade; (c) recovery based upon tort, whether or not arising from Seller's negligence; and (d) any recovery based upon damaged property, or otherwise based upon loss of use or profit or other incidental or consequential or liquidated damages.
- b) Under no circumstances, and in no event, will Seller be liable for personal injury or property damage or any other loss, damage, cost of repairs or incidental, punitive, special, consequential, or liquidated damages of any kind, whether based upon warranty, contract, strict liability, negligence or any other cause of action arising in connection with the design, manufacture, sale, transportation, installation, use or repair of the Goods sold by Seller. Purchaser hereby acknowledges and agrees that under no circumstances, and in no event, shall Seller's liability, if any, exceed the net sales price of the defective Goods; no additional allowance shall be made for the labor or expense of

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repairing or replacing defective Goods or workmanship or damage resulting from the same. Except as expressly set forth in this paragraph, all Goods and/or services provided by Seller and its employees and agents are provided "as is," "where is," and "with all faults."

- c) This warranty shall not be extended, altered or varied except by a written instrument signed by Seller and Purchaser. In the event that any provisions hereof should for any reason be held ineffective, the remainder of this warranty shall remain in full force and effect.

5.03 Additional Purchaser Acknowledgements.

Except as otherwise expressly provided herein, Purchaser acknowledges that Seller does not make and specifically negates, renounces and disclaims any representations, warranties and/or guaranties of any kind or character, expressed or implied, with respect to (i) the Goods sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose, (ii) the maintenance or other expenses to be incurred in connection with the Goods, (iii) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, suppliers and employees or (iv) the accuracy or reliability of any information, designs or documents furnished to Purchaser. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of its Goods and/or rendering of its services. Any recommendations made by Seller concerning the use, design, application or operation of the Goods shall not be construed as representations or warranties, expressed or implied. Failure by Seller to make recommendations or give advice to Purchaser shall not impose any liability upon Seller.

ARTICLE VI LIMITATION OF LIABILITY

6.01 Seller's Assets. Purchaser specifically agrees to look solely to Seller's interest in the Aviojet Corp. for the recovery of any judgment from Seller, it being agreed that Seller (and any officers, shareholders, partners, members, managers, directors, employees, affiliates, subsidiaries or parents of Seller) shall never be personally liable for any such judgment. Seller shall have the right to transfer and assign, in whole or in part, all its rights and obligations hereunder and in such event and upon such transfer, and notification of such transfer to Purchaser, Seller shall be released from any further obligations hereunder, and Purchaser agrees to look solely to such successor in interest of Seller for the performance of such obligations.

6.02 Goods. Seller's liability (whether under the warranty or inspection provisions of this Agreement or under the theories of breach of contract or warranty, negligence, or strict liability) for its Goods shall be limited to repairing or replacing (at Seller's option) Goods found by Seller to be non-conforming, or at Seller's option, to refunding the purchase price of the non-conforming Goods.

6.03 Damages. Seller will not have any liability for liquidated damages, penalties, fees, or for collateral, indirect, incidental, consequential or special damages, including loss of profits or loss of use, and the aggregate total liability of any damages under this Agreement shall in no event exceed its contract price of one of the Goods giving rise to the claim (or claims) or liability, whether resulting from delays in delivery or performance, breach of warranty, claims of negligent manufacturing, patent or copyright infringement, or otherwise. Purchaser agrees to indemnify and hold harmless Seller from all claims by third parties which extend beyond the foregoing limitations of Seller's liability.

ARTICLE VII CONFIDENTIALITY AND INTELLECTUAL PROPERTY

7.01 Confidential Information. Purchaser acknowledges that, in the performance of this Agreement hereunder, Purchaser may obtain access to or generate Confidential Information, as defined below, owned by Seller. Purchaser agrees, during and after the term of this Agreement, unless specifically permitted in writing by Seller, to (a) retain the Confidential Information of Seller in confidence and not disclose such information to any third party (including, without limitation, any person, corporation or entity), and (b) use Seller's Confidential Information only for the purpose of carrying out this Agreement hereunder. As used herein, Confidential Information means any technical, business, financial or marketing documents, information, ideas or data in written, oral or tangible form (including, without limitation, any samples, models and prototypes), including, without limitation, any documents, ideas, information or data relating to Seller's business or potential business operations or with respect to Seller's research and development activities (including, without limitation, any new Goods) that is disclosed to Purchaser by or on behalf of Seller or any of its affiliates, learned by or generated by Purchaser pursuant to this Agreement hereunder. Furthermore, any technical, business, financial or marketing documents, information, ideas or data developed or generated in whole or in part by Purchaser pursuant to this Agreement hereunder (including, without limitation, any reports prepared by Purchaser) shall be deemed Confidential Information. Should there be a need for Confidential Information to be disclosed to Purchaser's employees or assistants, or to anyone else, Purchaser shall first obtain written permission from Seller and secure a Seller-approved written agreement from such individual to maintain all Confidential Information in confidence, and such agreement shall be provided to Seller prior to disclosure. In such circumstances, Purchaser shall remain ultimately responsible for preservation of the Confidential Information. Such Confidential Information shall not be duplicated, disclosed, or used without Seller's written permission.

7.02 Return of Confidential Information. Upon completion of Purchaser's services hereunder or other termination of this

Agreement, or at any time immediately upon the request of Seller, Purchaser will return to Seller all documents and copies of documents (including all notes, e-mails, and sketches) and all tapes or other embodiments of information or data in each case containing or constituting Confidential Information disclosed to or generated by Purchaser in connection with this Agreement as well as samples, models or prototypes supplied by Seller.

7.03 Applicability of Confidentiality.

When used in this Agreement, the term Seller shall be deemed to include Seller and its subsidiaries and affiliates if applicable. Unless protected pursuant to another written agreement between the parties, all Confidential Information heretofore disclosed to Purchaser by Seller or any of its respective subsidiaries and affiliates shall be subject to the provisions of this Agreement if such subsidiaries or affiliates of Seller exist at that time.

7.04 Duration of Confidentiality.

The obligation of confidentiality contained herein shall be maintained indefinitely from the date of receipt of any Confidential Information by Purchaser.

VIII ALTERNATE DISPUTE RESOLUTION

Any dispute or claim arising from or relating to this Agreement or performance under it shall be resolved amicably through discussions between Purchaser and Seller attempting in good faith to negotiate a resolution thereof; provided, however, that either Purchaser or Seller may seek injunctive relief from a court of proper jurisdiction where appropriate, in order to maintain the status quo while this procedure is being followed. If the parties fail to resolve any dispute arising under this Agreement, either party may seek arbitration as follows: (a) By written notice to the other party, submitting the dispute to binding arbitration, in accordance with the then current Expedited Commercial Arbitration Rules under the American Arbitration Association ("AAA"), each party to bear equally the costs of the arbitration provided, however, that the other party may agree or refuse to participate in such arbitration; (b) If the parties are not successful in resolving the dispute through self-help or one of the parties refuses to participate in arbitration, the dispute shall be resolved by litigation. Any claim submitted to arbitration must be governed by the Expedited Commercial Rules of the AAA: except that (i) Section 9.06 must govern applicable law and construction, (ii) the locale of any arbitration will be in Bergen County, New Jersey or agreed to by the parties in writing, (iii) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAA, (iv) the language of the arbitration must be in English, (v) any arbitration award must state the arbitrator's material findings of fact and conclusions of law, (vi) a party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel, (vii) a prevailing party in litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, in arbitration, or in litigation to confirm or enforce an arbitration award will be entitled to recover its reasonable attorney's fees and costs. Any suit to require arbitration under this Agreement, or to enforce judgment upon an arbitration award, may be brought in the state and federal courts of the State of New Jersey.

ARTICLE IX MISCELLANEOUS

9.01 Controlling Provisions. No terms and conditions other than the terms and conditions contained herein shall be binding upon Seller unless accepted by it in a writing signed by Seller. All terms and conditions contained in any prior oral or written communication, including, without limitation, Purchaser's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. Purchaser will be deemed to have assented to all terms and conditions contained herein if any part of the Goods and/or services described herein are shipped or an invoice is presented in connection with the said Goods and/or services.

9.02 Export and Import Compliance. Where applicable, in the performance of this Agreement, Purchaser shall comply with all applicable statutes, laws, rules, regulations, and orders of Purchaser's country and of any state or local authority or political subdivision thereof. Purchaser shall indemnify, save harmless and defend Seller from and against all losses, costs, fees (including attorneys fees), and damage arising directly or indirectly, from any actual or alleged failure by Purchaser to comply with any of the aforesaid statutes, laws, rules, regulations, and orders. Purchaser and Seller specifically acknowledge, represent, covenant and warrant that they are familiar with the provisions of the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S. Code §§78dd-1 and 78dd-2)(the "FCPA"); and they will not, in the course of carrying out their obligations under this Agreement or any related agreement, make any payment or take any other action prohibited by the FCPA, including paying, causing to be paid or facilitating any payment or thing of value to be given in an unlawful manner to any government official or political party for the purposes of obtaining or retaining business.

- a) If any order under this Agreement is placed under a United States Government ("USG") contract or subcontract, the content of the USG FAR/DFAR Contract Provisions, Certifications and Representations Appendices shall apply

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to that order and the parties' performance thereunder. The USG FAR/DFAR Contract Provisions, Certifications and Representations Appendices shall be construed according to the United States Federal Law of Government Contract as enumerated and applied by United States Federal Judicial bodies and Boards of Contract Appeals.

- b) Purchaser hereby indemnifies and agrees to hold Seller harmless from any costs, damages, penalties, attorney's fees and similar expenses of Seller due to Purchaser's breach (or threatened breach) of such obligation(s) under this Article. Each party shall reasonably cooperate with the other in obtaining all required export and import licenses, approvals and/or notifications pursuant to such U.S. laws.
- c) It will be a condition precedent to Seller's obligations hereunder that all necessary and desirable export licenses and approvals will be timely granted and continue in effect during the term of this Agreement.
- d) Purchaser agrees that it will not, directly nor indirectly, export or re-export and Goods or technical information received from Seller to any destination if such export or re-export would violate the laws of the United States of America.
- e) Purchaser agrees to the use of Seller's Ultimate Destination Statement attached hereto as "Exhibit A."

9.03 **Waiver of Jury Trial.** It is mutually agreed by and between Purchaser and Seller that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other concerning any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of Purchaser and Seller and/or any claim of injury or damage.

9.04 **Broker.** Purchaser and Seller represent and warrant to each other that neither has dealt with any agent, finder or broker, unless such is expressly provided in a purchase order or invoice provided by Seller. Seller and Purchaser, and their respective assigns, each agree to hold the other harmless and to indemnify the other against any claims of or liabilities to any broker based on dealings or alleged dealings with the indemnifying party. The obligations of Purchaser and Seller under this Section shall survive this Agreement notwithstanding any release of either party pursuant to any other provisions of this Agreement.

9.05 **Notices.** All notices, requests, consents and other communications hereunder shall be in writing and shall be personally delivered or mailed by first class registered or certified mail, return receipt requested, postage prepaid, or sent by private overnight express delivery, addressed to the parties as described in this Agreement or to such other address as the respective party may direct by notice to the other party. Any such notice, request, consent or other communication shall be deemed delivered at such time as it is personally delivered (or refused delivery) on a business day, on the third business day after it is so mailed or on the first business day following its delivery to a private overnight express delivery service, prepaid for next business day delivery, as the case may be.

9.06 **Governing Law and Venue.** This Agreement shall be governed by and construed under the laws of the State of New Jersey, without regard to conflict of law principles, and except that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any litigation arising out of or relating to this Agreement shall be exclusively venued in the Superior Court of New Jersey, Bergen County.

9.07 **Interpretation.** This Agreement shall be construed reasonably to carry out its intent without presumption against or in favor of either party. If any provision hereof shall be declared invalid by a court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The paragraph and/or section headings and the arrangement of this Agreement is for the convenience of the parties hereto and do not in any way affect, limit, amplify or modify the terms and provisions hereof.

9.08 **Singular, Plural, and the Like.** Wherever herein the singular number is used the same shall include the plural and the masculine gender shall include the feminine and neuter genders and vice versa, as the context shall require.

9.09 **Attorneys' Fees and Costs of Parties.** In the event that any action or proceeding is commenced to obtain a declaration of rights hereunder, to enforce any provision hereof, or to seek rescission of this Agreement for default contemplated herein, whether legal or equitable, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees in addition to all other relief to which it may be entitled therein. All indemnities provided for herein shall include, but not be limited to, the obligation to pay costs of defense in the form of court costs and reasonable attorneys' fees. Except as otherwise provided in this Agreement, Seller and Purchaser are to bear its own respective legal fees in all other cases, including any litigation in which there is a divided decision. All costs or expenses relating to the performance of the obligations hereunder and the consummation of the Agreement shall be borne by the party incurring such costs or expenses except as otherwise provided herein. This section shall survive the expiration or the earlier termination or cancellation of this Agreement.

9.10 **Counterparts.** This Agreement may be executed in several counterparts, which shall constitute one and the same instrument.

9.11 **Further Assurances.** Seller and Purchaser each agree to execute any and all documents necessary to effectuate the purposes of this Agreement, provided such documents shall not increase the liability or obligations of Seller beyond those set forth in this Agreement.

9.12 **Business Days.** If any dates set forth herein shall fall on a Saturday, Sunday or banking holiday in the State of New Jersey, the date shall automatically be extended until the first business day immediately following such date.

9.13 **Force Majeure.** Notwithstanding any other provision in this Agreement to the contrary, Seller shall not be liable to Purchaser for any delay or failure in performance of all or any part of this Agreement due to the extent that such delay or failure is the result of any cause beyond Seller's reasonable control including but not limited to any act of God, act of government, act of civil or military authority, terrorist act, war, riot, insurrection, labor disputes, fire, explosion or other hazard.

9.14 **Assignment and Subcontract.** The Purchaser shall neither assign nor transfer its order or any interest therein or any rights thereunder without the prior written consent of Seller. Such approval by Seller shall not relieve or otherwise alter the Purchaser's responsibilities and liabilities under the contract. This Agreement shall inure to the benefit of and be binding upon Seller and Purchaser and their respective permitted successors and assigns.

9.15 **Severability.** These terms and conditions of this Agreement shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance herefrom.

9.16 **Non-Waiver-Conflicting Terms and Conditions.** Any failure at any time of Seller to enforce any provision hereof shall not constitute a waiver of such provision nor prejudice the right of Seller to enforce such provisions at any subsequent time. Terms and conditions proposed by Purchaser that are inconsistent with those stated herein are waived by Purchaser. Furthermore, forbearance or failure of Seller to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Purchaser, shall not affect or impair Seller's rights arising from such defaults, nor shall forbearance or failure be deemed a waiver of Seller's rights in case of any subsequent default of Purchaser.

9.17 **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or other writing or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose. This Agreement may not be changed or modified, nor any provision hereof waived, except in writing by the party to be charged thereby.

9.17 **Independent Contractors.** Each party will perform this Agreement as an independent contractor, and this Agreement will not be construed to create between the Parties the relationship of principal and agent, joint-ventures, co-partners, employer and employee, franchiser and franchisee or any other similar relationship, the existence of which is expressly denied by each party. Each party represents that each party is engaged in a similar business for other clients. Each party will conduct its business under its own name as an independent contractor, and is expressly prohibited from holding itself out as an employee, agent, partner or representative of the other party. Any person employed by each party to perform hereunder will not be deemed to be an employee of the other party, and each party and its suppliers, subcontractors, agents or representatives will not be, or represent themselves to be, officers, employees, agents or representatives of the other party and will not bind, or attempt to bind, the other party to any agreement, liability or obligation of any nature.