

TERMS AND CONDITIONS FOR PURCHASE OF PRODUCTS (revision 9/30/11)

1. **Definitions:** The term "Contract" means these Terms and Conditions for Purchase of Products ("Terms and Conditions"), together with all documents specifically referenced herein and any written Blanket Purchase Order, Spot Buy Purchase Order, Firm Release (in the case of a direct buy), discreet release (in the case of an indirect buy), or agreement which attaches, incorporates or otherwise references these Terms and Conditions. The term "Company" means AEES Inc. or its subsidiary(ies) or affiliate(s) executing this Contract. The term "Seller" means any individual, corporation or other entity who is to supply Products purchased by the Company pursuant to this Contract. The term "Products" means the goods or materials sold, and/or services rendered, by Seller and purchased by Company under this Contract. "Blanket Purchase Order," and "Firm Release" are defined in Section 3 herein; "Spot Buy Purchase Order" is defined in Section 4.
2. **Scope and Acceptance:** All Products are supplied pursuant to this Contract. This Contract will become legally enforceable, and Seller shall be deemed to have provided definite and seasonable acceptance of all of the terms and conditions hereof without modification on the earlier of Seller's delivery of a signed acknowledgment, Seller's commencement of performance, or Seller's tender or shipment of all or any portion of the Products covered under this Contract. Company objects in advance to all additional or different terms proposed by Seller in Seller's quotation, Seller's acknowledgement and in Seller's other forms, and any acceptance by Seller of this Contract will be deemed to have occurred without any such Seller-proposed modifications. This Contract contains the entire understanding of the parties and is intended to be a final expression of their agreement and a complete statement of the terms thereof; Seller shall not rely on any document or communication which is not defined herein as forming the Contract.
3. **Blanket Purchase Orders/ Releases:** Company uses Blanket Purchase Orders to establish terms and conditions when Company either (i) contemplates the possibility of a subsequent *direct* purchase of Products (such as where the manufacturer is the Seller) or (ii) contemplates the possibility of a subsequent *indirect* purchase facilitated by Seller (such as where Seller is a distributor of Products). In each case, a "Blanket Purchase Order" represents Company's intention to thereafter purchase some portion of Company's requirements for Products from Seller pursuant to the terms and conditions established therein; such Blanket Purchase Order does not constitute a commitment by Company to purchase any specific amount of Products from Seller. When a Blanket Purchase Order has been issued, Company's commitment to purchase a specific quantity or amount of Products will be established through a subsequent release. The specific components of a release and Company's corresponding commitment to purchase Products will depend on whether Company is making a *direct* or *indirect* purchase, and determined as follows:
 - A. **Direct Purchase Commitment Established through Firm Release:** In the case of a Blanket Purchase Order for the *direct* purchase of Products, each release: (i) will include a "Firm Release" component and order line, which is defined for purposes of this Contract as, and expressly confined in all cases to the product lead time as specified on the Purchase Order; (ii) may provide a forecast component which attempts to predict the Company's future demand for Products; and (iii) may contain additional terms for the purchase of Products as determined by Company. When a release is issued by Company for the direct purchase of Products, Company has committed to purchase only those Products subject to the "Firm Release," *i.* A direct Seller hereby acknowledges that any quantities specified and delivery dates listed in a Blanket Purchase Order are contingent upon the issuance of a subsequent release by Company which includes a Firm Release and specified order line. A direct Seller further acknowledges that forecasts are not Firm Releases, regardless of whether such a forecast is contained in a Blanket Purchase Order, as a component of a release, or otherwise, and Seller hereby waives all claims that Seller relied on any such forecasts or projections and that Company is liable for any amounts related to or arising from such forecasts. A direct Seller will not fabricate or assemble any Products nor ship any Products other than related to those Products identified in a Firm Release. By accepting a Blanket Purchase Order, a direct Seller agrees to accept all Firm Releases issued by Company which are subject to a Blanket Purchase Order and to be paid the production price established by the Company in the Blanket Purchase Order.
 - B. **Indirect Purchase Commitment Established through Discreet Release:** In the case of a Blanket Purchase Order for *indirect* purchases facilitated through Seller, each discreet release: i) will identify a specific amount or value of Products to be purchased by Company; and ii) may contain additional terms for the purchase of Products as determined by Company. When such a release is issued by Company for the indirect purchase of Products, Company has committed to purchase only that discreet amount or quantity of Products identified in the release. An indirect Seller shall not procure any Products on Company's behalf nor deliver any Products to Company beyond those contemplated in such release. An indirect Seller agrees to accept all releases issued by Company which are subject to a Blanket Purchase Order and to be paid the price established by Company on the Blanket Purchase Order or release.
4. **Spot Buy Purchase Orders:** In certain circumstances, Company may issue a "Spot Buy Purchase Order" to a direct Seller of Products. Spot Buy Purchase Orders represent Company's commitment to purchase a specific amount or value of Products and the price to be paid for the Products, and such commitment shall not be conditioned on the issuance of any subsequent release by Company.
5. **Price/Terms:** Seller warrants that the prices set forth in this Contract are complete and that no additional charge of any type will be added without Company's prior express written consent, including but not limited to, charges for shipping, packaging, labeling, custom duties, taxes, metal surcharges and other material adjustments, storage, insurance, boxing and crating. Seller further warrants that the prices set forth in this Contract are the lowest prices charged for the Products, or substantially similar products, sold by Seller to its other customers, and that such prices (and other terms of purchase) are in full compliance with the Robinson Patman Act. If, after execution of this Contract, but prior to payment by the Company for all Products purchased hereunder, Seller (i) sells, or offers to sell, Products, or substantially similar products, to another customer at a lower price, (ii) offers a reduction in price to any customer already purchasing Products, or substantially similar products, or (iii) sells, or offers to sell, Products, or substantially similar Products, on commercial terms that are, in Company's reasonable judgment, more favorable than those set forth in this Contract, such lower price or more favorable terms will be applicable to all purchases of Products by Company hereunder. If, at any time during the term of this Contract, Company receives a *bona fide* offer from a third party to supply Products to Company on similar commercial terms, but at a lower price, Company may notify, and provide the necessary particulars of such offer to Seller, and Seller will, within thirty (30) days thereafter, inform Company whether it will match such price for Products purchased hereunder. If Seller does not agree to match such price, Company may, in its sole discretion, elect to purchase Products from such third party, and any obligation of Company to purchase Products from Seller pursuant to the terms of this Contract will be deemed to be waived by Seller to the extent of any such purchases. Upon request of Company, Seller will be required to certify that it is in compliance with the requirements of this Section. In addition, Company will have the right to examine and audit, during normal business hours, any and all records, data and documents, in whatever shape or form, including, but not limited to, electronic media, that may contain information relating to Seller's obligations as set forth in this Section. Such records will be kept in a form that is clear and accurate and containing content sufficient and adequate to permit the aforementioned audit. Except as otherwise expressly set forth in this Contract, Company will have no obligation to purchase specific quantities of Products from Seller and Company will be entitled, in its sole discretion, to purchase the same or similar Products from other suppliers. Company expressly reserves the right to disclose any of the terms of this Contract, including but not limited to pricing, to third parties.
6. **Taxes:** Seller will bear and pay all taxes and fees imposed on Sellers by the United States or any state or any foreign government including political subdivisions of any of them, which are based on or measured by net income, gross income or gross receipts including any withholding taxes levied against Seller for the privilege of doing business in a jurisdiction. If Seller is required by law to collect sales and use tax (including any gross receipts tax imposed similar to a sales and use tax) from the Company on behalf of any taxing jurisdiction, Seller will provide to Company invoices which separately state and

clearly indicate the amount of tax and Company will remit any such tax to Seller. Seller will have the responsibility of complying with all applicable foreign, national, state or local laws regarding value added tax and sales and use tax or substitutes therefore including registration, collection of taxes and the filing of returns where applicable. Notwithstanding whether Seller must collect sales and use tax from Company, Seller will state on every invoice the taxing jurisdiction (e.g. country, state and local jurisdiction) in which Products were provided. If applicable, in lieu of payment for any sales and use tax, Seller will accept a properly executed exemption or direct pay certificate from Company. The determination of whether an exemption or direct pay certificate will be submitted to Seller in lieu of payment for any sales and use tax will be made by Company on a location by location basis. With the exception of sales and use tax as described above, all other taxes, however denominated or measured, imposed upon the Seller, or the price or compensation under this Contract, or upon the Product provided hereunder, will be the responsibility and liability of Seller.

7. **Inspection and Quality Assurance:** All Products will, before delivery, be subject to inspection, tests, and audits by Company or its agent at reasonable times and places. Seller agrees to provide access for Company to its facilities at all reasonable times for such inspection, tests, and audits, and, at no additional cost, to provide all assistance and facilities reasonably necessary to perform the same. Neither the inspection, testing, or auditing of any Products before delivery to Company nor the failure to do so will constitute acceptance of any Products, or relieve Seller from exclusive responsibility for furnishing Products in strict conformance with the Company's specifications. Seller warrants that it has and will maintain an adequate quality control/assurance program with respect to the production and delivery of Products such that all Products delivered by Seller to Company will comply with Company's specifications and Seller's warranties contained herein, and that Seller creates and maintains adequate quality control/assurance reports, certificates, affidavits, and other such records relating to the Products. Seller agrees to conform to the AEEES Supplier Quality Manual document number NMSQM74-01.00, as modified from time to time. Seller agrees that, upon request and at no additional charge, it will promptly furnish authenticated copies thereof, as well as applicable certificates of conformance and/or compliance acceptable to Company, at the time of, or promptly after, delivery. Seller agrees to promptly reimburse all losses, claims and expenses that arise directly or indirectly and in whole or in part from Seller's failure to provide Products in conformance with the Company's specifications, including, without limitation, all expenses associated with line down time and overtime, rework charges and any need to secure alternate supply, and regardless of whether such losses, claims and expenses are incurred directly by Company or by Company's customer; Company may debit and set off amounts otherwise due and owing or to become due and owing to Seller or Seller's affiliates in order to recover such expenses and without prejudice to other remedies that may be available to Company. IF THE PRODUCTS INVOLVE SERVICES, SELLER WARRANTS THAT SUCH SERVICES WILL BE DELIVERED IN ACCORDANCE WITH THE HIGHEST STANDARDS OF PROFESSIONAL AND ETHICAL COMPETENCE AND INTEGRITY IN SELLER'S INDUSTRY, AND TO ENSURE THAT EMPLOYEES ASSIGNED TO PERFORM ANY SUCH SERVICES UNDER THE CONTRACT WILL CONDUCT THEMSELVES IN A MANNER CONSISTENT THEREWITH; SELLER FURTHER WARRANTS THAT SERVICES WILL BE RENDERED BY SELLER IN (I) AN EFFICIENT, SAFE, COURTEOUS AND BUSINESSLIKE MANNER; (II) IN ACCORDANCE WITH ANY SPECIFIC INSTRUCTIONS ISSUED FROM TIME TO TIME BY COMPANY AND (III) TO THE EXTENT CONSISTENT WITH THE FOREGOING, IN AN ECONOMICALLY EFFICIENT MANNER.
8. **Rejection:** Products will be received subject to inspection and approval by Company after delivery. Upon inspection, Company may give Seller notice of rejection or revocation of acceptance, notwithstanding any payment, passage of title, approval, prior test or inspection. No inspection, approval, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance, will relieve Seller of any obligations under this Contract or impair or waive any right or remedy of Company with respect to Seller's performance hereunder. If, in Company's judgment, the Products do not conform to the requirements of this Contract, Company shall provide notice to Seller of the non-conformity and Company may offer a period determined in Company's sole discretion and noticed in writing by Company to Seller to cure such defect. If Company does not choose to offer a cure period or if such a period is offered by Company but the defect is not corrected by Seller within such period, then Company will have the right to reject the Products and, in addition to any other rights and remedies it may have, Company shall have the right, in its sole discretion, to exercise any one or more of the following remedies: (i) return any or all nonconforming Products to Seller for reimbursement, credit, replacement, or repair as Company may direct; (ii) correct, rework, secure alternate conforming supply and/or repair the Products with all costs associated therewith to be charged to and paid by Seller; (iii) accept the delivery of the Products subject to a reduction in price reflecting the reduced value attributable to the non-conformance as reasonably determined by the parties, or (iv) hold any or all nonconforming Products, at Seller's risk and expense, for disposal or correction according to Seller's instructions. Furthermore, Company may, at its option, reduce the quantity of Products Company is obligated to purchase by the quantity of Products returned to Seller hereunder and/or cancel the Contract for default under Section 13 hereof. Any Products rejected by Company and returned to Seller will be returned, at Seller's risk and expense, with the cost of packaging, handling, inspection, examination, transportation and all other costs contemplated herein or related to or arising therefrom to be charged to and paid by Seller in the manner determined by Company, such methods to include, without limitation, a Company-controlled debit and setoff against amounts otherwise due and owing or to become due and owing to Seller or Seller's affiliates. Such Products will not thereafter be tendered to Company for acceptance unless the previous rejection and requirement of correction are disclosed to Company in writing. All such nonconforming Products that are so remedied will have the same warranty as stated in Section 9 from the date of re-delivery. Acceptance, whether or not it has been revoked, will not release Seller's responsibility for latent defects, non-conformities, warranty, or other claims. Nothing in this Contract will relieve Seller from the obligation of testing, inspection and quality control.
9. **Warranty:** SELLER EXPRESSLY WARRANTS THAT ALL PRODUCTS WILL BE (I) IN STRICT CONFORMANCE WITH ALL APPLICABLE SPECIFICATIONS, DRAWINGS, INSTRUCTIONS, DATA, SAMPLES, AND STANDARDS SPECIFIED BY THE COMPANY, (II) MERCHANTABLE, FREE FROM DEFECTS IN DESIGN, MATERIAL AND WORKMANSHIP, (III) AS DESCRIBED AND ADVERTISED, OF GOOD QUALITY, FIT FOR THE INTENDED PURPOSES (OF WHICH SELLER ACKNOWLEDGES AND WARRANTS THAT IT IS FULLY AWARE), (IV) COMPOSED OF ALL NEW COMPONENTS, (V) FREE FROM ALL LIENS, ENCUMBRANCES AND ANY ACTUAL OR CLAIMED PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT, AND (VI) MANUFACTURED IN COMPLIANCE WITH ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS, REGULATIONS OR ORDERS, AND AGENCY OR ASSOCIATION STANDARDS OR OTHER STANDARDS APPLICABLE TO THE MANUFACTURE, LABELING, TRANSPORTING, LICENSING, APPROVAL OR CERTIFICATION OF THE PRODUCTS. THESE WARRANTIES ARE IN ADDITION TO ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WHICH MAY BE APPLICABLE. COMPANY'S APPROVAL OF SELLER'S DESIGN, MATERIAL, PROCESS, DRAWING, SPECIFICATIONS OR THE LIKE WILL NOT BE CONSTRUED TO RELIEVE SELLER OF THE WARRANTIES SET FORTH HEREIN. LIMITATIONS ON COMPANY'S REMEDIES (OR DISCLAIMERS OF WARRANTIES) IN DOCUMENTS OF SELLER, OR OTHERWISE, WOULD BE MATERIAL TO THIS CONTRACT AND WILL NOT BE EFFECTIVE AND ARE HEREBY OBJECTED TO AND REJECTED. ALL WARRANTIES AND OTHER PROVISIONS OF THIS SECTION WILL (A) SURVIVE INSPECTION OR ACCEPTANCE OF, PAYMENT FOR, AND USE OF THE PRODUCTS AND COMPLETION, TERMINATION, OR CANCELLATION OF THIS CONTRACT, (B) WILL RUN TO COMPANY, ITS CUSTOMERS, SUCCESSORS, AND ASSIGNS, AND TO USERS OF THE PRODUCTS, AND (C) BE EFFECTIVE FOR THE LONGER OF THE PERIOD PROVIDED BY APPLICABLE LAW OR THE WARRANTY PERIOD PROVIDED BY THE COMPANY TO ITS CUSTOMERS; PROVIDED, HOWEVER IN THE CASE OF ANY RECALL CAMPAIGN OR OTHER CUSTOMER SATISFACTION OR CORRECTIVE SERVICE ACTION UNDERTAKEN BY THE COMPANY OR ITS CUSTOMERS, THE WARRANTY SHALL CONTINUE FOR SUCH TIME PERIOD AS MAY BE DICTATED BY THE COMPANY'S CUSTOMER OR THE APPLICABLE FEDERAL, STATE, LOCAL OR FOREIGN GOVERNMENT WHERE THE PRODUCTS ARE BEING USED OR PROVIDED. IN ADDITION TO THE FOREGOING, THE SELLER HEREBY AGREES TO ASSIGN TO THE COMPANY ANY AND ALL WARRANTIES AVAILABLE TO SELLER ON ANY COMPONENT, SUPPLIES OR SERVICES NOT MANUFACTURED OR PERFORMED BY SELLER. THIS CONTRACT WILL BE GOVERNED BY THE UNIFORM COMMERCIAL CODE, LATEST REVISION, AS ENACTED BY THE STATE OF MICHIGAN, INCLUDING ALL WARRANTY PROTECTIONS (EXPRESS OR IMPLIED) AND ALL BUYER REMEDIES SET FORTH THEREIN.

10. **Intellectual Property:** If Company furnishes the design for the Products, Company will nevertheless be considered to have retained all intellectual property rights relating to such design. If Company requires Seller to prepare a design for the Products, then such design work shall be considered by the parties to be work made for hire; Company will own the intellectual property rights relating to such design and Seller shall, upon Company's request, assign any residual intellectual property interests to Company. If Seller furnishes a pre-existing design for the Products, then Seller will continue to own all intellectual property rights relating to such design to the same extent to which Seller owns such rights, and Seller hereby grants Company a permanent, paid-up, nonexclusive, worldwide, royalty-free license, with a right to sublicense to others, to make, have made, use, and have used, such intellectual property. Company does not transfer to Seller any patent, trade secret, trademark, service mark, copyright, or other intellectual property right of Company in information, documents, or property that Company makes available to Seller under the Contract, other than the right to use such intellectual property rights to produce and supply Products solely to Company. Seller will indemnify, protect, defend or settle (at Seller's expense), and hold harmless Company, its parents, affiliates, and its and their directors, officers, employees, agents, successors and assigns, customers and the users of Seller's Products ("Indemnitees") from all liabilities, expenses, suits, claims, actions, demands, judgments, settlements, costs, losses, damages and all other obligations and proceedings, including without limitation all judgments rendered against, and all fines and penalties imposed upon, Indemnitees and all attorney fees and any other cost of litigation (collectively "Liabilities") incurred as a result of actual or alleged infringement of any present or future patent, copyright, trademark, trade secret, or other actual or alleged intellectual property right of any third party arising from Company's purchase, use or sale of Products supplied under this Contract (i) alone; (ii) in combination by reason of their content, design, structure; or (iii) in combination in accordance with Seller's recommendations. In the event of an allegation of intellectual property infringement or if the use or sale of the Products is enjoined, Seller will, at its own expense and at Company's option, either (i) procure the right to continue using the Products; (ii) make such alterations modifications or adjustments to the Products so that they become non-infringing without incurring a material diminution in performance or function; (iii) replace same with a non-infringing equivalent; or (iv) remove the Products and refund the purchase price and the transportation and installation costs thereof. Seller's obligations will apply even though Company furnishes all or any portion of the design and specifies all or any portion of the processing used by Seller. All such obligations of Seller to indemnify, hold harmless, protect and defend Company are in addition to Seller's warranty obligations and all other rights or remedies of Company and will survive acceptance and use of, and payment for, the Products, and completion, termination, or cancellation of this Contract. If any settlement requires an affirmative obligation (other than ceasing use of the Product) of, results in any ongoing liability to or prejudice or detrimentally impacts Company in any way and such obligation, liability, prejudice or impact is material, then such settlement shall require Company's written consent and Company may have its own counsel in attendance at all proceedings and substantive negotiations relating to such Liabilities.
11. **Liability and Indemnification:** Seller will indemnify, protect, defend or settle (at Seller's expense), and hold harmless Indemnitees from and against all Liabilities arising out of or in any manner connected with personal injury, including death, or property loss or damage to Company or to others (including Seller and employees and invitees of Seller, Seller's suppliers, distributors, Company and Company employees and invitees) arising out of or in any manner connected with (i) the production and delivery of, or any defect in, Products supplied hereunder (including, without limitation, any claims of strict liability, tort, negligence or otherwise premised on either an actual or alleged defect in the Products or otherwise incident to the performance of this Contract); (ii) any act or omission of Seller; and/or (iii) breach of any representation, warranty (whether express or implied) or covenant, whether caused by Seller, or a supplier of Seller, or employees or invitees of either of them, and in each case whether or not caused or contributed to by the fault or negligence of any of the Indemnitees. For the avoidance of doubt, Seller expressly agrees that Seller will indemnify, defend and hold harmless the Indemnitees in connection with this Section 11 even if any or all of the Liabilities incurred by any or all of the Indemnitees are caused in part by the concurrent negligence of one or more of the Indemnitees. Seller waives the application of the doctrine of comparative negligence and other doctrines that may otherwise allocate the liability covered by Seller's indemnity. Seller agrees to waive and release any rights of contribution, indemnity or subrogation it may have against any of the Indemnitees as a result of any indemnity claim asserted by another Indemnitee under this Section 11. Seller, for itself, its successors, assigns and subcontractors hereby expressly agrees to waive any provision of any workers' compensation act or other similar law whereby Seller could preclude its joinder by Company as an additional defendant, or avoid liability for damages, contribution or indemnity in any action at law, or otherwise where Seller's or its subcontractor's employee or employees, heirs, assigns or anyone otherwise entitled to receive damages by reason of injury or death brings an action at law against any Indemnitee. Seller's obligation to Company herein will not be limited by any limitation on the amount or type of damages, benefits or compensation payable by or for Seller under any workers' compensation acts, disability benefit acts, or other employee benefit acts on account of claims against Company by an employee of Seller or anyone employed directly or indirectly by Seller or anyone for whose acts Seller may be liable. In particular, but without altering or in any way limiting the general application of the waiver set forth in the previous sentence, Seller expressly waives application of Section 131 of the Michigan Worker's Disability Compensation Act, and all comparable sections of any other applicable state's laws, as each may be amended from time to time. The obligations in this Section are in addition to Seller's duty to provide insurance and will not be altered by any limitation on the amount or type of damages, compensation, or benefits payable by Seller under any Workers' Compensation Act, U.S. Longshoremen's and Harbor Workers' Act, or any other employee benefit act. Seller's obligations hereunder will not be limited to the extent of any insurance available to or provided by Seller.
12. **Insurance:** Seller agrees to maintain the following types of insurance coverage: (i) Workers' Compensation Insurance or qualification as a self-insurer to satisfy the laws of the states which have jurisdiction over Seller's employees. To the extent permitted by law, Seller's Workers' Compensation Insurer or Seller, if self-insured, agrees to waive rights of subrogation against Company; (ii) Employers' Liability Insurance for Bodily Injury per accident with limits of not less than \$1,000,000 and Bodily Injury by Disease with limits of not less than \$1,000,000 per policy; and (iii) Commercial General Liability Insurance for bodily injury, personal injury and property damage, including coverage for products/completed operations and contractual liability, with combined limits of not less than \$5,000,000 per occurrence. Upon Company's request, Seller will provide Company with written certification, reasonably acceptable to Company, certifying that (a) the required insurance coverages are in effect and will not be canceled or materially changed until thirty (30) days after prior written notice has been delivered to Company, (b) Company is designated as an additional insured on Seller's Commercial General Liability policy and (c) all of Seller's insurance identified herein will be primary and not contributory or excess of any other insurance carried by or on behalf of Company. Seller may satisfy the limits of insurance required herein with any combination of primary and umbrella/excess insurance policies. The insurance requirements in this Section are separate and distinct from any other obligations of Seller contained herein, and neither the issuance of any insurance policy nor the minimum limits specified herein will be deemed to limit or restrict in any way Seller's liability arising under this Contract.
13. **Termination:** This Contract may be terminated for any of the following reasons and in the respective manner as provided in this Section:
- A. Mutual Agreement:** This Contract may be terminated in whole or in part at any time and on the terms established by a written agreement between Seller and Company.
- B. Without Cause:** Notwithstanding any other provision herein, Company may terminate this Contract at any time in whole or in part for Company's convenience and even though Seller is not then in default by giving written notice to Seller. After receiving written notice of termination, Seller will immediately cease production and shipment of all Products indicated in the notice of termination. Unless such termination is due to default of Seller or failure of Seller to assure adequate performance, Company will thereafter pay Seller as follows:
- i. Direct Purchases Subject to Firm Release or Spot Buy.** If the terminated Contract relates to a direct purchase which was subject to a Firm Release or a Spot Buy Purchase Order, then Company shall pay Seller: (i) the value of all finished goods which had been produced by Seller to fulfill the previously-operative Firm Release or Spot Buy Purchase Order, as the case may be, said value established by the then-current production price; (ii) the value of all work in process that had been pursued to fulfill the previously-operative Firm Release or Spot Buy Purchase Order, said value to be established in proportion to the current production price less any scrap value; and (iii) the purchase

price less scrap value of all raw materials that Seller had procured for Products not yet finished or in process but which related to Products intended to be produced to fulfill the previously-operative Firm Release or Spot Buy Purchase Order if such raw material was unique to the Products and can not reasonably be re-purposed by Seller; *provided, however*, that in no case shall the amount to be paid by Company to Seller exceed the amount that would have otherwise become due for Products produced by Seller in fulfillment of the then-operative Firm Release or Spot Buy Purchase Order. Upon such payment, all finished goods, work in process and raw materials for which Company has paid will become the property of Company and will be released by Seller to Company for pick-up and removal, upon demand, and Seller hereby agrees to waive all claims against the Company for damages, including, without limitation, those for loss of anticipated profits.

ii. For Indirect Purchases: If the terminated Contract relates to an *indirect* purchase where a release established a discreet amount or quantity of Products to be purchased, then Company shall pay Seller the value of the Products that had been shipped to Company as of the time when notice of termination was received by Seller. In no case shall the amount to be paid by Company to Seller exceed the amount that would have otherwise become due for Products identified in the previously-operative discreet release.

C. For Cause: Without prejudice to any of Company's other rights or remedies at law and in equity, Company will have the absolute and unrestricted right to cancel and terminate this Contract, in whole or in part, without being liable to the Seller for any costs, expenses or damages of any kind, if the Products are, in Company's judgment, non-conforming or defective or not delivered as scheduled, or if Seller fails to comply with or fulfill at any time any of the terms and conditions of this Contract, or with Company's shipping and billing instructions, or if, in Company's opinion, the credit or ability of Seller to perform this Contract becomes impaired, whereupon Company will have the continuing right to obtain Products from another source, without liability to Seller and without prejudice to any other rights or remedies of Company and in addition thereto.

- 14 **Transition of Supply:** In connection with termination of this Contract or Company's decision to change to an alternate source of supply, Seller will cooperate in the transition of supply, including the following (collectively, "Transition Support"): (i) Seller will continue production and delivery of all Products as ordered by Company, at the prices and other terms stated in this Contract, without premium or other condition, during the entire period reasonably needed by Company to complete the transition to the alternate supplier(s), such that Seller's action or inaction causes no interruption in Company's ability to obtain Products as needed; (ii) at no cost to Company, Seller will promptly provide all requested information and documentation regarding and access to Seller's manufacturing process, including on-site inspections, bill-of-material data, tooling and process detail and samples of Products and components; and (iii) subject to Seller's reasonable capacity constraints, Seller will provide special overtime production, storage and/or management of extra inventory of Products, extraordinary packaging and transportation and other special services as expressly requested by Company in writing. Unless otherwise agreed in writing by Seller and Company, Seller shall not be obligated to provide Transition Support beyond the *earlier* of (a) the full transition by Company to an alternate supplier and the ability of that supplier to produce the full quantity and quality of transitioned Products; or (b) one hundred eighty (180) days from that date when Company provides written notice to Seller that Company requires Transition Support as contemplated by this Section (the "Transition Period"). If the transition occurs for reasons other than Seller's default, Company will, at the end of the Transition Period, pay the reasonable, actual cost of Transition Support as requested and incurred, *provided* that Seller has advised Company of its estimate of such amounts and obtained Company's written consent prior to incurring such amounts.
15. **Payments:** Unless otherwise expressly set forth in this Contract, the terms of payment are net 90 days after Company's receipt of either Seller's valid invoice or the Products, whichever is later and all payments due and owing Seller shall be made in United States dollars unless otherwise expressly provided in this Contract. Seller will promptly submit correct and complete invoices or other agreed billing communications with appropriate supporting documentation and other information reasonably required by Company after delivery of the Products, and Company may withhold payment until a correct and complete invoice or other required information is received and verified. All cash discounts will be computed from the date of receipt by Company of a valid invoice or receipt of the Products, whichever occurs later. Cash discounts will be based on the full amount of the invoice, less freight charges and taxes if itemized separately on the invoice. Delay in receiving valid invoices or Products will be considered good cause for withholding payment without losing cash discount privileges. Payment by Company of an invoice from Seller does not constitute acceptance of the Products covered by the invoice. If the production or delivery of Products covered by this Contract may give rise to mechanics' or other similar liens, payment will not be due and the cash discount period will not commence until Seller has delivered to Company a complete release of all liens arising out of the production or delivery of such Products, a receipt acknowledging payment in full covering all labor and materials for which a lien could be filed, or a bond satisfactory to the Company indemnifying it against any lien. If payments are required to be made under this Contract by Company in a currency other than USD, Seller will provide Electronic Funds Transfer (EFT) instructions to Company and Company will make such payments to Seller electronically, to the extent permitted by law. Company will have the right, at any time, to set off and apply against any monetary obligations that Company owes to Seller or any of its parents, subsidiaries or affiliates, any obligations or performance that Seller, or any of its parents, subsidiaries or affiliates, may owe to Company; said right to set off may also be utilized by Company in full or partial satisfaction of any remedy available to Company under this Contract.
16. **Confidentiality:** At all times prior to, during, and after the term of the Contract, Seller will (i) maintain the confidentiality of any information disclosed by Company or any of its parents, subsidiaries, affiliates, customers, and contractors, whether or not identified as "confidential" upon disclosure ("Confidential Information"); (ii) not disclose or permit the disclosure of any Confidential Information to any person other than its employees for whom such knowledge is essential for performance of a Contract; and (iii) not use Confidential Information except for performance of this Contract. Seller will immediately notify Company of any disclosure of any Confidential Information that is not permitted by this Contract or other misuse of any Confidential Information or breach of this Contract. Without limiting the direct liability of Seller's employees and others who may have received Confidential Information directly or indirectly from Seller, Seller will be responsible for the disclosure or other misuse of Confidential Information by Seller's employees and others, and Seller will immediately take such steps as may be necessary to terminate any continuing disclosure or misuse by any of Seller's employees and others of which Seller becomes aware. Company makes no representation or warranty of any kind, express or implied, with respect to any Confidential Information. Company may, at its sole discretion, elect at any time, by written notice to Seller, to terminate Seller's further use of Confidential Information for any purpose. Upon receipt of such notice, Seller will, and will cause Seller's employees to, promptly cease all further use of Confidential Information, return to Company all physical materials containing Confidential Information, whether the materials were originally provided by Company or copied or otherwise prepared by Seller or any Seller employee, and erase or otherwise destroy any Confidential Information kept by Seller or any Seller employee in electronic or other non-physical form. Such termination by Company will not affect Seller's continuing obligations in this Section 16. Seller agrees that no information disclosed by it to Company will be confidential unless due notice thereof is given in advance to and accepted by Company in writing.
17. **Liens:** Seller hereby waives and relinquishes all liens and claims (statutory or otherwise) which Seller now has or may hereafter have as a result of the labor or materials furnished by Seller in connection with this Contract. Seller warrants that no lien, encumbrance or security interest will be filed by Seller or anyone claiming under or through Seller against Company, Company's property, or the Products furnished under this Contract.
18. **Independent Contractor/Safety:** Seller is and will remain an independent contractor of the Company. No employee, agent, or representative of Seller or its subcontractors will be deemed to be an employee of Company. Seller will provide all safeguards, and take all precautions, necessary in connection with the production and delivery of the Products sold hereunder to prevent the occurrence of any accident, injury, death, loss, or damage to any person or property, and will be solely responsible therefor. Seller warrants that all Products delivered hereunder will be produced and delivered in a safe, proper, and workmanlike manner and in compliance with all applicable codes, regulations, laws, standards, specifications and Company requirements concerning safety, performance and otherwise, including, without limitation, any work or services related thereto performed on premises controlled by Company.

19. **Assignment:** Neither this Contract, nor Seller's rights and obligations hereunder, are assignable by Seller without the prior written consent of the Company, which consent shall not be unreasonably withheld. A sale or other transfer (whether by gift, merger, consolidation, operation of law or otherwise) of fifty percent or more of the outstanding voting equity of Seller (e.g., capital stock, membership interests, *etc.*, as the case may be) shall be deemed an assignment of the Seller's rights and obligations hereunder for which Seller must obtain the prior written consent of Company. As conditions precedent to any assignment of this Contract by Seller, Seller shall (i) ensure that the proposed assignee is reasonably acceptable to Company; (ii) present an assignment and assumption agreement to Company in advance of execution that is reasonably acceptable to Company; and (iii) have fully performed all obligations owed under this Contract to the point when any assignment of this Contract occurs. If each of the preceding conditions is met and an assignment follows, Seller shall be released from any obligation to subsequently provide Products as contemplated by this Contract, but each of Seller's other obligations as provided in this Contract (including, by way of example and not limitation, Seller's warranties and indemnification obligations related to Products previously supplied and Seller's duty to maintain confidentiality) shall survive the assignment. Any attempted assignment by Seller which fails to fulfill the conditions contained in this Section will be null and void. Without waiver of any other applicable rights, the Company may assign this Contract to an affiliate of the Company or any successor in interest to the Company's business without Seller's consent.
20. **No Violation of Law:** Seller's activities, Seller's production facilities, and the Products will comply with all applicable laws, rules, regulations, orders, conventions, ordinances or standards of the country(ies) of destination or that relate to the manufacture, labeling, transportation, importation, exportation, licensing, approval or certification of the Products, including, but not limited to those relating to environmental matters, data protection and privacy, wages, hours, and conditions of employment, subcontractor selection, discrimination, occupational health/safety and motor vehicle safety. Upon request, Seller will furnish Company with certificates of compliance therewith and such other explanatory and factual information requested by Company to verify such compliance or to enable Company to comply with its Company's own compliance with laws and regulations applicable hereto. Seller further warrants that it will comply, where applicable, and without limitation, with all orders, standards, and regulations of each government agency with jurisdiction which relates to or concern's Seller's activities.
- The Equal Employment Opportunity Clause required under Executive Order 11246, the affirmative action commitment for disabled veterans and veterans of the Vietnam era, set forth in 41 CFR 60-250.4, the affirmative action clause for handicapped workers, set forth in 41 CFR 60-741.4, and the related regulations of the Secretary of Labor, 41 CFR Chapter 60, are incorporated by reference in these Terms and Conditions. By accepting these Terms and Conditions, Seller certifies that it complies with the authorities cited above, and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8.
21. **Limitation on Use of Payment:** Seller hereby warrants that Seller shall not use any money, property or thing of value received by Seller under or pursuant to this Contract to directly or indirectly influence improperly or unlawfully any decision, judgment, action or inaction of any official, employee or representative of any government or agency or instrumentality thereof, or of any other person or entity, in connection with or relating to the subject matter of this Contract or any supplement or amendment hereto. It is the intent of Company and Seller that no payment or transaction shall be made during the term of this Contract that is illegal, improper or is intended to unduly or improperly influence any third party, including without limitation, extortion, kickback or bribery. If Seller breaches the terms of this section, Company may immediately terminate this Contract without any liability.
22. **Environment, Health, Safety and Security:** If Seller, either as principal or by agent or employee, enters upon the property of Company, Seller agrees to comply with Company's rules and regulations, including its environmental, health, safety and security rules and regulations.
23. **Hazardous and Dangerous Goods and Materials:** Seller warrants (i) that any chemical substance or mixture delivered to Company pursuant to this Contract is on the Toxic Substance Control Act inventory or that the premanufacture notice requirements thereof have been satisfied and such chemical substance or mixture is lawfully available for sale and use; (ii) that chemical substances or mixtures delivered hereunder will be properly packaged with all appropriate warning labels, instructions for use, and notices, and that, if such chemical substances or mixtures are supplied in bulk, Seller will provide Company with an adequate supply of such warning labels, instructions, and notices for use in Company's facilities; (iii) that Seller will supply with, or before, delivery, and at any other time upon Company's request, all information known to Seller with respect to potential hazards, including possible toxic or harmful effects, related to the handling, use, storage, disposal, or transportation of any chemical substances or mixtures delivered hereunder, and any precautions that should be taken to eliminate or reduce to a minimum such hazards; and (iv) that Seller will ascertain and furnish all information about Products required by Company to comply with all safety-related laws and regulations (including, without limitation, those relating to applicable right-to-know laws and occupational safety and health acts), and with laws and regulations regarding composition, ingredients, or otherwise, including promptly furnishing to Company upon written request a list of all ingredients therein and the amounts thereof and information concerning any changes in such ingredients thereafter. Seller agrees that it will, upon Company's request, accept the return of unused toxic or hazardous chemical substances or mixtures delivered to Company pursuant to this Contract. Unless approved in writing by Company's location manager prior to shipment, Seller will not deliver any Products containing asbestos in a content exceeding the local regulatory level or 1% by weight of the Product, whichever is less.
24. **Import/Export Compliance:** Seller warrants that all sales made hereunder are or will be made at not less than fair value under the United States AntiDumping Law (19 U.S.C. Sec. 160 *et seq.*). Company will not be a party to the importation of the Products, the transaction(s) represented by the Contract will be consummated subsequent to importation, and Seller will neither cause nor permit Company's name to be shown as "Importer of Record" on any customs declaration. Transferable credits or benefits associated with the Products, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Company unless otherwise prohibited by applicable law. Seller will provide Company with all information and records relating to the Products necessary for Company to (i) receive these benefits, credits, and rights, (ii) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (iii) claim preferential duty treatment under applicable trade preference regimes, and (iv) participate in any duty deferral or free trade zone programs of the country of import. Seller will be responsible for strict compliance with all legal, regulatory and administrative requirements associated with any importation or exportation of Products, including obtaining any required licenses or approvals and, unless otherwise agreed between the parties elsewhere in this Contract, the payment of all associated duties, taxes and fees.
25. **Duty Drawback:** Upon request of Company, Seller will cooperate with Company in seeking any duty drawback available to Company in connection with export by Company of any Products imported by Seller and provided to Company under this Contract, or incorporating, or manufactured by Company from, such Products. Without limitation, Seller will (i) provide all information with respect to such imported Products necessary to complete any such drawback claims to be filed by Company, including U.S. Customs Service entry numbers, dates of entry, quantities and description of goods, customs values, and rates and amounts of customs duties paid by Seller, and (ii) execute applicable certificates of delivery and other documents as necessary in connection with Company's drawback claims.
26. **Labor Contracts:** Seller shall notify Company of any labor contract expiration date at least six months before the expiration of a current labor contract that has not been extended or replaced. Company may thereafter direct Seller in writing to manufacture up to 60 days of additional inventory of the Products, specifying the quantities of Products required and any packaging and storage requirements. Seller will use commercially reasonable efforts to comply with Company's written instructions prior to the expiration of the current labor contract, until the current labor contract has been extended or a new contract established, and throughout any labor shortage. If Company requests additional inventory pursuant to this Section, Company shall buy the entire quantity of

conforming Products that Company has requested and Seller has thereafter promptly produced. Seller shall be responsible for all carrying costs and any incremental costs associated with the manufacture of any additional inventory requested by Company pursuant to this Section.

27. **Changes:** Regardless of whether Seller is then in default, Company may make changes to the general scope of this Contract at any time, and Seller will continue performance of this Contract as so changed. Notice of any change made by Company shall be provided to Seller in writing. If any such change causes an increase or decrease in the cost of, or time required for, the performance of Seller's obligations under this Contract, an equitable adjustment will be made to the price or delivery schedule, or both, and this Contract will be modified in writing accordingly; *provided, however*, that (i) any claim by Seller for an increase in cost or production time under this Section must be asserted by Seller in writing within thirty (30) days from the date of receipt by Seller of the Company's notification of change or no such increase shall be made; and (ii) any claim by Seller for an increase in cost shall be in writing and shall detail any differences in the Products' (a) raw material content; (b) raw material cost; (c) direct and indirect processing costs as will be incurred by Seller; (d) direct and indirect labor costs as will be incurred by Seller; and (e) any additional substantive differences that arise from Company's change order and which lead to either an increase or decrease in Seller's direct or indirect cost; and (iii) no adjustment in price shall exceed the direct, actual and incremental costs reasonably incurred or saved by Seller and associated with Company's required change, and no adjustment in delivery time shall vary from the actual increase or decrease in Seller's production time occasioned by the change. Where the cost of property made obsolete or superfluous by a change is either included in Seller's claim for adjustment or set-off against a claim for adjustment by Company: (i) no such obsolescence claim shall exceed the proportionate value of Products left undelivered to Company and subject to the then-current Firm Release less scrap values; and (ii) Company shall have the right to prescribe the manner of disposition of such property and the proceeds therefrom shall be paid to the Company. Nothing in this Section shall excuse Seller from proceeding with the order as changed. In any effort to establish an equitable adjustment to the price or delivery schedule related to a change or in any effort to verify any claims made by Seller hereunder, Company shall at any reasonable time or times be permitted to inspect and audit the records, facilities work or material of Seller which relate to any Company-required change.
28. **Electronic Commerce:** Seller acknowledges that Company currently uses, or will in the future use, an electronic "business to business" framework to facilitate the transmission of Key Documentation relating to the purchase of Products hereunder. For purposes of this provision "Key Documentation" means purchase orders, releases, order confirmations, advanced shipping notices (ASN), change orders, invoices and other similar documentation. Unless the requirements of this section are otherwise waived by Company in this Contract, Seller acknowledges and agrees that (i) it has in place currently, or will implement as soon as possible after execution hereof, the system designated by Company to facilitate transmission of Key Documentation electronically, (ii) that Seller will comply with Company's reasonable specifications with respect to Key Documentation; and (iii) Key Documentation transmitted hereunder by such methods will not be deemed invalid solely because they have been transmitted or executed electronically. To the extent required by Company, each authorized representative of a party will adopt a unique, verifiable digital identification consisting of symbols or codes to be transmitted with each electronic transmission, and use of such digital identification will be deemed for all purposes to constitute a "signature" and will have the same effect as a signature on a written document.
29. **Notifications:** Seller shall immediately notify Company of any actual or possible safety problems with the Products delivered hereunder. Seller shall also give Company reasonable advance notice of potential material shortages, insolvency, labor disputes, any anticipated change in control of Seller, and all other matters, regardless of whether such matters are within Seller's reasonable control, that are known or reasonably anticipated by Seller and which may potentially delay or interfere with Seller's performance of this Contract.
30. **Company's Property and Parts:** All property of any kind supplied to Seller, or paid for, by Company will be and remain Company's property, and Seller will maintain such property in good condition and repair, except to the extent that such property is integrated into Products delivered hereunder. Materials or parts provided by, or on behalf of, Company which have been, or are to be, processed by Seller are bailed to Seller solely for purposes of such processing and shall remain Company's property. All Company property, while in Seller's custody or control, will be held at Seller's risk, free of all liens, encumbrances or security interests of Seller or third parties, and will be kept insured by Seller at Seller's expense in an amount equal to replacement cost with loss payable to Company. All property of the Company is subject to removal by Company at any time, and to return upon Company's request. Seller will assume all risk of death or injury to persons or damage to property arising from use of Company's property. Company does not guarantee the accuracy of any Company property or the availability or suitability of any property furnished by it. Seller assumes sole responsibility for inspecting, testing and approving all of Company's property supplied by Company prior to any use by Seller.
31. **Force Majeure:** Neither party shall be in default for any delay or failure to perform its obligations under this Contract if caused by an extraordinary event beyond the reasonable control without its fault or negligence; *provided, however*, that any delay or failure to perform caused by default of a supplier of Seller at any lower tier must be beyond the reasonable control of both Seller and such supplier without the fault or negligence of either and items to be furnished must not be obtainable from other sources in sufficient time to permit Seller to meet the delivery schedule, and *provided further* that Seller furnishes prompt written notice of any delays or non-performances (including its anticipated duration) after becoming aware that it has occurred or will occur. If Seller is unable to perform for any reason, Company may individually or in combination (i) purchase the Products from other sources, reduce Company's purchases from Seller accordingly without liability to Seller, and set off any additional incremental cost of such alternate supply against Seller's account; and (ii) require some or all of Seller's performance, but on a delayed basis and after the *force majeure* event has passed. Within three business days after written request by the other party, the party prevented from performing because of a *force majeure* event will provide adequate assurances that its non-performance will not exceed 30 days. If the non-performing party does not provide such assurance, or if the non-performance exceeds 30 days, the other party may terminate the Contract for cause by providing written notice of termination to the non-performing party before performance resumes.
32. **Background/Credit checks:** Seller, at its own expense, will have background and credit checks performed on each employee that it plans to assign to work on the Company's premises. Seller will comply with all applicable C-TPAT security criteria as issued and updated by the U.S. Customs and Border Protection Agency from time to time. Seller will provide Company with documentation of such compliance upon request.
33. **Shipping:** Unless otherwise expressly provided in this Contract all Products shall be shipped Ex Works (INCOTERMS 2000). With respect to Seller's responsibilities to facilitate proper shipping and Product receipt (i) all Products will be packed and marked in accordance with Company's directions; (ii) packing slips must accompany each shipment and identify the purchase order number and the purchase order line number to which the shipment relates, release number, the part number and part quantity, the shipment number and receiving plant; (iii) where multiple packages comprise a single shipment each package will be shown on packing slips, bills of lading, and invoices; (iv) Seller will mark the Products in accordance with the standards of the Uniform Commercial Code; and (v) Seller will issue to Company advance shipping notices as requested by Company. In addition to the generality of the foregoing, if this Contract expressly provides that Products are to be shipped CIP Company location (INCOTERMS 2000) or by some other shipping method for which Seller is responsible, then (i) Seller shall ship the Products in accordance with Company's instructions; (ii) all drayage, demurrage, storage, insurance, packing and related charges will be paid by Seller unless otherwise provided in the Contract; (iii) Seller shall mark all shipments of Products in conformance with the requirements of the common carriers to be used by Seller; (iv) Seller shall secure the lowest transportation costs consistent with the shipping requirements of this Contract; and (v) Seller will be responsible for all extra charges incurred because of Seller's failure to follow Company's shipping instructions, including those related to delivery schedules, whether or not Seller's liability for general damages is excused under other provisions of this Contract. Notwithstanding any other provision of this Contract, Seller will pay all express and other charges necessary to expedite delivery to enable Seller to meet the delivery schedule or the requirements of the Firm Releases issued by Company, and Seller will ship all late shipments by express or other priority

methods of delivery at its expense. Upon delivery of Products to Company, all containers, packing and crating material shall become property of the Company.

34. **Delivery:** Time and quantity are of the essence. Delivery must be on the date indicated on the Purchase Order or Release, such that Products are received by the Company's consuming location on the delivery date; consequently, Seller shall make appropriate adjustments to Seller's production schedule and internal ship dates to account for necessary transit time, border crossing processes, holidays and all other events that can be reasonably anticipated and which may impact the ability to deliver Products by the required delivery date. If the Contract involves a Blanket Purchase Order or if no delivery schedule is provided, deliveries are to be made only in quantities and at times specified in Company's Firm Release, discreet release or Spot Buy Purchase Order, as the case may be. Company shall be permitted to seek replacement Products from other sources if, in Company's reasonable judgment, Seller has not delivered or is not expected to deliver Products in the quantities or at the times required by this Contract. Notwithstanding Company's receipt and Company's possible failure to reject, Company will have no liability for payment of Products delivered to Company which are in excess of quantities specified by Company or received more than three days in advance of the required delivery date, and Company may return such overshipments or advanced shipments to Seller at any time at Seller's expense for all packing, handling, sorting and transportation charges. If delivery is not made by Seller by the delivery date indicated, Seller shall reimburse Company for all incidental and consequential damages which relate to or arise directly or indirectly and in whole or in part from Seller's failure to deliver Products on time, such expenses to include, without limitation, those related to (i) any replacement Products sought from other sources by Company (ii) line down time and overtime and (iii) rework related expenses, and regardless of whether such expenses were incurred by Company or Company's customer. Company may, from time to time, change delivery schedules or direct temporary suspension of scheduled shipments as may be directed by an OEM customer, and in such a case, Seller shall conform to the modified delivery dates. Any losses sustained and costs incurred by Company or by Company's customer as a result of late delivery or non-delivery by Seller shall be charged to and paid for by Seller in the manner determined by Company (which may include, among other methods, a Company controlled debit and setoff of amounts otherwise due and owing or to become due and owing to Seller or Seller's affiliates); *provided, however*, that Company will be responsible for additional costs of expedited or other special transportation that Company may require as a result of changes in delivery schedules to the extent that (i) such changes were not caused by Seller, and (ii) Company can recover such costs from its own customers.
35. **Company Name/Logo:** Seller may not use the Company's name and/or logo in any manner other than as may be identified in this Contract without first obtaining written permission from Company.
36. **Right to Injunction; Forum:** Seller acknowledges and agrees that Company will be irreparably damaged and will have no adequate remedy at law for any material breach of the Contract or a material failure of Seller to perform those covenants contained in the Contract, and that, in addition to any other rights or remedies Company may have, Company may obtain a restraining order or injunction against any threatened or actual breach of this Contract by Seller or a court order requiring specific performance of this Contract (i) without the necessity of proving damages or the adequacy of money damages, (ii) without posting any bond or other security and (iii) without prejudice to any other rights and remedies which may be available at law or in equity. In the event Company is successful in any suit or proceeding brought to enforce this Contract, or for damages sustained by reason of a breach of this Contract, or in any defense of a matter which involves this Contract, Seller shall pay to Company its reasonable attorneys' fees and costs in connection with such suit or proceeding. Seller and Company agree that the Contract was entered in Oakland County, Michigan and that this Contract is governed by the laws of the State of Michigan, excluding its laws related to choice or conflicts of law. Seller and Company each expressly consent to personal jurisdiction in the State of Michigan in any action or proceeding brought in any court therein, whether state or federal, which arises from or relates to this Contract, and each expressly waives all positions designed to defeat such personal jurisdiction, including a claim that the doctrine of *forum non conveniens* should be applied.
37. **Other Provisions:** The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and does not apply. Company's failure to assert any right is not a waiver of such right or any other right. Any remedies provided herein to Company are cumulative and Company shall be permitted to seek any other remedies provided in law or equity or by statute. Seller shall bring all claims or causes of action against Company which relate to or arise out of this Contract not later than one (1) year after that time when Seller knew or reasonably should have known of Company's failure to substantially fulfill a material term of this Contract; any claims or causes of action not brought by Seller within the aforesaid period shall be deemed waived by Seller. SELLER AND COMPANY EACH HEREBY WAIVE AND NEITHER SHALL DEMAND TRIAL BY JURY. If any provision of this Contract is held to be in conflict with, or invalid, illegal or unenforceable, under any applicable local, state, federal or other law, such provisions shall be of such force and effect to the maximum extent permissible by such jurisdiction and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
38. **Entire Agreement:** This Contract, as defined herein, constitutes the entire agreement of the parties and supersedes and merges all prior proposals, understandings and agreements, oral and written, between the parties relating to the subject matter of this Contract and may not be modified or altered except by written instrument duly executed by both parties. By signing this Contract, Seller agrees that this Contract exclusively governs and controls the rights of the parties so that any other writing Seller may submit to Company shall only be for Seller's convenience. Any additional or differing terms, whether or not materially different, set forth in any communication from Seller are hereby expressly rejected.
39. **Non-solicitation and Non-interference with Business Relations:** During the term of this Contract and for twelve (12) months following its termination or expiration, Seller covenants and agrees that (a) it shall not, directly, indirectly or in concert with any other person, solicit the services of, retain, offer employment to, or employ any employee or independent contractor of the Company, without the Company's consent, which shall not be unreasonably withheld, conditioned or delayed; and (b) it shall not (i) do anything, intentionally or otherwise, to discredit or otherwise injure the reputation or goodwill of the Company; or (ii) in any way interfere with the relationship of the Company with any Client, customer, employee, independent contractor, or business relation. Any violation of this section shall be deemed a material breach hereof, and the Company may immediately terminate this Contract.