

Terms and Conditions of Sale

Interpretation

For the purposes of these Terms and Conditions of Sale ("Conditions"):

- **"Buyer"** means the person, firm or company which places an order for purchase of Products and/or Services as identified in any such order or Proposal as the case may be.
- **"Conditions"** means these terms and conditions of sale and supply which may be updated by the Supplier from time to time.
- **"Contract"** means the agreement between the Supplier and the Buyer arising as a result of the Buyer's submission of an order for the Supplier's Products and Supplier's written acceptance and/or, in the case of Services, an agreement between such parties for the provision of Services by Supplier, as constituted by a Proposal. Such Contract shall be deemed to incorporate and be governed by these Conditions.
- **"Products"** means goods supplied as agreed to be supplied by the Supplier to the Buyer under any Contract including, where applicable, any Software.
- **"Proposal"** means a proposal document signed by the Supplier and the Buyer describing Services to be provided to or for the Buyer, subject to these Conditions.
- **"Services"** means any services which the Supplier has agreed to provide to or for the Buyer under any Contract, as more fully described in the relevant Proposal.
- **"Supplier"** means Dwyer Instruments, LLC and any of its affiliated companies (collectively referred to as "DwyerOmega").

1. Basis of Sale

THESE CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN THE BUYER'S ORDER OR IN ANY DOCUMENTS INCORPORATED BY REFERENCE IN THE BUYER'S ORDER. These terms and conditions of sale (these "Conditions") are the only terms which govern the sale of the Products and/or Services by the Supplier to the Buyer. If the sale includes Services, then the additional terms in Schedule A shall also apply to such Services. Notwithstanding anything herein to the contrary, if a written contract signed by the Supplier and the Buyer is in existence which covers the sale of the Products or Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Conditions.

Any offer, including without limitation any quotation or proposal or similar document, referencing these Conditions is capable of acceptance only on the terms stated in such offer and these Conditions, and any such offer is expressly conditional on acceptance of these Conditions and those contained in the offer without the addition of any other terms whether or not such terms conflict in any way with those of the offer or herein. Any quotation/confirmation of sale/invoice issued by Supplier accompanying or referencing these Conditions comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Conditions may be modified by inclusion of different terms on Supplier's quotation or order acceptance documents but not by inclusion of any terms on documents provided by Buyer. These Conditions prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute Supplier's acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Conditions. Buyer expressly waives the right to enforce any terms other than those in these Conditions including, without limitation, any terms proposed or supplied by Buyer. The Supplier's failure to object to any provision contained in any communication from the Buyer shall not be construed as a waiver of these Conditions nor as an acceptance of any such provision. Retention by the Buyer of any Products delivered by the Supplier, receipt by the Buyer of any Services performed by the Supplier or payment by the Buyer of any invoice rendered hereunder, shall be conclusively deemed acceptance of these Conditions.

2. Quotations

Prices, specifications and lead times referenced in the Supplier's quotations are for information only and shall not be binding on the Supplier until all technical requirements have been agreed and the Supplier has accepted the Buyer's order. Quotations expire if the Buyer does not place an order with the Supplier within thirty (30) days of the date of the Quote.

3. Orders

By submitting an order to the Supplier, the Buyer agrees to be subject to these Conditions in their entirety. All orders must be bona fide commitments showing definite prices and quantities and mutually agreed shipping dates. No order, whether or not submitted in response to a quotation by the Supplier, shall be binding upon the Supplier until accepted in writing (i.e., order confirmation) by the Supplier.

4. Prices and Taxes

Prices and specifications are subject to change without notice. The prices for Products shall be the price quoted by the Supplier to the Buyer, and the fee for Services shall be the fee agreed in the Proposal or, in either case, as otherwise agreed between the parties in writing. Prices and fees do not include taxes, transport charges, insurance and export and/or import charges or duties including without limitation sales, value added tax, use or excise taxes, applicable to the Products sold and or Services supplied under any Contract, which taxes and other charges may, in the Supplier's discretion, be added by the Supplier to the sale price and/or fees or billed separately and which taxes and other charges shall be paid by the Buyer unless the Buyer provides the Supplier with any necessary tax exemption certificate. Unless otherwise agreed in writing, the Buyer shall be liable to pay the Supplier's charges for transport, packaging, insurance and export and/or import clearance.

5. Shipment and Delivery

- a) The Supplier shall deliver or arrange for the delivery of Products. If no delivery method is specified on the Buyer's purchase order, the delivery method will be in the sole discretion of the Supplier. Delivery occurs at the Supplier's facilities when the product is tendered to the carrier or is picked up by the Buyer as agreed between the parties. Any lead times, ship dates or delivery dates cited in the Supplier's quote or order confirmation are approximate and in no event shall Supplier incur any liability for any loss, damages or expenses (consequential, special or otherwise) incurred by the Buyer as a result of any delay in delivery for any reason, nor for any loss or damage in transit. Time for delivery is not of the essence.
- b) Supplier may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. When delivery is to be by installments, the Supplier exercises its right to make partial shipments, or if there is delay in the delivery of any one or more installments for whatever reason, the Buyer shall not be entitled to treat the Contract as a whole as repudiated.
- c) Unless otherwise agreed in writing by the parties, Supplier shall deliver the Products Ex Works Supplier's facility (Incoterms 2020) using Supplier's standard methods for packaging and shipping such Products. Buyer agrees to pay all transportation charges incurred after the Products are made available to the carrier and to reimburse Supplier for any transit insurance or freight pre-paid for the Products by Supplier.
- d) Where Buyer furnishes special transportation instructions, any special expense is to be borne by the Buyer, including special handling, packaging, and additional freight charges. When export instructions or special packaging are required and have been agreed upon by both Supplier and

Buyer, any extra charges such as export duties, licenses, fees and the like shall be borne by Buyer.

- e) If for any reason Buyer fails to accept delivery of any of the Products, or if Supplier is unable to deliver the Products because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; and (iii) Supplier, at its option, may store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6. Non-Delivery

- a) The quantity of any installment of Products as recorded by Supplier on dispatch from Supplier's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- b) The Supplier shall not be liable for any late delivery of Products (even if caused by Supplier's negligence).
- c) Any liability of Supplier for non-delivery of the Products shall be limited to delivering the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered.

7. Title and Risk of Loss

Title and risk of loss passes to Buyer upon delivery, i.e., when Supplier makes the Products available for pick up by a common carrier as per the Incoterms above, and Buyer shall have the responsibility of filing any claims for loss, damage, delay or otherwise, with the carrier, insured or other related third parties. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Supplier a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the relevant state Uniform Commercial Code.

8. Inspection and Rejection of Nonconforming Products

- a) Buyer shall inspect the Products within three (3) days of receipt ("Inspection Period") at Buyer's facility, except in the case where, subject to the Supplier's approval, Buyer's source inspector or authorized representative inspects the Products at Supplier's facility, in which case Buyer has no further right of inspection. Buyer will be deemed to have accepted the Products unless it notifies Supplier in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Supplier. "Nonconforming Products" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- b) If Buyer timely notifies Supplier of any Nonconforming Products, Supplier shall, in its sole discretion, (i) replace such Nonconforming Products with conforming products, or (ii) credit the price for such Nonconforming Products in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Supplier's facility as directed by Supplier. If Supplier exercises its option to replace Nonconforming Products, Supplier shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer, at Buyer's expense and risk of loss, the replaced Products to the Delivery Point.

9. Payment Terms

- a) Each shipment of Products shall be a separate transaction and the Buyer will be invoiced on delivery. Buyer shall pay all invoiced amounts due to the Supplier within 30 days after the date of the Supplier's invoice. Buyer shall make all payments hereunder in US dollars unless otherwise agreed upon in writing by the Supplier.
- b) All amounts due under a Contract shall be paid in full by the Buyer without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.
- c) The Supplier may, in its sole discretion, determine at any time that the Buyer's financial condition requires full or partial payment in advance or the provision of security for payment by the Buyer in a form satisfactory to the Supplier.
- d) If the Buyer fails to make any payment when due then, without prejudice to any other rights and remedies available to the Supplier, the Supplier shall (at its option) be entitled: (i) to treat the Contract as repudiated by the Buyer, to suspend or cancel further delivery of Products and/or the provision of Services or any part thereof under that Contract or any other Contract between them and claim damages and/or receive reasonable cancellation fees; (ii) to affirm the Contract and claim damages from the Buyer; (iii) to recover from Buyer Supplier's reasonable attorney's fees and all costs incurred in connection with non-payment of related invoices and (iv) to recover, in addition to the payment, interest on the unpaid amount (both before and after judgement) at the rate of 5% per annum above the "prime rate" as set forth from time to time in the Wall Street Journal (East Coast Edition), until payment in full is made. Such interest shall be calculated daily.

10. Products

- a) The Supplier may modify specifications provided the modifications do not adversely affect the performance of the Products. In addition, the Supplier may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by government authority, or non-availability of materials from its suppliers.
- b) All descriptions, illustrations and any other information relating to the Products contained in the Supplier's catalogues, brochures, price lists, advertising material and any sales or other particulars or literature are made by way of general description, are approximate only and for the general guidance and information of the Buyer. They shall not constitute warranties or representations by the Supplier, nor shall they form part of any Contract.

11. Order Cancellation, Rescheduling and Termination

- a) Orders for Products accepted by the Supplier may be cancelled, changed or rescheduled by the Buyer only with the written consent of the Supplier (which consent the Supplier may withhold for any reason) and the Buyer shall indemnify the Supplier against the cost of all labor and materials used in connection with the order so cancelled or varied and against all loss, damage cost, charges and expenses suffered or incurred by the Supplier as a result of that cancellation or variation.
- b) Termination of any Contract in accordance with these Conditions shall not affect the accrued rights or liabilities of the parties at the date of termination.
- c) Supplier reserves the right at any time to make changes in design or additions or improvements in its Products or Services without liability or obligation to install such change, addition, or improvement in any Products or Services provided prior thereto.
- d) Supplier reserves the right to cancel all or part of any order, including without limitations orders previously acknowledged or accepted by Supplier, for any reason prior to delivery.

12. Intellectual Property Rights

- a) Notwithstanding delivery of and the passing of title in any Products and subject to Section 13 (Software) and this Section 12c), nothing in these Conditions or any Contract shall have the effect of granting or transferring to, or vesting in, the Buyer any intellectual property rights in or to any Products and/or Services.
- b) Buyer acknowledges and agrees that all patent, copyright and other intellectual property rights in any work or tangible deliverable item arising from or created, produced or developed by the Supplier under or in the course of provision of any Services (the "Works"), wherever in the world enforceable, including without limitations all right title and interest in and to the Services and all documents, data, drawings, specifications, articles, sketches, drawings, reports, inventions, improvements, modifications, discoveries, tools, scripts and other items relating thereto shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Supplier and the Buyer shall acquire no right, title or interest in or to the same except as expressly stated in these Conditions.
- c) The Supplier grants to the Buyer a revocable, non-exclusive, non-transferable license to use such of the Works as are necessary, and to the extent necessary, for the Buyer to obtain and utilize the intended benefit of the Services.
- d) If any claim is made against the Buyer that the Products or Services infringe the patent, copyright or other intellectual property rights subsisting in the United States of America of any third party, the Supplier shall indemnify the Buyer against all losses, damages, costs and expenses awarded against, or incurred by, the Buyer in connection with the claim or paid, or agreed to be paid, by the Buyer in settlement of the claim provided that: (i) the Supplier is given full control of any proceedings or negotiations in connection with any such claim; (ii) the Buyer shall give the Supplier all reasonable assistance for the purposes of any such proceedings or negotiations; (iii) except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Supplier; (iv) the Buyer shall do nothing which would or might vitiate any insurance policy or cover which the Buyer may have in relation to such infringement and shall use its best endeavors to recover any sums due thereunder and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover; (v) the Supplier shall be entitled to the benefit of, and the Buyer shall accordingly account to the Supplier for, all damages and costs (if any) awarded in favor of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and (vi) without prejudice to any duty of the Buyer at common law, the Supplier shall be entitled to require the Buyer to take such steps as the Supplier may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Supplier is liable to indemnify the Buyer under this Section 12(d), which steps may include (at the Supplier's option) accepting from the Supplier non-infringing, modified or replacement Products or Services.
- e) The Supplier shall have no obligation or liability under this Section 12(d) insofar as the infringement arises from: (i) any additions or modifications made to the Products and/or Services in question, by anyone other than the Supplier or without Supplier's prior written consent; (ii) any information provided by the Buyer to the Supplier including without limitation any specification; (iii) performance by the Supplier of any work required to any Products, or performance of any Services, in compliance with the Buyer's requirements or specification; (iv) a combination with or an addition to equipment not manufactured or developed by the Supplier; or (v) the use of Products beyond that scope established by the Supplier or approved in writing by the Supplier.
- f) Without prejudice to Section 16(a) (Limitation of Liability), this section states the entire liability of the Supplier and the exclusive remedy of the Buyer with respect to any alleged infringement of intellectual property rights belonging to a third party arising out of or in connection with the

performance of any Contract. This section shall be subject to the limits of liability outlined in Section 16 (Limitation of Liability).

13. Software

The Supplier shall, at all times, have and retain title and full ownership of all software, firmware, programming routines, and documentation relating to such software supplied by the Supplier for use with the Products, and of all copies made by the Buyer (collectively "Software") and grants the Buyer a non-exclusive and non-transferable license to use such Software solely for use with the Products.

14. Buyer Indemnity

Buyer agrees to indemnify, defend, and hold harmless Supplier from and against any and all claims, costs, proceedings, demands, losses, damages, and expenses (including, without limitation, reasonable attorney's fees and legal costs) of any kind or nature, arising from or relating to: (i) any actual or alleged breach of this Agreement by Buyer; (ii) any actual or alleged breach of applicable law by Buyer; (iii) any act or omission by Buyer; or (iv) Buyer's use of the Products.

15. Limited Warranty

- a) Supplier warrants to Buyer that for a period of twelve (12) months from the date of shipment of the Products or such other period as provided by Supplier in its relevant product documentation or on its quotation ("Warranty Period"), that such Products will be free from material defects in material and workmanship, provided, however, that the Supplier does not warrant that operation of the Software (defined in Section 13) will be uninterrupted or error free or that all program errors will be corrected. The Buyer shall be responsible for determining that the Product is suitable for the Buyer's use and that such use complies with any applicable law. In addition, Buyer is responsible for proper installation of the Products and any necessary equipment or hardware.
- b) The Supplier shall not be liable for a breach of the warranty set forth in Section 15(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Supplier within seven (7) days from the date that Buyer discovers or ought to have discovered the defect; (ii) Supplier is given a reasonable opportunity after receiving the notice to examine such Products and Buyer (if requested to do so by Supplier) returns such Products to Supplier's place of business at Buyer's cost for the examination to take place there; (iii) Buyer properly packages such Products to protect against risk of loss and damage; and (iv) Supplier reasonably verifies Buyer's claim that the Products are defective.
- c) The Supplier shall not be liable for a breach of the warranty set forth in Section 15(a) if: (i) Buyer makes any further use of such Products or Services after giving such notice absent written authorization from Supplier to do so; (ii) the defect arises because Buyer failed to follow Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or (iii) Supplier determines that a claimed defect resulted from (a) normal wear and tear, including corrosion; (b) installation and/or maintenance by Buyer or a third party; (c) misuse or abuse, whether willful or negligent, of any of the Products or Services by any person other than Supplier; (d) modifications, alterations, service, repair or replacement made by Buyer or a third party during the Warranty Period that were not requested or authorized by Supplier; (e) any combination or use of the Products or Services with any incompatible equipment or ancillary products that may be connected to the Products or Services; (f) failure of Buyer to maintain environmental conditions in accordance with Supplier specifications or instructions, if any; (g) customized equipment manufactured by third parties for incorporation into any of the Products or Services; (h) defects or errors in any drawings, design or custom specifications provided by Buyer or from other materials or other property supplied by the Buyer; (i) causes beyond Supplier's reasonable control; (j) the failure or defect arises out of any breach by the Buyer of its obligations to provide information to the Supplier under this agreement; or (k) causes other than Supplier's workmanship or materials.

- d) Subject to Section 15(b) and Section 15(c) above, with respect to any such Products or Services during the Warranty Period, Supplier shall, in its sole discretion, either: (i) repair or replace such Products (or the defective part) or Services or (ii) credit the price of such Products at the pro rata contract rate provided that, if Supplier so requests, Buyer shall, at Supplier's expense, return such Products or Services to Supplier. Following Supplier's evaluation, such repair, replacement or issuance of a credit shall be Buyer's sole and exclusive remedy with respect to a breach of warranty set forth herein. All costs of de-installation or re-installation of the Products or Services shall be borne by Buyer. Products or Services that are repaired or replaced during the Warranty Period are warranted for the remaining term of the original Warranty Period.
- e) If the Buyer fails to pay when due any portion of any payment due from the Buyer to the Supplier under a Contract or otherwise, all warranties and remedies granted under this section may, at the Supplier's option, be terminated.
- f) THE FOREGOING WARRANTIES APPLY ONLY TO THE BUYER, AS THE ORIGINAL PURCHASER, AND ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, TERMS AND CONDITIONS, EXPRESS OR IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, TO THE EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SUPPLIER'S SOLE AND EXCLUSIVE LIABILITY, AND THE BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR BREACH OF THE WARRANTIES IN THIS SECTION SHALL BE AS SET FORTH IN THIS SECTION 15.

16. Limitation of Liability

- a) IN NO EVENT SHALL SUPPLIER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b) IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE PRICE PAID BY BUYER FOR THE PRODUCT(S) OR SERVICES THAT GAVE RISE TO ANY SUCH LIABILITY. WITH RESPECT TO SERVICES CONTINUING BEYOND ONE YEAR, IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY EXCEED IN ANY YEAR 100% OF THE TOTAL AMOUNT PAYABLE BY THE BUYER IN RESPECT OF SERVICES IN THAT YEAR.
- c) Any claim arising out of or in connection with a Contract must be commenced against the Supplier within one year (or such other warranty period) of (i) delivery of the Products, or (ii) provision of the Services (as applicable), giving rise to the claim, and Supplier shall have no liability to the Buyer under or in connection with any claim commenced after such time.

17. Compliance with Law

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products or Services under this Agreement or any resale of the Products or Services by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Supplier may terminate this Agreement if any governmental authority

imposes antidumping or countervailing duties or any other penalties on Products or Services. The export or re-export of the Products and related technical data supplied hereunder, if any, may be subject to regulation or restriction under the United States Export Administration Act, the Arms Export Control Act, the U.K. Export Control Organization, or other similar laws. Buyer shall not sell, re-export, transfer or otherwise dispose of the Products or any related technical data in violation of U.S. laws, U.K. laws or any other applicable export laws. Buyer shall have sole responsibility for obtaining all applicable licenses or authorizations at its sole cost and expense.

Buyer shall fully cooperate with Supplier, without charge, in any official audit or inspection by an authorized agent, official, employee, or accredited representative of the U.S. government. Buyer shall indemnify and hold Supplier harmless from, or in connection with, any violation of this Section by Buyer, its employees, consultants, agents, or customers. The obligations, requirements and claims described herein shall survive the expiration of any business relationship with the Supplier, including its divisions, subsidiaries and affiliated companies.

18. Force Majeure

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Supplier hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, COVID-19 and other mass health related issues, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give reasonably prompt notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. If due to such circumstances or events the Supplier has insufficient stocks to meet all its commitments, the Supplier may apportion available stocks between its customers at its sole discretion.

19. Confidential Information

All non-public, confidential or proprietary information of Supplier, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Supplier to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Supplier in writing. Upon Supplier's request, Buyer shall promptly return all documents and other materials received from Supplier. Supplier shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

20. Insolvency of the Buyer

If: (i) the Buyer becomes insolvent, has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt or an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or

reconstruction) or carries out or undergoes any analogous act or proceedings under an applicable foreign law; or (ii) the Buyer ceases, or threatens to cease to carry on business then, without prejudice to any other right or remedy available to the Supplier, the Supplier may treat any Contract as repudiated and/or withhold any further supply of Products and/or Services without any liability to the Buyer and, if any Products and/or Services have been supplied but not paid for, the price or fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

21. Waiver

No waiver by Supplier of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Supplier. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

22. Assignment

The Buyer may not assign, transfer, novate or otherwise dispose of all or any of its rights or delegate any of its obligations thereunder, in whole or in part, without the prior written consent of the Supplier.

23. Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

24. No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

25. Governing Law

All matters arising out of or relating to these Conditions and any Contract shall be governed by the laws of the State of Connecticut, without regard to its conflict of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Conditions. Where any claim or dispute arising out of or in connection with these Conditions or any Contract is not settled by negotiation, the parties will consider using mediation, in accordance with the American Arbitration Association mediation rules and procedures then in force, before resorting to arbitration. If any party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, any party may refer the claim or dispute to arbitration, in accordance with the then applicable Commercial Arbitration Rules of the American Arbitration Association. The arbitration process will be commenced by service by one party on the other party of a written notice that the dispute is to be referred to arbitration. The parties will then participate in good faith in the arbitration. Unless otherwise agreed between the parties, the arbitrator will be nominated by the American Arbitration Association. Arbitration proceedings shall be held in Chicago, Illinois. Under no circumstances are the arbitrators authorized to render an award inconsistent with the provisions of the Warranties section and Liability section of these Conditions. The expenses and fees of any such arbitration proceedings shall be borne equally by the Supplier and the Buyer. The award of the arbitrator or arbitrators shall be final and binding upon the parties, and judgment upon any such award may be entered in any court having jurisdiction. Nothing in this section shall prevent any party

from having recourse to a court of competent jurisdiction for the sole purpose of seeking a preliminary injunction or such other provisional judicial relief as it considers necessary.

26. Jurisdiction

Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Connecticut, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

27. Notices

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the quotation, order, or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

28. Severability

If any provision or part of a provision of these Conditions is or is held by any court of competent jurisdiction to be unenforceable or invalid, such unenforceability or invalidity shall not affect the enforceability of any other provision.

29. Survival

Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Section 17 (Compliance with Laws), Section 19 (Confidential Information), Section 25 (Governing Law), Section 26 (Submission to Jurisdiction) and this Section 29 (Survival).

SCHEDULE A

Services Terms

In addition to the terms and conditions outlined in the Conditions to which this Schedule A is attached, the following shall apply only to Services subject to the Conditions and the terms of the relevant Proposal:

Service Order Cancellation and Termination

- a) Contracts for Services shall commence on the commencement date identified in the relevant Proposal and, subject to earlier termination in accordance with this Section b) and Section c), shall continue in force for the initial term as prescribed in such Proposal and thereafter for any renewal period (if any) set out in the Proposal and thereafter without limit of period unless or until terminated by either party in accordance with this Section b) or Section c).
- b) Without prejudice to this Section c), either party may terminate a Contract for Services by giving ninety days (90) written notice to the other party.
- c) Either party may terminate a Contract for Services immediately at any time by written notice to the other party if the other party commits a material breach of the Contract for Services which is incapable of remedy or which it fails to remedy within thirty days (30) of receiving written notice requiring it to be remedied.
- d) Upon termination or expiry of any Contract for Services, each party shall, except to the extent permitted or required to exercise its continuing rights or obligations hereunder, return to the other party all property of the other party then in its possession, custody or control and shall not retain any copies of the same.

Service Warranty

- a) Supplier represents and warrants that the Services provided under these standard terms and conditions will be performed by qualified individuals in a professional and workmanlike manner. This warranty extends only to the original Buyer. Supplier shall not be liable for a breach of this warranty regarding Services unless Buyer gives written notice of the defective Services, reasonably described, to Supplier within ten (10) days from the date of service. Supplier's warranty obligation regarding Services is limited to, at Supplier's option and in its sole discretion, a) re-performance of the Services to the extent required to correct such defect, or b) refunding the amount paid for the specific Services which are in breach of the warranty. Any re-performance of Services will be warranted against defects in material or workmanship for the remaining portion of the warranty applicable to the Services. Warranty claims must be filed by Buyer within the time period stated above.
- b) This warranty applicable to Services will be voided if, in Supplier's opinion, either: (a) the subject of any Services has been altered, repaired, or modified following commissioning/installation by Supplier without the prior written agreement of the Supplier; or (b) Buyer engaged, employed, or used a third party to commission or install Supplier's equipment, or do corrective services, without Supplier's prior written consent.
- c) This warranty applicable to Services only applies to the original Buyer and original site where the work was performed and cannot be assigned to a different site or location, without the express written consent of the Supplier.

Buyer Training

- a) If Services to be provided by Supplier include Buyer training, Buyer shall be responsible to select from its employees those trainees who possess the requisite technical skill, experience, and language fluency appropriate for comprehension of the training and associated training materials ("Attendees"). Training curriculums and associated materials are general in nature and are intended only to supplement Attendees' prior knowledge. Trainings do not replace Buyer's existing practices and procedures regarding equipment operation, safety, and maintenance. The equipment discussed during trainings and in training materials may differ from or may only partially represent the equipment which Buyer or its Attendees operate, service or maintain. It is Buyer's responsibility to ensure that Attendees shall not operate or work on or around any specific Buyer equipment without first familiarizing Attendees with all applicable safety, operating and maintenance instructions and procedures relating to Buyer's specific equipment.
- b) Supplier makes no warranty or guarantee that Buyer's representatives who attend any training will achieve any level of proficiency or ability to use the Products or Services. The Buyer is solely and exclusively responsible for ensuring that such individuals are capable of using the Products or Services safely and effectively. If requested by Buyer, Supplier shall issue to Buyer's representatives certificates stating that they have attended the relevant training. Such certificate shall in no way certify the competency of the work of Buyer's representatives.