

**TRI STAR METALS, LLC**  
**TERMS AND CONDITIONS OF SALE**

1. CONTROLLING PROVISIONS. TRI STAR METALS, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY (“SELLER”) EXPRESSLY LIMITS ACCEPTANCE TO THE TERMS AND CONDITIONS (THIS “AGREEMENT”) CONTAINED HEREIN, AND THIS AGREEMENT CONTAINS THE ONLY TERMS AND CONDITIONS UNDER WHICH SELLER AGREES TO BE BOUND. Unless Seller otherwise agrees in writing, this Agreement shall be applicable to all agreements, purchase orders, acknowledgement forms, invoices, references to Seller’s website, and sales of all Seller’s products, goods and/or services (individually and collectively, “Product”) to you (“Buyer”).

All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer’s own purchase order form, which are different from, or in addition to, this Agreement are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations, if any, are merged herein. Seller’s acceptance of any order is subject to Buyer’s assent to all of this Agreement, and Buyer’s assent to this Agreement shall be conclusively presumed from (i) Buyer’s receipt of this Agreement without prompt and specific written objection thereto in correspondence (not in a pre-printed form) directed to an officer of Seller, or (ii) from Buyer’s acceptance of all or any part of Product ordered.

If Buyer’s purchase order should be construed as an offer to purchase rather than an acceptance of any offer to sell, then Buyer is hereby notified that Seller’s acceptance of any order from Buyer is expressly subject to Buyer’s assent to each of the terms and conditions set forth in this Agreement (whether delivered in connection with Seller’s purchase order form, acknowledgement form, invoice, reference to Seller’s website, or otherwise); and Buyer’s assent to this Agreement shall be conclusively presumed from (i) Buyer’s receipt of this Agreement without prompt and specific written objection thereto in correspondence (not in a pre-printed form) directed to an officer of Seller, or (ii) from Buyer’s acceptance of all or any part of Product ordered.

If Buyer’s purchase order or any other document or correspondence contains terms and conditions different from, contrary to, inconsistent with, or additional to the terms and conditions contained in this Agreement, then Seller’s action in filling any order received from Buyer, or Seller’s confirmation of the quantity, price, and delivery terms stated on Buyer’s purchase order (in an acknowledgement, invoice or otherwise), shall not be construed as Seller’s assent to any different, contrary, inconsistent or additional terms and conditions, or as Seller’s waiver of any of Seller’s terms and conditions as stated in this Agreement.

Any reference to Buyer’s purchase order noted on a Seller acknowledgement, invoice or other form, or correspondence delivered from Seller to Buyer shall not override, limit, or affect in any way the applicability of this Agreement.

2. TERMS OF PAYMENT. Buyer shall pay all amounts due for Product purchased hereunder within thirty (30) days from the date of Seller’s invoice; except that, (i) if Seller reasonably deems Buyer’s financial status unsatisfactory; (ii) Buyer is in default of any obligation of Buyer to Seller, or (iii) Buyer sells or transfers the line of business for which Product is purchased or is a participant in a merger or other reorganization, Seller (without prejudice to any other rights or remedies it may have) may require immediate payment in full of all amounts payable to Seller by Buyer or a documentary letter of credit approved by a U.S. bank acceptable to Seller or other financial security for such payment or any other obligation. Any letter of credit must be a documentary letter of credit assignable, irrevocable, confirmed by a credible bank with a payment office acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller’s invoice and a bill of lading. Buyer will pay all costs related to the letter of

credit. Buyer shall pay an additional interest in an amount equal to one and one-half percent (1.5%) of the unpaid balance per month (or portion thereof), or if less, at the highest interest rate permitted by applicable law, accruing from the applicable due date. Buyer shall not withhold or set off from any amounts due to Seller, any amounts claimed to be owed by Seller to Buyer for any reason whatsoever.

3. PRICES; SHIPPING CHARGES; TAXES. The prices for all Product purchased hereunder will be the prices contained in the individual written quotations or proposals. Prices are firm only for a period of seven (7) days, unless specified otherwise. All prices are based on quantity indicated and, unless otherwise indicated on Seller's acknowledgment and/or invoice, are F.O.B. the location of Seller's facility from which Product is shipped. All prices shall be subject to change without notice. Buyer shall pay, and be exclusively liable for, all costs of shipping, delivery, insurance and the like after Seller has effected delivery of Product to the carrier. Prices do not include any tax or other governmental charge or assessment on the sale, shipment, production or use of any Product sold hereunder. Such taxes and charges, when applicable, may appear as separate additional charges on Seller's invoice. Buyer shall be responsible for and shall pay to Seller, or if requested by Seller, directly to the taxing authority, all applicable taxes, fees, levies, imports, duties, tariffs, withholdings or other charges (including any interest and penalties thereon), if any imposed by any taxing authority by reason of the sale and delivery of Product to Buyer.

4. DELIVERY.

(a) *General.* Shipping dates are estimates and may be revised by Seller upon receipt or scheduling of Buyer's order or by necessity in filling the order. Seller shall make a commercially reasonable effort to effect shipment on or before the scheduled shipping date(s) reflected on Seller's acknowledgment and/or invoice, but such schedule may vary due to, among other things, conditions beyond Seller's reasonable control, including, but not limited to Seller's receipt of all materials and information to be supplied by Buyer. If no shipping date is specified, shipment will be made on date(s) selected by Seller. In no event shall Seller be liable for any damages or penalties for delay in delivery or for failure to give notice of delay. Delivery may be made in advance of any scheduled delivery date upon reasonable prior notice to Buyer. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of thirty (30) days, Seller may, at its option, terminate the Agreement as to the undelivered Product or waive such delay and establish a new delivery schedule.

(b) *Delay.* If shipment of Product or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold Product at the risk and expense of Buyer from the time it is ready for shipment through the date of actual shipment. In the event of any such delay in shipment, full and final payment for Product is due and payable thirty (30) days after Buyer is notified that Product is ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Products, Buyer must accept shipment immediately.

5. QUANTITY. If the Seller delivers to Buyer a quantity of Product of up to twenty percent (20%) more or less than the confirmed order quantity in pounds, Buyer shall not be entitled to object to or reject Product or any portion of them by reason of surplus or shortfall and shall pay for such Product at the agreed upon price.

6. RISK OF LOSS. Seller assumes no responsibility for delay, breakage or damage after having made delivery in good order to the carrier. All risk of loss of or damage to Product shall be assumed by Buyer upon Seller's delivery of such Product to the carrier for shipment to Buyer. Any and all claims by Buyer for damage, loss or delays in transit shall be made by Buyer against the carrier (with written notice thereof to Seller), and Seller shall have no responsibility or obligations with respect to any such damage, loss or delay. Buyer shall carry out all customs formalities and bear all of the costs and risks resulting therefrom.

7. TITLE. Notwithstanding Section 6, title to any Product sold by Seller to Buyer shall not pass from Seller to Buyer until such Product has been paid for in full. If Buyer should fail to pay when due any amount Buyer owes to Seller, Seller shall have, in addition to any other rights of Seller, the right (without liability to Seller) to repossess Product or to require Buyer to effect (at Buyer's expense and risk) the return delivery of Product to Seller.

8. SECURITY INTEREST; COLLECTION EXPENSES. Until Buyer has paid to Seller all amounts due to Seller in connection with all Product purchased hereunder, Seller shall retain, and Buyer hereby grants to Seller, a security interest (i) in all such Product now existing or hereafter acquired in the amount of the full purchase price, plus all other amounts due hereunder, and all costs of collection incurred by Seller (including but not limited to court costs and reasonable attorneys' fees), (ii) in all proceeds thereof as defined by the Uniform Commercial Code ("UCC") as adopted in the State of Illinois, United States of America, and (iii) in all accounts receivable arising from the resale of any of Seller's Product by Buyer. Seller shall retain all rights and remedies of a secured party under the UCC as in effect at the time of delivery of such Product. This grant of security interest is made to secure payment of all debts or liabilities and performance of all obligations of Buyer to Seller, whether such debts, liabilities or obligations are now existing or hereafter arise and whether direct or contingent. A copy of Seller's invoice, including this Agreement, may be filed with the appropriate authorities at any time as a financing statement or chattel mortgage in order to perfect Seller's security interest. Buyer agrees to execute all instruments and perform all acts which may be deemed necessary by Seller for the creation, perfection and protection of such lien and security interest. In the event Buyer shall fail to make payment when due for purchases, Buyer agrees to pay all of Seller's costs of collection, including reasonable attorneys' fees, costs, and expenses.

9. SET-OFF. In addition to any other right or remedy of Seller at law or in equity, Seller shall be entitled to set off and retain all monies paid (including, but not limited to, credits, monies, or balances owed to Buyer or Buyer's successors, assigns, affiliates, agents and contractors, with respect to any transaction between Buyer and Seller) and to apply the same to any amounts owed to Seller, as Seller in its sole discretion shall deem appropriate.

10. INSPECTION BY BUYER. Buyer shall carefully inspect all deliveries of Products as they are received by Buyer and report to Seller promptly (but in any event within three (3) calendar days after receipt of shipment) any alleged error, shortage, defect or nonconformity of such Products. Any failure by Buyer to timely inspect and timely report shall constitute Buyer's acceptance of such Product and Buyer's waiver of any claim or right against Seller arising with respect to any error, shortage, defect, or nonconformity. Buyer shall conduct any required inspection at its expense and shall return any nonconforming Product to Seller within thirty (30) days after receipt of shipment at Buyer's sole expense and risk.

11. CANCELLATION. Buyer's order shall not be cancelled, changed, reduced in amount, or suspended, in whole or in part, without the express written authorization of Seller (which authorization shall be in Seller's sole discretion).

12. RETURNS. No returns, including special orders, shall be accepted without express written authorization of Seller (which authorization shall be in Seller's sole discretion). In the event that Seller authorizes Buyer's request for a return, the returned products shall be shipped to Seller in original condition, in full case quantities only, freight prepaid by Buyer, and at Buyer's sole risk and expense. In no event will Seller consider returns for products shipped greater than 30 days prior to the request for return. Buyer shall be deemed to have accepted Product at the time of delivery unless it returns such Product to seller in accordance with this Agreement.

13. TERMINATION BY SELLER. Seller may terminate any sale or similar agreement with Buyer upon notice to Buyer.

14. DELIVERY DATES; FORCE MAJEURE. All delivery and completion dates are approximate and Seller shall not be responsible for any damage of any kind resulting from any delay. Seller shall not be liable for any default or delay if caused, directly or indirectly, by acts of God, the elements, labor strikes or other labor disputes, accidents, economic shocks, any governmental action, civil commotion, acts of terrorism, prohibition or regulation, shortage or breakdown of or inability to obtain or non-arrival of any labor, material or product used in the manufacture of Product, failure of any party or third-party to perform any contract with Seller or Buyer relative to Product, or from any other cause whatever beyond Seller's control (individually and collectively, the "Force Majeure Event"). If a Force Majeure Event prevents, delays or otherwise interferes with Seller's delivery or completion of Product which would cause the cost of Product to exceed the total purchase price of such Product, Seller shall be under no obligation to deliver Product unless Buyer agrees to pay the additional costs incurred by Seller in connection with such Force Majeure Event to complete delivery of Product.

15. LIMITED WARRANTY AND WARRANTY PERIOD. Seller warrants that the products manufactured by Seller will be free from defects in material and workmanship, excluding design, at the time of delivery, when installed in accordance with Seller's product guidelines and instructions ("Limited Warranty"). This Limited Warranty is limited to forty-five (45) days from the date of delivery of Product and to Products that have been fully paid for.

(a) *Seller's Obligation Under Warranty.* Seller's sole obligation under this Limited Warranty shall be, in Seller's sole discretion, either to replace or repair Products, during the warranty period when it has been determined by Seller that Product failed due solely to manufacturing defects in materials and workmanship. Seller's warranties will apply only if Products: (i) have been installed, maintained and used in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which Products were designed; (iii) have not been subjected to damage, misuse, abrasion, corrosion, negligence, accident, tampering, faulty installation, improper storage, inadequate maintenance or any other cause affecting Products after shipment; (iv) have not been altered; and (v) have been fully paid for. Seller will not be responsible for the design and fitting of Products, or the function of Product. For the avoidance of doubt, this is not a warranty of performance, but a limited warranty as to the condition of Product at delivery. Seller does not assume responsibility for delays in replacement of products subject to this Limited Warranty. Products replaced by Seller under this Limited Warranty shall be warranted for the balance of the original warranty period. IN NO EVENT SHALL SELLER BE RESPONSIBLE FOR ANY LOSS OR DAMAGE ARISING OUT OF THE BUYER'S IMPROPER SELECTION, MISAPPLICATION OR MISUSE OF PRODUCTS.

(b) *Disclaimer of All Other Warranties.* SELLER MAKES NO WARRANTIES OR CONDITIONS BEYOND THOSE STATED IN THIS LIMITED WARRANTY. SELLER DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. SOME STATES (OR JURISDICTIONS) DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR CONDITIONS, SO THIS LIMITATION MAY NOT APPLY IN ALL CIRCUMSTANCES.

(c) *Patent Warranties.* SELLER DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT. IF THE DESIGNS OR SPECIFICATIONS ARE FURNISHED BY BUYER, BUYER WARRANTS THAT THEY DO NOT INFRINGE ON ANY PATENT OR OTHER INTELLECTUAL

PROPERTY RIGHT, AND MUST INDEMNIFY AND HOLD HARMLESS SELLER FROM ANY CLAIMS OF INFRINGEMENT AGAINST SELLER RELATING TO THEIR USE BY SELLER.

(d) *Limitations.* No salesperson, representative or agent of Seller is authorized to make any guaranty, warranty or representation that contradicts the terms contained in this Limited Warranty. Any waiver, alteration, addition or modification to the warranties contained herein must be in writing and signed by authorized representatives of Seller to be valid, binding and enforceable. Seller does not assume responsibility for any defective product not manufactured by Seller to which a Seller Product is attached. All statements, technical information or recommendations relating to Product are based upon tests believed to be reliable but do not constitute a guaranty or warranty. Seller shall not under any circumstances whatsoever be liable to any party for loss of profits, diminution of good will or any other special, consequential or incidental damages whatsoever with respect to any claim made under this limited warranty. Some states (or jurisdictions) do not allow the exclusion or limitation of incidental or consequential damages, so this limitation may not apply in all circumstances.

16. LIMITATION OF LIABILITY. Buyer's sole and exclusive remedy for breach or any claim in connection with this Agreement, other than those arising under the Limited Warranty, shall be for repair or replacement of the Product giving rise to said breach or claim. Buyer's sole and exclusive remedy for breach or any claim in connection with the Limited Warranty shall be repair or replacement of Product giving rise to said breach or claim.

EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 15 ABOVE, SELLER SHALL HAVE NO LIABILITY, OBLIGATION OR RESPONSIBILITY OF ANY KIND, IN ANY WAY OR TO ANY EXTENT FOR ANY CLAIMS, LOSSES, EXPENSES, COSTS, DAMAGES OR LIABILITIES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH (I) THE PRODUCT, (II) FOR ANY REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO PRODUCT (OR THE USE, SALE, RESALE OR PERFORMANCE THEREOF), (III) THE SALE, USE OR RESALE OF THE PRODUCT, (IV) ACTS OR OMISSIONS OF ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY VENDOR REFERRED BY OR ON BEHALF OF BUYER.

IN NO EVENT WHATSOEVER SHALL SELLER HAVE ANY LIABILITY, OBLIGATION OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO, DAMAGE TO PROPERTY, INJURY TO PERSONS, LOSS OF USE OF PRODUCTS OR ANY ITEM WITH WHICH SUCH PRODUCTS ARE USED, LOST PROFITS, LOSS OR USE OF DATA OR INFORMATION OF ANY KIND, OR DELAYS OR INCONVENIENCE) ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH, THIS AGREEMENT OR THEIR SUBJECT MATTER, ANY PRODUCTS OR THEIR SALE, USE OR RESALE, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, EQUITY, TORT (INCLUDING ANY FORM OF NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THESE LIMITATIONS SHALL APPLY DESPITE ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION, THEN SELLER'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT POSSIBLE.

SELLER'S MAXIMUM LIABILITY TO BUYER HEREUNDER, OR TO ANY PARTY OTHER THAN THE ORIGINAL BUYER OF PRODUCT, INCLUDING, BUT NOT LIMITED TO BUYER'S BENEFICIARIES, SUCCESSORS OR ASSIGNS, OR ANY OTHER THIRD PARTY, ARISING OUT OF OR IN CONNECTION WITH THE PRODUCT OR SALE, USE OR RESALE OF PRODUCT SOLD HEREUNDER, THE TRANSACTIONS CONTEMPLATED HEREBY, OR SELLER'S OR BUYER'S

CONDUCT OR ACTIONS IN RELATION TO ANY OF THE SAME OR TO EACH OTHER, RESULTING FROM BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE, SHALL BE STRICTLY LIMITED TO, THE AMOUNT(S) ACTUALLY RECEIVED BY SELLER FROM BUYER AS PURCHASE PRICE FOR PRODUCT WHICH GIVE RISE TO SELLER'S LIABILITY.

17. NO ASSURANCES AS TO RESULTS. Buyer acknowledges that no guarantees or assurances have been made as to the results that may be obtained from the use of the products sold hereunder whether used singly or in combination with other items. No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning Products not contained in this Agreement. Any technical advice Seller furnishes with respect to the use of Products is given without charge, and Seller shall have no obligation or liability for the advice given or the results obtained, all such advice being given and accepted at Buyer's risk.

18. INDEMNITY. Buyer shall defend, indemnify and hold harmless Seller, its subsidiaries, successors, assigns, affiliates, agents and contractors, and the officers, directors and employees of each of them, from and against any and all third-party damages, losses, claims, judgments or other liability, costs or expenses (including but not limited to, court costs and reasonable attorneys' fees) incurred by Seller, which may in any way arise out of theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the production, use, storage, sale, processing or other disposition of Product, supplies or materials used in connection with Product, or parts manufactured with Product, if (i) the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller, or (ii) the claim asserted is inconsistent with the limitation of warranties, limitation of liability, and/or limitation of remedies set forth herein. Seller reserves the right, without being required to do so, and without waiver of any indemnity hereunder, to defend, at Buyer's expense, any claim, action or lawsuit coming within the scope of this indemnity provision. Seller is under no obligation to indemnify Buyer for any reason.

19. CONFIDENTIALITY.

(a) *Buyer's Rights to Confidentiality.* Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Seller to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure.

(b) *Seller's Rights to Confidentiality.* All proposals, plans and other information furnished by Seller, in any form, during bidding, negotiating and delivery of Product are confidential and the property of Seller, whether or not marked "Confidential," and may not be shown or disclosed to any other bidder, and may not be shown or disclosed to any other third party or used by Buyer except as may be necessary for the selection or use of Product.

(c) *Buyer's Obligations.* Buyer must treat as confidential any business proposal from Seller and all technology made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer may use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform hereunder. Buyer may not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer must maintain, for Seller's inspection, written records which must include the names and address of such employees and

contractors granted such access. Buyer will indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer

20. INTELLECTUAL PROPERTY. Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations will remain the exclusive property of Seller and its licensors, as the case may be. Nothing herein will be deemed to grant Buyer any license or any other rights in such Intellectual Property. The term "Intellectual Property" includes without limitation all of the following: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design and process patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements improvements, work-in-progress, research and development information; and (v) all other proprietary rights relating to the foregoing.

21. BREACH.

(a) *Default.* If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover Product in transit or delivered, disable delivered Products, and otherwise enforce its remedies for Buyer's default.

(b) *Compensation.* Seller will be awarded interest, consequential and incidental damages and costs (such as interest and actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.

(c) *Security.* Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment. If Buyer does not post such security, Seller may cease performance of its obligations, and enforce its remedies for Buyer's default.

(d) *Remedies Not Exclusive.* Except where expressly stated otherwise in this Agreement: any enumeration of Seller's rights and remedies is not intended to be exhaustive; Seller's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy; and, all of Seller's rights and remedies are cumulative and are in addition to any other right or remedy that may be available to Seller.

(e) *Good Faith.* Seller will not be liable for any action taken pursuant to a good faith exercise of any of its rights herein.

(f) *Waiver.* Seller's failure or delay in enforcement of any provision will not constitute a waiver of a breach or of that provision.

22. MISCELLANEOUS.

(a) *Enforcement.* Buyer shall be responsible and liable for all costs incurred by Seller in enforcing its rights and Buyer's obligations under this Agreement.

(b) *Severability.* If any provision of this Agreement is determined to be invalid, illegal or unenforceable, but if the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable, then the remaining provisions of this Agreement remain in full force.

(c) *Entire Agreement; Amendments.* This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous oral and written communications, negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of the other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than those expressly stated in this Agreement.

(d) *Waivers.* The parties may waive any provision in this Agreement only by a writing executed by the party against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this Agreement, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

(e) *Notices.* Any notice, request, demand or other communication (each, a "Notice") given pursuant to this Agreement must be in writing and delivered to the other party by either personal delivery, Certified Mail (return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid), facsimile or e-mail at the address of such party listed on the signature page to this Agreement. Notices will be deemed delivered upon the recipient's confirmation of receipt. A party may change its address by giving Notice pursuant to this Section.

(f) *Successors and Assigns.* Unless there is evidence to the contrary, if there is an assignment, voluntary or involuntary, by merger, consolidation, dissolution, change of control, operation of law or any other manner, then this Agreement will be binding upon the successors and assigns of the assigning party and will continue to be binding upon the nonassigning party.

(g) *Third Party Beneficiaries.* Except where expressly stated otherwise in this Agreement, this Agreement does not and is not intended to confer any rights or remedies upon any party other than the parties to this Agreement.

(h) *Attorneys' Fees.* If Seller turns over to an attorney the collection of any amount due under this Agreement, then Buyer shall pay to Seller all of Seller's expenses and reasonable attorneys' fees and disbursements. Subject to the previous sentence, in all other events, the prevailing party in any action under this Agreement will be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

(i) *Governing Law.* The laws of the State of Illinois (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance and enforcement.

(j) *Forum Selection.* Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement may bring the legal action or proceeding in, and each party hereby submits to the nonexclusive jurisdiction of, the United States District Court for the Northern District of Illinois, and its appellate courts, or in any court in the State of Illinois sitting in Du Page County, Illinois,



and its appellate courts. Each party waives, to the fullest extent permitted by law: (i) any objection that it may now or later have to the laying of venue or any legal action or proceeding arising out of or relating to this Agreement brought in any court of the State of Illinois sitting in the City of Chicago, or the United States District Court for the Northern District of Illinois; and (ii) any claim that any action or proceeding brought in any court specified in the preceding clause (i) has been brought in an inconvenient forum.

(k) *Arbitration.* At Seller's election, all controversies and claims arising out of or relating to this Agreement, or the breach thereof, will be settled solely by arbitration held in DuPage County, Illinois, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, provided Seller may also elect to institute, prior to formation of the arbitration panel, an action for a claim and delivery or replevin action to enforce its security or other interest in Product. The arbitrator(s) may enter an interim award that Product be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereon. No demand for arbitration hereunder may be filed by Buyer. The arbitrator(s) will be bound by these this Agreement and will not apply any principles of equity nor allow any claims not specifically permitted by these this Agreement. The arbitrator(s) may include the fees of the arbitration tribunal and arbitrators in an award. The arbitration proceedings and the award will be confidential.

(l) *Waiver of Jury Trial.* EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL, OR THAT IT HAD THE ABILITY TO SO CONSULT, BUT MADE AN INFORMED DECISION NOT TO DO SO.

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