

Sales Order Terms and Conditions

1. Applicability. These Sales Order Terms and Conditions (these “**Terms**”) are the only terms which govern the sale of the goods (“**Goods**”) by the vendor named on the Sales Order to which these Terms are attached (“**Seller**”) to the purchaser named on the Sales Order (as hereafter defined) to which these Terms are attached (“**Buyer**”). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The sales order form to which these Terms are attached (the “**Sales Order**” and collectively with these Terms, this “**Agreement**”) 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 Terms 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 acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. Buyer’s acceptance of the Sales Order shall be deemed to be Buyer’s acceptance of each of the terms and conditions contained herein.

2. Delivery. The Goods will be delivered within a reasonable time after Seller’s receipt of Buyer’s Sales Order subject to availability of finished Goods. Unless otherwise agreed in writing by the parties, Seller’s shipping terms are FOB origin at Seller’s facility located at 3922 Pembroke Road, Pembroke Park, Florida 33021 (the “**Origin Point**”). If Seller includes shipping of the Goods to any delivery point other than the Origin Point, Buyer shall be responsible for all unloading costs and provide equipment and labor reasonably suited for receipt of the Goods to Buyer’s destination point. Seller shall not be liable for any delays, loss or damage in transit. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods 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. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller’s notice that the Goods have been delivered at the Origin Point, or if Seller is unable to deliver the Goods at Buyer’s requested destination point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. Non-Delivery. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller’s place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller’s negligence) unless Buyer gives written notice to Seller of the non-delivery within two (2) days of the date when the Goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Quantity. If Seller delivers to Buyer a quantity of Goods of up to 5% more or less than the quantity set forth in the Sales Order, or any other variance in order quantity agreed to between Buyer and Seller, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Order adjusted pro rata.

5. Shipping Terms. Delivery shall be made FOB (Seller’s Location at 3922 Pembroke Road, Pembroke Park, Florida 33021).

6. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Goods at the Origin Point. As collateral security for the payment of the purchase price of the

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Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, 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 Florida Uniform Commercial Code.

7. Amendment and Modification. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

8. Inspection and Rejection of Nonconforming Goods. Buyer shall inspect the Goods within three (3) days of receipt (“**Inspection Period**”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. “**Nonconforming Goods**” 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. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller’s facility located at 3922 Pembroke Road, Pembroke Park, Florida 33021. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Goods to the Origin Point. Buyer acknowledges and agrees that the remedies set forth in the preceding sentence are Buyer’s exclusive remedies for the delivery of Nonconforming Goods, and except as provided under the preceding sentence, all sales of Goods

to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

9. Price. Buyer shall purchase the Goods from Seller at the price(s) (collectively, the “**Price**”) set forth in the Sales Order. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, personnel or real or personal property or other assets.

10. Payment Terms. Buyer shall pay all invoiced amounts due to Seller on receipt of Seller’s invoice. Buyer shall make all payments hereunder as per the payment terms specified in the Sales Order and in US dollars. Fees up to four percent (4%) may apply for any payments made by credit card. Buyer shall pay interest on all late payments at the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 14 days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise. Without limiting any of the foregoing, to the extent Buyer delivers any deposit to Seller to begin producing the Goods, Buyer understands, acknowledges and agrees that such deposit shall be nonrefundable and shall be retained by Seller for any reason whatsoever except for Seller’s failure to deliver the Goods as specified herein.

11. Limited Warranty. Seller warrants to Buyer that for a period of 6 months

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from the date of shipment of the Goods (“**Warranty Period**”), that such Goods will materially conform to Seller’s published specifications in effect as of the date of manufacture and will be free from material defects in material and workmanship. Except for the warranty set forth in the preceding sentence, Seller makes no warranty whatsoever with respect to the Goods, including any warranty of merchantability, warranty of fitness for a particular purpose, warranty of title, or warranty against infringement of intellectual property rights of a third party, whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise. Products manufactured by a third party (“**Third Party Product**”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in this Section 11. For the avoidance of doubt, Seller makes no representations or warranties with respect to any Third Party Product, including any warranty of merchantability, warranty of fitness for a particular purpose, warranty of title, or warranty against infringement of intellectual property rights of a third party, whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise. The Seller shall not be liable for a breach of the warranty set forth in this Section 11 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller’s place of business at Seller’s cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the Goods are defective. The Seller shall not be liable for a breach of the warranty set forth in this Section 11 if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller. Subject to the two preceding sentences, with respect to any such Goods during

the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller’s expense, return such Goods to Seller. The remedies set forth in the preceding sentence shall be the Buyer’s sole and exclusive remedy and Seller’s entire liability for any breach of the limited warranty set forth in this Section 11.

12. Limitation of Liability. In no event shall Seller 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 Seller has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose. In no event shall Seller’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 total of the amounts paid to Seller for the Goods sole hereunder.

13. Insurance; Indemnification. During the term of this Agreement, and for a period of six (6) months thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000.00 with financially sound and reputable insurers. Upon Seller’s request, Buyer shall provide Seller with a certificate of insurance from Buyer’s insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with thirty (30) days’ advance written notice in the event of a cancellation or material change in Buyer’s insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller’s insurers and Seller. Buyer shall, at Buyer’s sole cost and expense, release, defend, indemnify and hold

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Seller, its affiliates, and the directors, officers, agents, employees and shareholders of each harmless from and against all claims, demands, disputes, complaints, causes of action, suits, losses and damages (including attorneys' fees) of any kind to the extent they in any way relate to or arise, in whole or in part, due to (i) the act or omission of Buyer or any of its subcontractors, representatives, or agents, or the employees of any thereof, or anyone acting under their direction, control or on their behalf, in the performance of this Agreement or any breach or default hereunder or (ii) a claim that the Goods are defective, or (iii) a claim that the Goods, or any part thereof, infringes a patent, copyright, trademark, trade secret or other intellectual or proprietary right of a third party.

14. 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, if any, involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

15. Termination. In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. 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.

17. Confidential Information. All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller 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 Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller 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.

18. Intellectual Property. If Seller provides to Buyer any development, consulting, analysis, design, computer programming, installation, testing, conversion, implementation, training, technical writing and any other services resulting in the creation or modification of any computer programs, firmware, schematics, flowcharts, drawings, specifications, documentation, reports, recommendations or other writings, information or material embodied in a tangible medium ("**Deliverables**"), then: (i) all Deliverables developed in connection with the Sales Order, either by Buyer or jointly by Buyer and Seller, or by Seller pursuant to specifications or instructions provided by Buyer, shall be owned by Seller and constitute confidential information subject to Section 17 hereof; (ii) Deliverables that are owned by and confidential to Seller shall be considered work made for hire

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belonging exclusively to Seller with Seller having the right to obtain and to hold in its own name patents, copyrights, registrations, or such other protection as may be appropriate to the subject matter and any extension or renewals thereof (to the extent that any such Deliverables are not subject to the United States Copyright Act or do not otherwise qualify as work made for hire treatment under such Act, Buyer agrees to assign and does hereby assign all intellectual property rights in such Deliverables to Seller, and Buyer agrees to fully cooperate with Seller and any other person designated by Seller, at Seller's expense, in furtherance of Seller's rights under this Section 18, and Buyer will not, nor will it permit its employees to sell, transfer, assign, plagiarize or otherwise disclose such Deliverables to any third party); (iii) there are no restrictions on Seller's right to make, have made, use, modify, create derivative works of, reproduce, have reproduced, perform, display, sell and distribute Deliverables that are owned by Seller; (iv) with respect to any Seller-owned software, Buyer agrees to deliver to Seller the source code (including flowcharts, compile listings and comments sufficient to enable a reasonably skilled programmer to understand the function and operation of such computer programs) at no additional charge, and when Seller shall come into possession of such computer program source code in accordance with this Agreement, Seller shall thereafter have the absolute right to modify such source code to perform any functions that Seller deems necessary or desirable.

19. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not

relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

20. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section 19 is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

21. 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.

22. 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.

23. Governing Law; Venue. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision or rule (whether of the State of Florida or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Florida. 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 Florida in each case located in the County of Broward, State of Florida, and each party irrevocably submits to the exclusive jurisdiction

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of such courts in any such suit, action or proceeding.

24. 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 Sales Order. 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.

25. Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival. Provisions of these Terms 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, Sections 13, 14, 17, 18, 23, and 26.