

## Hill PHOENIX TERMS AND CONDITIONS OF SALE

1. **Acceptance and Complete Agreement.** All orders placed for products (the "Products"), spare/replacement parts for products ("Spares") and/or services (the "Services"), as applicable, furnished by HILL PHOENIX, INC. ("Seller") to the purchaser thereof (the "Buyer") are subject to the terms and conditions set forth herein and any Schedules attached hereto (collectively, these "Terms"), the warranty incorporated by reference in Section 13 of these Terms (the "Warranty") the written order acknowledgment from Seller accepting the Buyer's written order for the Products or Services (the "Order Acknowledgment"), and any confidentiality and/or nondisclosure agreement executed between Seller and Buyer (the "NDA"). These Terms, the Warranty, the Order Acknowledgment, and the NDA are hereafter collectively referred to as the "Contract," whether or not specifically referred to. If any provision in the Order Acknowledgment is inconsistent with these Terms, the provision of the Order Acknowledgment shall govern. No additional or different terms or conditions or any modifications, changes or amendments to the Contract shall be binding upon Seller unless specifically agreed to in writing by an authorized representative of Seller. Seller hereby objects to, and rejects, any additional or different terms already or hereafter proposed by Buyer, whether contained in any of Buyer's documentation including, without limitation, a purchase order, acknowledgement or other form, or in any other communication received by Seller from Buyer. Seller's failure to further object to any of the provisions contained in any documentation of Buyer's or any communication of any kind from Buyer shall not be deemed a waiver of the terms of the Contract or as an acceptance by Seller of any deviation from the terms of the Contract. SELLER'S ACCEPTANCE OF ANY OR ALL OF THE BUYER'S ORDERS FOR PRODUCTS OR SERVICES IS CONDITIONAL UPON BUYER'S ASSENT TO THE TERMS OF THE CONTRACT IN LIEU OF THE TERMS CONTAINED IN ANY OF BUYER'S COMMUNICATIONS OR DOCUMENTATION. The Contract constitutes the entire agreement between Seller and Buyer, superseding all prior oral or written communications and negotiations.

2. **Delivery and Delay.** All quoted delivery dates are estimates only. Seller reserves the right to make delivery in installments; and all such installments, when separately invoiced, shall be paid for when due per Seller's invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries.

3. **Shipment.** Unless otherwise specified in the Order Acknowledgment, all shipments are EXW Seller's factory(Incoterms 2010). Title to and risk of loss of the Products will pass to Buyer when the Products are made available to Buyer's nominated carrier at Seller's factory. Buyer shall be responsible for all shipping charges, including but not limited to shipping, transportation, duties and insurance costs. The Products will be shipped under a straight bill of lading, naming Buyer as consignee. If requested by Buyer, forthwith after the Products have been delivered to a shipper for transportation to Buyer, Seller shall transmit the bill of lading to Buyer at Buyer's address as stated in Buyer's order. Seller's responsibility for damaged goods ceases upon acceptance by the carrier and all claims for loss or damage occurring after acceptance by the carrier must be filed by Buyer with the carrier. In the event of (a) shortage, or (b) visible damage, (c) concealed damage or (d) loss occurring prior to acceptance by the carrier, a claim must be made in writing by the Buyer against

Seller. All claims against the carrier or Seller under this Section 3 must be made within two (2) weeks after the shipment date of the Products; provided, however, that Buyer may make a claim within four (4) weeks after the shipment date of the Products for international shipments. Buyer's failure to timely make any such claim shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims against Seller are subject to Buyer's compliance with Seller's RMA policy, which will be provided to Buyer upon request. Seller may, at Seller's option, require Buyer to (i) provide photographs or other documentation of such claim, and (ii) make the Products subject to the claim available for inspection by Seller or its authorized representative in order to substantiate the grounds for rejection of the Products. All rejected Products must be returned to Seller, at Buyer's expense, prior to replacement by Seller.

4. **Storage.** Any of the Products whose manufacture, installation or shipment is delayed by (a) the acts or omissions of Buyer or (b) at Buyer's request, may be placed in storage by Seller (at Seller's sole option) at Buyer's risk and at Buyer's expense. Storage fees will be assessed from the original shipment date until the actual equipment shipment date. The storage fee rate for finished Products that are prevented from shipping will be provided to Buyer. The storage fee will be added along with the actual freight and handling and applicable taxes to the final invoice for the Products. All charges for storage are per Product, and may vary based on the type of Product stored.

5. **Orders and Price.** All prices and delivery quotations made by Seller are conditioned upon these Terms. No order shall be binding upon Seller until received in writing and accepted by an authorized representative of Seller through Seller's issuance of a written Order Acknowledgment. Any Contract(s) resulting from acceptance of any order(s) placed with Seller may only be modified or rescinded by a written document, signed by the duly authorized representative of both parties. Buyer will be billed at Seller's prices stated at the time of order acceptance by Seller. All prices and special terms offered by Seller will expire thirty (30) days from the date such pricing or terms were originally proposed by Seller. Unless otherwise specifically agreed, all prices are for Products packaged for domestic shipment and for delivery F.O.B. point of manufacture, and are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms and conditions, which are not part of the original price quotation. If the prices are based on the purchase of a particular quantity of goods and Buyer fails to purchase that quantity which would justify the pricing granted, Buyer will, at Seller's option, pay Seller the difference between the stated prices and Seller's standard prices for such goods in the quantity actually purchased by Buyer.

6. **Price Adjustments.** The price of services or product(s) provided under this Agreement is subject to change within the discretion of Seller due to increases in material costs related to tariffs, import duties, trade policy, pandemics/epidemics, commodity or material costs, supplier costs, labor costs or related impacts or market conditions. Such changes shall come into effect with reasonable prior written notice from Seller to Customer. Such price change notification(s) to Customer shall also apply to prior orders or acknowledgments not yet fulfilled or in process, if indicated by Seller.

7. **Payment.** Terms of payment are net thirty (30) days from the date of Seller's invoice and shall be made in U.S. dollars, provided that Seller reserves the right to modify its credit terms from

time to time. If delivery is delayed by Buyer, date of notice of readiness for delivery shall be deemed to be date of delivery for invoice purposes. Any late payments are subject to a finance charge of the lesser of 1.5% per month (18% per annum) or the maximum amount allowed by law. If Seller accepts partial payment in an amount less than the full amount of any invoice, such acceptance shall neither constitute a waiver of Seller's right to collect the balance nor an accord and satisfaction, notwithstanding Seller's endorsement of a check or other instrument. In the event of Buyer's bankruptcy or insolvency, Seller shall be entitled to cancel any order then outstanding without waiving any claims in law or equity. Buyer shall have no right to withhold any amount due Seller under the Contract because of a claim Buyer may have against Seller. If Seller engages counsel in respect of any late payment or default, Buyer will pay, in addition to the balance then due and owing, all collection costs, court costs, administrative costs, investigation costs, reasonable attorneys' fees and all other incidental costs, charges or expenses incurred in the collection of past due amounts or otherwise resulting or arising from any breach by Buyer of the Contract. In addition to all other remedies available under the Contract or at law (which Seller does not waive by the exercise of any rights under the Contract), Seller shall be entitled to withdraw credit or suspend or cancel the delivery of any Products or provision of any Services, under this or any other Contract between the parties, if Buyer fails to pay any amount when due hereunder and such failure continues for five (5) days following written notice to Buyer thereof.

8. **Taxes and Other Charges.** Unless otherwise specified or required by law, all prices will be quoted and billed exclusive of customs, duties or taxes, and Buyer shall be responsible for all such applicable duties and taxes (exclusive of taxes on Seller's income). If exemption from such taxes is claimed, Buyer must provide a certificate of exemption at the time its order is submitted to Seller, and Buyer will indemnify Seller for any unpaid taxes, as well as any penalties and interest, in the event such exemption is not applicable.

9. **Substitutions; Modifications.** Seller shall have the right to deliver substitute products for the Products ordered by Buyer, provided that such substituted products do not materially differ from the ordered Products in terms of overall form, fit and performance, as determined in Seller's sole and complete discretion. Seller reserves the right at any time to make changes to Products, without liability or obligation to implement such change to any Products previously manufactured, and further reserves the right to discontinue any Product.

10. **Cancellation by Buyer; Rescheduling.** Buyer may cancel its order, reduce quantities, revise specifications or extend delivery schedules as long as Seller is notified in writing prior to the cancellation deadline, if any, set forth in the Order Acknowledgment; provided, however, that if no cancellation deadline is set forth in the Order Acknowledgment, Buyer must notify Seller in writing no later than 45 calendar days prior to the shipment date originally specified in the Order Acknowledgment. Seller may invoice Buyer for cancellation fees which shall take into account all expenses (a) already incurred, including but not limited to expended materials, labor, and work in progress; (b) for outstanding commitments that cannot be cancelled; and (c) for all incidental costs and expenses, including but not limited to storage and handling fees. Buyer will pay such cancellation fees within 30 days of the date of Seller's invoice.

11. **Cancellation by Seller; Rescheduling.** Seller reserves the right to cancel any orders placed by Buyer, or to refuse or delay

shipment thereof, if Buyer (a) fails to make any payment as provided in the Contract or under the terms of payment set forth in any invoice or otherwise agreed to by Seller and Buyer, (b) fails to meet reasonable credit or financial requirements established by Seller, including any limitations on allowable credit, or (c) otherwise fails to comply with the Contract.

12. **Returns.** Seller may, in its sole discretion, accept the return of Spares. Spares must be in good working condition to be eligible for return. Prior to returning any Spares, Buyer shall issue a written request to Seller for a Return Merchandise Authorization (RMA) number setting forth the reason for such request in reasonable detail. Any return of Spares to Seller will be made ONLY upon Seller's assignment of an RMA number to Buyer. Such RMA number must be displayed prominently on the outside of the box that contains the returned Spares. Any Spares returned to Seller without an RMA number will be refused and returned to Buyer at Buyer's expense.

13. **Buyer Supplied Parts.**

a. **Governing Provisions.** This Section 12 contains provisions specifically and only applicable to orders for Products for which Buyer supplies (a) parts to Seller for integration into the Products ("Buyer Supplied Parts" or "BSP"), or (b) designs.

b. **Buyer Supplied Parts.** Product ship dates are contingent on receipt of any and all BSP(s) on or before the BSP delivery date(s) provided in the applicable Order Acknowledgment. Any BSP delivery date missed by more than two (2) business days will result in the order being handled pursuant to Section 12(d) below.

c. **Buyer Design Changes.** All ship dates are based on design(s) finalized on or before the design finalization date(s) specified in the applicable Order Acknowledgment. Changes requested after that point in time will be accommodated pursuant to Section 12(d) below.

d. **Late BSP Delivery or Design Changes.** In the event that any BSP delivery or design change is not timely made as described in Sections 12(b) and 12(c) above, the order shall be handled as follows: (a) Buyer may request that Seller expedite the manufacturing of the Product to meet the original shipment date, subject to Seller's acceptance of such request and Buyer's payment of rescheduling charges; or (b) the Product is placed on "Hold" and its shipment rescheduled. If a Product is placed on "Hold", the revised ship date will be formalized by Seller after determination of the next available production slot. In the event of a design change, the next available production slot must allow completion of the design change cycle. This cycle includes the quoting of, and Buyer's agreement to, the revised pricing associated with the design change, the engineering implementation of the design change, and the acquisition of materials required for the design change. At Seller's election, the design change may also be implemented in the field as an aftermarket modification. Other options will be considered by specific changes on specific Products at the time of the design change request.

e. **Specifications.** Quantities and sizes are subject to variation in accordance with Seller's standard practices and tolerances and the requirements of the job where the Products are to be installed.

f. **Installation.** If the applicable Order Acknowledgment provides for installation, Seller's obligation to deliver the Product and provide for its installation shall in no event commence until the premises is ready to receive the Product, and such obligations shall be subject to all other terms of the Contract. Costs and

expenses to Seller or its contractor of delays in installation due to interference by Buyer or other contractors working on the premises will be charged to the Buyer, and shall extend Seller's time of performance to the extent of such delay. Installation costs stated in the Contract are estimated, cover only installation of the Products specified herein, and do not cover any other costs, including, but not limited to, costs of electrical work, carpentry, plumbing, sweeping, mopping, dusting or general cleanup. Seller or its contractor shall not be responsible for removing or disposing of the packing material, cartons, boxes or other containers housing the Products. Buyer must inspect and accept or reject the Product and services performed by Seller within five (5) business days from the date of installation, or the Product and such services shall be deemed accepted by Buyer.

14. **Warranty.**

a. **General.** [The warranty applicable to the Products is located at [www.hillphoenix.com/warranty](http://www.hillphoenix.com/warranty) and is incorporated herein by reference. The extended warranty provisions of the Warranty shall apply to the Products if an extended warranty is purchased by Buyer, as indicated on the applicable Order.]

b. **Additional Terms Pertaining to Warranties.** Deviations from published specifications which do not materially affect performance of the Products covered hereby shall not be deemed to constitute a breach of the Warranty. The Warranty is subject to the disclaimers and exclusions set forth therein.

15. **Intellectual Property Rights.** All intellectual property rights in, or relating to, the Products, Spares or Services, including but not limited to all technical data, processes, designs, drawings, engineering data, U.S. and foreign patents, patent applications, patent rights, trademarks and service marks (including common law rights, applications and registrations therefor), copyrightable and un-copyrightable works (including those in computer programs, drawings, designs, documentation and specifications), copyright registrations, trade secrets, proprietary rights in information (including in data, inventions, discoveries, know-how, formulas, processes, technical information and business information), license rights under the intellectual property rights of third parties and all other intellectual property rights whether or not subject to statutory registration or protection (collectively, "Intellectual Property Rights"), are owned by or licensed to Seller. The sale of any Products, Spares or Services to Buyer in no way conveys to Buyer, either expressly or by implication, any intellectual property ownership or license whatsoever, except as may be granted by the Seller in the materials which accompany the Products, Spares or Services upon delivery. Seller expressly reserves its ownership rights in and to its Products, Spares and Services, and asserts that additional restrictions may apply to the use of the Products, Spares or Services, as set forth in the applicable Products, Spares or Services documentation and other materials which accompany the Products, Spares or Services.

a. **Infringement Claims – Indemnification by Seller.** Seller will defend, indemnify and hold harmless Buyer and its officers, directors, employees, agents and shareholders from any liabilities, losses, costs and expenses (including without limitation reasonable out of pocket expenses for attorneys' fees and costs of litigation) (collectively "Losses") arising out of a claim made against Buyer by a third party (but excluding claims described in Section 14 (b)) for alleged infringement of any U.S. patent, trademark or copyright existing as of the effective

date of any Contract and relating to Buyer's lawful use of the Products purchased under such Contract in Buyer's business. Seller's obligations hereunder are contingent upon Buyer having made all payments to Seller then due at the time the claim arises and not otherwise being in breach of any provision of the Contract as well as Buyer's complying with the Indemnification Procedures outlined below. Seller may also, at any time, at its option: (i) procure for Buyer the right to continue to use the Products in question, free of any liability for such infringement; or (ii) direct Buyer to cease use of and not market or sell such Products and (1) modify the Products in question so that they become non-infringing; (2) substitute the Products in question with functionally equivalent non-infringing Products; or (3) in accordance with Section 11 above, accept the return of the Products against payment of the Products' then-depreciated value, computed on a three (3) year straight-line depreciation schedule commencing as of the date of delivery. The obligations set forth in this Section 14(a) shall be Buyer's sole and exclusive remedy and Seller's entire liability for any infringement of third party intellectual property rights as described in this Section 14(a).

b. **Infringement Claims – Indemnification by Buyer.** Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, employees, agents and shareholders from and against any Losses arising out of a claim made against Seller or its suppliers by a third party to the effect that any Products manufactured for or sold to Buyer infringe upon any patent, trademark, copyright or other intellectual property right, if such Products were manufactured pursuant to Buyer's designs, specifications, processes and/or formulas.

16. **Other Indemnification Claims.**

a. **By Buyer.** Buyer shall defend, indemnify and hold harmless Seller and its officers, directors, employees, agents and shareholders from and against any and all Losses arising out of the use, operation or possession of the Products by Buyer or its affiliates, directors, employees, agents or representatives; the negligent or willful act or negligent or willful omission of Buyer or its affiliates, officers, directors, employees, agents or representatives; or the alteration or modification of the Products or the use or combination of the Products with other products, devices or services by Buyer or its affiliates, directors, employees, agents or representatives.

b. **By Seller.** Seller agrees to defend, indemnify, and hold harmless Buyer and its officers, directors, employees, agents and shareholders from and against any and all Losses arising out of the negligent or willful act or negligent or willful omission of Seller or its affiliates, officers, directors, employees, agents or representatives; and any and all lien notices, lien claims, liens, encumbrances, security interests, or other lien rights of any kind filed by any party including without limitation, any subcontractor, which in whole or in part are based in Products or Services provided to Buyer.

17. **Indemnification Procedures.** Promptly after receipt of any written claim or notice of any action giving rise to a claim for indemnification, (a) the indemnified party shall notify the other party and provide copies of the claim and any documents relating to the same in its possession; and (b) the indemnifying party shall have control of the defense of any such claim and all negotiations for settlement or compromise provided, however, that the indemnified party shall have the right to approve defense counsel selected by the indemnifying party, such consent not to be unreasonably withheld or

delayed. In the event both the indemnified party and the indemnifying party are named in the claim and circumstances exist or may arise which would make the indemnifying party and the indemnified party adverse to each other or create a conflict of interest for the indemnifying party defending the indemnified party, the indemnified party shall be permitted to participate in the defense of the claim with counsel of its own choosing at the reasonable cost and expense of the indemnifying party; and (c) at the indemnifying party's reasonable request and expense, the indemnified party shall provide it with reasonable assistance for the defense of the claim. The indemnified party shall be entitled to employ counsel at its own expense to monitor the handling of the claim and neither party shall settle a claim that imposes on, or restricts the operations of, the other party or requires the other party to pay monies or make admissions without the written consent of such other party, which consent shall not be unreasonably withheld or delayed. If the indemnifying party fails to assume the defense of any claim within the prescribed period of time, then the indemnified party may assume the defense of such claim at the reasonable cost and expense of the indemnifying party.

18. **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 the Contract is confidential, solely for the use of performing this Contract 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: 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. The parties agree that the provisions set forth in the NDA (if executed by the Parties), shall supplement and be in addition to the obligations of this Section. In the event of any conflict between this Contract and the NDA, the parties agree that the NDA shall control with respect to the obligations of confidentiality of information between the parties, and this Contract shall control with respect to the sale of any Products or Services.

19. **Data Security.** Buyer shall comply with the data protection and privacy legislation in all relevant countries and shall ensure that its employees, agents and contractors observe the provisions of that legislation. Buyer represents that it has developed and implemented and covenants that it will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to (a) ensure the confidentiality, security, integrity and availability of Seller's Confidential Information provided hereunder; (b) protect against anticipated threats or hazards to the confidentiality, security, integrity and availability of such information; (c) protect against unauthorized access or use of such information; and (d) ensure the proper disposal of such information. Buyer shall promptly notify Seller of any breach of confidentiality by Buyer or any of its agents, disclosure of Seller's Confidential Information by Buyer or one of its agents or a breach of Buyer's information security policies or procedures. Notice shall be provided to Seller no later than 24 hours upon discovery of breach.

20. **Security Interest.** Buyer hereby grants to Seller, its

successors and assigns, a lien on and purchase money security interest in and to all of the right, title and interest of Buyer in, to and under the Products sold hereunder, 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, to secure payment of the purchase price of the Products. Default in payment of such price or any part of the price when due shall permit Seller, in its sole discretion, to declare all obligations of Buyer immediately due and payable, and in such event, Seller shall have all the rights and remedies of a secured party under applicable law. In connection with the security interest granted herein, Seller is expressly authorized, at its discretion, to file one or more financing statements or other notices under applicable law naming Buyer as debtor and Seller as secured party. Buyer will execute such documents requested by Seller to record and otherwise perfect this security interest.

21. **Limitation of Liability.**

a. **Incidental and Consequential Damages.** SELLER'S LIABILITY WITH RESPECT TO THE PRODUCTS AND SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO THE AMOUNT RECEIVED BY SELLER FOR THE PRODUCTS OR SERVICES GIVING RISE TO ANY CLAIM HEREUNDER. SELLER SHALL NOT BE SUBJECT TO AND EXPRESSLY DISCLAIMS ALL INDIRECT, SPECIAL, EXEMPLARY PUNITIVE, CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM UNDER THE CONTRACT OR THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCTS SOLD OR SERVICES RENDERED PURSUANT HERETO, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, THE NEGLIGENCE OF SELLER OR OTHERWISE, AND WHETHER OR NOT SUCH LOSS WAS FORESEEABLE OR WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. **Specifically Excluded Damages.** WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PROPERTY OR PERSONAL INJURY DAMAGES, PENALTIES, DAMAGES FOR LOST PROFITS OR REVENUES, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWN TIME, SHUT DOWN OR SLOW DOWN COSTS, OR FOR ANY OTHER TYPES OF ECONOMIC LOSS, AND FOR CLAIMS OF BUYER'S CUSTOMERS OR ANY THIRD PARTY FOR ANY SUCH DAMAGES.

c. **Remedies.** THE DAMAGE LIMITATIONS PROVIDED IN THESE TERMS AND CONDITIONS AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE BUYER'S SOLE REMEDY (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN). THIS LIMITATION ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE.

22. **Insurance.** Seller represents that it has in place, and covenants to maintain in place for one year after completion of all obligations specified in any order by Buyer, insurance at its own cost and expense, in amounts and of the types customarily accepted in the

industry in which Seller operates.

23. **Statute of Limitations.** Any action that Buyer may have against Seller alleging Seller's breach of any provision of the Contract must be commenced in one (1) year following Buyer's discovery of the alleged breach or such claim shall be forever barred.

24. **Modification; Waiver.** No modifications to these terms and conditions shall be enforceable except when in writing and signed by both parties, unless otherwise expressly stated herein. Seller shall not be deemed to have waived any of its rights, powers, or remedies under these terms and conditions, or at law or in equity unless such waiver is in writing and is executed. No delay or omission by Seller in exercising any right, power, or remedy shall operate as a waiver thereof or of any other right, power, or remedy. No waiver by Seller of any default shall operate as a waiver of any other default, or of the same default or another occasion.

25. **Separability.** If any provisions of the Contract shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provisions hereof which shall be construed as if such illegal and unenforceable provision or provisions had not been inserted herein, unless such illegality or unenforceability shall destroy the underlying business purpose of the Contract.

26. **Assignability.** Buyer may not assign any Contract without Seller's prior written consent. Seller may assign any Contract to an affiliate of Seller or to an acquirer of control of Seller's equity or all or substantially all its assets.

27. **Force Majeure.** Seller shall not be liable for any loss, delay or failure to perform resulting from any circumstance, direct or indirect, reasonably beyond its control including, without limitation, fire, flood, accident, explosion, mechanical breakdown, strike or other labor trouble, plant shutdown, unavailability of or interference with the usual means of transporting the Products or any law, regulation, order, recommendation or request of any governmental authority having or claiming to have jurisdiction over Seller, its subcontractors and/or its suppliers. In addition, Seller shall be so excused in the event it is unable to acquire from its usual sources and on terms it deems to be reasonable, any labor or material necessary for manufacturing the Products or performing the Services. In the event that there should be a shortage of any Product, Seller may apportion its available Product among itself, its affiliates and all its customers in such equitable manner as it deems fair and reasonable. Upon giving prompt written notice to Buyer of any such causes of a delay or failure in its performance of any obligation under the Contract, the time of performance by Seller shall be extended, at Seller's option, to the extent of any delay resulting from any force majeure event.

28. **Governing Law; Exclusive Jurisdiction and Venue.** The Contract shall be governed and construed according to the laws of the State of Georgia, without reference to principles or conflicts of laws. Any action brought by either party arising out of or relating to the Contract must be brought in a U.S. District Court or state court in Fulton County, Georgia. Buyer waives any objection to jurisdiction or venue in respect of said Courts and to any service of process issued under their authority.

**Export Controls.** Buyer acknowledges that all shipments by Seller are or may be subject to restrictions and limitations imposed by United States export controls, trade regulations and trade sanctions. Buyer at all times will comply with such sanctions, controls and regulations and will cause compliance with such

sanctions, controls and regulations in its use and disposition of the Products. With respect to each Product shipment pursuant to these terms and conditions, Buyer will obtain and supply to Seller in writing all information required by Seller to obtain any U.S. export license, permit, approval or documentation applicable to such shipment. Notwithstanding any contrary provision in the Contract, Seller will have no obligation to make any shipment to Buyer until it has received all such information and has obtained the applicable licenses, permits, approvals or documentation for shipment, if any. If Seller learns, or has reasonable cause to believe, or if any branch or agency of the United States claims, that a violation of any applicable trade sanctions, export controls or trade regulations has occurred or is likely to occur because of any shipment, Seller may, in addition to any other remedy it may have, terminate the Contract immediately upon written notice to Buyer. Buyer shall indemnify, defend and hold Seller harmless from any loss or liability arising out of any breach of the foregoing covenants contained in this section.

29. **Survival.** Sections 6, 9, 14, 15, 16, 17, 18, 19, 20, 22, 27, and this Section 29 will survive the expiration or earlier termination of the Contract, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination.

Last Revised January 2022.

