POWELL FABRICATION & MANUFACTURING LLC
Terms and Conditions of Sale

These general terms and conditions apply to all quotations, proposals, acknowledgments, invoices submitted by Powell Fabrication & Manufacturing LLC ("Seller") for the sale of Products and/or services ("Products"), to all related purchase orders, order releases and/or similar documents received by Seller for the purchase of Products, and to all Products sold by Seller, except as otherwise specifically provided in a document issued by Seller.

SELLER'S QUOTATIONS (OR OTHERWISE REFERRED TO BY SELLER AS A PROPOSAL) ARE EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THE ADDITIONAL OR DIFFERENT TERMS SET FORTH BELOW WHICH REPRESENT THE SOLE AND EXCLUSIVE TERMS AND CONDITIONS UPON WHICH SELLER OFFERS TO SELL PRODUCTS AND/OR SERVICES TO BUYER.

These terms and conditions, Seller's quotation(s), and/or any other documents (such as drawings or other specifications) provided by Seller and related to the Products are collectively referred to herein as the "Agreement." The Agreement also includes any amendments made from time to time by the parties – but these terms and conditions of sale shall not be amended, modified or rescinded, and no amendment, modification or rescission of Seller's quotations, and terms and conditions set forth herein will be binding upon Seller, unless such amendment, modification or rescission is agreed to in writing, makes express reference to amending these terms and conditions, and is signed by an Authorized Representative of Seller (see Section 24 below).

Buyer's acceptance of the Agreement is limited to acceptance of the terms and conditions set forth herein. Any proposal for additional or different terms or any attempt by Buyer to vary in any degree any of the terms of this Agreement in Buyer's acceptance are hereby objected to and rejected by Seller. THE TERMS OF THIS AGREEMENT ARE EXCLUSIVE.

1. Prices

A) Seller's published prices, if any, are subject to change without notice. Unless otherwise provided in the Agreement, prices contained in individual written quotations or proposals are firm for thirty (30) days from the date of the quotation or proposal; thereafter, they are subject to change, and Buyer should inquire as to their validity and request written confirmation or revision. All prices are in United States dollars.

B) Unless otherwise expressly provided by Seller in the Agreement, prices do not include sales, excise, use, value-added or other similar taxes now in effect or hereafter levied, transportation charges (such as freight, insurance, shipping, storage, handling, demurrage or similar charges), engineering documentation, special packaging, marketing or testing, and Buyer shall pay all such charges, including applicable sales or other taxes levied with respect to Products and the Agreement (unless exempt therefrom), as well as any government fees levied on the inspection and/or installation of the Products, upon receipt of the related invoice from Seller and in accordance with this Agreement. In the event that the Agreement expressly provides that any of the foregoing charges are specifically included in the price, any charges attributable to increases in applicable rates after the date such price is quoted to Buyer shall be added to the price.

C) In the event Buyer requests changes to Products after the date of quotation, Seller may unilaterally increase lead times and prices to cover increased costs (plus reasonable overhead and profit) associated with such changes including, without limitation, increased costs of design, raw materials, and/or manufacturing.

D) Where applicable, Seller may add to the price, and Buyer agrees to pay, for the price of additional Products, portions of Products made necessary by incomplete or inaccurate information supplied by the Buyer.

E) Seller reserves the right to increase any price in the event of increased costs beyond Seller's reasonable control including, without limitation, (a) raw material costs, (b) modifications to specifications requested by Purchaser, (c) price of goods manufactured by others and re-sold by Seller, or (d) applicable tariffs/ duties / surcharges.

F) Where final design approval of Equipment delays Seller's ability to order raw material before expiration of vendor quotes, Seller reserves the right to increase any price in the event of increased raw material costs above 10% of the original raw material costs used in connection with the finally quoted price by Seller to Buyer.

2. Payment

A) Invoices may be rendered separately for each shipment (including any early shipment) made by Seller, and payment will be due net thirty (30) days after the date of shipment, unless a different period is stated elsewhere in the Agreement. Buyer shall be liable for the price of all Products substantially conforming to the Agreement, notwithstanding that Buyer may not have accepted or may have revoked acceptance of same. Buyer shall not be entitled to deduct, counterclaim or set off against the price of Products, or against any other amount owing under the Agreement including under any invoice, any claim or alleged claim arising out of the Agreement or any other transaction with Seller.

B) Any remittances received by a bank or other depository of Seller in connection with the Agreement will be received by such bank or other depository solely as a clearing agency. Such receiving bank or depository has no authority to determine whether or not the amount remitted constitutes payment in full. Remittances marked to indicate "payment in full" or other similar expressions may be deposited by such bank or depository notwithstanding such markings and such deposit shall not indicate Seller's acceptance of the remittance as payment in full and shall not otherwise be treated as an election by, or an impairment of any of the rights of, Seller unless expressly agreed in writing by Seller.

C) Seller may elect to deliver the Products in installments, with each installment being considered a separate sale and invoiced as such, and Buyer shall timely pay each invoice. Any Products indicated at any time as back-ordered shall be considered an installment delivery.

D) Seller shall have the right to stop delivery if Buyer is in arrears with payment. A failure to pay for an installment within the time for payment is an anticipatory material breach of other installments by Buyer.

E) All amounts due on installation or other event which requires the action or cooperation of Buyer which Buyer fails to perform shall become due upon such failure to perform.

3. **Credit**

A) Seller may, at any time and in its sole discretion, limit or cancel the credit of Buyer as to time and amounts, and as a consequence, may demand payment in cash before delivery of any unfilled portion of the Agreement, and may demand assurance of Buyer's due performance including, without limitation, demanding that one or more deposits, letters of credit or other assurance be provided by Buyer. Upon making such demand, Seller may suspend production, shipment and/or deliveries until Buyer has provided such assurance. If, within the period stated in such demand, but in no event longer than 30 days, Buyer fails to agree and comply with such different terms of payment, and/or fails to give adequate assurance of due performance, Seller may, in its sole discretion and without any requirement to do so, (1) by notice to Buyer, treat such failure or refusal as a repudiation by Buyer of the portion of the Agreement not then fully performed, whereupon Seller may cancel all further deliveries and any amounts unpaid shall

immediately become due and payable, or (2) make shipment under reservation of a security interest and demand payment against tender of documents of title.

B) Buyer hereby represents to Seller that Buyer is solvent, that it has all requisite power and authority to enter into the Agreement, that the execution, delivery and performance of the Agreement does and will not conflict with or result in a breach of any contract to which it is a party or by which its assets may be bound, and that no other person other than Seller has or will have a security interest in the Products covered by this Agreement until performance in full by Buyer of its obligations under the Agreement. Buyer further agrees that each acceptance of delivery of the Products sold under the Agreement shall constitute the remaking of each of these representations at such time.

C) If this Agreement permits or requires the use of a letter of credit, the letter of credit shall be assignable, irrevocable, confirmed by a United States bank acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading.

4. Packaging; Delivery; Force Majeure

A) The Agreement shall be a shipment contract, and the Products shall be delivered FCA St. Louis, Michigan, unless otherwise provided in the Agreement. Whether or not Seller prepays shipping charges, title to each shipment of the Products sold hereunder and risk of loss thereon shall pass to Buyer when Seller or its agent delivers such shipment to a common carrier or licensed trucker consigned to Buyer or his agent, but such shipment shall remain subject to Seller's rights of stoppage in transit, rights of reclamation and other legal rights of Seller. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary.

B) Where a shipping/delivery date is specified by Seller, that date reflects Seller's estimate for the probable time required for completion of Buyer's order, based on Seller's then-current manufacturing capacity and scheduling. All shipping dates are approximate and shall be computed from the date of entry of the order on Seller's books. Seller reserves the right to increase quoted lead times in the event of increased lead times beyond Seller's reasonable control including, without limitation, industry related delivery delays, changes to the Products by Buyer, and delays between the date of entry of the order on Seller's books and the issuance of a purchase order from Buyer. All shipping/delivery dates are further subject to Seller's prompt receipt from Buyer of all drawings, information, and approvals necessary to provide the Products and satisfaction of any other conditions under the Agreement.

C) Seller shall put the Products in the possession of a carrier and, without liability, make such contract for their transportation as Seller decides having regard for the nature of the Products and other circumstances. On Buyer's request, Seller shall obtain and deliver to Buyer documents necessary to enable the Buyer to obtain insurance. The Seller is not responsible to prepay transportation or insurance costs. The Buyer shall pay all handling and other charges incidental to transportation. Seller will generally follow the Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost.

D) Products shall be packaged and labeled in accordance with standard labeling of Seller. Identification of all packages shall be with the standard labels of Seller. Identification of all packages shall be with the Seller's part number. Special packaging or labeling shall be an additional charge to Buyer.

E) Seller assumes responsibility for compliance with all U.S. federal, state, and local laws governing exports from the United States in connection with the sale and use of the Products covered by the Agreement. Buyer is responsible for any subsequent re-export of such Products as well as all export and import duties, fees, permits, licenses, etc. for Products to be delivered outside of the United States shall be the responsibility of the Buyer.

F) If shipment of any Products or other performance by Seller is delayed at the request of or due to the fault of the Buyer, the Seller may at its option hold the Products at the place of manufacture at the risk

and expense of the Buyer from the time the Products are ready for shipment. In the event of any such delay to shipment, full and final payment for an item shall be due and payable thirty (30) days after the Buyer is notified that the item is ready for shipment and an invoice issued for such Products. If the Seller is unwilling to accommodate the Buyer by holding such item, then Buyer agrees to accept shipment immediately.

G) All inspection, delivery, and other dates for Seller's performance are estimates only. In addition, the Seller shall not be in default or liable, directly or indirectly, because of Seller's delay or failure to deliver or perform arising or resulting, in whole or in part, from (i) any cause beyond Seller's control or beyond the control of Seller's suppliers or contractors, including but not limited to embargo, governmental regulation, seizures, acts of God, insurrections, war, the adoption of any law, ordinance, regulation, late receipt of order having full manufacturing details, ruling or order, or inability or delay in obtaining materials, (ii) the lack of usual means of transportation, fires, floods, explosions, strikes, labor disputes or any other accidents, contingencies, or events, at the Seller's or its supplier's plant or elsewhere (whether or not beyond the Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance, or (iii) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise. In the event of any such delay or failure in performance, Seller shall have such additional time within which to perform its obligations under the Agreement as may reasonably be necessary under the circumstances; and Seller shall also have the right, to the extent necessary in Seller's reasonable judgment, to apportion fairly, among itself and its various customers in such manner as Seller may consider equitable, Products then available for delivery. If, as a result of any such contingency, Seller is unable to perform under the Agreement in whole or in part, then, to the extent that it is unable to perform, the Agreement shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion of the Agreement, if any. This section shall be effective even as to circumstances which exist at the time of quotation or as of the date of the Agreement.

H) Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Products. Seller shall provide a quotation for services to assist Buyer in these functions if requested.

5. Acceptance

A) Buyer shall accept any tender of Products which substantially conform to the description of the Products set forth in the Agreement**.** Seller's standard test procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. On request, Seller will quote to Buyer additional charges required to conduct any additional acceptance procedures requested by Buyer. Buyer shall be deemed to have accepted drawings, specifications, technical documentation, samples, prototypes and Products unless Buyer gives Seller notice in writing stating with specificity all defects and nonconformities upon which Buyer will rely to support its rejection: (a) in the case of defects discoverable through inspection, within 7 days after receipt of the item or (b) in the case of defects not discoverable through inspection, within 30 days or other reasonable time established by Seller after receipt of the item. Failure to so act shall constitute an irrevocable acceptance by the Buyer of the item. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SPECIFIED ARE WAIVED. If the Buyer rejects any tender of the Products or other items and if requested by Seller, Buyer shall return them to the Seller, pursuant to Seller's direction. In the case of Buyer acceptance of non-conforming Products, Buyer shall immediately notify Seller whether or not Buyer will continue to accept similarly non-conforming Products and failure to do so shall constitute a waiver by Buyer of specification requirements for said Products. In any event, when Products have been altered from their original state, Buyer shall be deemed to have accepted such Products. Buyer's acceptance of Products tendered under this Agreement shall be final and irrevocable. No attempted revocation of acceptance shall be effective, and Buyer shall be limited to the remedies specifically provided in the Agreement.

B) If the Agreement requires, or Seller requests in writing, inspection or testing, the Buyer shall provide at the place of manufacturer at its own expense, one or more qualified and authorized employees

to inspect and/or test the Products, check them for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven (7) days of the date of notification by Seller that the Products are ready for shipment, then the Seller may, at its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment of the Products. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and otherwise covered by Seller's warranty, will be at the Buyer's expense. Buyer shall also provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense. Equipment, parts and materials furnished by Buyer for Seller's testing and/or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the Products include the necessary fixtures and tooling, the inspection and/or testing at the place of manufacturer may be performed on equipment similar to but other than that identified in the Agreement.

C) Any expense incurred by Buyer in the inspection or testing of Products shall be paid by the Buyer, whether or not the Products have been rejected as defective or non-conforming or the Products have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

D) Any claim by the Buyer for shortages in any delivery must be in writing with satisfactory evidence delivered to the Seller within 30 days of receipt. Carriers are responsible for Products lost or damaged in transit. In the case of loss or damage to Products in transit, Buyer shall immediately notify the carrier or its agent in writing of such loss or damage and shall do all things necessary to assert and prosecute a claim solely against the carrier for such loss or damage.

E) Seller may charge Buyer a restocking charge equal to twenty-five percent (25%) of the invoice price of returned Products. Returned Products must be returned to Seller in the original packaging and Buyer must first obtain a written consent from Seller to return the Products. Seller may offset the restocking charge against any amounts Seller owes to Buyer. Equipment built to Buyer specifications is only eligible for return at Seller’s discretion and terms.

6. General Express Warranties

A) Seller warrants to the Buyer only, subject to the terms of this Agreement, that: (1) the Products (only the portions thereof manufactured by Seller) shall be free from manufacturing defects in materials and workmanship under normal use and service; and (2) the Products will be free and clear of all liens, encumbrances, and other claims except for Seller's reservation of a security interest in the Products prior to receipt of payment in full. The warranty period for Products eighteen (18) months from the date of notification to ship. Products which are supplied by other vendors and which are resold by Seller hereunder without alteration or change shall only have the warranty furnished by said vendor, which, to the extent possible, Seller passes on to the Buyer. Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Products without liability if, in its judgment, the change is non-material. Products which are manufactured by Seller may include new parts or serviceable used parts that are functionally equivalent to new parts. Seller may, in its discretion, also rely on any generally accepted industry standards.

B) Seller's warranties are conditioned upon (i) installation, maintenance and normal use in conformity with instructions furnished by Seller from time to time, if any; and (ii) the Products not having been subjected to misuse, neglect, or accident, or to alteration, improper installation, repair or improper testing in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Products.

7. Express Warranties Relating to Patents, Other Intellectual Property Rights

A) Seller will indemnify Buyer against and defend all suits and pay all damages and costs finally adjudicated against Buyer for infringement of United States patents by Products purchased under the Agreement; provided that Buyer will promptly notify Seller in writing of any claim asserted and suit or

action brought against Buyer alleging that the Products purchased under this Agreement infringe one or more United States patents, and provide Seller with assistance and information requested by Seller for its defense, and provided that the indemnity of Seller under this Agreement shall not extend to claims, suits or actions for infringement based upon the use of any Products in combination with apparatuses, methods, circuits or devices not furnished by Seller or upon the use of any such combination, or based upon the application or use of such Products, including any application or process performed or facilitated by such Products ("Excluded Claims"). Seller shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to prosecute or settle such claims. Buyer shall not be entitled to indemnification, defense, or contribution from Seller with respect to any Excluded Claims, and Buyer will indemnify Seller against and defend all suits and pay all damages and costs awarded against Seller arising out of any such Excluded Claims. In addition, Buyer will indemnify Seller against and defend all suits and pay all damages and costs awarded against Buyer with respect to claims of infringement for Products manufactured wholly or partially to Buyer's design or specifications.

B) Notwithstanding the foregoing, the Seller shall have the right, in its sole discretion and at its expense, either (a) to procure for Buyer the right to continue using such Products, (b) to replace such Products with non-infringing products and services of at least equal function and quality, (c) to modify such Products so that they become non-infringing, or (d) request the return of such Products and refund the purchase price less an allowance for depreciation and shipping costs thereof. THE FOREGOING EXPRESSES THE ENTIRE OBLIGATION AND LIABILITY OF SELLER WITH RESPECT TO INFRINGEMENT OF PATENTS BY PRODUCTS.

8. Limitation of Warranties; Disclaimer of Implied Warranties

A) THE LIMITED EXPRESS WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT.

B) All descriptions, shipping specifications and illustrations of the Products in catalogues, brochures and price lists otherwise provided by the Seller and not expressly and specifically incorporated in the Agreement were and are for general guidance only, and the Seller is not responsible for any errors or omissions therein or for any loss or damage resulting from reliance thereon. Seller does not warrant that it or the Products are in compliance with any industry standards, guidelines, or procedures, or with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction unless otherwise specifically provided in the Agreement. Buyer affirms that it has not relied upon the Seller's skill or judgment to select or furnish Products for any particular purpose beyond the specific express warranties in this Agreement.

9. Limitation of Remedies and Seller's Liability

A) Seller's responsibility, and the sole and exclusive remedy of Buyer under Buyer's warranties, is, at Seller's option and subject to the terms hereof, to repair, to replace, or to keep the Products and refund/credit Buyer's account in the amount of the purchase price of, any defective or nonconforming Products which are returned or offered to be returned by Buyer to Seller during the warranty period, provided that (1) Seller is promptly notified in writing with a detailed explanation of any alleged deficiencies upon discovery by Buyer that such Products fail to conform to the Agreement; (2) Seller's examination of such Products shall disclose to Seller's satisfaction that such Products are defective or nonconforming under the Agreement; and (3) shipment to Seller's facility or to a Seller designated location and return to Buyer's location will be at expense of Buyer. Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations) exclusively to those provided in this Section.

B) NOTWITHSTANDING ANYTHING SET FORTH IN THIS AGREEMENT (INCLUDING ITS ATTACHMENTS), AND TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE RESPONSIBLE OR LIABLE TO BUYER FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, CONTINGENT OR PUNITIVE DAMAGES IN CONNECTION WITH ANY BREACH OF WARRANTY OR OTHER BREACH OF SELLER'S OBLIGATIONS UNDER THIS AGREEMENT (INCLUDING ANY ATTACHMENTS HERETO). SELLER'S AGGREGATE LIABILITY FOR ANY DAMAGES OR CLAIMS ARISING OUT OF OR RELATING TO ANY PRODUCTS HEREUNDER SHALL IN NO EVENT EXCEED THE AMOUNT BUYER PAID FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM OR DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Products by the Seller will be warranted for the remainder of the original warranty.

C) The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller and all indemnification to which Seller is entitled shall be also for the benefit of Seller's parent, subsidiary and affiliate companies (and their respective officers, directors, employees, agents, contractors, and suppliers). If any other provision of the Agreement is determined to apply to other parties, all other provisions including limitations, waivers and disclaimers shall also apply.

10. Indemnification

Buyer shall indemnify, defend and hold harmless Seller, and Seller's parent, subsidiary and affiliate companies, and their respective shareholders, officers, directors, employees, representatives and agents, from and against any and all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the use, storage, sale, processing or other disposition of the Products, supplies or materials used in connection with the Products, or goods manufactured with the Products, (1) if the action or inaction of the Buyer or its employees, customers or agents, or the Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against the Seller, and/or (2) if the claim asserted is inconsistent with the limitation of warranties, limitation of liability and/or limitation of remedies set forth in this Agreement.

11. Cancellation and Breach

A. In the event this order is cancelled by the Buyer, the cancellation charges will be based on the total amount invoiced by Seller as of the cancellation date.

B. If Buyer fails, with or without cause, to furnish Seller with instructions for, or refuses to accept deliveries of, any of the Products sold under the Agreement, or is otherwise in default under or repudiates all or any part of the Agreement or any other agreement with Seller, or advises Seller that it will default in the performance of any of its obligations, or fails to pay when due any invoice under the Agreement or any other agreement with Seller, 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, then, in addition to any and all remedies allowed by law, Seller, without notice: (1) may bill and declare due and payable all undelivered Products under the Agreement and/or any other agreement between Seller and Buyer and/or (2) may cease performance of its obligations and defer shipment under the Agreement and/or any other agreement between Buyer and Seller until such default, breach or repudiation is removed, (3) may cancel any undelivered portions of the Products and/or any other agreement with Buyer in whole or in part and/or (4) may recover Products in transit or delivered, retrieve delivered Products, repossess all Products which may be stored by Seller for Buyer's account and otherwise enforce its remedies for Buyer's default. Buyer shall remain liable for all damages suffered or incurred by Seller in any such circumstances. Seller shall be awarded incidental damages including, without limitation, reasonable profits and costs such as actual reasonable attorney fees in any proceeding to enforce its remedies in which it obtains relief for damages or injunctive relief. All rights granted to Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

C. Seller shall not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

12. Security Interest Power of Attorney

In addition to any security interest granted by the UCC, the Buyer hereby grants a security interest to the Seller in all Products and documents related thereto and proceeds and products therefrom to secure all obligations of the Buyer to the Seller, whether or not arising under the Agreement. Buyer shall sign financing statements evidencing the security interest as reasonably requested by Seller, or Seller may file a copy of the Agreement or portion thereof as a financing statement. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Buyer shall provide a landlord's waiver of any lien rights at the premises to which the Products are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of the Buyer and others to repossess or render inoperable all Products in which it has a security interest. In case of a default by Buyer, Buyer hereby irrevocably appoints the Seller as its agent to obtain possession of the Products and documents related thereto. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in any Products or the proceeds thereof (including cash, accounts, contract rights, instruments and chattel paper) which are the subject to this Agreement if payment therefor shall not have been made in full to Seller.

13. Buyer's Property

Buyer shall insure all materials, fixtures, tooling, and other property delivered to Seller against all risks and waives subrogation in the event of loss of or damage to such property.

14. Proprietary Information

A) Unless otherwise agreed, Buyer acknowledges that any information disclosed to Seller is subject only to Buyer's patent rights, without any other restrictions on Seller's use, including reproduction, modification, disclosure or distribution of the information. Buyer agrees not to label any such information with a notice asserting that the information is proprietary or confidential to Buyer. In addition, Buyer agrees not to assert any claim (other than a claim for patent infringement) against Seller, Seller's customers, or their respective suppliers, with respect to any information that Buyer has disclosed or may disclose to Seller in connection with the Products.

B) All proposals, plans, specifications, models, tools, patterns, processes, fixtures, designs and other information furnished by the Seller or Seller's parent, subsidiary or affiliate companies in bidding, negotiating and performing the Agreement, are proprietary to Seller and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any third party or used by Buyer except as may be necessary for the selection or use of the Products. Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Products or part thereof unless specifically required by the Agreement.

C) Any invention or other information, whether patentable or not, developed by Seller in the performance of the Agreement shall remain the property of Seller. Seller shall be under no obligation to refrain from using in its business any of Seller's proprietary information disclosed to Buyer under this Agreement. Buyer shall not attempt to reverse engineer, reverse decompile, disassemble, modify, adapt, translate, create derivative works from, rent, lease, loan, distribute, or sublicense the Products or Buyer information to any other party or affiliate of Buyer, without the express written consent of Seller.

D) Buyer understands and acknowledges that any and all works of authorship created by Seller in connection with the Products, whether paid for in whole or part by Buyer, are not works-made-for-hire under any copyright laws and shall not be the property of Buyer unless separately agreed to in a signed writing by Buyer and Seller.

15. United States Government Regulations

The Buyer shall not engage in any transaction with respect to the Products, by way of resale, lease, shipment, or otherwise, which violates any statute or regulation of the United States of America.

16. Fair Labor Standards Act

Seller certifies that any Products produced in the United States shall be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the United States Fair Labor Standards Act, as amended, and of the regulations and orders of the United States Department of Labor issued under Section 14 thereof. No other certifications or waivers regarding payments to Seller's suppliers or laborers are required.

17. Time Period for Buyer Claim

Any proceeding by the Buyer for breach of the Agreement or any other right against Seller arising from or in connection with payment by Buyer or the Agreement cannot be filed or maintained unless; (i) it is commenced within one (1) year after the cause for action has accrued; (ii) Buyer has given timely written notice to Seller of its claim as provided herein; and (iii) Buyer deposits any unpaid portion of the purchase price for Products with the tribunal pending final adjudication. An action shall accrue no later than shipment of the Products.

18. Arbitration

A) All controversies and claims arising out of or relating in any way to the Agreement, or any breach thereof, shall be settled solely by arbitration held in Southfield, Michigan, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except (1) Seller may elect to institute, prior to formation of the arbitration panel, with an action for a claim and delivery, replevin, or similar relief to enforce its interests in the Products, and (2) either party may seek injunctive relief from a state court located in Oakland County, Michigan, or federal court in the Eastern District of Michigan, to enforce provisions of the Agreement relating to confidential information. Judgment upon any arbitration award may be entered and enforced in any court having proper jurisdiction. No demand for arbitration hereunder may be filed by Buyer as a claim or counterclaim if Buyer has not given timely written notice of its claim to Seller or if more than one year has expired from the date of the cause of action accrued, as provided in the Agreement. The arbitrator(s) may enter an interim award that the Products be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller.

B) Upon the filing of a demand for arbitration by Seller or Buyer, the Buyer shall deposit with the arbitrator(s) any unpaid balance of the purchase price for any Products and any other unpaid amount under the Agreement to be held in an interest-bearing account. If such deposit is not made, the arbitrator(s) shall enter a final award against the Buyer in the amount of the unpaid purchase price and other amounts owed by Buyer to Seller under the Agreement. The arbitrator(s) shall be bound by the terms of the Agreement, shall not apply principles of equity or allow any claims not permitted by the Agreement, may only award or grant to the parties such remedies as a court of competent jurisdiction could award or grant within the locality where the arbitration takes place and which are authorized (and not excluded or otherwise limited under the Agreement), and may not award consequential or punitive damages. The arbitrator(s) may include the arbitration fees in an award.

19. Applicable Law, Jurisdiction and Venue

A) This agreement shall be governed, construed and enforced under the law of the State of Michigan including the uniform commercial code in force on the initial date of the agreement ("UCC"), without regard to its conflict of law rules and except as provided herein. The U.N. Convention on the International Sale of Products shall not apply. Any services to be provided hereunder, whether or not they are otherwise ancillary to and part of a sale of Products (whether as separate units or included in a construction project), shall be considered ancillary to a sale of Products and the UCC shall apply to all Products and services to be provided hereunder ("Products").

B) State courts in Oakland County, Michigan and federal courts in the Eastern District of Michigan shall have exclusive jurisdiction over the parties and the claims arising under the Agreement, subject to the provisions of Section 18 above regarding arbitration. Neither party shall assert any objection to such jurisdiction or that venue in any such court is inconvenient or otherwise improper. Buyer and Seller consent to service of process by personal delivery or by postage prepaid, certified U.S. mail, mailed to the address of such party set forth in this Agreement.

20. Assignment

The Agreement and Buyer's rights and obligations hereunder may not be assigned, pledged, hypothecated or otherwise transferred by Buyer except with the prior written approval of Seller, which shall not be unreasonably withheld or delayed. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this section. Seller may freely assign all rights and obligations it has under this agreement and may subcontract performance of any aspect of this Agreement.

21. Relationship

The relationship between Buyer and Seller is solely that of a vendor and vendee. Buyer is not an agent of Seller and has no authority to act on behalf of Seller, accept service or process, to create obligations of any kind or bind Seller in any respect.

22. Conflict

To the extent any express terms set forth in Seller's quotation (e.g. proposal) to which these Terms and Conditions are attached or in which they are incorporated by reference are inconsistent with these Terms and Conditions, the express terms set forth in Seller's quotation (e.g. proposal) shall control (to the extent, and only to the extent, of such inconsistency).

23. Waiver

Waiver by Seller of any provision of the Agreement or of a breach by Buyer of any provision of the Agreement shall not be deemed a waiver of future compliance with the Agreement and such provision, as well as all other provisions of this Agreement, shall remain in full force and effect.

24. Amendment or Modification

A) The Agreement is the complete and exclusive statement of the Agreement of the parties and supersedes any and all previous quotations and/or agreements relating to the Products.

B) The Seller is willing to consider negotiating written changes to the Agreement, including these terms and conditions, but reserves the right to make an adjustment in the price of the Products.

C) No amendments, modifications, supplements, limitations, waivers or discharges of this Agreement or any of its terms shall bind Seller unless in writing and signed by an authorized representative of Seller, making express reference to amending the Agreement. No agent, employee, or representative of the Seller has any authority to sign and bind the Seller with respect to any of the foregoing (including without limitation any representation or warranty concerning Products not contained in the Agreement), except an Officer of the Seller or an authorized representative appointed by an Officer of the Seller ("Authorized Representative of Seller").

D) Notwithstanding anything to the contrary in this Agreement, no modifications, limitations, waiver or discharge of any provision of the Agreement shall affect the Buyer's liabilities to Seller accrued prior thereto.

E) Orders submitted in any Buyer's purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with the terms and conditions of the Agreement), may be accepted, approved, or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises

Buyer in writing signed by an Authorized Representative of Seller) notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other writing. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such purchase orders or by failing to further object to Buyer's terms or conditions.

F) Obvious stenographic and clerical errors contained in the Agreement are subject to correction by Seller.

25. Heading and Definitions

The heading and definitions in the Agreement are inserted for convenience only and shall not constitute a part hereof.

26. Severability

If any provision of the Agreement shall be held to be unenforceable or invalid, such provision shall be ineffective to the extent of such prohibition or invalidity, and the balance of the Agreement shall be interpreted as if such provision were so excluded. Any declaration of unenforceability of a provision shall be as narrow as possible.

27. Interpretation

Any interpretation of the Agreement shall be construed consistently by and against both parties, and shall not be construed against the draftsperson hereof. Buyer and Seller acknowledge that they are merchants in respect to the Products, they have had an opportunity to review the Agreement, and the previsions of the Agreement are reasonable when considered as a whole.

28. Samples

The Agreement covers the Products provided as samples, whether or not provided without charge, except that they are provided with all faults and that all warranties provided in the Agreement are disclaimed. Samples are provided only for evaluation by Buyer as examples of the type of Products available from Seller, and not as a representation that the quality or specifications of Products which may be supplied under a separate Agreement for the sale of Products will be similar or as high. Samples may not be used in production or final assembly and must be returned to Seller upon Seller's request if they were provided without charge.