



## TERMS AND CONDITIONS OF SALE AND SERVICE

The accompanying quote or sales order acknowledgement (the "Order") and these Terms and Conditions of Sale and Service set forth the entire contract agreement between Buyer and Ichor Systems, Inc. or its direct or indirect subsidiaries and affiliates ("Seller") for the products, parts, components, spares, upgrades, software ("Products") and/or any services set forth in the Order ("Services"). Unless otherwise stated, written quotations expire automatically thirty (30) days from the date issued. Quotations are made subject to approval of Buyer's credit. All quotations are subject to change or withdrawal without prior notice to Buyer. Seller may refuse orders and has no obligation to supply Products or Services unless Seller issues an order acknowledgement, and no Buyer credit or payment issues then exist.

### ACCEPTANCE

By its placement of any purchase order with Seller for, or acceptance of delivery of any Products or Services, Buyer expressly agrees to be bound by these terms and conditions. **THE FAILURE BY BUYER TO SPECIFICALLY OBJECT TO THESE TERMS AND CONDITIONS OF SALE IN WRITING WITHIN TEN (10) DAYS OF RECEIPT OF THESE TERMS SHALL CONSTITUTE AN ACCEPTANCE HEREOF.** In addition, 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 this Contract. Seller hereby rejects any additional or different terms or conditions proposed by Buyer, whether or not contained in any of Buyer's business forms or on Buyer's website, and such additional or different terms and conditions shall be void and of no effect unless in a writing specifically agreed to by Seller specifically referring to and agreeing to the change. Notwithstanding anything herein to the contrary, if a written contract signed by both parties covers the sale of the Products and Services covered hereby, the terms and conditions of that Contract shall apply.

### BUYER'S DUTY TO INSPECT

Buyer must immediately inspect all Products for shortages, conformity with Order and defects. If Products appear not to conform to the contract between Buyer and Seller, Buyer shall discontinue their use and immediately notify Seller of such condition and afford Seller a reasonable opportunity to inspect the same. If Buyer fails to provide Seller with notice of nonconformity within fifteen (15) days, Buyer shall be deemed to have accepted the Products. No material will be taken back and credited or replaced unless arrangements for return have been made with Seller. Buyer will be responsible for all costs and expenses associated with any returns of Products and will bear the risk of loss or damage of such Products, unless Seller agrees otherwise in writing.

### SHIPMENT

Unless otherwise stated in writing by Seller, all prices are quoted FCA Seller's manufacturing facility. Buyer will pay all charges and assume all risks of transportation from the Seller's manufacturing facility. Seller shall not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause outside of Seller's control. Buyer shall be responsible for making all claims with carriers, insurers, warehousemen and others for mis-delivery, non-delivery, loss, damage, or delay. Seller shall ship Products via the method specified by Buyer. Absent specific written instructions from Buyer, Seller shall have the right to select the shipment method.

### PRICING

All amounts due are payable in US Dollars unless otherwise agreed in writing. All prices shall be as specified by Seller, or as set forth in the accompanying Seller quote and/or order acknowledgment. Prices for Services during normal business hours and including travel time, will be charged in accordance with the hourly rate stated in the quote. A minimum of 30 hours will be charged per Services' visit to Buyer's facility. Services performed outside of normal business hours, are subject to additional costs. The cost of any additional parts required by Supplier to perform the Services will be charged in addition to the hourly rate and invoiced separately to Buyer. Seller may impose additional surcharges to offset significant and unpredictable increases in the cost of manufacturing, shipping and servicing our Products. By issuing an order for our Products, Software and/or Services, Buyer agrees to pay these surcharges upon notification. Prices are exclusive of all

excise, sales, use, transfer and other taxes (including without limitation VAT and GST as well as import, export and customs fees and duties, if applicable) imposed by any federal, state, municipal, or other governmental authority (including governments of countries other than the USA), insurance costs and licensing fees, all of which shall be paid by Buyer. Buyer is responsible for obtaining and providing to Seller any certificate of exemption or similar document required to exempt any sale from sales, use, or similar tax liability. In the absence of proper evidence of exemptions, purchaser shall reimburse Seller for all taxes, excises, duties, imposts or other charges which Seller may be required to pay any government (national, state or local) upon, or measured by the production of any phase or part of the production, storage, sale, transportation, delivery and/or use of the Products.

## TERMS OF PAYMENT

Where Seller has extended credit to Buyer, unless otherwise agreed in writing by Seller payment shall be made in full within thirty (30) days following the shipment date. Seller reserves the right at any time to change the amount of credit extended or to withdraw credit entirely if, in Seller's opinion, Buyer's financial condition or previous payment record so warrants. On any order on which credit is not extended by Seller, payment shall be made in advance of shipment. If, in the judgment of the Seller, the financial condition of the Buyer at any time does not justify continuation of production or shipment on the terms of payment originally specified, the Seller may require full or partial payment in advance and, if such payment is not made, Seller shall be entitled to cancel any order then outstanding, and Buyer shall pay Seller's cancellation charges. Absolutely no early payment discount will be allowed unless stated in a separate written agreement executed between Seller and Buyer. Notwithstanding any early payment discount agreement, certain items are expressly excluded from discount terms, including but not limited to, 1) Buyer reimbursement of tariffs paid by Seller, 2) payment of Seller claims for stale, excess or obsolete inventory, and 3) Seller invoices for custom or specialty raw materials purchased at request of Buyer. Buyer's failure to make payment when due will be a material breach of this contract, and Seller, at its sole discretion and without incurring any liability, may either terminate the Order or suspend performance or suspend further deliveries under this and/or any other agreements with Buyer. Under no circumstances will Buyer have a right of set-off. In the event Seller initiates any proceeding to collect any amount due from Buyer, Buyer will be liable for all collection costs and expenses, including but not limited to reasonable attorney fees and expenses. All overdue payments will be charged a periodic rate of 1.5% per month finance charge, such charges not to exceed the maximum charge permitted by law. Seller reserves, and Buyer grants to Seller, a security interest in all Products sold and all proceeds to secure the full payment and performance by Buyer of its liabilities and obligations to Seller hereunder. Buyer acknowledges that this document or copies of this document may be filed with the appropriate authorities as a financing statement and agrees to execute and deliver such other documents as Seller may require in order to perfect its security interest. Seller shall have the right to terminate any Order, or to delay the shipment thereof, by reason of Buyer's bankruptcy or insolvency, or the pendency of any proceedings against Buyer under any statute for the relief of debtors, or Buyer's breach of this Contract.

## CANCELLATION CHARGES

Any request for cancellation must be provided in writing and approved by Seller prior to Product shipment or performance of Services. Buyer shall pay to Seller a cancellation charge that is equal to the cost of all material procured and on order that cannot be cancelled by Seller without charge, along with the actual cost and expenses Seller has incurred, if any, that are related to the cancelled Order for items including but not limited to labor, engineering, fabrication, assembly and appropriate overhead and loss of profit. Where Seller has agreed to a return of a Product in writing, any such return is subject to inspection after receipt by Seller. Buyer may not return any customized Product. All returns must be accompanied by a return material authorization number ("RMA#") issued by Seller's Return Department. Buyer bears all risk of loss or damage to the returned Products until delivery at Seller's designated facility. Any return shipment received by Seller shall be in its original condition. If Buyer orders the Products through the issuance of one or a series of blanket purchase orders, such blanket purchase order shall be binding and non-cancelable. If no release schedule is provided in the blanket Purchase order, Buyer is required to issue releases covering the total quantity in the blanket purchase order prior to the expiration date of the blanket Purchase Order, or if no expiration date is included, no later than twelve (12) months from the issuance of the blanket purchase order, always taking into account Seller's standard lead times for the applicable Product. If Seller is building to forecast in the absence of a blanket purchase order, Buyer shall provide to Seller a forecast of its requirements for Products, updated by Buyer at least monthly (the "Forecast"). Buyer shall be liable for thirteen (13) weeks of Products immediately following the date of each Forecast (the "Committed Purchases"). Buyer shall take delivery of the Committed Purchases in accordance with the agreed upon delivery dates and if no delivery dates have been agreed upon, within four (4) months from the applicable Forecast date.

## DELIVERY DATES

Shipping dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Buyer may expedite scheduled ship date, as determined by the original order, only with the written consent of Seller. If such consent is given, Buyer shall pay to Seller an expedite fee in accordance with all applicable handling, engineering and miscellaneous costs, including but not limited to, fabrication and assembly, labor, and appropriate overhead associated with the expedited order. Buyer may delay the scheduled ship date as determined by the original order for up to thirty (30) days without any additional charge. However, such delay cannot be beyond the last day of the Supplier's then current financial quarter. Buyer may not delay scheduled ship date beyond thirty (30) days without the written consent of Seller. Any order delayed more than thirty (30) days from the original ship date without the written consent of Seller shall be considered an order cancellation unless Seller, in its sole discretion, agrees otherwise.

## CHANGE REQUESTS

Change requests for any order, including delivery, drawing, configuration, design and/or material changes, must be provided in writing by Buyer to Seller. Buyer is hereby notified that the price and delivery dates may be affected by any such changes. If any such change shall cause an increase or decrease in the price, or in the time required for performance, an equitable adjustment will be negotiated and incorporated into the order prior to Seller's obligation to proceed with the change request.

## SERVICES

Services for the maintenance support for refurbished OEM systems plus upgrade installation are provided by the Seller in accordance with the Products purchased by the Buyer and as contained in the Order. The Seller's personnel that will provide the Services shall be trained on the systems and have a minimum of five (5) years of experience. If the Buyer requires Services as set forth in the Order, the Seller shall provide the Services on Monday to Friday from 9 am to 5 pm ("Normal Working Hours"), and subject to Seller's personnel availability. The Seller shall not be liable in any way for the operation of the systems or Products before or after any Services are performed. Unless otherwise agreed in writing, the Seller shall not perform the Services outside of Normal Working Hours; or provide any parts required to put the systems in working order; or perform process support (together, "Excluded Services"). For performance of any agreed Excluded Services, the Seller will charge a premium hourly rate consisting of 1.5 times the hourly rate agreed specified in the Order. The Seller's personnel shall have the right to refuse or postpone the performance of any of the Services, if in Seller's sole opinion, the system, Product or the work environment is deemed unsafe or inappropriate due the Buyer's use of spare parts which are neither supplied nor approved by the Seller or the system's manufacturer.

## LIMITATION OF LIABILITY

IN NO EVENT SHALL SELLER BE LIABLE TO OR INDEMNIFY BUYER OR ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR CONTINGENT DAMAGES (COLLECTIVELY, "EXCLUDED DAMAGES"), WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH EXCLUDED DAMAGES, FOR ANY REASON. BUYER HEREBY WAIVES ANY LIABILITY OF SELLER FOR ANY EXCLUDED DAMAGES. IN NO EVENT SHALL SELLER'S (OR ITS LICENSORS' OR SUPPLIERS') MAXIMUM LIABILITY FOR DAMAGES UNDER THIS CONTRACT EXCEED THE AMOUNT PAID HEREUNDER FOR THE SPECIFIC PRODUCT, PART, SOFTWARE OR SERVICE.

## WARRANTY

Products. Seller warrants, to the original Buyer of the Products (excluding Software (defined below), parts, consumables, and prototypes), that for the applicable warranty period for each such Product set forth in [www.ichorsystems.com/warranty](http://www.ichorsystems.com/warranty) or otherwise provided by Seller in writing (the "Warranty Period"), the Products shall be free from material defects in materials and workmanship and will conform in all material respects to the applicable Seller Product specifications, under normal use and service when correctly installed, maintained, serviced and operated within the Seller Product specifications for which they were designed. During the Warranty Period, Seller will, at its option and in its sole discretion, either (i) repair or replace any Product which does not comply with the above warranty without charge to Buyer or (ii) require the return of the Product giving rise to the warranty claim and, upon receipt, refund the pro-rated portion of the fees paid for said Product, provided that, within the Warranty Period, Buyer notifies Seller in writing promptly after discovery of the noncompliance. The choice of a particular remedy will be made by Seller at its sole

discretion. Seller will perform repairs or replacements only during regular working hours in accordance with Seller's normal, non-emergency service practices. Buyer agrees that it will provide all necessary access and assistance to Seller in effecting the chosen remedy. The notification must be made in writing within thirty (30) days of the date of Buyer's first detection of the alleged basis for the warranty claim, otherwise such claim is waived. All Warranties are further contingent upon Buyer promptly, within seven (7) days of notice of discovery of such defects by writing, shipping back such defective part or item to the Seller if requested by the Seller, otherwise such claim is waived. Buyer shall bear all freight charges. Products may only be returned by Buyer when accompanied by a return material authorization number ("RMA#") issued by Seller's Return Department, with freight prepaid by Buyer, which RMA# must be clearly marked on the outside of the shipping container. Buyer bears all risk of loss or damage to the Products until delivery at Seller' designated facility. Repaired and replacement Products, parts and components shall be warranted for the remainder of the original warranty. If such repair or replacement is not feasible, Seller may refund the purchase price. If, however, the Product is deemed by Seller not to be defective, the owner shall reimburse Seller at published repair or replacement rates. For parts or Products returned for repair that are not covered under warranty, Seller's standard repair charges shall be applicable in addition to all shipping expenses. Unless otherwise stated in Seller's repair quote, any such out-of-warranty repairs are warranted for ninety (90) days from date of shipment of the parts or repaired Product. Seller may, at its discretion, use reconditioned components in the Service of Products or to satisfy its warranty obligations, provided that any reconditioned components used shall be functionally equivalent to new components. Seller will respond to any notice of noncompliance in a commercially reasonable period of time with the understanding that response time will vary depending on factors such as the complexity of the issue or the availability of replacement parts. This warranty does not apply to any Product or part which, as determined by Seller in its sole discretion, (a) has been installed, operated, maintained, serviced, modified, altered or used other than in accordance with Seller Product specifications recommended by Seller for the proper and normal use of the part or Product; (b) has been repaired, modified or altered by any party other than Seller or a third-party authorized in writing by Seller; (c) has been used in conjunction with parts or equipment not provided or authorized by Seller; (d) has been contaminated with corrosive, reactive, and/or harmful chemicals, gases or any radioactive materials; (e) has been subjected to unusual physical, thermal, electrical or optical stress, misuse, abuse, tampering, accident, contamination, negligence or neglect in use, storage, transportation or handling (including any failure to maintain appropriate environmental conditions as specified by Seller for a particular Product); (f) is a consumable item or an item requiring repair or replacement due to normal wear and tear; (g) is based on designs or specifications provided to Seller; (h) has been modified or altered such that Seller is unable to verify the alleged warranty nonconformance with its standard test equipment or procedure; or (i) is damaged as the result of a Force Majeure Event. If a seal is used on the Product, any removal or breaking of the seal shall void the warranty. Calibrations performed in accordance with the application user manual shall not void the warranty if performed properly. The foregoing warranty does not apply to or cover (i) any products, raw materials, fixtures or tools provided by any other person, entity or Buyer incorporated into the Products; (ii) damage to sensors; (iii) Products that are marketed and sold by Seller as a distributor for a third-party manufacturer and under such third-party manufacturer's name, except to the extent of any warranty that is expressly provided to Seller by such third-party manufacturer and is assignable by Seller to its customers; or (iv) on-site warranty repair unless otherwise agreed. The foregoing warranty applies only so long as the Products remain in use in the country of purchase. To the extent the Products are removed from the country of purchase, the foregoing warranty may be voided at Seller's discretion.

Software. Unless otherwise provided in the Order, for Software, Seller warrants to the Buyer of the Products or licensee of Software that, for the duration of the warranty period for the applicable Product if Software is licensed with a Product, or a period of twelve (12) months from the day Software becomes available if Software is licensed individually, the Software shall be free from significant programming errors or defects when properly installed. For Software upgrades or reconfigurations performed in connection with Services, Seller warrants that, for the longer of: (a) a period of ninety (90) days following completion of the upgrade or reconfiguration, or (b) the remaining Software warranty period, if any, on the associated Product sold by Seller (if applicable) to Buyer, the Software shall be free from significant programming errors or defects when properly installed. During the applicable warranty period, if Buyer promptly notifies Seller in writing of possible errors or defects in the Software, identifying any such error or defect in reasonable detail sufficient to allow Seller to identify and replicate such error or defect, Seller shall, at no cost to Buyer, use commercially reasonable efforts to promptly repair and correct such errors or defects in the Software. The foregoing warranty is nontransferable unless approved by Seller in writing. These warranties shall not apply to any errors or defects in the Software to the extent caused in whole or in part by (a) any combination of the Software with functionality, software, hardware or other products not supplied or approved by Seller; (b) any correction or modification of the Software not made by Seller or corrections or modifications made by Seller but to Buyer's written specifications; or (c) the failure of Buyer to use the most current release of the Software provided to Buyer or to follow the most current instructions as may be provided by Seller from

time to time with respect to the proper use of the Software. Except for Software upgrades or reconfigurations provided in connection with Services pursuant to the Order, these warranties do not apply to, and do not obligate Seller to develop or to provide, any future releases, updates, upgrades or modifications to the Software or develop or provide Software development tools to Buyer. On-site repair service is not covered under the foregoing warranty, unless otherwise stated in Seller's quotation or otherwise agreed upon by the parties in writing. Notwithstanding the foregoing, if the Software is provided free of charge, the Software is provided "AS IS" and as such, Seller shall have no warranty obligations to Buyer.

Services. Seller warrants that any services set forth in the relevant purchase order (the "Services") will be of a professional quality conforming to generally accepted industry standards and practices, provided that Buyer notifies Seller of any non-conforming Service within thirty (30) days from completion of that Service. This warranty and Seller's Service obligations shall not apply in the event Buyer fails to provide Seller reasonable access and all information reasonably requested by Seller.

#### DISCLAIMER OF WARRANTY, LIMITATIONS

TO THE FULLEST EXTENT PERMITTED BY LAW, THE FOREGOING WARRANTIES ARE THE EXCLUSIVE AND SOLE WARRANTIES OF SELLER FOR PRODUCTS, PARTS, SOFTWARE AND SERVICES. ALL OTHER WARRANTIES, REPRESENTATIONS, PROMISES OR GUARANTEES, EXPRESS OR IMPLIED, ARE EXCLUDED AND EXPRESSLY DISCLAIMED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. THE OBLIGATIONS OF SELLER SET FORTH IN THIS WARRANTY SECTION SHALL BE SELLER'S SOLE LIABILITY, AND PURCHASER'S SOLE REMEDY, FOR BREACH OF THE FOREGOING WARRANTIES. WITHOUT LIMITING THE FOREGOING AND FOR THE AVOIDANCE OF DOUBT, ALL CONSUMABLE AND EXPENDABLE COMPONENTS ARE PROVIDED "AS IS." SELLER'S RE-PERFORMANCE OF SERVICES SHALL BE SELLER'S SOLE OBLIGATION, AND PURCHASER'S SOLE REMEDY, AT LAW OR IN EQUITY IN THE EVENT ANY SERVICE FAILS TO CONFORM TO THE FOREGOING WARRANTY FOR SERVICES.

#### INDEMNIFICATION

Buyer assumes, upon title being passed to Buyer, all risk, insurable interest and liability for physical loss, damage or injury to persons or property of Buyer or others, arising out of the use or possession of the Products. Buyer agrees to indemnify and hold Seller harmless from any and all claims or liabilities asserted against Seller in connection with the use or possession of said Products, except to the extent that such claims arise out of the negligence of Seller.

#### INTELLECTUAL PROPERTY

Buyer agrees that any and all designs, drawings, schematics, computer graphics and bills of material of the Products and their specifications, collectively ("Intellectual Property"), are the sole property of Seller. Seller shall retain all right, title and interest in and to all materials, fixtures, tools and/or dies furnished, designed, developed or manufactured by Seller in connection with the manufacture of the Products. Seller agrees to indemnify Buyer and hold them harmless from and against claims resulting from any Intellectual Property infringement Claims with respect to any Product. In the event of any such claims Seller shall, in its sole discretion, either supply Buyer with non-infringing replacement of the affected Product, secure a license to use the infringing Product, or modify the infringing Product to make them substantially equal but non-infringing. This constitutes Buyer's sole and exclusive remedy for all third-party infringement claims. Notwithstanding the foregoing, Seller shall have no obligations under this section to the extent an Intellectual Property infringement claim results from any modification or change made to a Product that is not performed or authorized by Seller, or that arises out of the combination of a Product with another component, item or product.

#### SOFTWARE LICENSE

Purchaser acknowledges that the software or firmware components and applications, if any, either available on a stand-alone basis or embedded or accompanying the Products sold hereunder (the "Software") and any accompanying documentation (the "Documentation") are licensed and not sold to purchaser. Seller shall at all times have and retain title and full ownership of the Software and the Documentation, and purchaser shall receive no rights to the Software or the Documentation except as expressly provided herein. Unless the parties enter into a separate written license agreement, including a shrink-wrap and/or clickwrap agreement (in which case, the terms of that separate agreement will prevail), the following license terms shall apply: upon Seller's receipt of full payment for the Software, purchaser shall be entitled to

use the Software and the Documentation only for its own internal use; purchaser may use the Software only in object code form, only per the Documentation, and only with the Products for which it is designed (if any); purchaser may not copy the Software or Documentation, except to make a reasonable number of backup copies of the Software and a reasonable number of copies of the Documentation to use the Software; and purchaser agrees to any shrink-wrap and/or clickwrap related to third party software which is provided to purchaser. For purposes of this Contract, Software and Documentation shall be deemed to be "Products." No license to use the source code of the Software is provided hereunder. Any Software and Documentation provided to the U.S. Government is only provided as "commercial computer software" and "commercial computer software documentation," respectively, under these Terms and Conditions (per 48 CFR 12.212, 48 CFR 227.7202-1, or other applicable regulations). Purchaser shall not use, distribute, license, sublicense, resell, copy, make available or otherwise transfer all or any part of the Software or the Documentation other than as expressly permitted hereunder without the prior written consent of Seller. Purchaser shall not, nor shall it permit any employee or agent of purchaser to, adapt, modify, copy, reproduce, reverse engineer, decompile, decrypt or disassemble the Software in any way without the prior written consent of Seller. Except as expressly set forth herein, Seller shall have no obligations to purchaser whatsoever with regard to the Software. Without limiting the generality of the foregoing, Seller has no obligation to develop updates or modifications to the Software or develop or provide Software development tools to purchaser.

## CONFIDENTIALITY

Buyer acknowledges that in connection with the purchase and sale of Products or Services or the licensing of Software, Seller may make available certain business (including without limitation, pricing) and technical information and materials, and all marked information ("Confidential Information"). Any information or material which by its nature and under the circumstances surrounding its disclosure is generally considered proprietary and confidential shall also be deemed Confidential Information regardless of whether it is properly marked with legends or properly reduced to writing. Buyer shall (a) hold the Confidential Information in strict confidence and use its reasonable efforts to prevent the unauthorized disclosure of the Confidential Information; (b) not disclose the Confidential Information in any manner whatsoever, allow any third party to take possession of or to inspect, observe any operation of, or disassemble any Product or any portion of thereof, or take any photograph or recording of the Product or the operation thereof, except as permitted by subparagraph (d) below or as required by applicable law; (c) use the Confidential Information only for the purpose of performing its obligations hereunder or in conjunction with the operation of the Products or Software and for no other purpose; and (d) provide access to the Confidential Information to only those of its employees or representatives who need to know the Confidential Information for the sole purpose of using the Products or Services in compliance with this Contract. These obligations shall not apply to information that: (i) was independently developed by or for the receiving party without use of the disclosing party's Confidential Information, in whole or in part, as demonstrated by written evidence; (ii) is or becomes generally available to the public without breach of confidentiality obligations by the receiving party; (iii) was in the receiving party's possession or was known by the receiving party without restriction at the time of disclosure by disclosing party, as demonstrated by written evidence; or (iv) is lawfully received by the receiving party on a non-confidential basis from a third party without breach by such third party of any legal, contractual, or fiduciary obligation to the disclosing party.

## GOVERNING LAW

This Contract and matters connected with the performance thereof or otherwise arising out of this Contract shall be construed, interpreted, applied, governed and enforced in all respects by the laws of the domicile of the Seller without regard to conflict of law provisions; provided, however, that either party may seek preliminary injunctive relief in a court with subject matter jurisdiction. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. No suit or action shall be brought against Seller more than one (1) year after the cause of action has accrued. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement.

## FORCE MAJEURE

Seller will not be liable to Buyer for delays or failures in performance, including late delivery and non-delivery, arising from strikes, fire, flood, earthquake, war, riot, accident, explosion, epidemic, embargo, acts of God, civil or military authority, changes in law, regulation or governmental policy, acts or omissions of vendors or suppliers, transportation difficulties or delays, unavoidable production delays of the Products, or any other cause beyond the Seller's reasonable control.

## EXPORT CONTROL

Any and all obligations of Seller to provide the Products, as well as any technical data, shall be subject in all respects to all applicable laws and regulations pertaining to import and export control. Buyer represents and warrants that it will not export or re-export the Products or technical data related thereto except in conformity with such laws and regulations. If the Product being ordered is for export or re-export, upon the request of Seller, the Buyer must provide Seller with the name of the ultimate end-user of the Product and any intermediate consignees or export agents together with a detailed description of the end-use. UNLESS OTHERWISE SPECIFICALLY PROVIDED IN SELLER'S QUOTATION, PRODUCTS AND/OR SERVICES HEREUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. Buyer shall defend, indemnify, and hold harmless Seller from and against any claim, loss, liability, expense or damage (including liens or legal fees) incurred by Seller with respect to any export or re-export activities of Buyer and/or Buyer's forwarder or agent which are contrary to the provisions in this section.

## MISCELLANEOUS

Buyer shall not assign its rights or delegate its duties hereunder or any interest therein or any rights hereunder without the prior written consent of Seller, and any such assignment, without such consent, shall be void. No agreement or understanding in any way modifying the conditions of this order shall be binding upon Seller unless made in writing and approved by Seller. If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable in any respect, such determination will not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct. To the extent that any such provision is found to be invalid, illegal or unenforceable, the parties will negotiate in good faith to substitute for such provision, to the extent possible, a new provision that most nearly effects the parties' original intent in entering into this Contract or to provide an equitable adjustment if no such provision can be added. The other provisions of this Contract will remain in full force and effect. No waiver of any provision of this Contract shall be valid or binding on Seller unless agreed to in writing by Seller. The failure of Seller to enforce at any time any of the provisions of this Contract, or the failure of Seller to require at any time performance by Buyer of any of the provisions of this Contract, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of Seller to enforce each and every such provision thereafter.