



**GENERAL TERMS AND CONDITIONS OF SALE**

**OF**

**BADER DE MÉXICO S. EN C. POR A. DE C.V.;**

**AND/OR**

**BADER (USA), INC.;**

**AND/OR**

**ANY OF THEIR AFFILIATES**

**(EACH REFERRED TO AS “SELLER”)**

## TABLE OF CONTENTS

	<u>Page</u>
<b>1. General Application, Formation, Choice of Law and Jurisdiction.....</b>	<b>1</b>
(a) General Application .....	1
(b) Formation .....	1
<b>2. Integration, Modification, and Status of Parties.....</b>	<b>1</b>
(a) Complete Integration .....	1
(b) Modification.....	2
(c) Parties.....	2
(d) Quotations .....	2
(e) Resale .....	2
(f) Acknowledgments.....	2
(g) Directed Source Supplies .....	2
(h) Quantities .....	2
(i) Cancellations .....	3
<b>3. Authority of Seller’s Agents.....</b>	<b>3</b>
<b>4. Prices and Payment. ....</b>	<b>3</b>
(a) Prices and Payment .....	3
(b) Price Adjustments .....	3
(c) Changes to Goods and Schedule at Buyer’s Request .....	3
(d) Payment Demand and Acceleration.....	4
(e) Letters of Credit .....	4
(f) Export/Import Fees .....	4
(g) Payment Terms .....	4
(h) Installments .....	4
(i) Carrying Charge.....	4
(j) Buyer’s Failure to Cooperate .....	5
(k) Right of Offset .....	5
(l) Allocation of Payments.....	5
(m) Samples .....	5
(n) Withholdings from Amounts Due Seller .....	5
(o) Cumulative Rights .....	5
(p) Solvency of Buyer.....	5
<b>5. Delivery.....</b>	<b>6</b>
(a) Shipping Dates .....	6
(b) Method, Cost and Insurance of Shipment.....	6
(c) Risk of Loss and Title .....	6
(d) Shipping and Packaging.....	6
<b>6. Delay of Shipment or Performance Excused for Various Reasons.....</b>	<b>6</b>
(a) Delayed Shipment.....	6
(b) Supply Allocation .....	7
<b>7. Inspection, Testing and Rejection. ....</b>	<b>7</b>
(a) Testing.....	7
(b) Rejection .....	7
(c) Inspectors .....	8

(d)	Delivery Shortages .....	8
(e)	Expenses .....	8
<b>8.</b>	<b>General Express Warranties. ....</b>	<b>8</b>
(a)	General .....	8
(b)	Warranty Requirements .....	8
(c)	Records .....	9
<b>9.</b>	<b>Patent Warranties.....</b>	<b>9</b>
<b>10.</b>	<b>Disclaimer and Limitation of Express Warranties.....</b>	<b>9</b>
<b>11.</b>	<b>Remedies and Limitation of Seller’s Liability.....</b>	<b>9</b>
(a)	General Remedies .....	9
(b)	Buyer’s Obligations .....	10
(c)	Recall .....	10
(d)	<b>Maximum Damages</b> .....	10
(e)	Exclusive Remedy and Limitation of Actions .....	11
(f)	Limitation of Liability on Safety compliance .....	11
<b>12.</b>	<b>Disclaimer of Implied Warranties.....</b>	<b>11</b>
<b>13.</b>	<b>Design, Service Parts, Service and Training Provided by Seller.....</b>	<b>11</b>
<b>14.</b>	<b>Indemnification. ....</b>	<b>12</b>
(a)	Third Party Claims .....	12
(b)	Buyer’s Indemnity for Unsafe Use .....	12
<b>15.</b>	<b>Security Interest.....</b>	<b>12</b>
<b>16.</b>	<b>Proprietary Information. ....</b>	<b>13</b>
(a)	Buyer’s Rights to Confidentiality .....	13
(b)	Seller’s Rights to Confidentiality.....	13
(c)	Proprietary Features .....	13
(d)	Trade Secrets.....	13
(e)	Restrictions on Other Purchases by Buyer.....	14
(f)	Intellectual Property .....	14
<b>17.</b>	<b>Buyer’s Property.....</b>	<b>15</b>
(a)	Insurance and Risk of Loss .....	15
(b)	Maintenance .....	15
<b>18.</b>	<b>Government Regulations.....</b>	<b>15</b>
<b>19.</b>	<b>Labor Standards .....</b>	<b>15</b>
<b>20.</b>	<b>Breach. ....</b>	<b>15</b>
(a)	Default.....	15
(b)	Seller’s Damages .....	15
(c)	Cumulative Rights and Limitations .....	16
(d)	Good Faith .....	16
(e)	Waiver.....	16
(f)	Substantial Compliance .....	16
(g)	Currency.....	16

<b>21. Termination or Cancellation .....</b>	<b>16</b>
<b>22. Claims .....</b>	<b>17</b>
<b>23. Force Majeure.....</b>	<b>17</b>
<b>24. Limitations of Actions .....</b>	<b>17</b>
<b>25. Severability .....</b>	<b>18</b>
<b>26. Assignment and Assumption .....</b>	<b>18</b>
<b>27. Choice of Law, Jurisdiction and Arbitration .....</b>	<b>18</b>
(a) Choice of Law.....	18
(b) Jurisdiction.....	18
(c) Arbitration.....	18
(d) Rules and Location .....	18
(e) Procedures.....	19
(f) Judicial Assistance and Enforcement.....	19

## **BADER GENERAL TERMS AND CONDITIONS OF SALE**

### **1. General Application, Formation, Choice of Law and Jurisdiction.**

(a) General Application. These General Terms and Conditions of Sale (“General Terms”) apply to, and are an integral part of: i) all proposals and quotations submitted by Seller; ii) all purchase orders received by Seller; and iii) all sales of goods and services sold by Seller, except as otherwise specifically provided in a document specifically issued by Seller as an exception. Any services to be provided by Seller, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included as part of an installation), shall be considered ancillary to a sale of goods and the law adopted by these General Terms shall apply to all goods and services to be provided by Seller (collectively “Goods”). All references to “Seller” include one or more of the entities that comprise the Seller identified above and any affiliate of such entities that receives a purchase order referencing or otherwise subject to these General Terms. All references to “Buyer” include those entities performing or identified as a buyer, purchaser, or in similar manner, pursuant to a contract for the sale of Goods with a Seller.

(b) Formation. A written quotation issued by Seller is an offer to sell. A contract shall be formed and Buyer shall be deemed to have accepted the provisions of these General Terms by any of the following: (a) signing and returning to Seller a copy of any quotation within the time provided therein; (b) sending to Seller a written acknowledgment or acceptance of the quotation within the time provided therein; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assembly, or delivery of the Goods (including instructions to build and hold) following receipt of or access to any quotation or these General Terms; (d) failing to cancel a pending purchase order which is not deemed to be an acceptance of an offer by Seller within ten days after receiving these General Terms; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer’s acceptance of an offer. All sales by Seller consist, in the following descending order of priority, Seller’s quotations, these General Terms, terms in other documents which are referred to herein or are attached hereto or in a document provided, signed, or issued by Seller which reference the transaction, and commercial terms on Buyer’s purchase order (excluding for example, Buyer’s standard terms and conditions of purchase and other terms inconsistent with Seller’s quotation and these General Terms) (all of which constitute the “Agreement”).

### **2. Integration, Modification, and Status of Parties.**

(a) Complete Integration. The Agreement is a final, complete and exclusive statement of the agreement of the parties related to the Goods. A purchase order or an amendment submitted by Buyer orally or in writing (whether or not it contains terms or conditions modifying, adding to, repugnant to or inconsistent with these General Terms), may be accepted, approved, performed or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement without any such terms and conditions unless Seller specifically agrees to them in a writing signed by it. Notice is hereby given that Seller objects to any such terms or conditions in Buyer’s purchase order or other document or communication. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by performing such purchase order or by failing to further object to Buyer’s terms or conditions.

(b) Modification. SELLER IS WILLING TO NEGOTIATE CHANGES TO THESE GENERAL TERMS IN WRITING SIGNED BY SELLER, BUT SELLER EXPRESSLY RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED COST RELATED TO SUCH CHANGES. FOR THE AVOIDANCE OF DOUBT, SELLER SHALL NOT BE DEEMED ACCEPT ANY AMENDMENT, CHANGE, SUPPLEMENTATION OR ADDITION TO THESE GENERAL TERMS, UNLESS SELLER EXPRESSLY AGREED IN WRITING TO SUCH AMENDMENT, CHANGE, SUPPLEMENTATION OR ADDITION. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in a writing signed by Seller's authorized employee at its home office. Notwithstanding anything to the contrary in the Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement shall affect Buyer's liabilities to Seller accrued prior thereto. Seller may correct unilaterally mathematical and typographical errors in the Agreement. A course of performance, course of dealing, or custom in the trade shall not modify or waive any right of Seller.

(c) Parties. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be also for the benefit of Seller's affiliates, agents, employees, contractors, and other suppliers. Customers of Buyer and end users are not intended third party beneficiaries of the Agreement. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

(d) Quotations. Goods quoted to Buyer are subject to prior sale or other commitment. Unless otherwise stated therein, prices and delivery schedules in quotations are valid for 90 days from date of issue and subject to modification by Seller thereafter.

(e) Resale. Buyer shall limit its distribution of the Goods purchased under the Agreement to the incorporation of the Goods into Buyer's value added product which Buyer shall market under Buyer's name. Buyer shall not remove any markings on Goods as received from Seller except as required by Buyer's value-add processes. Buyer is responsible for the selection of Goods, Buyer's ability to achieve the results it intends with other products of Buyer's design, assembly, manufacture or purchase, and for the system performance of Buyer's value added product. Any technical support by Seller for Buyer's value added product shall be AS IS without warranty or liability and Buyer is responsible to verify the appropriateness and validity of any such support.

(f) Acknowledgments. Buyer and Seller acknowledge that: (i) they are merchants in respect to the Goods produced by Seller; (ii) they have had an opportunity to review the Agreement; and (iii) the provisions of the Agreement are reasonable when considered as a whole.

(g) Directed Source Supplies. Buyer may direct Seller to obtain components or services from third parties ("Directed Source Supplies") for use in the provision of the Goods. Seller shall not be responsible to Buyer for any warranty or other claims arising from or related to Directed Source Supplies or from the failure of the third party to timely provide Directed Source Supplies.

(h) Quantities. All orders for Goods to be used by Buyer in production are for 100% of Buyer's requirements for the life of the program for which the Goods were quoted or

otherwise identified. Except as may be provided in a Seller's logistics agreement, Buyer shall provide releases with at least four weeks firm for production, an additional twelve weeks forecast. Seller shall not be obligated to provide in excess of 120% of the estimated demand included in Seller's quotation or other document accepted in writing by Seller, although Seller shall attempt in good faith to meet such requirements. Releases against an estimated annual demand shall be applied on a weekly basis based on a 50 week production year. Prices shall be equitably adjusted for deliveries in any 12 months in which the quantities ordered is less than 80% or more than 120% of the estimated demand in Seller's quotation or other documented accepted by Seller in writing.

(i) Cancellations. Program Cancellations must be notified to Seller minimum 12 weeks in advance. For any non-expected cancellation orders or drastic drop in releases which causes surplus inventory for Seller, Seller will hold the finished Goods for a maximum period of five weeks. After that, Seller may ship and send an invoice to Buyer for Goods.

**3. Authority of Seller's Agents.** No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the written Agreement. An alleged affirmation, waiver, representation or warranty shall not be deemed to be part of the basis of the Agreement and shall not be enforceable, unless it is expressly included within the Agreement.

**4. Prices and Payment.**

(a) Prices and Payment. Prices contained in Seller's published price lists, if any, are subject to change without notice. Prices contained in individual written quotations are firm only for a period stated therein and otherwise for 90 days from the date of the quotation, unless modified in writing by Seller prior to Buyer's acceptance. After any firm price period in a quotation or other written communication from Seller, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. All prices are ex works Incoterms 2010. Prices are for the Goods, and do not include any amount for freight, insurance, fees, customs duties or federal, state or local excise, value added, sales, use, service, occupation, gross income, property or any other taxes, all of which shall be paid by Buyer even if the tax is assessable against Seller (except for taxes on Seller's net income). Buyer shall reimburse Seller for any such amounts paid by Seller which are Buyer's responsibility under law or the Agreement. Unless provided otherwise in the Agreement, all prices are in United States dollars and must be paid in U.S. dollars, except otherwise directed by Seller. Buyer shall pay upon receipt of all invoices issued by Seller to Buyer for any such items Seller may pay which were the obligation of Buyer to pay under the Agreement.

(b) Price Adjustments. Seller may unilaterally adjust the price before and after issuance of a purchase order to cover Seller's increased cost of performance due to increases in the costs and/or availability of materials pursuant to the Jacobsen Hide Index.

(c) Changes to Goods and Schedule at Buyer's Request. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, or manufacturing of the Goods and adjust the delivery schedule or any other performance by Seller, which Seller determines to be required by changes requested by Buyer to the Goods after the date of any quotation. Seller is not obligated to perform any such changes which would substantially affect Seller's performance, but Buyer shall compensate Seller for them if Seller complies with such requested changes. In addition, if any delay in delivery beyond the date of delivery scheduled

at the time of entry of the purchase order is requested or is otherwise caused by Buyer, Seller shall adjust the price as provided in this Subsection.

(d) Payment Demand and Acceleration. If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or delivery of a documentary or stand-by letter of credit issued or confirmed by any bank with a branch in the United States or Mexico acceptable to Seller or other financial security or other assurance for such payment or other performance acceptable to Seller. In addition, all amounts owed by Buyer to Seller shall be accelerated and payable immediately: (i) if Buyer fails to make any payment when due and as otherwise legally required, (ii) if Buyer sells or transfers the line of business for which the Goods are purchased, or (iii) if Buyer is a participant in a merger or other reorganization.

(e) Letters of Credit. If the Agreement permits or requires the use of a letter of credit, the letter of credit must be a standby or documentary letter of credit which is assignable, irrevocable, confirmed by a bank with branch in the United States or Mexico, with a payment office in Detroit, Michigan or León, Guanajuato, acceptable to Seller, payable in installments, and requires payment to Seller on submission of Seller's invoice and a bill of lading or other proof of delivery, and Seller's statement that a payment is due. Any such letter of credit must be issued and accepted by Seller before date of proposed initiation of procurement or production of the Goods or other event established to by Seller; otherwise, Seller reserves the right to postpone production and delivery without liability to Seller. If a required letter of credit is not received within 30 days prior to the proposed initiation of production or other established, Buyer shall be in material default.

(f) Export/Import Fees. All export and import permits and licenses and the payment of all export and import duties and customs fees shall be the responsibility of Buyer, unless Seller is obligated to do so under a delivery term included in the Agreement.

(g) Payment Terms. For all approved credit, Buyer shall pay for all Goods net 30 days after shipment. Seller may change payment terms without cause on seven days' notice to Buyer. Notwithstanding the foregoing, Buyer shall pay the price for any equipment, dies, tooling or other capital Goods in advance of purchase by or delivery to Seller, as required by Seller.

(h) Installments. The Agreement may require or the Seller may elect for the delivery the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer shall pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future shall be considered an installment delivery. A failure to pay for an installment when due is a material anticipatory breach of other installments by Buyer, unless the failure to pay is the result of a good faith dispute and the Buyer deposits the amount in dispute into an escrow with an independent third party.

(i) Carrying Charge. All amounts not paid to Seller when due shall incur a monthly carrying charge of 1.0% above the then current London Inter Bank Offered Rate (LIBOR) one month rate to the extent allowed by law and otherwise at the highest written contract rate allowed by law. Buyer shall reimburse Seller for all costs of collection, including reasonable attorney fees, of amounts not paid when due.



(j) Buyer's Failure to Cooperate. All amounts due on inspection, delivery, installation, acceptance or other event which requires the action or cooperation of Buyer which Buyer fails to supply timely shall become due upon such failure, irrespective of whether or not the Goods are formally accepted by Buyer.

(k) Right of Offset. Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and shall pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts by Buyer under written protest shall not constitute a waiver by Buyer of its claims.

(l) Allocation of Payments. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.

(m) Samples. Samples of Goods and sample test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or upon written agreement with Buyer.

(n) Withholdings from Amounts Due Seller. If Buyer is required by law to deduct an amount as a withholding tax or other government fee (however it may be described in such legislation) from any payment under the Agreement such that Seller will not actually receive on the due date the full amount provided for under the Agreement, Buyer shall provide Seller with 60 days' prior written notice of such obligation, and on the due date:

(i) Buyer shall deduct the amount for the withholding tax;

(ii) Buyer shall pay an amount equal to that amount deducted to the relevant authority in accordance with applicable law and give to Seller the original receipt or other proof of payment required for Seller to obtain a refund;

(iii) Buyer shall pay Seller an amount equal to the difference between the payment otherwise due and the amount deducted;

(iv) Buyer shall also pay Seller the amount deducted; and

(v) Seller shall, after receiving reimbursement of the withheld amount, if any, repay Buyer the amount recovered after deducting the expenses incurred in obtaining reimbursement.

(o) Cumulative Rights. All remedies of Seller under the Agreement are cumulative and to the extent not specifically waived under the Agreement in addition to those provided by law.

(p) Solvency of Buyer. Buyer represents that it is solvent and able to pay the price for the Goods and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it shall notify Seller. Acceptance of delivery shall be a reaffirmation at delivery of Buyer's solvency, and that there has not been a material adverse change in such information.

## **5. Delivery.**

(a) Shipping Dates. Shipping dates are estimates based on Seller's and/or its supplier's present design, supply and manufacturing capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's purchase order and/or delivery releases. All shipping dates are approximate and shall be computed from the date of entry of the purchase order and/or delivery releases on Seller's books. All shipping dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or formal acceptance, letter of credit, deposit and other conditions as specified in the Agreement, and of all drawings, information and approvals convenient or necessary for Seller to provide the Goods and/or to grant any credit terms.

(b) Method, Cost and Insurance of Shipment. Seller shall deliver the Goods ex works Incoterms 2010 by tendering the Goods for placement in the possession of a carrier and, unless otherwise advised by Buyer in writing, without liability, shall make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. If Seller agrees to arrange shipping, Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyers' cost. On Buyer's request, Seller shall obtain and send to Buyer, upon its reasonable written request, documents to assist Buyer in obtaining insurance. Seller is not responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation. Buyer is responsible for making any claim against the carrier, and other handlers of the Goods after delivery to Buyer.

(c) Risk of Loss and Title. The Agreement is for a shipment contract and the Goods shall be delivered ex works Incoterms 2010 Seller's dock or ex works Seller's supplier's dock if the Goods are to be shipped directly from Seller's supplier to Buyer. Whether or not Seller prepays shipping charges shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods shall remain with Seller until Buyer pays for the Goods in full.

(d) Shipping and Packaging. Except as otherwise provided in the Agreement, Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. If such charges are specifically included in the Agreement in the price or Seller's obligations, any increase in rates for such services becoming effective after the date the price is quoted to Buyer shall be added to the price. All Goods shall be packed for shipment by Seller for over-the-road travel transportation, and for placement in a seaworthy container if transportation under the Agreement includes transportation by sea, in accordance with Seller's standard practices. It is Buyer's responsibility, whether or not Seller arranges shipping, to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods and advise Seller in writing of Buyer's requirements. Buyer shall pay Seller for the additional procedures and materials for production and service parts. Buyer shall pay Seller for additional handling charges for small, expedited or other shipments outside Seller's normal and ordinary course of business or the normal performance of the Agreement.

## **6. Delay of Shipment or Performance Excused for Various Reasons.**

(a) Delayed Shipment. If shipment of any Goods or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time the

Goods are ready for shipment. In the event of any such delay in shipment, full and final payment for Goods shall be due and payable 30 days after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer shall accept shipment immediately. A reasonable charge for storage as computed by Seller plus all expenditures incurred for space, insurance, and handling will be charged to Buyer. Invoices for Goods stored at Buyer's request will be provided at the beginning of the storage period and periodically thereafter, and payment will be due net 30 days from the date of invoice billed in advance. Product color may change during storage and is not a breach of warranty.

(b) Supply Allocation. Whenever Seller's supply of the Goods, materials or means of production or source of supply is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned in Subsection (a), Seller, in its sole discretion, may allocate its supply to its own use, to Buyer, and to other customers. Subsection (a) shall be effective even as to events described in Subsection (a) which exist on the date of a quotation or of contract formation.

## **7. Inspection, Testing and Rejection.**

(a) Testing. Seller's standard test procedures (which may include an original equipment manufacturer specification) conducted by Seller's representative or supplier shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. Seller is not obligated to provide other than its or its supplier's standard test procedures. On written request made not later than 30 days prior to the scheduled delivery date, Seller will quote to Buyer additional charges required to conduct any additional test procedures requested by Buyer which may be acceptable to Seller. Any variation to standard test procedures as a result of any special requests requires a written amendment to the Agreement with specific acceptance criteria detailed and approved in writing by Seller. Such specific acceptance criteria, which may be declined by Seller, must be submitted by Buyer to Seller in writing a minimum of 60 days prior to delivery date. Alterations to standard test procedures within 60 days of delivery will not be approved and, in any case, cannot then be used as a reason for rejection. The addition of such a test does change the specifications with which Seller must comply.

(b) Rejection. All manuals, drawings, specifications, technical documentation, samples, test results, prototypes and Goods shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection as provided by Seller's standard test procedures, if any, not later than seven days of receipt of such items or other reasonable time established by Seller in writing. The Goods must be rejected prior to Buyer processing the Goods by cutting, sewing, treating, or taking any other action as Seller is not responsible for such costs. Buyer shall have seven days after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If an item is rejected, notice must be given to Seller so that it will arrive no later than ten days after receipt of the item by Buyer. Failure to so act shall constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. Buyer may reject the Goods only for material non-conformities and all non-material non-conformities shall be resolved under the express warranty. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer shall return them to Seller, as instructed by Seller, within three days after such request. A failure to so return shall constitute an irrevocable acceptance. No attempted revocation of an acceptance shall be effective, and Buyer shall be

limited to any available express warranty remedies specifically provided in the Agreement. There shall be no limitation on the period of time in which Seller may cure any non-conformity or breach, provided Seller continues to make reasonable efforts to cure.

(c) Inspectors. If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon at least three days' notification by Seller that the Goods are ready for inspection or testing, Buyer shall provide at the place of ex-works manufacture or delivery, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, as provided in this Section on Inspection, Testing, and Rejection, for general compliance with the Agreement and an authorization for shipment. If Buyer fails to do so within seven days, then Seller may, in its own discretion, (i) determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment, (ii) conduct Seller's or its supplier's standard test procedures, and (iii) ship the Goods it determines them to be conforming. Correction of non-conformities, which would likely or should have been discovered by Buyer during required, requested or completed inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense and shall not be a basis for rejection.

(d) Delivery Shortages. Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven days of receipt of the shipment at Buyer's facilities.

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

## **8. General Express Warranties**

(a) General. Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods shall be in material conformance with the specifications in the Agreement at the time of delivery. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. All Goods consisting of hides and natural materials are subject to natural variations. Because the Goods may be subject to a wide variety of use, installation, maintenance, cleaning, and other factors, the warranty is only against the named defects and not against any other defects or failures such as, but not limited to, those due to normal wear and tear, normal maintenance and unknown causes. The warranty does not cover physical damage to the surface or cosmetics of the Goods, including but limited to cracks or scratches naturally occurring after delivery or caused by processing or installation after delivery.

(b) Warranty Requirements. Seller's warranties against non-conformities and defects shall continue to apply only so long as the Goods: (i) have been installed, maintained and used in conformity with instructions furnished by Seller from time to time, if any, and otherwise in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller or Seller authorized warranty service providers in any respect which, in the judgment of Seller, adversely affects the condition of the Goods; and (v) have been fully paid for.

(c) Records. Buyer shall create, maintain and make available to Seller, permanent records of the installation, maintenance, use and disposition of the Goods.

**9. Patent Warranties**. Seller shall defend and indemnify Buyer from any claim which asserts that the Goods or their inherent qualities or manufacture, intrinsically, infringe any rightful patent, except as to a claim based on Buyer's modifications and use of the Goods as a step in an overall process or as an element in an overall combination. Seller's obligation shall not apply to a claim based on the Goods or portions thereof specified, designed, or manufactured by Buyer. Buyer shall notify Seller promptly of any assertions of patent infringement and provide Seller with assistance and information requested by Seller for its defense, or Seller shall have no further obligation to defend or indemnify. 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. Seller's exclusive obligation to indemnify as to the Goods declared to infringe is limited to the acquisition of a license, the replacement of the Goods with non-infringing Goods, the modification of the Goods so that they are non-infringing, or the return of the purchase price and shipping costs in exchange for the Goods, as Seller may elect. This Section states Seller's entire and exclusive obligation regarding patent infringement and the exclusive remedies therefor, and Buyer waives all other rights. Seller disclaims any implied warranty of non-infringement. Buyer shall defend and indemnify Seller for all infringement claims (including direct, contributory and inducement) based on Goods or portions thereof specified, designed or incorporated by Buyer.

**10. Disclaimer and Limitation of Express Warranties**. There are no express warranties other than those contained in the Agreement and they are not assignable. Any representations as to performance and other matters, except as expressed as a warranty contained in the Agreement, were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein unless specifically provided and identified as such. Seller is not responsible for any errors or omissions or for any loss or damage resulting from reliance on catalogues, brochures, price lists or other information provided to Buyer from Seller, including, without limitation, any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information. Such information provided by Seller is intended for general information only and is not a representation, warranty or other obligation of Seller. Buyer is to conduct its own tests or include in the written Agreement with Seller's written consent any express obligations of Seller which Buyer deems material. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures unless specifically contained in the Agreement. All Goods as used are sold AS IS WHERE IS without any additional, express warranty or any implied warranty.

**11. Remedies and Limitation of Seller's Liability**.

(a) General Remedies. Defective or non-conforming Goods or parts thereof discovered and reported to Seller in writing during the express warranty period of 90 days after delivery shall be repaired or replaced by Seller without any additional charge, and shipped to Buyer, free on board ("FOB") Buyer's plant, for reinstallation or further processing by Buyer at its cost, subject to the terms hereof of the Agreement, as Buyer's exclusive remedy. The warranty obligation of Seller is limited to the repair or replacement of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller shall determine upon examination to be defective as not in conformity with the

express warranties contained herein. Goods may only be returned pursuant to a returned materials authorization issued by Seller. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price as Buyer's exclusive remedy. Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations or a failure of an item to meet its intended purpose) exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE, REGARDLESS AS TO WHETHER SELLER'S LIABILITY ARISES UNDER CONTRACT, TORT, STRICT LIABILITY STATUTES, OR OTHERWISE, FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO: LOST PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; RECALL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES; COST OF PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE OR SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each provision of the Agreement which provides for a limitation of liability, disclaimer of warranties, or exclusion or limitation of damages or remedy is severable and independent of each other and to be enforced as such. Buyer waives any causes of action or theories of liability relating to or arising under the Agreement including, but not limited to, those arising under contract, tort, strict liability, indemnity, product liability statutes, or otherwise, except as specifically provided by the UCC or other applicable laws as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new or extended warranty, and the warranty period provided for herein shall not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer or otherwise.

(b) Buyer's Obligations. Buyer shall contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods or parts thereof. If requested by Seller, Buyer shall issue a new purchase order or amendment to Seller for replacement parts, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer shall provide with any claim in writing a complete description of the non-conformity or defect. Buyer shall comply with Seller's return instructions (including return of the Goods) within 30 days or the claim shall be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying and packing returned Goods. Goods returned without compliance with the above procedures shall be returned to the sender at sender's cost.

(c) Recall. Seller shall not be liable for any costs related to a recall, service campaign or similar action without its prior written consent and Seller's maximum obligation in any such event is the provision or cost of replacement Goods.

(d) Maximum Damages. **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, EXCEED 100% OF THE TOTAL AMOUNT PAID OR PAYABLE TO SELLER PURSUANT TO THE AGREEMENT FOR THE NON-CONFORMING OR DEFECTIVE GOODS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF BUYER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.**

(e) Exclusive Remedy and Limitation of Actions. This Section sets forth Seller's sole liability and entire obligation and Buyer's exclusive remedy for any action that is brought against Seller relating to or arising under the Agreement or the non-provision or provision of Goods. All actions by Buyer must be brought within the earlier of one year after delivery, and any periods provided by the Agreement or they are barred.

(f) Limitation of Liability on Safety compliance. BUYER SHALL DESIGN, REQUEST, INSTALL AND USE THE GOODS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE. It is Buyer's or other user's responsibility to provide all proper instructions, measures, designs, drawings, devices, tools, training, and means that may be necessary to effectively protect and warrant the Goods against any kind of serious bodily injury or property damage which otherwise may result from the manufacture, installation, use, operation, setup, or service of the Goods. Buyer must comply with all safety compliance and similar state regulations, and other sources to insure the safe use of the Goods. Seller warrants that the Goods will be in substantial compliance with the specific requirements of Buyer as contained in the Agreement. Because of changes which occur in, state codes, local codes and user safety and other programs, Seller must be advised by Buyer in writing if it desires specific modifications of the Goods required for compliance. A quotation will be submitted for such requested modifications.

**12. Disclaimer of Implied Warranties.** SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN THAT THE GOODS WILL BE NEW AND GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. There are no warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon Seller's skill nor judgment to select the Goods for any particular purpose beyond the specific express warranties in the Agreement nor upon any support provided to Buyer related to Buyer's products. Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer has and shall provide in writing all requirements and specifications of Buyer. Buyer's approval of drawings and/or prototypes constitutes Buyer's acceptance and waiver of any responsibility for a failure to consider or correct information or approval provided by Buyer. Any modifications of drawings, prototypes and other work of Seller after approval by Buyer shall be at Buyer's expense at Seller's normal rates for services and materials. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement.

**13. Design, Service Parts, Service and Training Provided by Seller.** All design, application engineering, parts, labor, service, software and training, if any, provided by Seller or its agents and contractors (including those provided under purchase orders subsequent to the Agreement) related to the Goods (whether or not covered by warranty) are subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Buyer shall pay Seller for all non-warranty service in advance or upon such other terms as may be agreed. Seller shall provide Goods for service for 10 years after such production closes at quantities and prices to be

negotiated. A termination by Buyer of production obligations also terminates Seller's obligations as to service Goods. Seller may elect to discontinue service and service parts on the types of Goods sold at any time upon 180 days' notice.

#### **14. Indemnification**

(a) Third Party Claims. Buyer shall indemnify, and at Seller's request defend, Seller from 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 Goods, supplies or materials used in connection with the Goods, or parts, components and systems manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's or its customer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller. Buyer shall defend and indemnify Seller from all liability for claims, damages, losses and expenses incurred as a result of the advice furnished by Seller to, and relied on by, Buyer or its contractors to the extent the liability exceeds any liability as limited by the Agreement had the advice been furnished to, and relied on by, Buyer.

(b) Buyer's Indemnity for Unsafe Use. Buyer shall use and shall require its employees and all other users of the Goods to use all safety devices and guards furnished with or intended to be used with the Goods, and to follow proper safe operating procedures in accordance with general industry standards and as set forth in manuals and instruction information furnished by Seller and as otherwise required by the Agreement. If Buyer fails to comply with the obligations set forth in this subsection, Buyer shall indemnify and save Seller harmless and on Seller's request defend Seller from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the use and installation of the Goods and all warranties of Seller shall become automatically void. Buyer shall notify Seller promptly, and in any event within 30 days, of any accident or malfunction involving Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods and Buyer's reports regarding the Goods for Seller's inspection. If Buyer fails to provide such notice and cooperation to Seller, Buyer shall indemnify Seller from any claims arising from such accident or malfunction whether or not the Goods are non-conforming or defective.

**15. Security Interest**. In addition to any security interest granted in accordance to applicable law, Buyer hereby grants a security interest to Seller in all Goods and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller. Seller may file a financing statement and at Seller's request, Buyer shall sign financing statements and other documents which evidence, perfect and confirm the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement or other similar documents if necessary or convenient to perfect Seller's security interest. Buyer shall not change the name of Buyer, the jurisdiction of Buyer's formation, or the location of any Goods from the original destination point or installation site without prior written notice to Seller. Buyer shall provide a lien waiver or subordination from all third parties to whom the Goods may be delivered. Buyer shall provide a landlord's waiver or subordination of any lien rights at the premises to which the Goods are to be stored or installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others and take other actions to repossess or render inoperable all Goods in which it has a security interest provided that Seller provides Buyer with immediate notice it has rendered the Goods inoperable. In case of a default by Buyer, Buyer hereby irrevocably appoints



Seller as its agent to obtain possession of the Goods and documents related thereto. Title shall not transfer to Buyer until the Goods are paid in full. Buyer shall maintain the Goods which constitute inventory in a segregated area and not co-mingle any Goods which are not fully paid. Buyer shall immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which has not been paid to Seller.

**16. Proprietary Information.**

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

(b) Seller's Rights to Confidentiality. All proposals, plans and other information furnished by Seller in bidding, negotiating and performing the Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and shall not be shown or disclosed to any other bidder, and shall not be shown or disclosed to any other third party or used by Buyer unless necessary for the selection or use of the Goods and written notice of such disclosure has been given to Seller. Buyer shall treat as confidential any quotation or other business proposal from Seller and all technology which shall be made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer shall use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer shall not manufacture or sell any product using confidential information provided by Seller or obtained from reverse engineering or decompiling Goods. Buyer shall not disclose, or authorize or instruct any third party to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer and without prior written notice to Seller of Buyer's intent to do so. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such information or technology. Buyer shall maintain, for Seller's inspection, written records which shall include the names and address of such employees and contractors granted such access. Buyer shall indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer except as specifically provided in the Agreement.

(c) Proprietary Features. Any design, invention or other information developed by Seller in the performance of the Agreement shall remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by Seller in the performance of the Agreement, alone or in cooperation with Buyer, shall be the property of Seller and Seller shall be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement, except as provided in Subsection (a).

(d) Trade Secrets. Unauthorized use of such confidential information will greatly diminish the value of such confidential information and cause irreparable harm to Seller. Seller, in addition to any other remedies it may have, shall be entitled to equitable relief to protect

such confidential information, including without limitation temporary and permanent injunctive relief without providing a bond or further proof of irreparable harm by Seller.

(e) Restrictions on Other Purchases by Buyer. Buyer shall not purchase from any supplier of Seller any Goods or components thereof which have been purchased by Buyer from Seller until two years after the last purchase of such Goods or components from Seller. Buyer shall not disclose to third parties Seller's sources of supply of materials.

(f) Intellectual Property. All oral, written and graphic information such as documents, instruments, manuals, materials, notes, data, Inventions, examples, samples, discoveries, formulas, compounds, processes, logs, reports, analysis, compilations, studies, communications, files, floppy disks or records containing proprietary information of Seller, its clients and suppliers, including but not limited to: i) technology, development of industrial processes, production systems, control processes, chemical formulas and technical specifications of products and raw materials, names, equipment operation and applications, products and elements, statistical information, research and development results, re-engineering processes and products, processing times, production logistics, information of supplies and raw materials, production volumes and, in general, other processes, elements and related products to the industry of manufacture and commercialization of leather products and its derivatives. ii) planning, management and control processes, strategic planning, business plans, financial plans, budgets, information systems, costs systems, projected sales prices, marketing, commercialization and sales strategies, marketing and sales, business contacts, customer lists and suppliers, quality control systems, technical expertise and know-how that has been, or will be disclosed to Buyer by Seller shall be deemed to be considered trade secrets that constitute and represent an important and irreplaceable asset of great value to Seller. The disclosure of such information or its utilization by Buyer or by others, would cause to Seller and its shareholders, affiliates and/or subsidiaries, substantial and irreparable damages, affecting their competitiveness, market position, their trade and economic interests, and their relationships with business partners, customers and suppliers. Thus, it is necessary to implement legal measures to protect, store and maintain, under strict confidentiality, all information that is known or that will be known by Buyer. Buyer shall assign to Seller any intellectual or industrial property rights arising from the terms and conditions herein, as well as property rights and exclusive exploitation of Inventions. Buyer agrees that the files and information generated thereto will be the exclusive property of Seller. In this regard, Buyer shall cooperate, when it is needed, to carry out the procedures deemed appropriate to implement legal measures to protect such intellectual and industrial property. If Buyer, or any person employed by or working under the direction of Buyer as a result of Buyer's performance under the Agreement conceives or first reduces to practice: (a) any invention or any experimental, development or research activities, including engineering related thereto, whether or not patentable; (b) any reduction to practice of any subject matter, application or discovery which could be patented or copyrighted; or (c) any improvement in the design of the Goods or any alternative or improved method of accomplishing the objectives of these Terms and Conditions (collectively referred to herein as "Inventions"), such Inventions will be owned by Seller and be deemed confidential and proprietary property of Seller, whether such Inventions or any portions thereof can be copyrighted or patented or not. Buyer will immediately disclose all Inventions to Seller and will cooperate (and cause its employees to cooperate) in executing any documents and taking any other actions necessary or convenient to patent, copyright, assign to Seller or otherwise perfect or protect such Inventions for the benefit of Seller.

**17. Buyer's Property.**

(a) Insurance and Risk of Loss. Buyer shall insure all Buyer's materials, fixtures, tooling and other property delivered to Seller against all risks of loss of, damage to, and injury from, such property and waives subrogation in the event of loss of or damage to such property or personal injury arising from the use or storage of such property.

(b) Maintenance. All dies and other tooling paid for by Buyer by separate purchase order or under a specific provision in the Agreement for amortizations under a piece price, shall be owned by Buyer and shall be replaced by Buyer after they no longer properly perform using normal maintenance.

**18. Government Regulations.** Buyer shall not engage in any transaction with respect to the Goods, by way of resale, lease, and shipment or otherwise, which violates any applicable law, statute or regulation. Buyer shall comply with all applicable export control laws and shall not, directly or indirectly, export, re-export, resell, ship, or divert any service, technical data, or software furnished hereunder to any person, entity, project, use, or country in violation of applicable laws or licensing requirements. Buyer warrants that Seller is not and shall not become a government subcontractor to Buyer and shall not be required to comply with the government acquisition regulations of any governmental body because of the Agreement or performance of the Agreement. If Buyer elects to sell Goods to any governmental entity or any state, or to a prime contractor or other subcontractor selling to such purchasers, Buyer does so solely at its own option and risk. Buyer remains exclusively responsible for compliance with all laws governing such sales and shall not obligate Seller as a subcontractor or otherwise to such entities. Seller makes no representations, certifications or warranties whatsoever with respect to the ability of its Goods or prices to satisfy any such statutes or regulations.

**19. Labor Standards.** Seller certifies that any Goods produced in Mexico shall be produced in compliance with all applicable requirements of the Mexican Federal Labor Law, as amended, and of the regulations and orders of the Mexican Labor laws and regulations. Buyer warrants that no other certifications or waivers regarding Seller's payments to Seller's suppliers or laborers are required for Buyer to pay Seller.

**20. Breach.**

(a) Default. If Buyer defaults in the performance of payment or any other of its obligations, if Buyer advises Seller that it will or may default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of a protective order for debtor's relief for Buyer, Buyer shall be in material breach and Seller may cease performance of its obligations, recover the Goods in transit or delivered, terminate its obligation to deliver Goods and otherwise enforce its remedies for Buyer's default. For example only, a failure to make any payment as required by this Agreement or any other contract with Seller or an affiliate of Seller is a material breach of this Agreement.

(b) Seller's Damages. Seller shall be awarded interest, and costs (such as but not limited to actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.

(c) Cumulative Rights and Limitations. All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

(d) Good Faith. Seller shall not be liable in damages or otherwise for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

(e) Waiver. Seller's failure or delay in enforcement of any provision shall not constitute a waiver of a default or of the provision itself.

(f) Substantial Compliance. Seller shall not be liable for any damages for breach of any provision of the Agreement with which it has substantially complied.

(g) Currency. The choice of currency expressed in the Agreement and the place of payment are essential terms and there are no equivalent terms. Any money judgment rendered under the Agreement shall be converted in any enforcement action in a jurisdiction in which the local legal currency is other than as expressed in the Agreement shall be converted into the legal currency of the enforcing jurisdiction at the current New York rate of exchange as published in the *Wall Street Journal* on the date of entry of the original judgment.

## **21. Termination or Cancellation.**

(a) A party may terminate or cancel the Agreement immediately by written notice to the other party if:

(i) The other party breaches any of its material obligations under the Agreement and that breach is not capable of remedy.

(ii) A party becomes insolvent.

(iii) It becomes unlawful for the party to perform its obligations under the Agreement.

(b) Seller may terminate or cancel the Agreement immediately by written notice to Buyer if Buyer fails to:

(i) Pay money owing under the Agreement for more than seven days after it becomes due.

(ii) Accept delivery at the delivery point within seven days from the date the Goods are first available for delivery as advised to Buyer by Seller, unless agreed by Seller otherwise in writing.

(iii) Perform any other provision of the Agreement or breaches any of its material obligations under the Agreement and does not remedy that failure or breach within the remedy period set out in a written notice from Seller giving full particulars of the breach and requiring it to be remedied. Any breach which is not so described is waived.

(c) The rights of termination or cancellation under the Agreement are in addition to any right of action or remedy which the parties have under the Agreement in respect of

any breach of the terms and conditions of the Agreement.

(d) The termination or cancellation of the Agreement does not affect the right of action or other remedy of the parties before termination in respect of any prior breach of the terms and conditions of the Agreement, including any breach which is the grounds of termination.

(e) All rights and obligations of each party to the Agreement which are expressed to survive termination, cancellation, or expiry of the Agreement, or which by their nature or context must survive termination, cancellation, or expiry of the Agreement, will survive the termination, cancellation, or expiry of the Agreement.

(f) Buyer may cancel its purchase order for the Goods prior to their completion by immediate payment to Seller of Seller's cost of manufacture and liquidated damages (including labor, engineering, materials, equipment time and overhead) computed using Seller's standard internal costing procedures, plus 15% of the sale price of the Goods.

**22. Claims.** COMMUNICATIONS CONCERNING DISPUTED DEBTS OR OTHER CLAIMS, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT OR MUST BE DELIVERED TO SELLER WITH ACKNOWLEDGEMENT OF RECEIPT DULY EXECUTED BY AN AUTHORIZED OFFICER OR DIRECTOR OF SELLER.

**23. Force Majeure.** All inspection, delivery and other dates for Seller's performance are estimates only. In addition, Seller shall not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or purchase order; (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or other performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; or (v) failure of Seller's suppliers to perform. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or waive such delay and establish a new delivery schedule.

**24. Limitations of Actions.** A proceeding by Buyer for breach of the Agreement or any other right against Seller arising under or related to the Agreement or any open account or account stated arising under or related to this Agreement cannot be filed nor maintained by Buyer unless: (i) it is commenced within one year after the cause of action has accrued; (ii) Buyer has given timely written notice to Seller of the details of its claim as provided in the Agreement; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. Except as specifically provided otherwise in the Agreement, an action for breach of warranty or any other provision of the Agreement shall accrue no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required by the Agreement. Buyer waives the application of any law providing for any presumptions or other benefits relating to an account stated or open account arising under or

relating to this Agreement unless stated in a writing signed by Seller acknowledging liability for such amount.

**25. Severability.** Any provision found to be unenforceable by a final unappealed order entered by the court or tribunal shall be severed from the Agreement. Such severance shall be as narrow as possible and shall not affect the remainder of the Agreement in such action and other actions, unless the court or tribunal shall also find, on the request of Seller, that without such provision as originally written, the Agreement is not likely to meet the reasonably commercial expectations of the parties and in such case, the court or tribunal shall enter an equitable judgment of rescission, termination or reformation of the Agreement as necessary to reach an equitable result.

**26. Assignment and Assumption.** No right or interest in the Agreement may be assigned by Buyer without the prior written consent of the Seller. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this Section. At Seller's request, Buyer shall include in any sale of Buyer's business related to the Agreement an assignment and assumption of Buyer's obligation to purchase the Goods.

**27. Choice of Law, Jurisdiction and Arbitration.**

(a) Choice of Law. The Agreement shall be governed, construed and enforced under the laws of the State of Michigan including the Uniform Commercial Code in force on the initial date of the Agreement ("UCC") for all Agreements except those between a Buyer and Seller formed in Mexico which shall be under the law of Mexico, except as provided herein. The U.N. Convention on the International Sales of Goods shall not apply.

(b) Jurisdiction. Subject to the obligation of the parties to arbitrate, all disputes arising under or relating to the Agreement shall be resolved exclusively by the courts of Michigan except where the Buyer and Seller are formed under the laws of Mexico in which case the courts of the state of Mexico in which the Seller has its principal place of business shall have such exclusive jurisdiction. If Buyer does not maintain a registered office or agent in the United States, Buyer hereby irrevocably appoints the Secretary of State of the state whose law applies and CT Corporation at its office in Michigan as Buyer's non-exclusive agents to receive process on behalf of Buyer in any litigation or arbitration proceeding arising under or related to the Agreement for forwarding to Buyer at the address set forth in the Agreement.

(c) Arbitration. In the event of any dispute, controversy or claim arising out of or relating to the Agreement or the breach, termination or invalidity hereof (whether statutory, contract, tort or otherwise), regarding or pertaining the validity, intention, or interpretation, execution, or compliance, and all matters relating to these General Terms or the Agreement, the parties shall make a good faith effort to resolve any such issues through negotiation, and if not so resolved, said dispute shall be resolved by arbitration.

(d) Rules and Location. If Buyer and Seller are Mexican entities, the arbitration shall be in accordance with the rules and procedures of the American Arbitration Association and the arbitration proceedings shall take place at Mexico City, Mexico. Otherwise the arbitration shall be in accordance with the rules and procedures of the American Arbitration Association, and the arbitration proceedings shall take place in a city chosen by Seller. The arbitration shall be

conducted in English, but the arbitrators may receive documents or testimony in Spanish as may be necessary.

(e) Procedures. Any arbitration proceeding shall be subject to the following general rules:

(i) All parties shall have the opportunity to call such witnesses and present such evidence as such parties reasonably require and in accordance with applicable rules.

(ii) The arbitration shall be carried out by three arbitrators who shall resolve by majority vote, unless the Parties agree that the nature of the dispute requires only one arbitrator. Said arbitrators shall be appointed one by Seller, and one by the Buyer, and the third arbitrator shall be appointed jointly by the two arbitrators so appointed. If any party refuses to select an arbitrator, the arbitration body shall select an arbitrator on such party's behalf. All arbitrators shall be neutral.

(iii) At least one of the arbitrators selected shall be fluent in Spanish and English and shall not be current or former employees, directors, shareholders, agents, representatives, legal, accounting, or other professional advisers of either party. The third arbitrator (appointed by the other two arbitrators) shall have substantial experience in arbitrating transnational commercial disputes.

(iv) The arbitration panel shall grant an award, strictly grounded in applicable law as set forth herein, within six (6) months.

(v) Each party shall pay its own counsel expenses, but the other expenses of the arbitration process shall be paid by the losing party as determined by the panel.

(vi) The arbitration award shall be final and binding upon the parties hereto and shall not be subject to judicial review.

(vii) In the event the losing Party does not comply with the arbitral award within 10 days following the date said award was delivered to such Party, the other Party may immediately request judicial assistance to execute the award. Any arbitration award may be enforced against the parties or their assets wherever they may be found and a judgment upon the award may be entered in any court having jurisdiction thereof.

(f) Judicial Assistance and Enforcement. Notwithstanding anything else contained in this Section, any party may seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party without waiving any right or remedy under the General Terms and the Agreement. The interim or provisional relief is to remain in effect until revised by the court independently or upon request or award of the arbitrator.

*(revised May 2019)*