



Marmon Power Systems

A Berkshire Hathaway Company

TERMS AND CONDITIONS OF PURCHASE

1. **ACCEPTANCE.** These Terms and Conditions of Purchase and all documents referenced herein (collectively, the "Order") is an offer by The Scott Fetzer Company ("Buyer") to purchase the goods ("Goods") and/or services ("Services" and together with the Goods, the "Deliverables") described in Buyer's purchase order from the person or entity to whom the purchase order is addressed ("Seller"). Acceptance is limited to the terms of the Order. The Order is the only terms and conditions which govern the purchase of Deliverables by Buyer and supersede all prior and contemporaneous terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. Any proposal for additional or different terms or any attempt by Seller to vary in any degree any of the provisions of the Order is hereby deemed material and objected to and rejected. No terms of any document or form submitted by Seller shall be effective to alter or add to the provisions contained in the Order. Unless otherwise stated herein, Seller's acknowledgment of the Order, shipment of Goods or commencement of any Services shall constitute acceptance by Seller of the Order. All specifications, drawings, and data submitted to Seller with this order or referred to buy this order are incorporated and made a part of this Order.
2. **PRICES.** The prices are the lower of Seller's prevailing prices or as stated on the Order and are otherwise fixed, firm and not subject to increase. Unless otherwise expressly agreed by Buyer in writing, the price includes all taxes (sales, use, excise, privilege, ad valorem, and other taxes, duties, tariffs and assessments now or hereafter imposed or levied) and charges for packing, hauling, storage and transportation to Buyer's designated point of delivery. Any price reduction subsequent to the Order but prior to payment will be applied to the Order. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order. Forecasts, estimates and similar projections of Buyer are not purchase commitments. Buyer shall have no obligation to purchase or otherwise compensate Seller for any of Seller's finished products, work in process or raw materials, not expressly covered by an Order issued by Buyer. If Seller sells or offers to sell any goods or services of the same or similar type as the Deliverables at a lower price and/or on more favorable terms or conditions to any other person or entity, Seller shall provide written notice to Buyer, whereupon Buyer shall have the option to have such more favorable price, terms and/or conditions applied to this Order and Orders thereafter.
3. **PAYMENT TERMS.** Seller shall issue an invoice to Buyer on or any time after the completion of delivery of Goods or Services. Buyer shall pay all properly invoiced amounts due to Seller within 90 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.
4. **DELIVERY.** Time is of the essence. Unless otherwise agreed by Buyer in writing, all shipments are F.O.B. destination and title and risk of loss/damage shall pass to Buyer at such time and place. The Order must be shipped complete for delivery by the date requested. Seller shall deliver Goods in the quantities and on the date(s) specified in the Order. Buyer shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Buyer's option, be returned to Seller, or held for disposition, at Seller's expense and risk. Seller shall be liable for damage caused by improper boxing, crating or packing. If delivery of Goods is not made in the quantities or at the times specified, or rendering of services is not completed at the times specified, Buyer reserves the right without liability, and in addition to its other rights and remedies, to take either or both of the following actions: (a) direct expedited routing, at Seller's expense; (b) terminate this Order as to Goods not yet shipped or services not yet rendered, and to purchase substitute Deliverables elsewhere and charge Seller with any loss incurred. Seller shall be liable for excess transportation charges, delays or claims resulting from Seller's deviation from Buyer's routing instructions.
5. **WARRANTIES.** Seller warrants that (I) all Deliverables are and will be (a) in full conformity with specifications, drawings, samples, quantities, delivery schedules, and descriptions furnished or specified by Buyer; (b) free from defects in material, workmanship and design, (c) merchantable and fit and sufficient for the purposes intended; (d) free and clear of all liens, Claims, security interests or other encumbrances; (e) free of claims of infringement or misappropriation of any third party's intellectual property rights; and (f) produced or provided in compliance all applicable foreign, federal, provincial, state, and local laws and regulations as well as requirements and standards applicable to the Deliverables including without limitation REACH, RoHS and Prop. 65 ("Laws"); and (II) Seller shall (a) comply with all applicable Laws and Buyer's prime contract (if any); and (b) refrain from engaging in any illegal, unethical, or deceptive practices. All warranties shall survive inspection, testing, delivery, acceptance, termination and payment and failure to inspect, test or discover any defect or other nonconformance. These warranties shall be in addition to all other warranties, express, implied or statutory. **NO ATTEMPT BY SELLER TO DISCLAIM, EXCLUDE, LIMIT, OR MODIFY ANY WARRANTIES OR SELLER'S LIABILITY FOR DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES SHALL BE OF ANY FORCE OR EFFECT.**
6. **INSPECTION.** All Deliverables are subject to inspection and testing by authorized representative(s) of Buyer and/or Buyer's customers at all reasonable times and places, including during production. Buyer reserves the right to reject or revoke acceptance, in whole or in part, of Goods which fail to meet any requirement of the Order, notwithstanding inspection, testing, delivery, acceptance and/or payment and such Goods may, at Buyer's option, be returned to Seller at Seller's cost or held for disposition at Seller's risk and expense.
7. **INDEMNIFICATION.** Seller, shall defend, indemnify, and hold Buyer, its affiliates and their respective officers, directors, members, managers, shareholders, employees, customers, successors and assigns, harmless against any and all claims, demands, damages, losses, liabilities, lawsuits, dispute resolution, judgments, fines, settlements, penalties, costs and expenses including without limitation all attorneys' fees and litigation costs and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers, whether direct, indirect, incidental, consequential, or otherwise (collectively, "Claims") arising out of relating to (i) the Deliverables (including death, injury and property damage); (ii) actual or alleged act, omission, negligence or failure to

- comply with the Order or any other agreement between Buyer and Seller; (iii) any Recall; (iv) actual or alleged infringement or misappropriation of any IP Right; (v) loss or damage to Buyer's Property; and (vi) Seller's breach of the Order. Seller shall not enter into any settlement without Buyer's prior written consent. This indemnification is in addition to the warranty obligations of Seller.
8. **INTELLECTUAL PROPERTY.** Seller represents and warrants that the manufacture, sale, performance and use of the Deliverables will not infringe any patent, copyright, trademark, trade secret, know how or other intellectual property or proprietary right ("IP Right"). If all or any portion of the Goods are held to constitute an infringement of a patent and/or their use is enjoined for any reason, Seller shall promptly, and at its own expense, either procure for Buyer the right to continue using such Goods royalty-free or replace such Goods to Buyer's satisfaction with non-infringing goods of equal quality and performance.
 9. **INSURANCE.** Seller shall obtain and at all times in which the Order is in effect and for no less than two (2) years thereafter, maintain at its cost insurance as designated by Buyer from time to time, but no less than insurance with insurers having a current A.M. Best rating of "A-VIII" or better: (1) primary comprehensive or commercial general liability insurance with limits of at least \$2 million per occurrence combined single limit for bodily injury and property damage with a \$2 million products-completed operations aggregate and a \$2 million general aggregate, including coverage for: (i) Products and Completed Operations liability; (ii) Blanket Contractual liability; and (iii) Cross Liability endorsement or Severability of Interest clause. Insurance required shall: (1) be endorsed to insure Buyer, its officers, directors, employees, representatives and agents as additional insureds; (2) be endorsed to waive any rights of subrogation against Buyer; (3) provide contractual liability coverage to Seller for its indemnity obligations; and (4) be endorsed to provide that such insurance is primary to and non-contributory with any other insurance obtained by, for or on behalf of Buyer notwithstanding any "other insurance" provision contained within such policies. Seller shall provide written notice to Buyer no less than 30 days prior to the effective date of cancellation or material reduction of any required insurance coverage. Prior hereto and at any time upon reasonable request, Seller shall provide certificates of insurance to Buyer along with other documentation as may be reasonably required by Buyer to evidence the insurance coverages required herein. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer.
 10. **CHANGES.** No change to any Order is binding upon Buyer unless it is in a signed writing, and specifically states that it amends such Order. Buyer shall have the right at any time to make changes in drawings, specifications, quantities, materials, packaging, time and place of delivery, and method of transportation, and cancel an Order, in whole or in part, without liability. If any such changes result in an increase or decrease in the cost or the time required for performance, an equitable adjustment may be made by Buyer or Buyer may, at its option, terminate an Order if agreement on an adjustment cannot be reached. Claims for adjustment must be asserted by Seller within ten days of the change order. Seller agrees to accept any such changes.
 11. **RECALL.** In the event that Buyer determines, in Buyer's sole discretion, that any defect, nonconformance or deficiency in any of the Goods requires a field campaign, recall, similar or other action ("Recall") to repair, replace or remediate any Goods or any of Buyer's products in which Goods are incorporated, Seller shall be liable to Buyer and its customers for all damages, costs and expenses with regard to the foregoing including, without limitation, attorneys' fees and court costs.
 12. **FORCE MAJEURE.** Buyer shall not be liable for failure to take delivery of the Goods or to allow performance of the Services or to otherwise perform hereunder if such failure or inability is due to causes beyond Buyer's control.
 13. **TERMINATION.** Buyer may terminate any Order, in whole or in part, without liability to Buyer at any time, if (i) Seller breaches the Order or fails to deliver the Goods or to perform the Services by the specified time; (ii) a petition initiating a proceeding under any applicable Law relating to bankruptcy, insolvency, or reorganization is filed by or against Seller; (iii) Seller is insolvent or executes an assignment for the benefit of creditors; (iv) a receiver is appointed for Seller or any substantial part of its assets; (v) Buyer is insecure with respect to Seller's ability to perform and Seller is unable to provide Buyer with adequate assurance of its ability to perform within five days after Buyer's request therefore; or (vi) Buyer provides no less than 5 days' written notice to Seller. Buyer's rights and remedies are cumulative, not exclusive and in addition to its rights and remedies at law, in equity or otherwise. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination. Upon receipt of notice of any termination, Seller shall, unless the notice directs otherwise, immediately discontinue all work.
 14. **PROPERTY.** Title to and right of immediate possession of any property, including, without limitation, patterns, tools, jigs, dies, equipment and materials ("Buyer's Property") furnished or paid for by Buyer shall be and remain the sole property of Buyer. No articles made therefrom shall be furnished by Seller to any other person or entity without Buyer's prior written consent. Seller shall be responsible for maintaining adequate records and maintenance and protection of Buyer's Property and shall return Buyer's Property to Buyer immediately upon demand. Seller waives any lien rights or other rights to retain Buyer's Property and acknowledges that its obligation to return Buyer's Property upon demand is unconditional.
 15. **AUDIT.** Buyer and its designees shall have the right to audit and inspect Seller and Seller's suppliers, records and facilities to determine Seller's and its suppliers' compliance with the Order.
 16. **NOTICES.** All notices to Buyer be given in writing and will be effective upon personal delivery, on the third day after mailing if sent by certified mail, postage prepaid, return receipt requested, or two business days after deposit if sent by a nationally recognized courier service which maintains evidence of the time, place and receipt of delivery, and in each case if addressed as set forth in the Order (or such other addresses a party may designate in writing from time to time).
 17. **INFORMATION.** All information, documents, specifications, suggestions, comments and data ("Information") heretofore or hereafter furnished or disclosed by Buyer to Seller is and shall remain the confidential and proprietary information of Buyer and shall be maintained in strict confidence and only used for purposes of fulfilling an Order. Further, Seller shall not in any manner advertise or publish the fact that it has furnished Buyer, or contracted to furnish Buyer, any Deliverables without the prior written consent of Buyer. **BUYER MAKES NO WARRANTY WITH RESPECT TO INFORMATION. ANY IMPLIED WARRANTIES THAT MAY EXIST WITH RESPECT TO ANY INFORMATION PROVIDED BY BUYER, INCLUDING ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXCLUDED.**
 18. **INVOICES.** The parties agree that for any transactions, facsimile signatures shall be accepted as original signatures, orders may be transmitted electronically and any document created pursuant to an Order may be maintained in electronic format; a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of any Order nor any document created thereto, based on the use of a facsimile signature, electronic order or the use of an electronic copy.
 19. **MISCELLANEOUS.** All waivers by Buyer shall be in writing. No delay or omission in the exercise of any right, power, or remedy of Buyer hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein. Seller shall not assign any Order or any monies due or to become due from Buyer without Buyer's prior written consent. The Order shall be construed in accordance with the laws of Tennessee, without regard to any rules on conflicts of laws. In case any one or more provisions contained in an Order shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The section headings contained herein are not part of the Order and are included solely for the convenience of the parties. If any term or provision of the Order is invalid, illegal or unenforceable in any

jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Order or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of the Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of

the Order.

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TERMS AND CONDITIONS OF SALE

1. **Acceptance:** These Terms and Conditions of Sale and all documents referenced herein (collectively, the "Terms") are the only terms and conditions which govern the sale of goods ("Goods") and/or services ("Services") and together with Goods, the "Deliverables") by The Scott Fetzer Company ("Seller") to the buyer ("Buyer") and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by mutual written agreement. Acceptance is expressly limited to these Terms. Any proposal for additional or different terms or any attempt by Buyer to vary these Terms is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to these Terms. The earlier of Seller's commencement of performance or Buyer's receipt of any of the Deliverables shall constitute acceptance of these Terms.

2. **Prices:** Seller's published prices in effect at date of shipment of goods, shall apply. Prices quoted are in U.S. Dollars and based on the price at the time of quotation and are subject to change without notice. Clerical errors are subject to correction without liability.

3. **Taxes:** Prices do not include any sales, use, excise, privilege, ad valorem, or other taxes, duties, tariffs or assessments now or hereafter imposed or levied ("Taxes") by or under the authority of any foreign, federal, state, provincial, or local law, rule, or regulation (collectively, "Law") concerning the Deliverables or the manufacture or sale thereof. If Seller pays any such Taxes, Buyer shall, upon demand, immediately reimburse Seller for such amounts.

4. **Shipping and Delivery:** Delivery of the equipment and material shall be made F.O.B. shipping point, and title and risk of loss of the equipment and material shall pass to Buyer at F.O.B. shipping point, unless otherwise expressly indicated in a writing signed by Seller. Unless Buyer specifies in writing the desired method of transportation (air express, motor freight, etc.), within a reasonable period of time before the date scheduled for shipment, Seller will use its judgment in selecting the carrier and route. Delivery/performance dates are estimates only. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays, or loss or damage in transit. Claims for loss or damage shall be made solely against the carrier. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order. Buyer agrees to accept a shipping tolerance of plus or minus ten percent (10%) on all "MADE TO ORDER" equipment and material. In the event of any over shipment within tolerance, additional items will be priced at the published price per item. In the event of any under shipment within tolerance, the shipment will be deemed as being complete and the order closed. In the event of failure or refusal of Buyer to accept delivery, no physical tender of the equipment and material by the Seller shall be necessary, but written notice of the Seller's readiness and willingness to deliver any quantity of the equipment or material at any time specified shall be equivalent to

physical tender thereof.

5. **Terms of Payment:** All payments are due within 30 days from date of invoice. Orders are subject to acceptance in writing by Seller. All payments shall be made without abatement, deduction, discount or setoff. Late payments are subject to a service charge of the lesser of 1.5% per month or the highest rate permitted under applicable Law. Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys' fees and costs. If, in Seller's judgment, the financial condition of Buyer does not justify continuance on the terms of payment above, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.

6. **Financial Responsibility of Buyer:** If at any time before shipment the financial responsibility of Buyer becomes impaired, or unsatisfactory to the Seller, cash payment or satisfactory security may be required by the Seller before shipment. Buyer will cooperate with the Seller in complying with any applicable conditional sale or security law and will furnish the Seller such other assurances, including financing statements, as the Seller may reasonably request. If Buyer shall fail to make payments in accordance with terms herein specified, Seller, in addition to its other rights and remedies, may at its option terminate shipment. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, the Seller shall be entitled to cancel any order then outstanding and shall receive reasonable and proper cancellation charges.

7. **Inspection:** Buyer shall inspect the Goods upon receipt and Services upon performance, and Buyer shall immediately notify Seller in writing of any claims that the Deliverables are different than identified in Buyer's purchase order whereupon Seller shall determine the remedy pursuant to Section 12, which shall be Buyer's exclusive remedy. Failure to give such written notice upon receipt will constitute irrevocable acceptance by Buyer of all Deliverables. All sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under these Terms to Seller without Seller's prior written authorization and compliance with Seller's return policies and procedures then in effect.

8. **Changes:** Changes in specifications or designs to any Deliverables, changes in delivery or performance schedules or reschedules or cancellations of orders are not permitted unless Seller has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by the Buyer. Once ordered, deliverables that are made to order, discontinued or custom products ("Special Order Goods") may not be cancelled by Buyer. Seller reserves the right to cancel any purchase orders or releases thereunder, or terminate any agreement relating to purchase of Seller's Deliverables, upon 10 days' notice to Buyer.

9. **Storage:** In the absence of agreed shipping dates, Seller may invoice Buyer and ship the Deliverables once they are ready for shipment. If, because of Buyer's inability to take delivery on the mutually agreed delivery date, the Deliverables are not shipped, stopped in transit

or returned, Seller may store them for Buyer at Buyer's expense and risk and risk of loss shall pass to Buyer when the Deliverables are placed in storage and such date shall constitute the date of shipment for purposes of beginning the warranty and payment periods.

10. Service Terms: (a) Any Services will be provided at Seller's then current service rates; (b) If the site is not prepared for the Services upon Seller's arrival, Seller may charge a service fee and for any delay and/or travel time; (c) Buyer shall provide Seller with advance notice of any rules, requirements and Laws; (d) Seller may refuse, without any liability, to provide Services and to allow Seller service personnel to suspend Services or vacate any site where, in Seller's opinion, provision of Services would pose a risk to the safety of any person. In such event, Buyer is responsible for payment of any delay and/or travel time at Seller's regular service rates; (e) Buyer is solely liable for all damages or injuries caused or contributed to by Buyer that may occur; and (f) If Buyer cancels, Buyer is responsible for any costs incurred by Seller caused by such cancellation.

11. Insurance: Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$2 million per occurrence, \$2 million products-completed operations aggregate and \$2 million general aggregate with insurance carriers having an AM Best rating of "A- VIII" or better. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material reduction of coverage in Buyer's insurance policy. Except where prohibited by law, Buyer shall waive, and shall require its insurer to waive, all rights of subrogation against Seller's insurers and Seller.

12. Warranty: The Seller expressly warrants that (a) equipment and material manufactured by it will be free from defects in material, workmanship and title at the date of shipment and (b) Services will be performed in a timely and competent manner in accordance with industry standards. THESE ARE SELLER'S ONLY WARRANTIES. SELLER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. All claims under this Warranty must be made in writing and delivered to the Seller prior to the expiration of twelve (12) months from the date of manufacture or be barred. Upon receipt of a timely claim, the Seller shall inspect the item or items claimed to be defective, and Seller shall, at its option, modify, repair or replace, free of charge, any item or items which the Seller determines to have been defective at the time of shipment from the factory, excluding normal wear and tear. Inspection may be performed at the Seller's plant, and in such event, freight for returning items to the plant for inspection shall be paid by Buyer. Adjustments for items of equipment and material not manufactured by Seller shall be made to the extent of any warranty of the manufacturer or supplier thereof. The foregoing shall be Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for any breach of warranty or for any other claim based on any defect in, or non-performance of, the equipment and material, whether based on breach of contract or in tort, including negligence or strict liability. Any contract created between Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer, and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract. Upon the occurrence of any event described in Section 14(e)(i)-(vi) without the prior written consent of Seller, this warranty shall be void.

13. Limitation of Liability: SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES, DAMAGES OR EXPENSES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER

SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE PRICE RECEIVED BY SELLER FOR THE DELIVERABLES WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED.

14. Indemnification: Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys' fees) (collectively, "Losses"), arising out of or relating to: (a) Buyer's or its agents provided specifications, design, structure, operation, material or method of making Deliverables ("Buyer's Specifications"), including without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's use, misuse or disposal of Deliverables or materials; (c) Buyer's non-compliance with any Law; (d) breach of these Terms by Buyer; and (e) Deliverables subjected to: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Deliverables; (v) repairs or modifications made to all or part of the Deliverables without the prior written consent of Seller; or (vi) a use or application other than or varying in any degree from the specifications and Seller's instructions.

15. Patents: Provided Buyer has made all payments due Seller, Seller shall defend any suit brought against Buyer based upon a claim that the Deliverables infringe any United States patent issued as of the date of Seller's quotation and shall pay any damages and costs finally awarded therein against Buyer, provided that Seller is notified promptly in writing of such suit and is given full authority, information and assistance by Buyer to defend or settle the suit. Notwithstanding anything to the contrary, Seller will have no liability to the extent that the suit is based upon: (i) modifications to any item made by or on behalf of the Buyer in a manner that causes the infringement; (ii) use of any item in combination with the Deliverables that causes the infringement; (iii) the failure of the Buyer to use corrections or enhancements to the Deliverables that are made available by Seller; (iv) Buyer's Specifications; (v) Buyer's distribution, marketing or use for the benefit of third parties of the Deliverables; or (vi) use not authorized under these Terms. If the Deliverables or any part thereof are deemed to infringe any such patent, Seller shall, at its expense and sole option either: (a) procure for Buyer the right to continue using said Deliverables or part; (b) replace them with non-infringing Deliverables or parts; (c) modify them so they become non-infringing; or (d) remove them and refund the purchase price for them depreciated over no more than 3 years.

16. Confidentiality: Unless otherwise specifically agreed to in writing, signed by an authorized officer of the Seller, neither Buyer nor any representative of Buyer, nor any other person, shall be entitled to, or have control over, any engineering or production prints, drawings or technical data which the Seller, in its sole discretion, may consider to be, in whole or in part, proprietary. Any such prints, drawings, data and other information transmitted to Buyer in connection with any order are the property of Seller and are disclosed in confidence on the condition that they are confidential and solely for the use in performing hereunder and may not be disclosed, used or copied unless authorized by Seller in writing..

17. Intellectual Property: All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents and applications therefor, and other information or intellectual property disclosed or otherwise provided to Buyer by Seller and all rights therein (collectively, "IP") are and will remain the property of Seller. Buyer shall have no claim to, nor ownership interest in, any IP and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written

request from Seller. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any IP, other than the limited right to use the Deliverables purchased from Seller.

18. **Non Recurring Engineering Charges:** Payment of a non-recurring engineering charge ("NRE") does not entitle Buyer or any representative of Buyer, or any other person, to have ownership, or control over, any engineering or production prints, drawings or technical data which Seller created in association with the order, unless otherwise specifically agreed to in writing, and signed by an authorized officer of Seller.

19. **Tooling:** In no event shall Buyer have any interest in any tools, jigs, dies, patterns, etc. (collectively, "**Tooling**") which is made or obtained for the production of the Deliverables. Such Tooling shall remain the property of Seller.

20. **Export Compliance:** Any items provided by Seller are controlled by the United States Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the United States Government or as otherwise authorized by U.S. Law and regulation.

21. **Assistance:** Seller may, but shall have no obligation to furnish Buyer with recommendations, engineering and technical information and advice and other assistance. All such assistance is furnished without charge solely as an accommodation to Buyer and the Seller shall have no liability for inaccurate, incomplete or faulty recommendations, information, advice and assistance, whether or not negligent.

22. **Force Majeure:** Seller shall not be liable for any delay in or failure to perform due to any event or contingency beyond its reasonable control (an event of "**Force Majeure**"), including acts of God, epidemics, acts of war whether declared or undeclared, blockades, labor disputes (whether of Seller's employees or the employees of others), raw material shortages and material increases in costs of raw materials, including those material increases in costs resulting from the imposition of tariffs. In the event of Force Majeure, the time for performance will extend for such time as reasonably necessary to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Deliverables among itself and its purchasers in such manner as Seller, in its sole judgement, deems fair and equitable.

23. **Termination:** Seller shall have the right to cease work or terminate these Terms or any purchase order, in whole or in part, at any time, without liability, if: (i) Buyer breaches or defaults under these Terms or any other agreement it has with Seller; (ii) a petition under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit or creditors; (iv) a receiver is appointed for Buyer or any substantial part of its assets; or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance within 10 days after written request therefor by Seller. In all cases, Seller's rights are cumulative, are not exclusive and in addition to all other rights and remedies it may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

24. **Waiver:** All waivers by Seller shall be in writing. Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

25. **Governing Law and Venue:** Any dispute arising out of or related to these Terms will be governed by and construed in accordance with the laws of the State of Tennessee without regard to any rules on conflicts of laws and exclusively litigated in either (i) a state or federal court located in Cook County, Illinois, or (ii) a state or federal court located in the state of Seller's principal place of business, at Seller's sole discretion.

26. **Severability:** The unenforceability or invalidity of any clause in these Terms shall not have an impact on the enforceability or validity any other clause in these Terms. Any unenforceable or invalid clause shall be regarded as removed from these Terms to the extent of its unenforceability and invalidity.

27. **Miscellaneous:** Buyer shall not assign any of its rights or obligations under these Terms or any purchase order without Seller's prior written consent. Buyer shall comply with all applicable laws. There are no third-party beneficiaries. Provisions which by their nature should survive will remain in force after any termination or expiration of any sale of Deliverables. The section headings are included solely for the convenience of the parties.

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