



# Terms & Conditions of Sale

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## 1. APPLICABILITY.

These standard terms and conditions apply to all quotations made and purchase orders accepted by SELEE; they are an integral part of the agreement between SELEE and Buyer. Any additional, amended or otherwise different terms or conditions provided by Buyer on Buyer's acknowledgement form or any other material provided by Buyer ("Buyer Terms") are deemed to be a material alteration of this agreement and are hereby objected to by SELEE and shall be deemed inapplicable to this agreement, unless otherwise specifically agreed to in a writing signed by an authorized representative of SELEE. Notwithstanding any requirement by Buyer that Buyer Terms apply, Buyer's acceptance of Products will constitute Buyer's rejection of the Buyer Terms and acceptance by Buyer of this agreement. In the event Buyer's terms are deemed to be an offer, SELEE hereby rejects such offer and Buyer agrees that the agreement be formed on the terms hereof. SELEE's failure to object to provisions contained in any communication from Buyer shall not be deemed a waiver of these terms and conditions. In the event Buyer and Seller execute a written Supply or other agreement, the terms and conditions of that contract shall control to the extent those terms are in any manner inconsistent with the standard terms and conditions set forth herein.

## 2. DEFINITIONS

- (a) "Buyer" means the entity or person who accepts a quotation of the Seller for the sale of the Products or whose order for the Products is accepted by the Seller.
- (b) "Seller" means SELEE Corporation.
- (c) "Quotation" means an offer in Writing by the Seller to sell the Products to the Buyer at certain prices and terms. A Quotation may be in the form of a proposal, a pro forma invoice, a quote, or another standard form of quotation.
- (d) "Products" means the products, including any installment of the products or any parts for the products, which the Seller is to supply to the Buyer under the Contract and in accordance with these Conditions.
- (e) "Contract" means the contract for the purchase and sale of the Products.
- (f) "Conditions" means the standard terms and conditions of sale set out in this document and, unless the context otherwise requires, includes any special terms and conditions agreed in Writing between the Buyer and the Seller.
- (g) "Writing" includes correspondence, facsimile transmission, e-mail or other comparable written means of communication.

## 3. BASIS OF SALE

- (a) The Seller shall sell and the Buyer shall purchase the Products in accordance with any written Quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Buyer.
- (b) No variation to these Conditions shall be binding unless agreed in Writing between the authorized representatives of the Buyer and the Seller. The Seller expressly limits acceptance to these Conditions and notifies the Buyer of its objection to any inconsistent terms, unless otherwise agreed to in Writing between the authorized representatives of the Buyer and the Seller.



- (c) The Seller's employees or agents are not authorized to make any representations concerning the Products unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations that are not so confirmed.
- (d) Any description contained in the Seller's catalogs, samples, price lists or other advertising material is intended mainly to present a general picture of the Products and shall not form a representation or be part of the Contract.
- (e) Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Products which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- (f) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

#### **4. ORDERS AND SPECIFICATIONS**

- (a) No order submitted by the Buyer shall be deemed accepted by the Seller unless and until confirmed in Writing by the Seller's authorized representative.
- (b) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Products within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- (c) The quantity, quality and description of the Products shall be set out in the Seller's Quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). The specification for the Products shall be in accordance with:
  - (i) the current edition of the relevant product or Products description leaflet as published from time to time by the Seller and:
  - (ii) any further specifications or descriptions (if any) expressly listed or set out on the face of the order. No other specification shall form part of or be incorporated by reference into the Contract.
- (d) If the Products are to be manufactured or any process is to be applied to the Products by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller (including Seller's legal expenses) in connection with or paid or agreed to be paid by the Seller in settlement of any claim relating thereto or for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- (e) The Seller reserves the right to make any changes in the specification of the Products which are required to conform with any applicable safety or other statutory requirements or, where the Products are to be supplied to the Seller's specification, which do not materially affect their quality or performance, provided, however, that Seller shall not be liable for any failure to make such changes.
- (f) No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labor and materials

used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## **5. PRICE OF THE PRODUCTS**

- (a) The price of the Products shall be the Seller's quoted price or, where no price has been quoted or a quoted price is no longer valid, the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only. If the Buyer has not accepted the prices quoted within 30 days, the Seller may alter the prices without giving notice to the Buyer.
- (b) The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- (c) Any special packaging of Products requested by the Buyer shall be an extra charge and unless provided to the contrary containers and packaging will not be returnable.
- (d) Damage or shortage of Products at delivery shall be reported to the Seller within 48 hours of receipt of Products at the Buyer's premises. Non-delivery of Products shall be reported within 10 days of the date of dispatch as notified to the Buyer in advice notices.
- (e) In addition to the price specified herein, the amount of any present or future tax applicable to the sale, manufacture, delivery, use or other handling of the Products shall be payable by the Buyer. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.
- (f) Unless otherwise agreed in writing all tools, drawings and other equipment manufactured or obtained by the Seller for the purposes of the Contract (whether partly or wholly at the expense of the Buyer or not) shall be and remain the property of the Seller.
- (g) Unless otherwise agreed in Writing the sale of the Products is made FCA (Free Carrier) the Seller's plant under Incoterms 2000, and the price does not include delivery.

## **6. TAXES**

In addition to the applicable prices, Buyer agrees to pay any and all applicable federal, state, and local taxes, duties and other levies, which amounts shall be an additional charge to Buyer hereunder.

## **7. TERMS OF PAYMENT**

- (a) Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall in the case of a Buyer whose credit has been approved by the Seller be entitled to invoice the Buyer for the price of the Products on or at any time after delivery of the Products, unless the Products are to be received by the Buyer upon tender by the Seller and the Buyer wrongfully fails to take delivery of the Products, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Products have been tendered for delivery by the Seller and the Seller has tendered delivery of the Products. In the case of a Buyer whose credit has not been approved by the Seller, payment will be due cash on delivery to the Buyer or its designated carrier.
- (b) The Buyer shall pay the price of the Products within 30 days of the date of the invoice, notwithstanding that delivery may not have taken place and title to Products has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for

payment will be issued only upon request.

- (c) If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - (i) cancel the Contract or suspend any further deliveries to the Buyer;
  - (ii) apply any payment made by the Buyer to such of the Products (or the Products supplied under any other contract between the Buyer and the Seller) as the Seller may think appropriate (notwithstanding any purported application by the Buyer); and
  - (iii) charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 12 per cent per annum or the highest rate allowed by law, whichever is lower, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## **8. DELIVERY**

- (a) Any dates quoted for delivery of the Products are approximate only and the Seller shall not be liable for any delay in delivery of the Products howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Products may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- (b) Where the Products are to be delivered in installments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- (c) If the Seller fails to deliver the Products for any reason other than a cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Products to replace those not delivered over the price of the Products.
- (d) If the Buyer fails to take delivery of the Products or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
  - (i) store the Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - (ii) sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract.
- (e) Quantities of Products may vary from the quantities ordered by up to plus or minus five percent (5%). Such variations will be shown on invoices and charged pro-rata.

## **9. INSPECTION AND ACCEPTANCE**

Within thirty (30) days after delivery to Buyer of Products, Buyer will inspect them and give written notice to Seller of any Products rejected, describing the Products rejected and specifying in detail the reason or reasons why the rejected Products do not conform to the sale contract. Upon receiving authorization and shipping instructions from authorized personnel of Seller, Buyer may return rejected Products, transportation charges prepaid, for replacement. Buyer will be deemed to have irrevocably accepted any and all Products with respect to which Buyer has failed to give Seller written notice of rejection by registered or certified mail within the 30-day period. Buyer's inspection



and/or acceptance tests shall not exceed the inspection and/or test procedures customary in the industry for the Products delivered by Seller and shall be at Buyer's expense. Seller may charge to Buyer any costs resulting from the testing, handling, and disposition of any Products returned by Buyer which are not found by Seller to be nonconforming.

## **10. RISK AND PROPERTY**

- (a) Risk of damage to or loss of the Products shall pass to the Buyer:
  - (i) in the case of Products to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer the Products have been tendered for delivery by the Seller; or
  - (ii) in the case of Products to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Products, the time when the Seller has tendered delivery of the Products.
- (b) Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, title in the Products shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Products and all other Products agreed to be sold by the Seller to the Buyer for which payment is then due.
- (c) The Buyer hereby grants a security interest in the Products to secure the payment of the obligations of the Buyer as set forth herein and any other sums due and arising from the Buyer to the Seller arising out of credit previously granted, credit contemporaneously granted and credit granted in the future by the Seller to the Buyer. The Buyer agrees to execute any and all financing statements that the Seller may, from time to time, wish to file with the appropriate authorities. Until such time as title in the Products passes to the Buyer, the Buyer shall hold the Products as the Seller's fiduciary agent and bailee, and shall keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until the that time the Buyer shall be entitled to resell or use the Products in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Products, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- (d) Until such time as title in the Products passes to the Buyer (and provided the Products are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Products to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Products are stored and repossess the Products.
- (e) The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products, which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **11. CANCELLATION AND RESCHEDULE**

- (a) No cancellation for Seller's default shall be effective unless Seller shall have failed to correct such alleged default within forty-five (45) days after receipt by Seller from Buyer or written notice of default.
- (b) Orders accepted by Seller are firm and non-cancelable. Seller will not accept cancellations or reschedule of orders, other than for default of Seller or upon payment of all Seller's costs incurred for and reasonably allocated to the portion of the work already terminated and/or work in process, in accordance with generally accepted accounting principles, and together with cancellation charges



shown in (f) below. Deliveries scheduled within ninety (90) days from time of shipment cannot be changed unless authorized in writing by Seller.

(c) If the termination involves custom or specialty Products, cancellation charges for such Products shall equal the order price for the total number of units representing work in process. Unless otherwise agreed and confirmed in writing by Seller, items scheduled for shipment are not subject to revision, reschedule or termination within ninety (90) days prior to date quoted by Seller.

(d) Seller reserves the right to cancel the remaining quantity of an item or an order when the value of the remaining quantity is below minimum item or order value accepted by Seller.

(e) Seller reserves the right to cancel all or part of any order accepted if inaccurate or incorrect information is supplied by Buyer, which in Seller's judgment, affects Seller's financial risk or ability to perform its obligations under the order, or otherwise materially changes the rights or responsibilities of Buyer and/or Seller under the order.

(f) Seller reserves the right to invoice the Buyer a cancellation charge that may include without limitation bill back to the unit price of the quantity delivered to the Buyer, times that quantity, less a credit for any amount previously paid by the Buyer and a cancellation charge based on the value of the unshippable value of the order.

## **12. CHANGES TO SPECIFICATIONS**

Seller reserves the right to change the specifications of any Product (including all statements and data appearing in Seller's catalogs, data sheets and advertisements) without notice. If specifications are changed, Seller assumes no obligation to provide the change on Products previously purchased or to continue to supply discontinued Products or versions. Seller may substitute Products manufactured to such modified specifications for those specified herein provided such Products substantially conform to the Products described in the sale contract.

## **13. WARRANTIES AND LIMITATION OF LIABILITY**

(a) IT IS EXPRESSLY AGREED THAT NO WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTY (EXPRESS, IMPLIED OR STATUTORY) IS MADE BY SELLER IN RELATION TO ANY PRODUCT. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE FREE FROM DEFECTS IN MATERIALS AND NORMAL WORKMANSHIP, BUT SELLER MAY AT ITS DISCRETION MAKE REASONABLE EFFORTS TO REPAIR OR REPLACE DEFECTIVE PRODUCTS.

(1) Seller may at its option replace or credit any Products it deems defective. Seller will not be under any obligation to replace any Products, but will at its option replace or issue credit upon verification of Buyer's complaint. If Seller determines that a defect was caused by the Buyer or the Product is acceptable, Seller will return said Product to Buyer and rebill or deny the debit.

(2) If Seller elects to repair or replace any Product, all transportation charges for returns will be the obligation of the Buyer.

(3) If Seller elects to extend any warranty hereunder, the warranty period is limited to thirty (30) days from date of shipment unless stated otherwise in writing by Seller. In no event shall the Seller be liable for loss of profit, loss of use, incidental damages, consequential damages or any loss, cost, or damages of any kind based upon a claim for defective Products or breach of warranty.

(b) Except as expressly provided in this section, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. ANY EXPRESS



WARRANTY NOT PROVIDED HEREIN AND ANY IMPLIED WARRANTY, GUARANTY OR REPRESENTATION AS TO PERFORMANCE, AND ANY REMEDY FOR BREACH OF CONTRACT, TORT OR OTHER LEGAL THEORY WHICH, BUT FOR THIS PROVISION, MIGHT ARISE BY IMPLICATION, OPERATION OF LAW, CUSTOM OF TRADE OR COURSE OF DEALING, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS IS EXCLUDED AND DISCLAIMED BY THE SELLER.

- (c) ASSUMPTION OF LIABILITY FOR LOSSES. BUYER ASSUMES ALL LIABILITY FOR ANY AND ALL DAMAGES ARISING FROM OR IN CONNECTION WITH, THE USE OR MISUSE OF THE PRODUCTS BY BUYER, ITS EMPLOYEES, OR OTHERS.
- (d) CUSTOM, DEVELOPMENTAL, AND NONSTANDARD ITEMS: SELLER MAKES NO WARRANTY OR GUARANTEE OF ANY KIND WITH RESPECT TO SALES OR ORDERS FOR CUSTOM, DEVELOPMENTAL, EXPERIMENTAL, PROTOTYPE, OR NONSTANDARD ITEMS DELIVERED HEREUNDER. ITEMS SOLD UNDER SUCH SALES OR ORDERS ARE FURNISHED "AS IS".
- (e) MILITARY APPLICATIONS OR GOVERNMENT FUNDED CONTRACTS: SELLER'S PRODUCTS SHOULD NOT BE USED OR SOLD FOR USE IN THE DEVELOPMENT, PRODUCTION, STOCKPILING OR UTILIZATION OF ANY MILITARY WEAPONS OR FOR OTHER PRODUCTS FUNDED BY THE GOVERNMENT THAT ARE CONTROLLED OR RESTRICTED BY FOREIGN TRADE LAWS OF THE UNITED STATES THAT REQUIRE EXPORT LICENSES.
- (f) TECHNICAL ADVICE: SELLER'S WARRANTIES AS STATED HEREIN SHALL NOT BE ENLARGED, DIMINISHED, OR OTHERWISE AFFECTED BY, NOR SHALL ANY OBLIGATION OR LIABILITY OF SELLER ARISE OUT OF, SELLER'S RENDERING OF TECHNICAL ADVICE OR SERVICE IN CONNECTION WITH BUYER'S ORDER OR THE PRODUCTS FURNISHED BY SELLER.
- (g) INFRINGEMENT: BUYER SHALL BE SOLELY LIABLE FOR, AND SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS AGAINST, ANY EXPENSES, DAMAGES, COST OR LOSSES INCLUDING ATTORNEYS FEES, RESULTING FROM ANY SUIT OR PROCEEDING INSTITUTED OR CLAIM ASSERTED (INCLUDING SETTLEMENT OF ANY OF THE FOREGOING), FOR INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS OR FOR UNFAIR COMPETITION ARISING FROM COMPLIANCE WITH BUYER'S DESIGNS OR SPECIFICATIONS OR ARISING FROM USE OF PRODUCTS FURNISHED HEREUNDER IN ANY MANUFACTURING OR OTHER PROCESS OR THE COMBINATION OF SUCH PRODUCTS WITH ITEMS NOT SUPPLIED BY SELLER. THE SALE OF PRODUCTS OR ANY PARTS THEREOF HEREUNDER CONFERS UPON BUYER NO LICENSE, EXPRESS OR IMPLIED, UNDER ANY PATENT RIGHTS, TRADEMARK RIGHTS, COPYRIGHTS OR TRADE SECRET RIGHTS OF SELLER. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES HERETO FOR PATENT INFRINGEMENT, TRADEMARK INFRINGEMENT, COPYRIGHT INFRINGEMENT, AND THEFT OF TRADE SECRETS, AND IS IN LIEU OF ALL WARRANTIES OR OTHER OBLIGATIONS, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT THERETO.
- (h) TO THE FULLEST EXTENT PERMITTED BY LAW, THE REMEDIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO BUYER AND ANY THIRD PARTY ARISING IN ANY MANNER WITH RESPECT TO THE SALE OF A PRODUCT BY SELLER. IN NO EVENT SHALL THE SELLER BE LIABLE FOR DIRECT,



INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS OR PLANT DOWNTIME), WHETHER OR NOT BASED ON THE SELLER'S NEGLIGENCE, AND WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, OR WHETHER BASED ON OR RELATED TO THE SUPPLY OF THE PRODUCTS OR THEIR USE OR RESALE BY THE BUYER. IT IS EXPRESSLY AGREED THAT SELLER'S SOLE AND ENTIRE LIABILITY FOR ANY AND ALL CLAIMS BY BUYER OR ANY THIRD PARTY IN ANY MANNER RELATED TO THE SALE OF ANY PRODUCT TO BUYER, OR TO BUYER'S OR ANY THIRD PARTY'S USE OF SUCH PRODUCT, SHALL BE LIMITED TO THE TOTAL AMOUNT COLLECTED BY SELLER FOR SUCH SALE.

#### **14. BANKRUPTCY**

- (a) This clause applies if:
- (i) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administrative order in bankruptcy, or files for bankruptcy or otherwise goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - (ii) a creditor takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
  - (iii) the Buyer ceases, or threatens to cease, to carry on business; or
  - (iv) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- (b) If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **15. EXPORT TERMS**

- (a) Where the Products are supplied for export from the United States, the provisions of this clause 11 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- (b) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties thereon and if the Buyer fails to comply with such requirements the Buyer shall (in addition to any other liability it may have to the Seller) be liable to indemnify the Seller in respect of any costs and expenses incurred by the Seller in pursuance of the Contract.
- (c) Unless otherwise agreed in Writing between the Buyer and Seller, the Products shall be delivered FOB to the air or seaport of shipment and the Buyer undertakes to adequately insure Products against loss when risk passes to the Buyer. When a Contract is expressed to be either C and F or CIF to an overseas territory the price of the Products will include the cost of freight by air or sea to principal ports only in the territory named and CIF prices will include insurance protection against breakage risk or total loss for the amount of the CIF price plus 10%.
- (d) Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favor of the Seller and confirmed by a bank acceptable to the Seller and enable the Seller to present the Contract documents through such bank as the Seller may from time to time designate.



#### **16. FORCE MAJEURE.**

Seller will not be responsible or liable for any delay or failure in performance arising as a result of fire, accident, acts of God, acts of public enemy, war, labor disputes, failure or delays, transportation, inability to secure Product, raw materials or machinery for the manufacturing process, requirements or acts of any government or agency thereof, judicial action or other causes beyond Seller's control. In such event, Seller may defer performance for a period equal to the time lost by reason of the delay. If such time exceeds forty-five (45) days, Seller may by written notice to Buyer cancel the affected order(s) as to any Products then undelivered without liability to Buyer.

#### **17. GOVERNING LAWS**

- (a) This contract will be governed by and construed in accordance with the laws of the State of North Carolina, USA, and in the case of international sale of Products with respect to which the Convention or Contracts for the International Sale of Products ("CISG") or any other law would otherwise apply, the Uniform Commercial Code as adopted in the State of North Carolina, USA, and not CISG or any such other law, shall apply. Buyer agrees that it will submit to the personal jurisdiction of the competent courts of the State of North Carolina and of the United States sitting in Henderson County, North Carolina, USA in any controversy or claim arising out of the sale contract.
- (b) All notices regarding any dispute arising from a sale of Products shall be effective if delivered by registered mail, return receipt requested, or approved overnight carrier to 700 Shepard Street, Hendersonville, North Carolina 28792 USA, with a copy sent by the same method to Perkins Law Firm, LLC, 200 North Main Street, Suite 301, Greenville, South Carolina 29601, USA, Attn: John Perkins.

#### **18. COMPLETE AGREEMENT**

The quotation, confirmation (acknowledgment) or invoice including these terms and conditions and all attachments and documents incorporated by reference herein, constitute the complete and exclusive statement of the terms and conditions of the sale contract between Seller and Buyer and supersede all prior or contemporaneous agreements, representations and/or communications, either oral or written, between the parties hereto or any representative of such parties with respect to the subject matter hereof. No change to this contract or waiver of any provision hereof will be binding on Seller unless made in writing and signed by a duly authorized officer of Seller. No field representative of Seller has the authority to sign such documents.

#### **19. GENERAL**

- (a) Any notice required or permitted to be given by either party to the other under these conditions shall be in Writing addressed to that other party at its principal place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving the notice.
- (b) Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- (c) The headings in these Conditions are for convenience only and shall not affect their interpretation.
- (d) No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (e) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- (f) Seller reserves the right to sub-contract the whole or any part of a Contract.