

# PMR GLOBAL INC. TERMS AND CONDITIONS OF SALE

THE FOLLOWING TERMS AND CONDITIONS OF SALE (these “**Terms**”), ARE THE ONLY TERMS WHICH GOVERN THE SALE OF PRODUCTS (“**Products**”) OR SERVICES (“**Services**”) BY PMR GLOBAL, INC. AND ITS AFFILIATES (“**Seller**”) TO THE ENTITY PURCHASING SUCH GOODS OR SERVICES (“**Buyer**”).

No salesperson is authorized to bind Seller to any promise or understanding not expressed herein.

I. APPLICABILITY. The accompanying order acknowledgement (the “**Sales Confirmation**”) and these Terms (collectively, this “**Agreement**”) compromise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, whether expressed or implied, with respect to the subject matter contained herein. Seller’s quotation, acknowledgment or invoice constitutes Seller’s offer to sell solely in accordance with the exact terms and conditions hereof, and supersedes all previous written and oral quotations, representations and/or agreements. Acceptance can be made by Buyer by any commercially reasonable means, including but not limited to Buyer’s issuance of an order, acceptance of Seller’s quotation, acceptance or use of the Products or Services, or acknowledgment or return of the Sales Confirmation. Acceptance hereof by Buyer is expressly limited to the exact terms hereof. If Buyer shall use its own purchase order or another form to order from Seller, such form shall be used for convenience only and shall constitute Buyer’s unconditional agreement to these Terms. Any inconsistent or additional terms or conditions contained in any purchase order or other form from Buyer are expressly objected to by Seller. Where this Agreement is found to be an acknowledgment, if such acknowledgment constitutes an acceptance of an offer, such acceptance is expressly made conditional upon Buyer’s assent to the terms of such acknowledgment, and acceptance or use of any part of Products or Services delivered by Seller shall be deemed to constitute such assent by Buyer. If Buyer does not agree to these Terms, Buyer must reject any Services provided or any shipment of Products upon receipt.

II. PRICES. All prices are subject to change without notice in the event of any changes in cost of materials or labor, specifications, quantities, delivery schedules, customs duties, other factors beyond Seller's control, or in the event of delays caused by

instructions of the Buyer, or failure of the Buyer to give Seller adequate information. Prices do not include taxes, including but not limited to Value Added Tax (VAT), shipping charges, or governmental charges, all of which are the responsibility of Buyer.

III. VARIATIONS IN QUANTITY; CHANGES. Buyer may make changes to quantities ninety (90) days before first delivery is scheduled. Seller reserves the option to make changes to Products or Services which do not affect form, fit, or function, and shall deliver Products to the latest configuration part number at the time of delivery.

IV. DELIVERY. All delivery dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in fulfilling any order, failure to deliver or delay in delivery or damage in transit. However, if Seller delays shipment of any Products more than thirty (30) days after the estimated delivery date (the “**Delayed Shipment Date**”), then Buyer may, as its sole remedy therefor, cancel the related order regarding the delayed Products by giving Seller written notice within five (5) days of the Delayed Shipment Date. Subject to Buyer’s rights in the aforementioned sentence, no delay in the shipment or delivery of any Products relieves Buyer of its obligations under this Agreement, including accepting delivery of any remaining installment or other orders of Products. Unless otherwise specified on the Sales Confirmation, all shipments of Products shall be considered delivered to Buyer, and title, ownership and risk of loss of the Products shall transfer and pass to Buyer Ex Works (Incoterms® 2010) Seller’s facility. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products 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 order. Where Buyer notifies Seller that it cannot take timely delivery of the

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Products, Seller will invoice customer according to the delivery date on the Sales Confirmation, and further may place such Products in storage, at the risk of Buyer, and Buyer shall reimburse Seller for all expenses incurred in connection with such storage. Any delay of delivery needs to be requested in writing and is subject to approval, costs and fees.

V. INSPECTION AND REJECTION OF NONCONFORMING GOODS. (a) It is Buyer's responsibility to verify both the count and condition of the shipped Products prior to signing for the receipt of the shipment and shortages and damages should be listed on the delivering carrier's bill of lading at the time of delivery. Seller is not responsible for any shortages or damages caused by the delivering carrier. Claims should be filed with the delivering carrier within five (5) days of receipt of the damaged or shorted delivery. Buyer shall inspect the Products within five (5) days of receipt (the "**Inspection Period**"). Buyer will be deemed to have irrevocably accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation required by Seller. "**Nonconforming Products**" means only the following: (i) the Products or Services received do not conform to the make/model/product from Buyer's order; or (ii) on visual inspection, Buyer reasonably determines that the Products are damaged, shorted, or other discrepancy which was caused solely by Seller or the original manufacturer. Buyer's rejection of any shipment for any reason other than for Nonconforming Products shall be a breach of Buyer's order and this Agreement.

(b) If Buyer timely notifies Seller of any Nonconforming Products, Seller shall determine, in its sole discretion whether the Products are Nonconforming Products. If Seller determines that the Products are Nonconforming Products, it shall take such action described in Section IX(a). Buyer must return, at its expense and risk of loss, the Nonconforming Products to Seller's facility. Buyer may not return any Nonconforming Products without a return materials authorization ("**RMA**") number. The RMA number must appear on the shipping label and packing slip. Buyer may not return and RMAs

will not be granted for damage, shortage, or other discrepancy of Products created by Buyer, the carrier or freight provider, or any other third party. At Seller's discretion, Seller shall return all Products not eligible for return to Buyer, freight collect, or hold Products for Buyer's account at Buyer's expense. If Seller exercises its option to replace Nonconforming Products, Seller shall, after receiving Buyer's shipment of Nonconforming Products, ship to Buyer the replaced Products in accordance with Section IV.

(c) Buyer acknowledges and agrees that the remedies set forth in Section V(b) are Buyer's exclusive remedies for delivery of Nonconforming Products. Except as expressly contained in this Agreement, all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased under this Agreement to Seller.

(d) Buyer acknowledges that there are some designs that cannot be manufactured per Buyer's drawings, and this may not be clear until production commences. Seller will make every effort to meet drawing design, and will work with Buyer on design for manufacturability issues. Seller retains the right to re-quote or cancel the order if Buyer cannot accept reasonable design changes. Buyer holds the Seller harmless in the event of order re-quote or cancellation for manufacturability issues.

VI. PAYMENT. (a) Buyer shall pay all invoiced amounts due to Seller in U.S. dollars by wire transfer or check net thirty (30) days from date of Seller's invoice, unless otherwise specified on the Sales Confirmation; provided, however, Seller reserves the right in its sole discretion to require full payment before entry, shipment, or delivery of any order. Buyer will pay Seller a service charge of \$25.00 for all payments returned by Buyer's bank for any reason. Buyer shall pay interest on all late payments at the rate of 1.5% per month, or the highest rate permitted by law, whichever is less, accruing daily. Buyer shall reimburse Seller for all costs incurred in collecting any late payments or other amounts due hereunder, including, without limitation, court costs and attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products and its performance any

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(b) Services hereunder if Buyer fails to pay any amounts when due. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise. Seller may recover for each delivery hereunder as a separate transaction, without reference to any other delivery.

(c) Buyer shall notify Seller in writing of any dispute with any invoice (along with a reasonably detailed dispute description) within ninety (90) days from the date of the invoice. Buyer will be deemed to have accepted all invoices for which Seller does not receive timely notice of disputes, and shall pay all undisputed amounts due under these invoices within the period set out in this Section. The parties shall seek to resolve all disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Buyer shall continue performing its obligations under this Agreement during any dispute, including, without limitation, Buyer's obligation to pay all due and undisputed invoice amounts in accordance with the terms and conditions of this Agreement.

(d) If the financial condition of Buyer is unsatisfactory to Seller, Seller may require full or partial payment in advance, or satisfactory security, in the form of a letter of credit or otherwise. In the event of bankruptcy or insolvency of Buyer, Seller may immediately cancel any order then outstanding and all amounts owed to Seller shall immediately become due and payable without further notice.

(e) Buyer hereby grants Seller a lien on and purchase money security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer authorizes Seller to execute on Buyer's behalf and file such financing statements as Seller deems appropriate to perfect and notify Buyer's creditors of Seller's security interest. Seller is entitled to all applicable rights and remedies of a secured party under applicable law.

VII. VARIATIONS IN QUANTITY; CHANGES. Buyer may make changes to quantities ninety (90) days before first delivery is scheduled. Seller reserves the option to make changes to Products or Services which do not affect form, fit, or function, and shall deliver Products to the latest configuration part number at the time of delivery.

VIII. EXPORT CONTROLS; FCPA; ANTI-BOYCOTT.

(a) Buyer acknowledges that Seller is subject to the U.S. economic sanctions and trade embargoes administered by the Office of Foreign Asset Control of the U.S. Department of the Treasury ("**Economic Sanctions Laws**"), which prohibit or substantially restrict transactions or other dealings with or involving certain countries and parties ("**Embargoed Targets**"). Buyer agrees to comply with all Economic Sanctions Laws and agrees not to engage in any transactions or dealings that could cause Buyer or Seller to violate the Economic Sanctions Laws. Without limiting the generality of the foregoing, Buyer shall not (i) directly or indirectly export, re-export, transship or otherwise deliver the Products or any portion of the Products to an Embargoed Target or (ii) broker, finance or otherwise facilitate any transaction in violation of any Economic Sanctions Laws. Buyer shall not make any disposition of the Products, by way of transshipment, re-export, diversion or otherwise, except as applicable U.S. export laws and regulations may expressly permit, and other than in and to the ultimate country of destination specified on Buyer's order(s) or declared as the country of ultimate destination on Seller's invoices or in the End Use Statement that Buyer supplies Seller. Seller shall not be named as shipper or exporter of record or U.S. principal party-in-interest (USPPI) unless specifically agreed to in writing by Seller in which case, Buyer shall provide Seller with a copy of the documents filed by Buyer for export clearance purposes. At Seller's request, Buyer shall supply end-use and end-user information to determine export license applicability. Failure of Buyer to comply with this Section shall constitute a material default allowing Seller to cancel related order(s) without liability.

(b) Buyer warrants that it shall not violate or cause the Seller to violate the U.S. Foreign Corrupt Practices Act of 1977 (FCPA), as amended, the United Kingdom Bribery Act (UKBA) of 2010, as amended, or their

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respective implementing regulations in connection with Buyer's sale or distribution of the Products/Services, and that Buyer does not know or have reason to believe that any consultant, agent, representative or other person retained by Buyer in connection with the sale and/or distribution of Products/Services has violated, nor caused Seller to violate the FPCA and/or the UKBA. Where Buyer learns of or has reason to know of any violation of FCPA or UKBA in connection with the sale or distribution of Products/Services, Buyer shall immediately advise Seller.

(c) Buyer further warrants that Buyer shall not violate or cause Seller to violate the U.S. Antiboycott Provisions of the U.S. Export Administration Regulations issued pursuant to the U.S. Export Administration Act of 1979, as amended, in connection with Buyer's purchase of Products/Services and that Buyer shall not request or require Seller to make statements or certifications against countries that are not subject to boycott by the U.S.

IX. WARRANTIES. (a) Seller warrants that Products manufactured by Seller, when delivered, shall be free from defects in material/workmanship. Seller warrants that Services shall be performed in accordance with generally accepted industry practice. Buyer's EXCLUSIVE remedy against Seller (whether the claim is in contract, warranty, tort (including negligence of any degree or strict liability) or otherwise) for any claim for, or arising out of any Products or Services tendered to Buyer (including any Nonconforming Goods) is, at Seller's sole election, a credit of the invoice purchase price less any discounts taken, or the repair or replacement of the Products, if properly installed, used and maintained, proved to have been defective in material or workmanship within ninety (90) days from the date of shipment, or re-performing the Services. Buyer shall notify Seller of any Nonconforming Products or Services during the Inspection Period. If Buyer does not provide such timely notification, it shall not be entitled to reject Products or Services, and Seller shall have no liability for such defect. Seller's warranty obligations shall not apply to Products which (1) have been altered or repaired by someone other than Seller, or (2) have been

subjected to misuse, neglect, or improper use or application, or

(3) are normally consumed in operation, or (4) have a normal life inherently shorter than ninety (90) days.

EXCEPT FOR THE WARRANTIES PROVIDED IN SECTION IX(A), (i) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING ANY WARRANTIES OF: (1) MERCHANTABILITY;

(2) FITNESS FOR A PARTICULAR PURPOSE; OR (3) NON-INFRINGEMENT, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND

(ii) BUYER

ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY DESCRIBED IN SECTION IX(A).

(b) Products manufactured by a third party ("**Third-Party Products**") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products. Third-Party Products are not covered by the warranty in Section IX(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (1) WARRANTY OF MERCHANTABILITY; (2) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (3) WARRANTY OF TITLE; OR (4) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

X. PATENTS/INDEMNITY. If Buyer receives a claim that Products, or any part thereof manufactured by Seller infringes a patent or other intellectual property right of a third party, Buyer shall notify Seller promptly in writing and give Seller information, assistance and

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exclusive authority to evaluate, defend and settle such claim. Where Buyer has furnished specifications/designs for the manufacture of the allegedly-infringing Products, Buyer shall defend, indemnify and hold harmless Seller against third-party claims for infringement arising out of Seller's use of such specifications/designs.

XI. LIMITATION OF LIABILITY. (a) IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF SELLER ON ANY CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OF ANY DEGREE AND STRICT LIABILITY OR PATENT INFRINGEMENT) OR OTHERWISE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCTS OR SERVICES, EXCEED THE PRICE ALLOCABLE TO THE PRODUCTS OR SERVICES OR PART THEREOF WHICH GIVES RISE TO THE CLAIM. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT,

(INCLUDING NEGLIGENCE OF ANY DEGREE, STRICT LIABILITY OR PATENT INFRINGEMENT) OR OTHERWISE, SHALL SELLER, ITS AFFILIATES, SUBCONTRACTORS, OR SUPPLIERS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF PROFIT OR REVENUES, LOSS OF USE OF THE PRODUCTS OR SERVICES, OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE GOODS, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS OR CLAIMS OF BUYER'S CUSTOMERS FOR DAMAGES OR FOR ANY SPECIAL, PROXIMATE, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, 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. If Buyer transfers title to, or leases Products sold hereunder to,

or otherwise permits or suffers use by, any third party, Buyer shall obtain from such third party a provision affording Seller and its subcontractors/suppliers the protection of the preceding sentence. Any action against Seller must be brought within eighteen (18) months after cause of action accrues.

(b) As to the Products sold hereunder, Buyer releases Seller from any liability for personal injuries, known or unknown and damage to real or personal property caused by or arising from the Products sold hereunder and agrees not to sue Seller under any theory of liability in tort, negligence, strict liability, contract or otherwise for any claim or demand for personal injuries and property damage which in any manner arises out of the sale, use, application, transportation or otherwise of the Products sold hereunder. The foregoing disclaimers of warranty in Section IX and disclaimers of liability herein shall be binding upon the Buyer and any successors in title, assigns, transferees and ultimate users of the Products.

(c) Each party acknowledges and agrees that the parties entered into the Agreement in reliance upon the limitations of liability set forth in this Section XI, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties, without which Seller would not agree to provide Products or Services to Buyer.

XII. NOTICE OF CLAIMS. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, WITHIN NINETY (90) DAYS AFTER BUYER LEARNS, OR SHOULD REASONABLY HAVE LEARNED, OF ANY CLAIM WITH RESPECT TO ANY PRODUCTS OR SERVICES, BUYER WILL INFORM SELLER IN WRITING OF THE CLAIM OR THE CLAIM IS WAIVED.

XIII. INDEMNIFICATION. BUYER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER AND ITS PARENT, AFFILIATED COMPANIES, OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY, "SELLER PARTIES") FROM ANY AND ALL CLAIMS,

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DEMANDS, DELAYS, ACTIONS, DAMAGES, LIABILITIES AND COSTS (INCLUDING REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, "CLAIMS") FOR BUYER'S BREACH OF AN ORDER OR THESE TERMS, OR FOR DEATH OR INJURY TO ANY PERSON OR PERSONS AND FOR DAMAGE OR LOSS OF ANY PROPERTY CAUSED BY, ARISING FROM OR IN ANY WAY CONNECTED WITH BUYER'S USE OF THE PRODUCTS OR SERVICES PURCHASED HEREUNDER, OR ANY ACTS OR OMISSIONS OF BUYER OR ITS SUB- CONTRACTORS, AGENTS, EMPLOYEES OR CUSTOMERS, AND REGARDLESS OF WHETHER ANY SUCH DEATH, INJURY, OR PROPERTY DAMAGE IS ALSO CAUSED IN PART BY THE NEGLIGENCE OR OTHER LIABILITY OF SELLER. SELLER WILL GIVE BUYER REASONABLE NOTICE OF ANY CLAIMS AND PERMIT BUYER TO CONTROL THE DEFENSE THEREOF. IF BUYER SHOULD FAIL TO ASSUME ITS OBLIGATIONS HEREUNDER WITHIN FOURTEEN (14) DAYS OF RECEIPT OF SUCH NOTICE, INCLUDING BUYER'S OBLIGATIONS TO PURSUE AND PAY FOR THE DEFENSE THEREOF, SELLER WILL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO DEFEND ITSELF AND REQUIRE FROM BUYER REIMBURSEMENT OF ANY AND ALL REASONABLE COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES). BUYER MAY NOT ENTER INTO ANY SETTLEMENT OR COMPROMISE OF ANY CLAIMS WITHOUT THE EXPRESS WRITTEN CONSENT OF SELLER.

XIV. EXCUSABLE DELAYS. (a) Seller shall not be liable for delays in delivery or failure to perform due directly or indirectly to causes beyond Seller's reasonable control including but not limited to: acts of God; war; terrorism; civil commotion; riots; embargoes; government regulations, orders, instructions or priorities; port congestion; acts of or failure to act on the part of Buyer or its agents/employees; fires; floods; sabotage; nuclear incidents; earthquakes; storms; epidemics; strikes, lockouts or other labor difficulties (affecting Seller or any third party); shortages of or inability to timely obtain proper labor, materials, components, shipping space or transportation, fuel, supplies or power at

current prices; or due to limitations imposed by the extent of availability of Seller's normal manufacturing facilities.

(b) If a delay excused per the above extends for more than ninety (90) days and the parties have not agreed upon a revised basis for continuing providing Products/Services at the end of the delay, including adjustment of the price, then either party (except where delay is caused by Buyer, in which event only Seller) upon thirty (30) days' notice may terminate the order with respect to the unexecuted portion of the Products/Services, whereupon Buyer shall promptly pay Seller its reasonable termination charges upon submission of Seller's invoices thereof.

### XV. TECHNICAL/PROPRIETARY

INFORMATION. (a) The purchase of Products shall not include any right to supply of technical information such as drawings or specifications, all of which are the property of Seller.

(b) Proprietary information, including drawings, documents, technical data, reports, software, designs, inventions and other technical information supplied by Seller in connection herewith (hereinafter called "Data"), shall remain Seller's sole property and shall be held in confidence by Buyer. Data shall not be reproduced, used or disclosed to others by Buyer without Seller's prior written consent. Upon completion of an order, Buyer shall promptly return all Data to Seller together with all copies or reprints thereof then in Buyer's possession or control, and Buyer shall thereafter make no future use, either directly or indirectly, of any Data or any information derived therefrom without Seller's prior written consent. The foregoing shall in no way obligate Seller to provide or supply Data.

XVI. DIES, TOOLS, PATTERNS. Seller's charges for dies, molds, patterns and the like represent the Buyer's proportionate cost for the manufacture thereof, it being expressly understood that they remain the property of Seller. Modifications made to dies, molds, patterns and the like in order to manufacture Products shall be at the discretion of Seller.

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XVII. GENERAL. (a) The rights and obligations of the Buyer and Seller hereunder shall be governed in all respects by the law of the State of Texas, U.S.A. (excluding its conflicts of laws provisions). The exclusive forum for adjudication of any disputes shall be the federal or state courts of the State of Texas located in Tarrant County, and Buyer and Seller each hereby irrevocably consent to personal jurisdiction and venue in such courts in any proceeding and waive any argument based upon an inconvenient forum. A final judgment in any legal suit, action or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The United Nations Convention on the International Sale of Goods shall not apply.

(b) EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(c) No waiver, modification, amendment, rescission or other change to this Agreement by Seller is effective unless explicitly set forth in writing and signed by an authorized officer of Seller. Any purported modification, change or waiver failing to comply with the immediately preceding sentence shall not be binding on Seller.

(d) The invalidity or unenforceability, of any part hereof shall not affect the validity of the remainder of this Agreement. The failure of Seller to assert any right at any time hereunder shall not prevent Seller's subsequent assertion of the same or different rights, and no single, partial exercise of any right, remedy, power or privilege hereunder (or failure to exercise any right, remedy, power or privilege hereunder) precludes any other or further exercise thereof or the

exercise of any other right, remedy, power or privilege.

(e) Buyer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written approval of the Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. This Agreement is binding on and inures to the benefit of the parties and their respective permitted successors and permitted assigns.

(f) The parties to this Agreement are independent contractors and nothing contained herein shall be construed as creating any agency, partnership, joint venture, franchise, business opportunity or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

(g) Except as set forth in the immediately following sentence, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Buyer and Seller hereby designate each of the Seller Parties as third-party beneficiaries of the indemnification provisions of this Agreement having the right to enforce such as if they were Seller hereunder.

(h) All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth within an Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be deemed given to a party: (i) when delivered by personal delivery; (ii) when delivered by a nationally recognized overnight courier (with all fees pre-paid), (iii) when sent by facsimile with confirmation of transmission, or (iv) three (3) days

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after mailing if sent by certified or registered mail, return receipt requested.

(i) Seller shall be entitled to recover its reasonable attorneys' fees and costs of court in any action to enforce this Agreement.

## XVIII. PROHIBITION FOR HAZARDOUS USE.

Products sold hereunder are not intended for application in, and shall not be used by Buyer in construction or application of a nuclear installation or in connection with use or handling of nuclear material or for any hazardous activity or critical application, where failure of a single component could cause substantial harm to persons or property, unless Products have been specifically approved for such activity or application. Seller disclaims all liability for loss or damage resulting from such unauthorized use and Buyer shall defend, hold harmless and indemnify Seller against any such liability, whether arising under breach of contract, warranty, tort (regardless of the degree of fault or negligence), strict liability or otherwise. Where Seller approves the application of the Products in a nuclear facility, the Buyer shall, before such use or provision, arrange for insurance or governmental indemnity protecting the Seller against liability and hereby releases and agrees to indemnify the Seller and its suppliers for any nuclear damage, including loss of use, in any manner arising out of a nuclear incident, whether alleged to be due, in whole or in part to the negligence or otherwise of the Seller or its suppliers.

XIX. STATUTORY REQUIREMENTS. Seller reserves the right to make any changes in the general specifications of the Products which are required for the Products to conform to any statutory requirement.

## XX. GOVERNMENT CONTRACTS.

Only Federal Acquisition Regulation ("FAR") supplement clauses expressly accepted in writing by Seller shall be included or incorporated by reference herein. Seller shall not be bound by and makes no representation of compliance with any FAR or FAR supplement clauses that Seller shall not have expressly accepted in writing

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