



Serac, Inc.
160 E Elk Trail
Carol Stream, IL 60188

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General Terms of Sale

Attachment#12290



Serac, Inc.

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1. **Applicability; Entire Agreement; Amendment and Modification**

1.1. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of any products or equipment (collectively, "**Equipment**") or services by Serac, Inc. ("**Seller**"). "Seller" shall include Seller, Seller's parent, Seller's affiliates and the directors, officers, employees, agents, representatives, subcontractors and suppliers of Seller, Seller's parent, and Seller's affiliates.

1.2. The terms contained in any applicable Seller document and these Terms comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. By ordering any Equipment, or receiving any services, from Seller, customer of Seller ("**Buyer**") agrees to these Terms. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms.

1.3. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

2. **Price; Order Placement and Acceptance**

2.1 "**Total Price**" means the total price for the Equipment and any services related thereto (if any), as set forth in the applicable Seller document. Unless otherwise provided by Seller, the Total Price is EXW Seller's plant, Carol Stream, Illinois and does not include the cost of packaging, crating, shipping and the applicable state, federal or local sales, use, service, occupation, income, property, excise or similar taxes, and import fees or duties, or any other similar taxes, duties or charges of any kind by any governmental authority on any amounts payable by Buyer. Buyer shall pay and/or reimburse Seller for all of the foregoing taxes, costs and expenses and any other taxes or charges that may now or hereafter be levied or imposed upon the ownership, leasing, possession or use of the Equipment by the Buyer or required to be collected by the Seller, or resulting from this transaction. In addition, Buyer shall reimburse Seller for the reasonable travel and living expenses incurred by Seller for its personnel in connection with the installation, tune-up, training and other services provided by Seller.

2.2 An order is deemed placed when Seller receives from Buyer a purchase order or other similar document, together with the required down payment. An order is deemed accepted when Seller sends Buyer an order acknowledgment or other similarly-intended document. The Terms herein shall apply throughout the sales process, including, but not limited to, the quotation requests, quotations, technical specification forms, purchase orders, order acknowledgments, invoices and payments.

3. **Cancellation**

If Buyer cancels an order, in whole or in part, after such order is accepted but at least ninety (90) days prior to the estimated date for the acceptance tests as described in Seller's quotation ("**Acceptance Test**"), Buyer shall be charged, and shall pay, a cancellation fee equal to twenty percent (20%) of the Total Price for the cancelled Equipment, plus all engineering, parts, shipping and installation charges, if any, incurred by Seller as of the date of cancellation. If Buyer cancels the order less than ninety (90) days before the estimated date for the Acceptance Test, or at any time after the Acceptance Test, Buyer shall be required to pay the Total Price for the cancelled Equipment, plus all shipping and installation charges as of the date of cancellation.

4. **Inspection; Shipment**

4.1 Seller will notify Buyer when it has completed the Equipment and, on a date mutually agreed upon by Seller and Buyer, but no later than thirty (30) days after receipt of Seller's notice, Buyer shall attend the Acceptance Test conducted by Seller at Seller's plant. If the Equipment contains all components that are listed in the applicable Seller document and operates as set forth in the Acceptance Test, Buyer shall accept the Equipment and shall execute an acceptance notice therefor. If Buyer is not present for the Acceptance Test, Buyer shall be deemed to have accepted the Equipment in whole and shall execute an acceptance notice therefor. Upon completion of the Acceptance Test, and regardless of whether Buyer has issued, or Seller has received, an acceptance notice, Buyer shall pay to Seller the corresponding installment payment of the Total Price in the manner and within the time period as set forth in the applicable Seller document.

4.2 Seller will make the Equipment available for pick-up at Seller's plant within fourteen (14) days after receipt of Buyer's installment payment described in the preceding Section. In the absence of any specific instructions by the Buyer at the time of such installment payment, Seller will select the shipping agent.

4.3 If the Acceptance Test or the shipment is delayed for Buyer's convenience, or because of Buyer's or any



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third party's failure to timely perform its obligations, Buyer shall pay each installment payment of the Total Price on the dates originally agreed upon in the applicable Seller document and shall pay Seller's actual costs, if any, resulting from delay (including, without limitation, storage and insurance). If the delay continues for longer than ten (10) days, Buyer shall also pay any increase in the price of the Equipment prior to actual shipment.

4.4 Seller shall not be responsible for damages to the Equipment that occur after Seller has made the Equipment available to the shipping agent. If the Equipment is damaged during shipment, all claims for damages must be filed with the shipping agent.

5. Installation

5.1 Buyer shall prepare its plant for the installation of the Equipment, including but not limited to, wiring, pipe fitting, grounding or construction to provide space, ventilation, electrical outlets and other utility requirements. Buyer shall remove or correct any hazardous condition that may affect the Equipment. All such preparation or construction must be completed prior to the estimated date of shipment of the Equipment.

5.2 Unless the applicable Seller document specifically provides that Seller will install the Equipment and sets forth the installation charges for such services, Buyer shall be responsible for installing the Equipment at Buyer's plant. Seller will provide Buyer with installation instructions; however, Seller shall in no event incur any liability or obligation for loss or damage to Buyer or any other person with respect to any Equipment if the Equipment is improperly installed or stored. Buyer shall hold Seller harmless against liability or obligation with respect to any expense, loss, or damage to Seller or any person resulting from any improper installation or storage of the Equipment.

5.3 When the Equipment is properly installed, at a time mutually agreed upon between Buyer and Seller, but not later than sixty (60) days after Seller has shipped the Equipment to Buyer, Seller will test and tune-up the Equipment at Buyer's plant to confirm it operates as set forth in the applicable Seller document.

6. Payment Terms; Security Interest; Insurance

6.1 The Total Price and the payment terms are as set forth in the applicable Seller document.

6.2 Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice in the manner specified by Seller. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% of the overdue amount per month, or the highest rate permissible under applicable law, calculated daily and compounded monthly.

6.3 Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, 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 Equipment if Buyer fails to pay any amounts when due hereunder. 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.

6.4 Buyer grants, and Seller or its assignee hereby retains, a purchase money security interest in favor of Seller in the Equipment purchased herein by Buyer (and a security interest in all other Buyer's equipment purchased from Seller prior to the date hereof, or hereafter acquired by Buyer from Seller), together with all attachments and improvements thereto (herein called the "**Secured Collateral**"), including any replacements, additions, improvements of the Secured Collateral or proceeds resulting from any disposition thereof and any insurance proceeds payable resulting from any damage or destruction thereof, and such security interest shall be retained by Seller until all obligations of Buyer to Seller, however incurred or whether presently existing or hereafter arising, are fully paid or performed.

6.5 The Secured Collateral shall be maintained at the address of Buyer set forth on the applicable Seller document and shall not be removed without the prior written consent of Seller. The Secured Collateral shall remain personalty and shall not be attached or affixed to the premises. Buyer agrees not to assert against any assignee of Seller any claim or defense which Buyer may assert against Seller. Buyer shall maintain in good condition and use the Secured Collateral in a careful and proper manner and shall comply with all laws, ordinances and regulations, including, but not limited to, any and all regulations relating to the safe possession, use or maintenance of the Secured Collateral. Buyer shall not remove, lease, sell or convey or in any manner transfer possession or any interest in the Secured Collateral and, other than the security interest provided for herein for the benefit of Seller, shall not suffer, cause or permit the creation of or maintenance of any prior, competing or subordinate interest, lien or claim on the Secured Collateral, whether by consent or legal process, without the express written



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consent of Seller. Upon Seller's request, Buyer shall obtain an executed waiver of landlord's lien, mortgagee's waiver and/or subordination agreement and shall promptly provide Seller financial information, certified if available, concerning Buyer's business, finances, and operating statements as reasonably required by Seller. Buyer shall provide Seller written notification immediately upon the occurrence of any change in any "Buyer Information", as well as the details of each such change. Buyer shall also promptly respond to periodic inquiries from Seller requesting confirmation and/or updates with respect to any such "Buyer Information". Buyer shall allow Seller access to Buyer's premises to inspect the Secured Collateral at any time during regular business hours.

6.6 Risk of loss of the Equipment shall pass from the Seller to the Buyer when the Equipment or component part, whether manufactured by Seller or another supplier, is delivered to a common carrier at Seller's plant. Title to the Equipment shall not pass to the Buyer until Buyer has provided an acceptance notice to Seller, regardless of any installment payments made by the Buyer to the Seller. Buyer shall procure insurance acceptable in all respects to Seller, insuring the Equipment against "all risks" subject to normal exclusions in an amount not less than the Total Price of the Equipment, from an insurance company acceptable to Seller, such insurance to cover the Equipment upon delivery EXW Seller's plant, during loading, unloading, installation and continuously thereafter until all amounts payable by Buyer are paid in full to Seller. Such insurance shall pay any loss first to Seller as its interest may appear herein and shall provide for notice of not less than thirty (30) days to Seller prior to any cancellation, non-renewal or alteration of policy terms. Buyer shall promptly provide Seller evidence of insurance required herein and of any and all renewals or replacements thereof upon execution. If Buyer fails to obtain the required insurance set forth herein or fails to evidence such insurance to Seller, then Seller shall have the right, but not the obligation, to procure such insurance, and, in such event, Buyer shall be liable for and shall promptly reimburse Seller for Seller's expenses and costs in obtaining such insurance.

6.7 Any software supplied with or for the Equipment shall remain the property of Seller. Seller hereby grants to the original Buyer, a royalty free, non-exclusive, non-transferrable license to use such software for the sole purpose of operating the Equipment. Buyer shall not decompile, modify or reverse engineer the software or disclose or deliver any portion or code of the software to any third party. If Buyer sells or transfers the Equipment, Buyer shall return such software and all copies thereof to Seller, unless such transferee agrees, in writing, to be bound by the provisions hereof. Buyer and transferee shall provide such written agreement to the Seller prior to the transfer of the Equipment. Any software subject to any type of license (of a third party or otherwise) (whether self-contained, shrink wrap, or otherwise) shall be subject to the terms of such license.

7. Warranty and Remedies

7.1 Seller warrants to Buyer that for a period of twelve (12) months from the date from which the Equipment is delivered to a common carrier at Seller's plant ("**Warranty Period**") the Equipment shall be free from defects in material and workmanship and shall operate as set forth in the applicable Seller document. The warranty (i) applies only if the Equipment is used according to Seller's instructions and (ii) covers neither electronic components the normal wear and tear of the Equipment nor the damages or accidents resulting from inadequate storage prior to installation, failure to follow installation, operation and maintenance instructions, unauthorized movement, modification, or alteration of the Equipment, accident, abuse, misuse, or the negligent acts of persons not under the reasonable control of Seller, power failure or surges, lightning and other acts of God, or Buyer's use of components, parts, peripherals, attachments, accessories and/or perishable tooling not approved by Seller.

7.2 During the Warranty Period, in the event that Buyer alleges the existence of defects in material or workmanship in any of the Equipment, then Buyer shall, as a condition precedent to Seller's obligations hereunder, promptly, but in no event more than ten (10) days after discovery of the alleged defect, give Seller written notice thereof and permit Seller reasonable access to the Equipment for inspection and testing purposes. In the event that Seller confirms that defects in any of the Equipment covered by the foregoing warranty have existed within the Warranty Period, then Seller will remedy such defects in one of the following ways to be selected by Seller in its sole and absolute discretion: (i) repair of the defects, at Seller's sole cost and expense for parts (ii) replacement of the defective Equipment or components thereof or replacement parts therefor; or (iii) refund to Buyer of the purchase price of the defective Equipment, components thereof or replacement parts therefor.

7.3 NOTWITHSTANDING ANY PROVISION OF THESE TERMS OR OTHERWISE, THE WARRANTY CONTAINED IN THIS SECTION 7, AS LIMITED HEREIN, IS THE ONLY WARRANTY EXTENDED BY SELLER (OR BY ANY PARENT, AFFILIATE, SUPPLIER OR AGENT OF SELLER) IN CONNECTION WITH ANY SALE OR SERVICE OF EQUIPMENT, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND ANY AFFIRMATIONS OF FACT OR QUALITY NOT EXPRESSLY CONTAINED HEREIN. BUYER HEREBY DISCLAIMS ANY STATUS AS, OR RIGHTS BASED UPON BEING, A THIRD PARTY BENEFICIARY OF ANY WARRANTY OF ANY PARENT, AFFILIATE, SUPPLIER OR AGENT OF SELLER OR AN



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INDIRECT SELLER OR SUPPLIER TO SELLER OR BUYER. BUYER HEREBY DISCLAIMS ANY RELIANCE OR INDUCEMENT BASED UPON ANY BROCHURES, LITERATURE, WEB SITE OR INTERNET REFERENCES OR INFORMATION, OR OTHER WRITTEN OR ORAL STATEMENTS WITH RESPECT TO THE EQUIPMENT, EXCEPT TO THE EXTENT SUCH STATEMENTS ARE EXPRESSLY SET FORTH HEREIN AND EXPRESSLY AGREED TO BY SELLER'S WRITTEN ACKNOWLEDGEMENT THAT THE SAME ARE DEEMED INCLUDED HEREIN FOR THE EXPRESS BENEFIT OF BUYER. ABSENT SUCH EXPRESS WRITTEN ACKNOWLEDGEMENT BY SELLER, BUYER AGREES THAT IT SHALL NOT ASSERT (AND BUYER HEREBY AGREES TO WAIVE) ANY CLAIMS, BY REASON OF CONTRACT, TORT, STATUTE OR OTHERWISE AGAINST SELLER OR ANY PARENT, AFFILIATE, SUPPLIER OR AGENT OF SELLER BASED UPON ANY SUCH BROCHURES, LITERATURE, WEB SITE OR INTERNET REFERENCES OR INFORMATION, OR OTHER WRITTEN OR ORAL STATEMENTS. IF BUYER DESIRES TO ASSERT A CLAIM OR FILE ANY LEGAL ACTION FOR BREACH OF WARRANTY, OR FOR ANY OTHER BASIS, INCLUDING, BUT NOT LIMITED TO, ANY CLAIM BASED UPON CONTRACT, TORT OR STATUTE, ARISING OUT OF OR RELATED TO THESE TERMS, THE EQUIPMENT, SPARE PARTS, REPAIRS, OR SERVICES PROVIDED BY OR ON BEHALF OF SELLER OR ANY PARENT, AFFILIATE, SUPPLIER OR AGENT OF SELLER, THE ACTION MUST BE COMMENCED NO LATER THAN ONE YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION AND BUYER HEREBY AGREES THAT ANY SUCH ACTION NOT COMMENCED WITHIN SUCH ONE-YEAR PERIOD SHALL BE DEEMED TO HAVE BEEN IRREVOCABLY WAIVED BY BUYER. BUYER ACKNOWLEDGES THAT THIS PERIOD HAS BEEN ESTABLISHED, AND HAS BEEN AGREED TO AS BEING REASONABLE, BY MUTUAL AGREEMENT OF THE PARTIES. BUYER FURTHER ACKNOWLEDGES THAT NO EMPLOYEE OF SELLER OR THIRD PARTY IS AUTHORIZED TO VARY OR EXPAND THE FOREGOING WARRANTY, UNLESS SUCH VARIANCE OR EXPANSION IS EXPRESSLY SET FORTH IN A DOCUMENT EXECUTED BY AN AUTHORIZED REPRESENTATIVE OF SELLER.

8. Patent Infringement

8.1 Seller will defend or settle, at its own expense, any third-party claim or suit against Buyer alleging that any part of the Equipment infringes any U.S. patent, trademark, copyright, or trade secret and will indemnify Buyer from all damages and costs that by final judgment may be assessed against Buyer on account of such infringement, provided Buyer gives Seller reasonable notice and control of such claim or suit. Seller's obligation shall not apply to infringements that arise out of Seller's compliance with Buyer's specifications, from a combination of the Equipment with a third-party's goods, or from any modification to the Equipment made without Seller's consent. If any portion of the Equipment becomes, or in Seller's opinion is likely to become, the subject of a claim of infringement, Seller will, at its option, (a) procure for Buyer the right to continue use of the Equipment, or part, (b) modify the Equipment, or part, so that they become non-infringing; or (c) accept return of the Equipment (free and clear of any liens or encumbrances) and refund to Buyer the amount actually paid to Seller by Buyer (less an amount equal to the depreciation in value of the Equipment during Buyer's use and possession of the Equipment) without interest and the transportation and installation costs, if any, thereof.

8.2 Buyer shall defend or settle at its own expense any third-party claim or suit against Seller alleging that any part of the Equipment infringes any U.S. patent, trademark, copyright or trade secret and shall indemnify Seller from all damages and costs that by final judgment may be assessed against Seller on account of such infringement, if such infringement arises from Seller's compliance with Buyer's design or specifications, from a combination of the Equipment with a third-party's goods, or from any modification to the Equipment made without Seller's consent.

9. Limitation of Remedies and Liability

BUYER ACKNOWLEDGES AND AGREES THAT:

- A. THE SOLE RESPONSIBILITY AND LIABILITY OF SELLER AND INCURRED BY OR ARISING OUT OF OR WITH RESPECT TO THESE TERMS, THE SALE AND OPERATION OF THE EQUIPMENT, OR SELLER'S SUPPLY OF EQUIPMENT, SPARE PARTS, REPAIRS OR SERVICES, AND THE EXCLUSIVE REMEDY OF BUYER (OR ANYONE CLAIMING RIGHTS THROUGH OR ON BEHALF OF BUYER) AGAINST SELLER UNDER THESE TERMS, ANY WARRANTY, OR OTHERWISE, WHETHER SUCH CLAIM IS BASED ON CONTRACT, TORT, STATUTE OR OTHERWISE, SHALL BE LIMITED TO (I) FOR INFRINGEMENT, THE REMEDIES SET FORTH IN SECTION 8; AND (II) FOR FAILURE OF THE EQUIPMENT, THE REMEDIES STATED IN SECTION 7. FOR DELAYS IN DELIVERY, SELLER SHALL HAVE NO LIABILITY UNLESS THE DELIVERY IS DELAYED BY MORE THAN THIRTY (30) DAYS FOR CAUSES NOT ATTRIBUTABLE TO BUYER, TO BUYER'S PROVIDERS OR TO FORCE MAJEURE CONDITIONS; IN WHICH CASE, BUYER SHALL HAVE THE RIGHT, AS ITS SOLE REMEDY, TO CANCEL THE ORDER WITHOUT INCURRING CANCELLATION CHARGES.
- B. THE TOTAL LIABILITY OF SELLER SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID TO SELLER BY BUYER WITH RESPECT TO THE EQUIPMENT, SPARE PARTS, REPAIRS OR SERVICE, IF ANY, WHICH GAVE RISE TO THE CLAIM, LOSS OR DAMAGE.

C. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, BUYER'S ASSIGNS OR AGENTS (OR ANYONE CLAIMING ON BEHALF OF OR THROUGH ANY OF THEM), FOR ECONOMIC LOSS, COMPENSATORY, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY OTHER INDIRECT DAMAGES, IN CONTRACT, IN TORT, OR BY REASON OF ANY STATUTE, OR OTHERWISE, AT EQUITY OR AT LAW, INCLUDING BUT NOT LIMITED TO, ANY DAMAGES FOR LOST PROFITS, REVENUE OR GOODWILL, DOWN-TIME, LOST PRODUCTION, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, CAPITAL COST OF ANY SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, FAILURE TO MEET BUYER'S SALES CONTRACTS, OR DEFECTS IN, OR CAUSED TO, BUYER'S MATERIALS OR WORKMANSHIP ARISING DIRECTLY OR INDIRECTLY FROM THE USE OF THE EQUIPMENT, OR CLAIMS OF ANY PARTY DEALING WITH BUYER FOR SUCH 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. BUYER ACKNOWLEDGES AND AGREES THAT THIS LIMITATION OF REMEDIES HAS BEEN NEGOTIATED BY SELLER AND BUYER, IS REASONABLE TO ENABLE BUYER TO RECEIVE THE BENEFIT OF A LOWER PURCHASE PRICE THAN WOULD APPLY IN THE ABSENCE OF SUCH LIMITATION, IS DEEMED TO BE ADEQUATE BY BOTH PARTIES, AND IS INTENDED BY THE PARTIES TO SURVIVE EVEN IF THE REMEDY IS CLAIMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. BUYER'S FULL AND COMPLETE PERFORMANCE OF ALL OBLIGATIONS OF BUYER RECITED IN THESE TERMS IS A CONDITION PRECEDENT TO ANY OF SELLER'S WARRANTY OR ANY OTHER OBLIGATIONS AND LIABILITIES.

10. Confidentiality

10.1 Each party shall keep in confidence, and with the same degree of care as it uses for its own confidential or proprietary information, but no less than a reasonable degree of care, all non-public confidential or proprietary business and technical information, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates ("**Information**") of the other party that it receives hereunder. Each party shall reproduce the Information of the other party only as necessary for use hereunder. Each party shall restrict disclosure of the Information of the other party to those of its affiliates and employees with a clear need to know, and shall advise those employees of the obligations of confidentiality herein. Buyer shall use Seller's Information only to install, operate or maintain the Equipment for which it was originally furnished. Buyer shall not disclose the price and payment terms of the Equipment to any third-party unless such disclosure is required for Buyer to finance the Equipment. The restrictions in this [Section 10](#) do not apply to Information (i) that either party obtains from a third-party that the receiving party has no reason to believe to be bound by a confidentiality agreement, (ii) that becomes generally known to the public or (iii) that is developed independently by either party without use of or reference to the other party's Information.

10.2 If any portion of the Equipment is subsequently transferred to another user, the new user must agree in writing to Seller's Terms with respect to, among other things, the use and confidentiality of the Information.

11. Default

If Buyer fails to pay any charge when due and such condition continues un-remedied for ten (10) days from written notice from Seller, or if Buyer fails to perform or observe any other material term or condition of the Terms or any applicable Seller document and such failure continues un-remedied for thirty (30) days after receipt of written notice from Seller, Seller may terminate its performance and exercise any available rights. Upon termination by Seller, Buyer shall be liable for any applicable charges, including cancellation charges.

12. Specifications; Substitutions and Modifications of Equipment; Tooling

Seller may, from time to time, alter the specifications of design of the Equipment, or components thereof; provided, however, that Seller will not make such alteration which affects the form, fit or functional interchangeability or operation of the Equipment without Buyer's prior written consent, unless such alteration is required by reason of compliance with the standards of any United States governmental body or regulatory or standard-setting agency. Seller retains the right to modify the specifications of Equipment designed by Seller and to substitute substantially equivalent Equipment manufactured to such modified specifications. Unless otherwise expressly provided, Seller retains title to, possession of, and the rights to exclusive use of all jigs, dies, fixtures, molds, patterns, gauges, taps, equipment, manufacturing aids, and similar devices, made or obtained for the performance of these Terms without regard to whether a separate charge is made for the same.

13. Force Majeure

Seller shall not be liable or otherwise responsible for any default or delay attributable to force majeure. For this purpose, the term "force majeure" shall mean any cause, circumstance or contingency beyond the reasonable



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control of Seller. Such causes, circumstances and contingencies shall include, without limitations, acts of God, strikes, work stoppages, port delays, fires, accidents, wars, terrorism, rebellions, civil commotion or public strife, acts of any government, whether legal or otherwise, acts of public enemies, inability to secure or delay in securing transportation, tariff or trade adjustments, quotas or restraints, inability to obtain or delays in obtaining machinery, materials, or sufficient qualified labor, or any other causes beyond Seller's reasonable control whether similar or dissimilar to the foregoing. If a delay is caused by such contingency, the date of delivery shall, at Seller's request, be deferred for a period equal to the length of the interruption.

14. **Miscellaneous**

- 14.1 **Assignment; Relationship of the Parties.** Neither party may assign its rights or obligations without the written consent of the other, except that Seller may, without Buyer's consent, assign its rights or obligations, in whole or in part, to an affiliate or a subsidiary or assign its rights to receive payment hereunder or thereunder. The relationship between the parties is that of independent contractors.
- 14.2 **Severability; Waiver.** If any portion of these Terms is found to be invalid or unenforceable, the remaining portion of these Terms shall remain in effect; provided if such invalid or unenforceable portion is an essential part of these Terms, the parties will immediately begin negotiations for a replacement provision consistent with the intent and purpose of these Terms. Any waiver of any provision of these Terms must be in writing and signed by authorized representatives of both parties. If either party fails to enforce any right or remedy available to it under these Terms, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the party.
- 14.3 **Section Headings.** The section headings herein are inserted for convenience only and are not intended to affect the meaning or interpretation of these Terms.
- 14.4 **Enforcement of Terms.** In the event of Seller's enforcement of any of these Terms, Buyer shall be liable to Seller for all costs, including attorneys' fees, incurred by Seller in enforcing these Terms and in collecting any sums owed by Buyer to Seller.
- 14.5 **Notice.** 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 on the applicable Seller document or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), certified or registered mail (in each case, return receipt requested, postage prepaid), or electronic mail. Except as otherwise provided herein, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
- 14.6 **Governing Law, Jurisdiction and Forum.** These Terms and all matters arising out of, or related to, any sale of products or services by the Seller to the Buyer shall be deemed to have been made and governed by the substantive laws of the State of Illinois, without regard to its choice-of-law or conflict of laws provisions. The United Nations Convention on the International Sale of Goods shall have no application to these Terms or any matters arising out of, or related to, any sale of products or services by the Seller to the Buyer. Any claims relating to the sale or use of Equipment or services provided by the Seller and/or the relationship between the Seller and the Buyer shall be asserted only in the state or federal courts located in Cook County, Illinois or DuPage County, Illinois. Buyer hereby unconditionally consents to the jurisdiction and venue of said courts.
- 14.7 **Time Limitation.** Any dispute of, or claim by, Buyer shall be deemed waived by Buyer unless action expressly permitted hereunder is brought within one (1) year after the accrual of Buyer's cause of action.
- 14.8 **Compliance with Law; Safety Precautions.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations. Buyer shall require its employees to use all safety devices, guards, and proper safe operating procedures including, without limitation, those set forth in manuals and instruction sheets furnished to Buyer. Buyer shall not remove or modify any such device, guard, or sign. It is the Buyer's responsibility to provide all the means that may be necessary to effectively protect all employees or others who use or have access to the Equipment from bodily injury, which otherwise may result from the method of particular use, operation, set-up, or service of the Equipment. Buyer shall promptly communicate to its employees all post-sale notices or warnings it receives with respect to the safe operation or maintenance of the Equipment. If Buyer fails to comply with such provisions of this Section or the applicable standards or



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regulations aforementioned, Buyer shall defend, indemnify and hold Seller harmless from and against any and all claims, losses, or damages arising therefrom. Seller shall not be responsible for compliance with any local laws, ordinances, codes or the interpretation thereof, which may be in effect at the Buyer's plant, unless such party has specifically agreed in writing to accept that responsibility, and Buyer hereby agrees to obtain any and all permits, licenses, authorizations or certificates required by any governmental or regulatory agency or other body for the installation and use of the Equipment.