



APPLIED FABRICATORS, INC.

STANDARD TERMS & CONDITIONS OF SALE

These "Terms and Conditions" govern the sale of goods or materials or the provision of any services ("Goods and/or Services") by Applied Fabricators, Inc. ("Seller") to the person or business entity buying such Goods and/or Services ("Buyer").

Each request for quote, order, acceptance of Goods and/or Services and/or payment to Seller by Buyer shall be deemed an acknowledgment and acceptance by Buyer of these Terms and Conditions as then in effect.

1. SCOPE OF TERMS AND CONDITIONS

Seller's provision of credit to Buyer, if any, acceptance of any purchase order and/or sale or provision of any Goods and/or Services to Buyer are all expressly conditioned upon Buyer's acceptance of these Terms and Conditions as then in effect. SELLER HEREBY REJECTS ANY TERMS OR CONDITIONS WHICH ATTEMPT TO ALTER, MODIFY OR CHANGE IN ANY WAY ANY PROVISION HEREOF, OR OTHERWISE ATTEMPT TO SUSPEND, CONTRADICT OR ADD TO ANY TERM OR CONDITION CONTAINED HEREIN, AND BUYER HEREBY WAIVES ALL SUCH TERMS OR CONDITIONS; THUS, SUCH SHALL NOT BE BINDING ON SELLER UNLESS EXPRESSLY AGREED TO IN A SEPARATE WRITTEN INSTRUMENT SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE. SELLER OBJECTS TO ANY DIFFERENT, INCONSISTENT, CONFLICTING, SUPPLEMENTAL OR ADDITIONAL TERMS OR CONDITIONS AND HEREBY REJECTS SUCH, WHETHER CONTAINED IN PREVIOUS OR SUBSEQUENT PROPOSALS OR COMMUNICATIONS (WHETHER ORAL OR WRITTEN) FROM OR WITH BUYER OR IMPLIED BY TRADE, CUSTOM, PRACTICE, COURSE OF DEALING OR USAGE IN THE TRADE. BUYER AND SELLER AGREE THAT THESE TERMS AND CONDITIONS, AS MAY BE SUBSEQUENTLY MODIFIED BY SELLER FROM TIME TO TIME, ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE COMPLETE AND FINAL EXPRESSION OF THE TERMS AND CONDITIONS GOVERNING TRANSACTIONS BETWEEN THEM, AND FURTHER AGREE THAT THERE SHALL BE NO "BATTLE OF THE FORMS" AS DESCRIBED IN SECTION 2-207 OF THE UNIFORM COMMERCIAL CODE.

2. DRAWINGS, PLANS AND SPECIFICATIONS.

Seller shall be entitled to rely upon the drawings, plans and specifications which were provided by Buyer. Buyer represents and warrants that any drawings, plans and specifications for Goods and/or Services meet Buyer's needs, obligations, and expectations, and do not infringe on any third parties intellectual property, including without limitation patents, copyrights, trademarks, or otherwise legally protected designs.

If the design is not complete at the time of this bid, released for construction drawings will be required before detailing, material purchases, or fabrication can commence, and Seller reserves the right to additional compensation.

3. ORDERS; MODIFICATION AND CANCELLATION.

An order shall be complete when the Goods and/or Services and the price are agreed between the Buyer and Seller, which Seller may memorialize in a Purchase Order. All orders remain subject to these Terms and Conditions.

After an order is made, Buyer may not cancel or modify such order in whole or in part without Seller's prior written consent, to be given or denied in Seller's sole and absolute discretion. Seller may condition modification upon an adjustment of price and/or other terms. In the event a cancellation of the order is authorized by Seller, Buyer shall reimburse Seller for all of its costs and damages in connection with the order and its cancellation, including without limitation raw materials purchased by Seller to fulfill the order, time and labor expended by Seller in partial performance of the order, and any other expenses incurred by Seller related to the cancelled order.

3. PRICE.

The price of the goods shall be Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in Seller's standard price list (the "List Price") current at the date of acceptance of the order. In the event that the price is memorialized in a Purchase Order that is accepted by Buyer, Buyer agrees that such price shall be binding, subject to the terms set forth herein.

Except as otherwise stated under the terms of any quotation and unless otherwise agreed in writing between Buyer and Seller, all prices are given by Seller on an ex works basis.

The price is exclusive of any applicable value added, sales, or other tax, which Buyer may be additionally liable to pay to Seller, as well as any freight or insurance costs incurred on delivery. Customs duties, clearance charges, or equivalent duties shall be for the account of Buyer.

While Seller will try to ensure that the price stated in the Purchase Order is accurate, errors may occur. If Seller discovers an error in the price of the goods or services which Buyer has ordered, Seller will inform Buyer as soon as possible.

In the event that delivery is not completed, in whole or in part, in less than sixty (60) days following receipt of the order, whether memorialized by Purchase Order or otherwise, Seller retains the right to adjust the price at its discretion based on changes in Seller's costs of supply, including without limitation the cost of metal or other components used for manufacture. Seller shall give reasonable notice of any such price adjustments to Buyer.

Buyer may cancel its order within two (2) working days of being informed of an increase in the price of the goods from the price that was indicated on the Purchase Order. If Buyer does not exercise this right of cancellation within two (2) working days, Buyer shall be bound by the new price.

4. TIME FOR DELIVERY AND PERFORMANCE; PAYMENT TERMS.

Unless specifically agreed to by Seller in writing, time is not of the essence in the order, and the project schedule and any modification shall allow Seller a reasonable time to complete its work and provide the Goods and/or Services in an efficient manner. Seller shall not be required to commence or continue work unless sufficient areas are ready to ensure continuous work. Buyer shall promptly provide Seller with all

schedules of work and with any other information necessary for the proper schedule of Seller's Work. Seller will not be bound by any schedule that was not included in bidding documents, or to any schedule revisions absent prior written agreement. Seller shall be entitled to an equitable adjustment in the price of the Work, including but not limited to, any increased costs of labor, including overtime, or materials, or reasonable reimbursement for storage of inventory or finished Goods and/or Services, resulting from any change of schedule, acceleration, out of sequence work or delay caused by others for whom Seller is not responsible.

Buyer's right, under the Uniform Commercial Code (the "UCC"), to reject due to delay in delivery is waived unless notice thereof is presented to Seller in writing within five (5) days after delivery.

Payment for all Goods and/or Services shall be due within thirty (30) days of delivery. If a credit card is used for payment, a two and a half percent (2.5%) service fee shall be added to the total. If payment is received within ten (10) days of delivery and payment is not made by credit card, then Buyer shall receive a two percent (2%) discount. Buyer shall incur a two percent (2%) per month interest charge on all payments not made within thirty (30) days.

5. INSTALLMENTS.

Unless otherwise expressly agreed with Buyer by Seller in a separate written document, Seller shall have the right to make delivery in installments. All installments shall be separately invoiced and paid as billed without regard to subsequent deliveries. Failure of Buyer to pay for any installment when due shall excuse Seller from making further deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for remaining installments.

7. LIMITED WARRANTY; DISCLAIMER.

Seller will furnish Goods and/or Services of the quality specified; provided, however, that Seller's affirmative statements, if any, with regard to the character of Goods and/or Services in advertising or product information, including, but not limited to, Seller's then current website, in price lists or otherwise, shall not be binding. If Goods and/or Services are defective or are not in substantial conformity with the specifications, subject to the tolerances and variations consistent with usual trade practices, Seller will replace such with conforming Goods and/or Services at Seller's facility where such Goods and/or Services are delivered for inspection in accordance with this Section (or if Seller and Buyer agree that such Goods and/or Services are not available for delivery to Seller for such an inspection, after inspection and confirmation by Seller of a defect or nonconformity originating with Seller, at the point of initial delivery) or will, at Seller's election, allow Buyer a credit or refund for the purchase price, provided that Buyer shall be deemed to have accepted the Goods and/or Services upon the earlier of: (a) ten (10) days after the Goods and/or Services were delivered to Buyer; or (b) the installation of the Goods and/or Services or their incorporation into any other good, service, building, or product. Following acceptance of the Goods and/or Services, Seller shall have no liability for, and Buyer shall have waived, any claim that is based on the inadequacy of the Goods and/or Services, including but not limited to, claims arising out the workmanship of the Goods and/or Services, the quality of the Goods and/or Services, or any defect in the Goods and/or Services. Notwithstanding the preceding, or anything to the contrary in this Agreement, Seller shall never be liable for any claims based on the inadequacy of the Goods and/or Services, including

but not limited to, claims arising out the workmanship of the Goods and/or Services (except as set forth in the following paragraph), the quality of the Goods and/or Services, or any defect in the Goods and/or Services, after the installation of the Goods and/or Services.

Seller provides a limited two-year warranty as the manufacturing workmanship of the T9 Wall Panel products only, and states that all such T9 Wall Panels shall be manufactured in a good and commercially reasonable manner, free of any major defects. Seller makes no warranty as to the installation workmanship of such T9 Wall Panels, and otherwise states that this limited manufacturing workmanship warranty shall be subject to all other limitations set forth in these T&C.

Buyer's remedies pursuant to this limited warranty shall be limited to return or replacement of the specific units of the Goods and/or Services that are found to be defective. If only a subset of a lot of delivered Goods and/or Services are found to be defective, Buyer's remedy shall be limited to the defective Goods and/or Services within that subset, but not as to the lot or group of units purchased as a whole, and Buyer shall not be authorized to return or seek refund for or replacement of that part of the lot or group that was not defective.

Buyer may not return, repair or dispose of any allegedly defective or nonconforming Goods and/or Services without Seller's consent. Upon receipt of consent from Seller to return allegedly defective or nonconforming Goods and/or Services, and shipping instructions, Buyer shall return to Seller F.O.B. Seller's destination, all such Goods and/or Services allegedly not conforming to specifications, or otherwise allegedly defective. Goods and/or Services returned must be returned in the same condition as when received by Buyer. Goods and/or Services found by Seller to be defective or not to conform to specifications shall, upon return, be replaced or repaired by Seller without any additional charge, or, at Seller's option, Seller may credit the purchase price of such Goods and/or Services to Buyer by issuing Buyer a credit memo or good funds or by setting off the purchase price of such Goods and/or Services against monies owed to Seller by Buyer. Seller will also credit Buyer for reasonable transportation charges on returned defective or nonconforming Goods and/or Services. Returned Goods and/or Services which are found by Seller to be free from defect and to conform to specifications or otherwise not suffer from a defect or nonconformity which originated with Seller shall be held at Seller's facility for Buyer's disposition. Should no such disposition instructions be received from Buyer within thirty (30) days of notice of Seller's finding, Seller may do with the Goods and/or Services as it wishes, including, but not limited to, selling such for its scrap value; provided that Buyer is given a credit toward the amount owing to Seller for such Goods and/or Services in the amount of such scrap value. Replacement or repaired Goods and/or Services will be warranted for the remainder of the original warranty period.

Seller expressly disclaims any warranty as to the fitness of the Goods and/or Services for use in any particular application, their suitability for construction, or their use in any design. Other than the limited warranty expressly set forth herein, Buyer expressly assumes any and all responsibility and liability for determining whether the Goods and/or Services meet Buyer's (and its customer's, client's, contractor's or other third party's) needs and requirements in terms of design, materials, size, shape, porousness, resistance to rust, mold, weather, or wear and tear, and other specifications, and Buyer expressly waives any express or implied warranty from Seller as to such issues.

Buyer agrees that no oral or written representation, guaranty or warranty made by Seller, its employees, agents or representatives, other than as expressly set out in these Terms and Conditions, shall be binding on Seller.

The limited warranty in this Section 7 is expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on Seller's part.

SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES AND AGREES THAT BUYER TAKES SOLE RESPONSIBILITY FOR THE SELECTION OF AND SPECIFICATIONS FOR THE GOODS AND/OR SERVICES AND THEIR FITNESS FOR ANY PURPOSES INTENDED BY BUYER OR BUYER'S CUSTOMER(S).

8. LIMITATION OF SELLER'S LIABILITY.

IN NO EVENT SHALL SELLER'S LIABILITY, REGARDLESS OF THE CAUSE THEREOF, EXTEND BEYOND REPLACEMENT OR REPAIR OF GOODS AND/OR SERVICES OR GIVING BUYER CREDIT FOR THE PURCHASE PRICE OF GOODS AND/OR SERVICES SOLD OR PROVIDED, EITHER AT SELLER'S ELECTION, NOR SHALL SELLER HAVE ANY LIABILITY FOR LOSS OF TIME, COST OF LABOR EXPENDED, OR FOR ANY SEPARATE, SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES RESULTING FROM REJECTION OF FINISHED PARTS BY BUYER OR BUYER'S CUSTOMER(S).

9. INDEMNITY.

To the fullest extent permitted by law, Buyer shall, at Buyer's sole cost and expense, indemnify, defend, release and hold harmless Seller, its officers, directors, agents and employees, from and against any and all claims, demands, lawsuits or proceedings of any kind brought or threatened against Seller and/or its officers, directors, agents and employees based on any claim, in whole or in part, that the Goods and/or Services as fabricated or manufactured by Seller reasonably in accordance with drawings, specifications or other information provided by Buyer fail to (i) be adequate for a particular purpose, (ii) comply with any product liability law, rule or regulation pertaining thereto and/or (iii) be adequate for any use to which the Goods and/or Services are put after shipment by Seller to Buyer, and Buyer shall pay all costs, expenses, damages, liabilities and losses incurred by Seller, its officers, directors, agents and/or employees, as a result of any such actual or threatened claim, demand, lawsuit or proceeding, including, but not limited to, reasonable attorneys' fees.

10. PATENT INFRINGEMENT OR TRADE SECRET VIOLATION CLAIMS.

Buyer expressly warrants to Seller that Goods and/or Services fabricated, manufactured or sold by Seller to Buyer in accordance with drawings, specifications or other information provided by Buyer shall not infringe upon any valid United States patent, copyright, or trademark, or knowingly violate any trade secret or other proprietary right of any third party. To the fullest extent permitted by law, Buyer shall, at Buyer's sole cost and expense, indemnify, defend, release and hold harmless Seller, its officers, directors, agents and employees, from and against any and all claims, demands, lawsuits or proceedings of any kind

brought or threatened against Seller and/or its officers, directors, agents and employees based on any claim, in whole or part, that the Goods and/or Services as fabricated or manufactured by Seller in accordance with drawings, specifications or other information provided by Buyer or the sale thereof infringes any patent, copyright or trademark or knowingly violates any trade secret or other proprietary right of any third party, and Buyer shall pay all costs, expenses, damages, liabilities and losses incurred by Seller, its officers, directors, agents and/or employees, as a result of any such actual or threatened claim, demand, lawsuit or proceeding, including, but not limited to, reasonable attorney's fees.

11. TRANSPORTATION; TRANSPORTATION INDEMNITIES; SECURING LOADS.

Buyer is responsible for the securing of all loads of Goods and/or Services transported from Seller's facility in Buyer's vehicle, as well as for flagging or otherwise marking such for transport. If a third party freight carrier transports Goods and/or Services purchased by Buyer from Seller's facility, such freight carrier shall be responsible for securing the load and flagging or otherwise marking the Goods and/or Services for transport. In no event, shall Seller have any liability to Buyer or any third party for any (i) damage to, or loss of, any vehicle used to carry Goods and/or Services purchased by Buyer from Seller, whether such vehicle belongs to Buyer or a third party, or to any other vehicle belonging to a third party; (ii) damage to, or loss of, the Goods and/or Services purchased by Buyer from Seller or to a third party's property (real or personal); (iii) injury to any person (whether the driver of the vehicle carrying the Goods and/or Services or an unassociated third person); or (iv) any other loss of any kind, resulting from a failure by Buyer or a freight carrier to properly secure a load of Goods and/or Services or flag or otherwise mark for transportation such Goods and/or Services purchased from Seller and transported from Seller's facility in Buyer's vehicle or on a vehicle belonging to a freight carrier. To the fullest extent permitted by law, Buyer shall, at Buyer's sole cost and expense, indemnify, defend, release and hold harmless Seller, and its officers, directors, agents and/or employees, from and against any and all claims, demands, lawsuits or proceedings of any kind brought or threatened against Seller and/or its officers, directors, agents and employees resulting, in whole or in part, from any failure by Buyer or a third party freight carrier to properly secure a load of Goods and/or Services or flag or otherwise mark for transportation such Goods and/or Services purchased from Seller and transported from Seller's facility in Buyer's vehicle or on a vehicle belonging to a freight carrier, and Buyer shall pay all costs, expenses, damages, liabilities and losses incurred by Seller, its officers, directors, agents and/or employees, as a result of any such actual or threatened claim, demand, lawsuit or proceeding, including, but not limited to, reasonable attorneys' fees. Any agreement by Seller to transport Goods and/or Services to Buyer (or its designated location for delivery) using Seller's trucks or means of transport must be memorialized in writing, at rates agreed to by Seller in its sole discretion. Buyer takes sole responsibility for selection of the location and timing of delivery, and for confirming that the location will be available for the delivery on the schedule agreed. Seller shall bear no responsibility for Buyer's failure to appropriately determine, secure, or identify the delivery location or time, and Buyer shall reimburse Seller for all costs, losses or expenses associated with such failure. In no event, shall Seller have any liability to Buyer or any third party for any (i) damage to, or loss of, the Goods and/or Services purchased by Buyer from Seller or to a third party's property (real or personal) during transport by Seller, unless caused by the gross negligence or willful misconduct of Seller; or (ii) injury to any person (whether the driver of the vehicle carrying the Goods and/or Services or an unassociated third person) during Seller's transport.

12. CLAIMS AGAINST COMMON CARRIERS.

Delivery of Goods and/or Services to a common carrier shall constitute delivery to Buyer and upon such delivery to a common carrier, all risk of damage shall be borne by Buyer, and Buyer shall be responsible for obtaining insurance, if desired, on the Goods and/or Services while in transport. If Buyer discovers a shortage in Goods and/or Services delivered or if the Goods and/or Services have been damaged in transit, Buyer must make a note to that effect upon the receipt Buyer gives the carrier or his, her or its agent. Also, Buyer must request that a similar notation be made on the freight bill. Damaged Goods and/or Services must not be unloaded until inspected and such damage noted in writing. If there is justification for a claim, Buyer will file such promptly with the carrier. If the Goods and/or Services were shipped F.O.B. destination, Buyer must take the above steps, notify Seller immediately, and Seller will file a claim with the carrier. Failure to comply with this Section shall be deemed an express acceptance of the Goods and/or Services by Buyer in an "AS IS" condition with no right to credit, refund or any other remedy.

13. LITIGATION AND COLLECTION.

Venue in any legal action brought by either Buyer or Seller in connection herewith or with Goods and/or Services shall be deemed proper in any of the following locations, which locale shall be at the choosing of Seller, in its sole and absolute discretion: (i) the county and state of the principal location of Buyer; (ii) the county and state of any location of Buyer to which Seller has delivered Goods and/or Services, if different from Buyer's principal location; (iii) the county and state of any location of Seller from which Goods and/or Services have been sold, provided or shipped to Buyer; or (iv) the county and state of the principal location of Seller. Buyer hereby agrees that it will submit to the personal jurisdiction of and venue of the court wherein venue is chosen by Seller in accordance with the preceding sentence.

If any default is made in payment of amounts due for the sale of Goods and/or Services or upon any other breach of these Terms and Conditions, as such may be subsequently modified by Seller from time to time without notice, Buyer agrees to pay Seller's reasonable costs of collection and/or compliance, including, but not limited to, reasonable attorneys' fees and costs, not to exceed the amount allowed by any applicable statute. In addition, Buyer agrees that Seller (a) is entitled to and may secure a lien against the Goods and/or Services for which payment has not been timely received, and (b) is entitled to and may secure a lien against any other good, building, product, or real estate into which the Goods and/or Services have been incorporated or installed, including without limitation a mechanics' or materials lien. Seller shall have no obligation to provide a lien waiver related to any Goods and/or Services until Seller has been paid in full by Buyer.

14. FREIGHT CHARGES.

If the agreed purchase price for Goods and/or Services was based on freight being allowed to destination (whether such freight charges were agreed to be included in the purchase price or to be charged as a separate line item), any change in applicable freight rates, including, but not limited to, any applicable fuel surcharges assessed by Seller upon prior notice to Buyer or without prior notice passed along by Seller

to Buyer from a third party carrier, between the date of quotation and/or acceptance of purchase order and the time of shipment will result in a corresponding change in price. If the agreed purchase price was based on there being sufficient Goods and/or Services for a carload or truckload shipment and Buyer has ordered shipments to be made in less than carload or truckload amounts, then Buyer must pay the difference between carload/truckload and less than carload or truckload freight. If price is quoted F.O.B. trucks, it shall mean on the nearest accessible road or street to the building operation, and not unloaded from the trucks.

Except as otherwise provided herein, Seller shall not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If such charges are by the terms of sale included (whether in the price itself or as a separate line item), any increase in rates, including, but not limited to, any increase in applicable fuel surcharges, whether assessed by Seller or passed along by Seller to Buyer from a third party carrier, becoming effective prior to the shipment date of the Goods and/or Services ordered, shall be the responsibility of Buyer.

15. TAXES, DUTIES, BROKERAGE AND OTHER FEES.

In addition to the agreed purchase price for Goods and/or Services, Buyer shall pay to Seller any and all applicable taxes imposed by any present or future law on the sale, manufacture, delivery, use and/or other handling of Goods and/or Services, whether such taxes are characterized as goods and services tax, sales tax, use tax, excise tax, value added tax, business transfer tax or otherwise (collectively, "Taxes"), but excluding income taxes normally paid by Seller, and all other reasonable charges for ancillary services and costs such as forming, galvanizing and other services, including, but not limited to, special packaging and the cost of performing any tests or inspections required by Buyer which are not regularly performed by Seller.

16. FINANCIAL RESPONSIBILITY.

Reasonable doubt on the part of Seller concerning the financial responsibility of Buyer (including, but not limited to, Buyer's failure to pay on the net due date for Goods and/or Services) shall entitle Seller to stop operation/production, decline shipment, or stop any Goods and/or Services in transit without any liability whatsoever to Buyer, until such time as the Goods and/or Services have been paid for or until Seller is furnished reasonably satisfactory proof of Buyer's financial responsibility, as determined in Seller's sole and absolute discretion. If Seller suspends performance and later proceeds with fulfillment of such order, Seller shall be entitled to such extension of time for performance as is necessitated by the suspension. If Seller has agreed with Buyer to accept payment for any shipment by credit card, such credit card shall be charged at the time of sale upon Buyer's confirmation that such shipment is to be paid for in such manner.

17. TITLE.

Notwithstanding delivery and passing of risk, Goods and/or Services sold by Seller to Buyer shall remain the property of Seller until Buyer has paid to Seller the agreed purchase price therefor (together with any accrued interest) and no other sums whatsoever are due from Buyer to Seller therefor. Until title to the

Goods and/or Services passes to Buyer in accordance with this Section 17, Buyer shall: (i) hold the Goods and/or Services on a fiduciary basis and shall not part with possession otherwise than in the ordinary course of business; (ii) take proper care of the Goods and/or Services; (iii) take all reasonable steps to prevent damage to or deterioration of the Goods and/or Services; and (iv) keep the Goods and/or Services free from any charge, lien or other encumbrance. From delivery until title to the Goods and/or Services passes to Buyer, Buyer shall insure the Goods and/or Services for their full value with a reputable insurer, and on request, Buyer shall produce the policy or policies of insurance to Seller. Further, until title to the Goods and/or Services passes to Buyer, Buyer shall hold the proceeds of any claim under any such insurance policy or policies in trust for Seller and shall immediately account to Seller with the proceeds.

18. PURCHASE MONEY SECURITY INTEREST ("PMSI").

In accordance with the UCC, Buyer hereby grants, and Seller hereby retains, a PMSI in all Goods and/or Services sold by Seller to Buyer, along with any products into which such Goods and/or Services are converted or included by Buyer and the proceeds of sale or other transfer by Buyer of any and all said products or of the Goods and/or Services themselves, until such time as Seller is fully paid all amounts owing by Buyer for such Goods and/or Services, at which time said PMSI shall be immediately released. In the event Seller is not timely paid for any Goods and/or Services, in addition to any other rights to which Seller may be entitled hereunder or at law or equity, Seller shall have all rights granted under the UCC in regard to enforcement of its PMSI. Seller reserves the right to, and Buyer acknowledges and agrees that Seller may, notify any of Buyer's secured creditors of Seller's PMSI. Buyer also authorizes Seller to file with appropriate authorities financing statement(s) and/or other documents deemed necessary by Seller to give notice of Seller's PMSI. Buyer shall take all reasonable steps and cooperate with Seller in perfecting Seller's PMSI.

19. TERMINATION.

If, at any time, (i) Buyer fails to pay to Seller any amount in full when due, or otherwise fails to perform any other obligation owed to Seller; (ii) Buyer becomes insolvent or makes an assignment for the benefit of creditors or is adjudged bankrupt or a receiver or trustee of Buyer's property is appointed; or (iii) a levy, execution or attachment is made of any material portion of Buyer's property, Seller may, in its sole and absolute discretion, terminate the contract with Buyer for the purchase and sale of Goods and/or Services as created hereby and refuse to make further deliveries and/or repossess any Goods and/or Services for which Seller has not been paid in full (in cash or cleared funds) or continue to perform but refuse to make any shipments except upon the receipt of payment in full (in cash or cleared funds) prior to shipment. All amounts payable to Seller are due immediately upon termination pursuant to this Section despite any other provision to the contrary herein.

20. CONTROLLING LAW.

These Terms and Conditions and the contract by and between Buyer and Seller for the purchase and sale of Goods and/or Services created hereunder is deemed made in Indiana and shall be governed as to

validity, interpretation, construction, effect, and in all other respects, by the laws of the State of Indiana, without giving effect to the conflict of laws principles thereof.

21. WAIVER.

Neither any failure nor any delay on the part of Seller in exercising any rights hereunder shall operate as a waiver of any of Seller's rights. Any waiver by Seller of any breach of, or any default under, any provision of these Terms and Conditions by Buyer will not be deemed a waiver of any subsequent breach or default. All rights and remedies granted herein are in addition to all remedies available at law or in equity.

22. FORCE MAJUERE

Seller reserves the right to defer delivery, to cancel the order or reduce the volume of Goods and/or Services delivered, all without liability of any kind whatsoever to Buyer, if Seller is prevented from or delayed in the carrying on of its business (in whole or in part, whether specific to the order or generally) due to causes beyond Seller's control, including, without limitation, strikes, lockouts or other labor difficulties, floods, fires, earthquakes, hurricanes or other unusually severe weather conditions, embargoes, war or other outbreak of hostilities, acts of terrorism, acts of nature, acts of Buyer, market shortages, pandemics, unavailability of Goods and/or Services or necessary materials, supplies or transportation services, any shift in raw material costs that prohibit or materially reduce the supply of Goods and/or Services or necessary materials or supplies from Seller's suppliers, inability to obtain shipping space, machinery breakdowns, delays of carriers or suppliers, governmental acts and regulations or other contingency the non-occurrence of which was a basic assumption on which the purchase order was accepted. In such a case, Seller shall have no obligation to purchase substitute goods or make other substitute arrangements in order to complete delivery to Buyer or to ship substitute goods from any other facility.

23. PAYMENT TERMS.

Payment in full is due at time of delivery. Issuance of credit to Buyer by Seller shall be in Seller's sole and absolute discretion. Time shall be of the essence in payment. No payment shall be deemed to have been received until Seller has received cleared funds.

In the event Buyer fails to make payment to Seller of any amounts due and owing (including any applicable surcharge or freight charge) by the net due date, Seller may charge interest on the outstanding balance at an annual rate of 18% or the highest rate allowed by law (whichever is less) until paid in full. Payments after accrual of such interest charges shall be applied first against such interest charges and secondly against past due invoices. In the event of any such failure to make timely payment, Seller reserves the right to revoke credit terms, if any, extended to Buyer. Buyer's account shall also be charged with any fees associated with insufficient funds.

Buyer shall make all payments due to Seller for Goods and/or Services sold without any deduction whether by way of set-off, counterclaim, abatement or otherwise, unless Buyer has a valid court order requiring an amount equal to such deduction to be paid by Seller to Buyer.

In no event shall Seller be responsible for any costs associated with the processing of invoices to Buyer with a third party or otherwise at Buyer's request and any such costs shall be separately paid or handled by Buyer at its sole cost and expense.

25. ASSIGNMENT.

Buyer may not assign its rights or obligations hereunder (whether voluntarily, involuntarily, by operation of law, transfer of majority or controlling interest or otherwise) without the prior written consent of Seller. These Terms and Conditions shall be binding upon Buyer and its successors and permitted assigns.

26. SEVERABILITY.

If any provision of these Terms and Conditions shall be unlawful, void or for any reason unenforceable, then that provision shall be deemed severable from these Terms and Conditions, and the remaining Sections shall continue in full force and effect.

27. EXCLUSIVE AGREEMENT.

The contract by and between Buyer and Seller for the purchase and sale of Goods and/or Services created hereby constitutes the entire agreement by and between Buyer and Seller with regard to the subject matter hereof and shall exclusively determine the rights and obligations of Buyer and Seller with regard to the purchase and sale of Goods and/or Services, any prior course of dealing, custom or usage of trade or course of performance notwithstanding, and may not be modified by Buyer except in separate writing signed by an authorized agent of Seller.