

IKG USA, LLC

GENERAL TERMS AND CONDITIONS OF SALE

- 1. ACCEPTANCE OF TERMS AND CONDITIONS.** These General Terms and Conditions of Sale and any quotation or other order acknowledgement (“Order”) issued by IKG USA, LLC (“Seller”) for products sold or to be sold (each called the “Product,” and if more than one, the “Products”) by Seller to the buyer named in the Order (“Buyer”) constitute the only terms and conditions governing the sale of Products by Seller to Buyer relating to the Order (herein the “Terms”); provided however, if Seller’s Order contradicts any term herein or contains different terms not covered herein, the Order shall prevail to the extent it contains any different or contradictory terms. Buyer’s acceptance of these Terms is an essential prerequisite to any agreement of sale made by Seller to Buyer with respect to the Products. No additional or different terms offered by the Buyer or included in Buyer’s purchase orders or other communications to Seller shall become a part of the agreement of sale between Seller and Buyer. Buyer agrees that these Terms will prevail over any of Buyer’s terms and conditions communicated to Seller regardless of whether or when Buyer submitted its purchase order or terms to Seller. Seller’s fulfillment of Buyer’s purchase order does not constitute acceptance of any of Buyer’s terms and conditions and does not modify or amend any of these Terms. To further clarify the above, if this document is an offer, acceptance of this offer is expressly limited to these Terms, and Seller reserves the right to withdraw this offer at any time before its acceptance by Buyer. If this document has been issued by Seller in response to a written offer made by Buyer, Seller’s acceptance of Buyer’s offer is expressly conditioned on Buyer’s assent to the additional or different terms contained herein. If these Terms are not acceptable, Buyer shall notify Seller in writing at once. Buyer’s action in (a) accepting any Products manufactured and delivered hereunder, or (b) receiving this document without objecting to the Terms in writing within three (3) business days of receipt shall constitute an unqualified acceptance by Buyer of these Terms.
- 2. TERMS OF PAYMENT.** (a) The Order is issued by Seller with the understanding that the prices of Products described in the Order are subject to adjustment at the time of shipment to reflect any increases in labor, material, and/or freight rates after the date of the Order. Prices are on a unit price basis only and are not to be extended into a lump sum figure without the express written consent of Seller. (b) Unless otherwise stated in the Order, terms of payment for shipments are net cash within thirty (30) days from the date of Seller’s invoice. Payment shall be made in accordance with payment instructions and options offered by Seller in separate correspondence. Failure to make timely payment of invoices entitles Seller at its option to withhold delivery of additional Products ordered until such payments are made, or at the Seller’s option effect cancellation of any unfilled Order without liability. (c) If invoices or any part thereof are not paid when due, Seller may assess a delinquency charge of 12% per annum on the amount of any past due payment (or such lesser amount as may be the maximum permitted by applicable law) from the date due until the date the amount is finally paid. Buyer agrees to pay such charge before and during any bankruptcy proceedings, if applicable. Payment of the delinquency charge without paying the amount due on an invoice will not excuse the breach. (d) Buyer agrees that it will 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, another transaction with Seller, bankruptcy, or otherwise. (e) Seller will not agree to an installment payment plan without a proposal from Buyer that is approved by Seller’s Credit Department in a writing signed by an authorized representative of Seller. Seller reserves the right to require payment in advance and/or payment guarantees. (f) As collateral security for payment of the purchase price of Products, Buyer hereby grants to Seller a 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. The security interest granted under this provision constitutes a security interest under Chapter 9 of the Texas Business and Commerce Code (Article 9 of the Texas Uniform Commercial Code).
- 3. TAXES.** All prices set forth in the Order are exclusive of all sales, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by any governmental authority. The amount of any sales, use, or excise taxes or other taxes, duties or charges, if any, applicable to the Products shall be added to the price and paid by Buyer, unless Buyer provides Seller with an exemption certificate acceptable to taxing authorities. Any taxes Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the Products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, and Buyer shall promptly pay the amount thereof to Seller upon demand. Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller’s income, revenues, gross receipts, or personnel resulting from the sale.
- 4. BUYER MODIFICATIONS, CANCELLATION, AND CANCELLATION CHARGES.** (a) If Buyer requests modification of the Order prior to Seller’s completion and delivery, only an authorized representative of Seller may consent to the request. Any additional charges accrued or set forth in conjunction with Seller’s consent to such modification will be solely for Buyer’s account and payable in accordance with the terms set forth in Seller’s consent. (b) Buyer may cancel the Order prior to Seller’s completion and delivery, but not after delivery has been made. If Buyer cancels, then, subject to the last sentence of this Section 4, Buyer agrees to pay all cancellation charges required by Seller, including without limitation Seller’s costs incurred, labor, overhead, administration charges, sales commissions incurred by Seller, cost of material already fabricated and unfabricated material, and anticipated profit from the Order, but less any net amounts (after deducting sales costs) received by Seller if any unfabricated material can be sold on open market. Seller has the option of claiming damages allowed by law in lieu of the foregoing cancellation charges.
- 5. TITLE AND RISK OF LOSS.** Unless otherwise specified in the Order, title and risk of loss shall pass to Buyer at the time of Seller’s delivery of the Products to the carrier for delivery to the Buyer, regardless of whether the carrier is selected by Buyer or Seller.
- 6. DELIVERY DATE AND TERMS, FAILURE TO ACCEPT DELIVERY, NON-DELIVERY.** (a) Unless otherwise specified in the Order, the delivery term shall be FCA Seller’s Facility [Seller’s city and state as specified in the Order] (Incoterms 2020). All transportation risk of loss and expenses from Seller’s Facility will be assumed and paid by Buyer even if transportation is arranged by Seller at Buyer’s request. Seller will not be liable for any delays, loss or damage of Products in transit. Buyer will provide equipment and labor reasonably suited for receipt and unloading of the Products at the transport destination point at its own expense and risk. (b) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products. Each partial shipment will constitute a separate sale, and Buyer shall pay for the Products shipped whether such shipment is in whole or in partial fulfillment of the Order. (c) Seller will exercise its reasonable efforts to meet the delivery date or dates specified in the Order; provided, however, the specified delivery date is conditioned upon Seller being promptly supplied with all information and details concerning Buyer’s specifications for the Products, and Buyer’s approval and return to Seller of Seller’s drawings which have been submitted for approval to Buyer or its agents. Seller reserves the right to unilaterally extend the specified delivery date in the Order if Buyer delays such submissions, reviews and approvals.

7. **INSPECTION OF NON-CONFORMING PRODUCTS.** Buyer shall have five (5) days after the date the Products arrive at the carrier's destination point to inspect for and notify Seller of any material visual defects, material failure to ship Products specified in the Order, or material shortage of Products specified in the Order, in each case not caused by the carrier or its agents or contractors (each a "Non-Conforming Products"). Buyer will furnish written evidence or other documentation of Non-Conforming Products required by Seller. **Seller's exclusive liability, and Buyer's exclusive remedy, for the rejection of Non-Conforming Products shall be limited to Seller's replacement or repair of rejected Non-Conforming Products within a reasonable time after confirming non-delivery, defects or shortages, as applicable, or adjustment of the purchase price by credit or refund.** Buyer agrees that five (5) days after receipt of the Products is sufficient time to determine if any portion of the shipped Order involves Non-Conforming Products subject to rejection. Buyer's failure to notify Seller of rejected Non-Conforming Products within the five (5) day inspection period will result in the shipped Products being deemed accepted.
8. **LIMITED WARRANTY.** (a) Specifications and tolerances for Products fabricated by Seller are in accordance with National Association of Architectural Metal Manufacturers standards, and galvanizing specifications and standards for Products fabricated by Seller are in accordance with applicable ASTM A-123 ("Tolerances"). Subject to the Tolerances, Seller warrants that Products shipped will materially conform to their description on the Order and that such Products will be free from material defects in material and workmanship under normal usage for one (1) year from the date the Products have been delivered to the specified delivery point in the Order (the "Warranty Period"). **The foregoing limited warranty ("Limited Warranty") is given exclusively to Buyer, and is not assignable or transferable by Buyer to any person or entity that purchases the Products from Buyer, any owner of premises where Products are used or installed, or any other end-user of the Products.** (b) Buyer, as a condition precedent to making a Limited Warranty claim, shall notify Seller of a claimed breach of the Limited Warranty prior to the expiration of the Warranty Period in writing immediately upon discovery of such alleged breach, but no later than five (5) days after such discovery or the date Buyer ought to have discovered the breach, whichever occurs first. (c) Subject to the notification condition precedent in subsection (b) and the following sentence, Seller will, at its option, either repair or replace, without charge, or allow credit for, any Products found on inspection by Buyer to be defective. Seller shall not be liable for breach of this Limited Warranty unless Buyer has timely given the written notice set forth in subsection (b), Seller is given a reasonable opportunity to inspect the allegedly defective Product if Seller requests such inspection, and Seller reasonably verifies Buyer's claim that the Product is defective. In no case shall Seller be liable for any charges, expenses or damages beyond the replacement or repair of the defective Products or its manufacture at the delivery point specified in the Order. Seller is not liable for any labor charges involved in the removal or replacement of defective Products or any resulting damages, all of which shall be for Buyer's account. (d) Buyer may not return defective Products to Seller unless Seller gives its prior express written consent. If consent is given, all such returns shall be solely at Buyer's cost and expense. (e) The foregoing Limited Warranty is valid only if the defective Products have been used in accordance with their design, specifications and intent of manufacture and this section. Seller shall not be liable for breach of the Limited Warranty if Buyer makes any further use of the Product after giving notice that such Product is defective or if the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Product or industry standards, or if Buyer alters or repairs the Product without the prior written consent of Seller, or if Buyer misuses or damages the Product. No allowance shall be made for labor, repairs or alterations performed by Buyer without Seller's prior written consent. (f) **THE REMEDY SET FORTH IN THIS SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF SELLER'S LIMITED WARRANTY SET FORTH IN THIS SECTION.** In the event a court of competent jurisdiction following all appeals determines that the remedy set forth herein fails of its essential purpose, Seller's liability for the Limited Warranty shall never exceed the price charged for such Product, or the portion thereof, as may prove defective or not in accordance with specifications.
9. **WARRANTY DISCLAIMERS. THE LIMITED WARRANTY SET FORTH IN SECTION 8 ABOVE IS SELLER'S SOLE AND EXCLUSIVE PRODUCT WARRANTY AND IS SUBJECT TO THE LIMITATION OF LIABILITY IN SECTION 8. EXCEPT AS SET FORTH IN SECTION 8, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO PRODUCTS SOLD BY SELLER. SELLER EXPRESSLY EXCLUDES AND DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE, AND INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** If Products or any portion thereof are manufactured by a third party and incorporated into, attached or packaged together with the Products ("Third Party Products"), such Third Party Products are not covered by the Limited Warranty. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCTS, INCLUDING (a) WARRANTY OF MERCHANTABILITY, (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (c) WARRANTY OF TITLE, OR (d) 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.**
10. **INDEMNIFICATION.** Seller shall indemnify, defend and hold Buyer harmless from any and all liability, loss, damage, cost and expense, including actual attorney's fees (collectively, "Losses") incurred by Buyer as a result of third party claims for personal injury, death or property damage to tangible property, to the extent caused by Seller's negligence. Seller shall have the sole authority to direct the defense of and settle any indemnified claim under the preceding sentence. Seller's indemnification is conditioned on Buyer (a) promptly, within the Warranty Period, notifying Seller of any claim, and (b) providing reasonable cooperation in the defense of any claim. Buyer shall indemnify, defend and hold Seller harmless from any and all Losses incurred by Seller as a result of third party claims for personal injury, death or damage to tangible property, to the extent caused by Buyer's negligence. Buyer shall have the sole authority to direct the defense of and settle any indemnified claim under the preceding sentence. Buyer indemnification is conditioned on Seller (a) promptly, within the Warranty Period, notifying Buyer of any claim, and (b) providing reasonable cooperation in the defense of any claim. For clarity, in the event Losses are caused by the joint or concurrent negligence of Buyer and Seller, the Losses shall be borne by each party in proportion to its degree of negligence. An indemnified party may at its discretion assume the defense of an indemnified claim and in any event must consent to the settlement of any indemnified claim.
11. **INTELLECTUAL PROPERTY INDEMNITY.** (a) Buyer will not alter any equipment or Products furnished by the Seller, or do anything that will in any way infringe, impeach or lessen the validity of, the patents and trademarks under which the Seller's equipment or parts thereof or Products are made or sold. (b) Buyer agrees as part of these Terms to indemnify, defend and hold Seller harmless from any liability, damages, actions, suits, cost, attorneys' fees and expenses occasioned by Seller's infringement of patent or patents existing on any Product, article or process of its manufacture, provided such article or Product was made or such process was conducted in accordance with Buyer's specifications and directions, or Buyer breaches subsection (a) of this section. (c) Seller agrees as part of these Terms to indemnify, defend and hold Buyer harmless from any liability, damages, actions, suits, cost, attorneys' fees and expenses occasioned by Buyer's infringement of patent or patents existing on any Product, article or process of Seller's manufacture, provided such article or Product was not made or such process was not conducted in accordance with Buyer's specifications and directions, and Buyer has not breached subsection (a) of this section. (d) As a condition to making an indemnity claim under subsections (b) or (c) above, the indemnified party must promptly notify the indemnifying party of such claim and provide reasonable cooperation in the defense of such claim. An indemnified party may at its discretion assume the defense of an indemnified claim and in any event must consent to the settlement of any indemnified claim.

12. **INSURANCE.** During the performance of the Order and for a one year period thereafter, the Buyer and Seller shall each maintain, at their own expense, commercial general liability with financially sound and reputable insurers, as well as automobile, umbrella, and worker's compensation insurance coverage. Upon request of the other party, each party shall produce certificates of insurance evidencing such coverage.
13. **FORCE MAJEURE.** Notwithstanding anything that is or may be the contrary herein, neither party shall be liable for its failure to perform its obligations under these Terms or Order when such failure results from any cause beyond such party's reasonable control, including but not limited to fire, flood or other act of God, labor dispute, strike, labor difficulty or disagreement, accidents at Seller's facilities, acts or requirements of government or civil authority, riot, war, embargo, pandemic, epidemic, pandemic, truck or car shortage or other transportation delay or difficulty. Delays due to any or all of the above causes shall not be deemed a breach of or failure to perform under these Terms or Order. In the event of such delay, the date of delivery shall be extended for a period equal to the time loss by reason of such delay. If such force majeure event continues for a period of sixty (60) days, either party shall be entitled to terminate the Order upon notice to the other party. In the event of termination, Buyer shall reimburse Seller for all reasonable costs incurred to the date of the force majeure event and Buyer shall be entitled to take control of Products then existing or any part of the Products for which it has compensated Seller. Nothing in this section shall require any party to settle any labor dispute, strike, labor difficulty or disagreement. Notwithstanding the foregoing, this section shall not apply to Buyer's failure to make payments to Seller when due.
14. **CONFIDENTIALITY.** Each party agrees to hold in confidence and not disclose to any third party or use for its own benefit, other than as may be approved by the disclosing party or by Seller in fulfilling the Order, any confidential or proprietary information (collectively, "Confidential Information") supplied to it, whether or not marked, designated or otherwise identified as "confidential" or "proprietary", by the other party. Any specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer in any form, shall be deemed Confidential Information of Seller whether or not marked as such. Any information marked "Confidential" by a party shall also be deemed Confidential Information hereunder. Upon the request of either party, the other shall promptly return all Confidential Information received from the requesting party. Confidential Information does not include information which (A) is within or becomes part of the public domain; (B) was already within the party's possession prior to its disclosure by the disclosing party; (C) is disclosed by a third party not under an obligation of confidentiality with respect to such information; or (D) is independently developed without use of or reference to the disclosing party's Confidential Information.
15. **INTELLECTUAL PROPERTY RIGHTS.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other Confidential Information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights used to create or otherwise relating to the Products (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials that are delivered to Buyer pursuant to a purchase order or prepared by or on behalf of the Buyer in the course of performing under a purchase order (collectively, the "Deliverables") except for any Confidential Information of Buyer or Buyer material, shall be owned by Seller. Seller hereby grants Buyer a worldwide, non-exclusive, non-transferable, and non-sublicensable license to use the Deliverables. Any design, invention or other information developed by Seller in the performance of a purchase order shall remain the property of Seller, whether or not Seller charges for design, research, development or similar services. Any patentable features developed by Seller shall be the property of Seller.
16. **USE OF PRODUCTS.** Buyer agrees to use the Products, and require its buyers or other end-users to use the Products, solely in accordance with instructions and product specifications of the National Association of Architectural Metal Manufacturers or other specified industry standards and requirements and all applicable laws. Notwithstanding anything herein to the contrary, Buyer is solely liable and responsible for any claims, damages, and liability caused by Buyer's negligence, gross negligence, intentional misconduct, or other act or omission, such as by modifying, storing, moving, repairing or altering the Product, or for any misuse or abuse of any Products.
17. **RESALE OF PRODUCTS.** In the event Buyer resells or distributes the Products to other end-users, Buyer agrees to: (a) include in any purchase or distribution agreement with its customers (including, but not limited to, any resellers) sections 10, 11, 14, 15, 16, and 22 of these Terms, (b) identify Seller as a third party beneficiary with respect to such provisions, and (c) expressly identify Seller, if not already identified, as (i) one of the indemnified parties in Sections 10 and 11, and (ii) one of the parties whose liability is limited under Section 22. Neither Buyer nor Buyer's employees, agents, representatives or resellers (or any other subsequent reseller(s) in the chain of sale of the Products) shall make any representations, warranties, guarantees, or other commitments to any of its customers regarding the Products which representations, warranties, guarantees, or other commitments are in addition to or inconsistent with any then-existing representations, warranties, guarantees, or other commitments in these Terms, the Limited Warranty or any other written documentation provided by Seller to Buyer.
18. **COMPLIANCE WITH LAWS.** Seller represents and warrants that the Products, to the extent based on Seller's specifications, shall comply with all Federal, State and local laws, regulations and ordinances affecting the Products. Buyer represents and warrants that it has and will maintain all licenses, permits, consents, and government authorizations necessary to purchase, use and (if applicable) sell the Products, and that its purchase, use and (if applicable) sale of the Products, as well as any specifications provided by Buyer to Seller for the Products, shall comply with all Federal, State and local laws, regulations and ordinances affecting the Products and their use or subsequent sale.
19. **COMPLIANCE WITH U.S. EXPORT CONTROLS AND TRADE SANCTIONS.** Buyer agrees to comply with all U.S. export controls and trade sanctions requirements. Buyer will obtain, or cause to be obtained, any authorizations required by the U.S. government for transfer outside of the U.S. Buyer agrees that the Products will not be transferred, directly or indirectly, to any country subject to U.S. trade sanctions, nor to any person or entity listed on the U.S. Department of Treasury Office of Foreign Assets Control Specially Designated Nationals List (updated list available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>).
20. **SELLER'S CANCELLATION.** In addition to any remedies or rights that may be provided under these Terms or at law or equity, Seller may terminate or cancel any of its unfulfilled obligations under the Order with immediate effect upon written notice to Buyer if: (a) Buyer fails to make any payment when due; (b) Buyer fails to perform or breaches any of its obligations under these Terms or the Order any other agreement between Seller and Buyer, in whole or in part, or indicates its intent not to perform its obligations under these Terms or the Order or any other agreement between Seller and Buyer; or (c) Buyer becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Early termination by Seller shall not excuse Buyer's payment or performance of any of its obligations then due or owing.
21. **PRODUCT IMPROVEMENT LIABILITY DISCLAIMER.** Seller reserves the right to make any changes in or improvements on its Products in fulfillment of the Order without incurring any liability or obligation whatsoever and without being required to make any corresponding changes or

improvements in Products previously manufactured or sold, whether to Buyer or any other person.

22. **LIMITATION OF SELLER'S LIABILITY.** (a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE OR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE TO SELLER OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.** (b) **FURTHERMORE, IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, INDEMNIFICATION OF ANY KIND, WARRANTY CLAIM, TORT (INCLUDING, BUT NOT LIMITED TO SELLER'S NEGLIGENCE, GROSS NEGLIGENCE AND/OR WILLFUL MISCONDUCT) OR OTHERWISE, EXCEED THE TOTAL PURCHASE AMOUNT PAID TO SELLER FOR THE PRODUCTS GIVING RISE TO ANY SUCH CLAIM.** (c) **The limitation of liability set forth in this section shall not apply to death or bodily injury resulting from Seller's acts or omissions.**
23. **ASSIGNMENT.** Neither party may assign these Terms or an Order or any of its rights or obligations under these Terms or an Order without the prior written consent of the other party, and any purported assignment without such prior written consent shall be null and void.
24. **MODIFICATION, WAIVER, CUMULATIVE RIGHTS AND SEVERABILITY.** These Terms and the Order may only be amended, modified or supplemented by an agreement in writing signed by an authorized representative of each party hereto which specifically states that it amends, modifies or supplements these Terms or Order, as applicable. No waiver by Seller of any of the provisions of these Terms or of Buyer's breach of contract shall be effective unless set forth in writing and signed by an authorized representative of the Seller. No waiver by Seller of any Terms or Buyer's breach shall be deemed to be a waiver of any other Terms or subsequent Buyer breach, as applicable. No failure to exercise, or delay in exercising, by Seller, of any right, remedy, power or privilege arising from these Terms or the Order shall operate or be construed as a waiver thereof. All rights and remedies available to Seller shall be cumulative and in addition to any other rights and remedies provided herein or by law. The invalidity, illegality or unenforceability in whole or in part of any provision hereof shall not affect the validity, legality or enforceability of any other provision. For the avoidance of doubt, Buyer's modification or cancellation of an Order shall be governed by Section 4 of these Terms.
25. **COSTS AND ATTORNEYS' FEES.** Buyer shall pay, in addition to all other remedies to which Seller is entitled, all costs and reasonable attorneys' fees and expenses of Seller incurred in connection with the enforcement of these Terms, including without limitation, collection efforts with respect to any unpaid purchase price whether or not a lawsuit is filed, and further including, without limitation, all fees, taxes, costs and expenses incident to a collection lawsuit and appellate, bankruptcy and post-judgment proceedings.
26. **RELATIONSHIP OF THE PARTIES; NO THIRD PARTY BENEFICIARIES.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms, the Order or other agreement shall be construed as creating any agency, partnership, joint venture 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. These Terms and the Order are for the sole benefit of the parties hereto and their respective permitted successors and 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 these Terms or the Order, except for the limited third party beneficiary status of Seller pursuant to section 17 above.
27. **GOVERNING LAW, JURISDICTION, VENUE, ARBITRATION, WAIVER OF RIGHT TO JURY TRIAL.**
- (a) **GOVERNING LAW, JURISDICTION, VENUE.** These Terms shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule of the State of Texas or any other jurisdiction that would cause the application of the laws of any other state or jurisdiction other than those of the State of Texas. These Terms shall be deemed to be entered into at Seller's headquarters in Harris County, Texas. The parties agree that, unless a party invokes arbitration in accordance with subsection (b) below, any controversy arising under these Terms shall be determined by the state courts of the State of Texas and any federal courts sitting in Harris County, Texas. Both parties hereby irrevocably submit and consent to the jurisdiction of said courts and agree that venue for any action arising hereunder shall lie exclusively in Harris County, Texas, if brought in state court, or the Southern District of Texas-Houston Division, if brought in federal court.
- (b) **ARBITRATION.** Upon written request of either party, any controversy or claim between the parties relating to or arising from the Order or these Terms, including, without limitation, any claim based on, related to or arising from an alleged tort, strict liability claim, or statutory claim, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Commercial Arbitration Rules of the American Arbitration Association, and the "Special Rules" set forth below unless both parties, in their respective sole discretion, agree in writing to mediate the dispute prior to submitting to binding arbitration. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Either party may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this subsection (b) applies in any court having jurisdiction over such action. The party that requests arbitration has the burden to initiate the arbitration proceedings pursuant to and by complying with the Commercial Arbitration Rules of the American Arbitration Association and shall pay all associated administrative and filing fees. The arbitration shall be conducted in Harris County, Texas and administered by the American Arbitration Association ("AAA"). All arbitration hearings will be commenced within sixty (60) days of the later of any of the following: (1) the date of AAA's confirmation to the parties of the filing of the arbitration demand with AAA; (2) the administrative conference, if any; or (3) the preliminary hearing, if any. If the arbitration hearing is not commenced within this sixty (60) day period, the party that requested arbitration shall have waived its election to arbitrate. This sixty (60) day period shall be extended from day to day if such delay is due to (x) a delay caused by the AAA in communicating with the parties, selecting the arbitrator(s), or initiating the arbitration proceedings or AAA procedures; or (y) the arbitrators' unavailability to commence the arbitration hearing within the applicable sixty (60) day period. Nothing in this subsection (b) shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in these Terms; (iii) limit the right of Seller (A) to exercise self-help remedies such as (but not limited to) setoff, or (B) to foreclose against any personal property collateral in accordance with applicable law, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver in accordance with applicable law. Seller may exercise such self-help remedies, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration proceeding brought pursuant to these Terms. At Seller's option, foreclosure under a security agreement may be accomplished by the exercise of nonjudicial foreclosure under the Texas Uniform Commercial

Code or by judicial foreclosure. Neither this exercise of self-help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the controversy or claim occasioning resort to such remedies.

(c) WAIVER OF RIGHT TO TRIAL BY JURY

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE ORDER OR THESE TERMS OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THESE TERMS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 27.

- 28. NOTICES.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the other party at the address set forth on the face of the Order 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) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 28.
- 29. SURVIVAL.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination, cancellation or expiration of the Terms and/or the Order, including but not limited to the following provisions: Sections 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 22, 25, 26, and 27.
- 30. COMPLETE AGREEMENT.** These Terms and the Order represent the entire agreement of the parties with respect to the sale of Products by Seller to Buyer as specified in the Order, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations or warranties, and communications, written and oral. **THERE ARE NO ORAL OR UNWRITTEN TERMS OR AGREEMENTS BETWEEN THE PARTIES WITH RESPECT TO THE ORDER OR THE PRODUCTS.**