

C&D Technologies, Inc.  
Standard Terms & Conditions of Sale

**1. Definitions:**

- a. **“Buyer”** shall mean the person or entity that either purchased or contracted to purchase the Goods from the Seller.
- b. **“Days”** shall mean calendar days, unless otherwise specified herein; *provided, however*, if the final calendar day of any period falls on a Saturday, Sunday, or federal holiday, then such period shall be extended to include the next weekday that is not a federal holiday.
- c. **“Goods”** shall mean the products and related services (if applicable) that Buyer has either purchased or contracted to purchase from Seller.
- d. **“Order”** shall mean this form or the quotation, purchase order, order acknowledgement, invoice or agreement relating to the Goods that is either attached to (and thus, incorporates) these terms or that is subsequently delivered by Seller to Buyer.
- e. **“Seller”** shall mean C&D Technologies, Inc. or the operating division or wholly-owned subsidiary thereof indicated in any Order, including, but not limited to, Trojan Battery Company, LLC.

**2. Conditional Offer:** The terms and conditions set forth herein shall exclusively apply to the sale of all Goods. Seller does not accept, and hereby expressly rejects, all terms and conditions contained in any document issued by Buyer, including in any purchase orders, that purport to pertain to the Goods and/or the relationship between Seller and Buyer, which terms and conditions are in addition to, or inconsistent with, the terms and conditions set forth herein. Any such terms shall not become part of any Order, and delivery of the Goods or other performance by Seller with respect to the Goods shall not constitute Seller's acceptance of any additional or different terms and conditions. If Buyer should find any of these terms and conditions not acceptable, Buyer must so notify Seller within five (5) Days of receipt thereof, or any objections which Buyer may have shall be considered forever waived. Any objections by Buyer will not be binding unless agreed to in writing by Seller. Seller reserves the right to revoke or modify these terms and conditions, in whole or in part, prior to Buyer's submission of an approved purchase order for the Goods, provided that, any modification after the submission of an approved purchase order will apply to any future purchase orders.

**3. Order and Order Acceptance:** The purchase of Goods

shall be made by written purchase order sent to Seller. All purchase orders shall reference these terms and conditions. No purchase order shall be binding upon Seller until acknowledged and accepted by Seller in writing, and Seller shall have no liability to Buyer with respect to purchase orders that are not acknowledged and accepted. Buyer shall submit purchase orders to Seller in accordance with Seller's lead times then in effect.

- 4. Prices:** Pricing for all Goods will be as stated in the applicable quotation prepared by Seller or, in the absence of such quotation, at Seller's then-prevailing price list for the applicable Goods. Except as may otherwise be indicated in writing by Seller, all prices are quoted F.O.B. shipping point (i.e., Seller's designated facility) and are subject to change without notice. Seller expressly disclaims any representation or warranty concerning “most favored customer” pricing which may appear in any of Buyer's documents in connection with the sale of any Goods to Buyer by Seller. Seller reserves the right to adjust final prices for all Goods at the time of shipment to the extent the lead time is greater than 30 days at the time purchase order is acknowledged and accepted.
- 5. Lead Adjustment:** To the extent that any of the Goods contain lead, Seller reserves the right, at any time, to adjust the unit price of such Goods in the event of a material increase in the average price of lead, as published by the London Metals Exchange.
- 6. Additional Charges:** Seller reserves the right to impose additional charges on Buyer in the event Buyer requests an extension or acceleration of a scheduled ship date or specifies special packaging or shipping and handling instructions.
- 7. Limited Warranty:** Goods sold by Seller hereunder will be subject to the Seller's then-current warranty with respect to such Goods in effect as of the shipment date (the “Standard Warranty”). No other warranty terms shall apply. The Standard Warranty will not be applicable unless the affected Goods have been installed, maintained and operated under normal conditions and in accordance with the specifications provided with the Order and/or the Goods or any other requirements contained in any warranty documentation. In no event will the Seller be responsible for damage resulting from misuse, abuse, or improper storage or handling of any Good. The remedies set forth in the Standard Warranty shall be Buyer's sole and exclusive remedies with respect to any claim related thereto.

Notwithstanding anything to the contrary contained herein, the warranty on purchased items, assemblies or accessories that are provided or installed as a separate component shall not extend beyond the warranty made by the manufacturer of such component.

8. **DISCLAIMER OF OTHER WARRANTIES:** THE APPLICABLE STANDARD WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
9. **LIMITATION OF DAMAGES; INDEMNIFICATION:** IN NO EVENT SHALL SELLER'S LIABILITY ARISING OUT OF THE SALE OF ANY OF THE GOODS HEREUNDER, REGARDLESS OF THE LEGAL THEORY ON WHICH SUCH DAMAGES MAY BE BASED, EXCEED THE AMOUNT THAT SELLER HAS BEEN PAID FOR SUCH GOODS UNDER THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL SELLER BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR CONTINGENT DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS OR GOODWILL.

FURTHER, TO THE EXTENT APPLICABLE, BUYER ACKNOWLEDGES ITS OBLIGATION TO INSTALL (OR HAVE INSTALLED) AND TO MAINTAIN (OR HAVE MAINTAINED) THE GOODS IN ACCORDANCE WITH ALL PROCEDURES AND GUIDELINES THEREFOR, IF ANY, PROVIDED BY SELLER AND/OR ITS AGENTS, CONTRACTORS AND SUBCONTRACTORS AND IN ANY EVENT IN ACCORDANCE WITH PRUDENT INDUSTRY PRACTICES. UNDER NO CIRCUMSTANCES SHALL SELLER BE SUBJECT TO, AND BUYER ASSUMES, ANY AND ALL LOSSES, DAMAGES, DEMANDS, CLAIMS OR LIABILITIES, ACTIONS, CAUSES OF ACTION, SUITS, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND DEFENSE COSTS) ARISING OUT OF OR RESULTING IN ANY WAY FROM THE NEGLIGENCE, IMPROPER INSTALLATION, APPLICATION, STORAGE, MAINTENANCE, COMBINATION WITH OTHER COMPONENTS OR OTHER MODIFICATION OR ALTERATION OR REPAIR BY BUYER OR ITS EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS OR SUBCONTRACTORS OF ANY OF THE GOODS.

Buyer shall indemnify, defend and hold Seller, its affiliates, and their respective officers, directors, shareholders, employees, agents, representatives, successors and assigns harmless from and against any loss, damage, claim, liability, fine or other expense (including, without limitation, attorneys' fees and expenses of litigation) arising out of or in relation to (i) Buyer's breach of these terms and

conditions; (ii) Buyer's gross negligence or willful misconduct; (iii) Buyer's infringement of a third-party's intellectual property rights.

10. **Product Liability:** Buyer acknowledges that the Seller has no control over, and is not responsible for, the manner in which the Goods will be used or otherwise dealt with by the Buyer. The Buyer therefore agrees to assume all responsibility for, and shall indemnify, defend and hold the Seller harmless from and against, any and all losses, liabilities, actions, claims, damages, demands and expenses (including without limitation attorneys' fees and court costs) (collectively, "Losses") arising out of or in any way connected with the installation, maintenance, use or operation of the Goods, or the design, construction or composition of any item or items made or handled by the Goods supplied hereunder, other than as set forth in Section 23 hereof.
11. **Claims for Errors in Shipment:** Upon delivery, Buyer agrees to promptly inspect the delivered Goods for conformity to Buyer's purchase order. Buyer shall have a period of thirty (30) Days from the date of Seller's delivery of the Goods to reject the Goods or otherwise notify Seller of any nonconformity of the Goods to Buyer's purchase order or any applicable packaging, shipping and handling or delivery specifications. If no such notice has been received by Seller within such 30-Day period, Buyer shall be deemed to have accepted the Goods and waived any claims (other than warranty and patent infringement claims which shall be unaffected) associated with conformity of the Goods to Buyer's purchase order and any delivery specifications.
12. **Returns:** Buyer must request and receive a return authorization number from Seller prior to returning any Goods to Seller for any reason. Seller shall have no obligation to accept return of any Goods for which it has not issued a return authorization number. All returned Goods must be returned to Seller at the location specified by Seller, transportation prepaid by Buyer, in either their original packaging or packaging that has been approved by Seller in advance. Custom Goods made to Buyer's specifications will not be accepted for return.
13. **Delays; Force Majeure:** Seller shall not, under any circumstances, be liable for any delay in or default of any of its obligations hereunder when such delay or default is directly or indirectly caused by, or in any manner arises out of, any cause beyond its reasonable control and not due to its gross negligence, including, without limitation, fire, flood, earthquake, explosions, acts of God, outage of any third-party systems, war, passage of law or any action taken by a governmental or public authority, including imposing an embargo, acts of terrorism, or strikes, labor stoppages or slowdowns or other industrial disturbances, riot or other civil unrest.
14. **Adequate Assurances:** In the event that either, (a) Buyer

is determined to be insolvent; (b) Buyer is placed in receivership; (c) Buyer becomes the subject of any voluntary or involuntary bankruptcy petition; or (d) in the opinion of Seller, a material adverse deterioration in Buyer's financial condition has occurred, Seller may, in addition to any other remedies available at law or in equity, elect to require that Buyer provide adequate assurance of payment, including, without limitation, full or partial prepayment of the cost of any Goods for which Buyer has submitted a purchase order.

15. **Cancellation of Orders:** Buyer acknowledges and agrees that any Order accepted by Seller may not be modified or cancelled except with Seller's written consent and upon terms that will hold Seller harmless against all costs, expenses, losses and damages associated with such modification or cancellation, including restocking fees and/or other cancellation charges which shall take into account, among other things, anticipated profits, expenses incurred and commitments already made by Seller in connection with such Order. If shipments are delayed by Buyer, payment shall become due on the date when Seller is prepared to make shipment, unless otherwise agreed in writing by the Seller at the time of such delay. Goods held for the Buyer shall be held at Buyer's risk and expense.

16. **Delivery Terms:** Buyer agrees that, except as may otherwise be specified in writing by Seller, delivery of the Goods shall be made F.O.B. shipping point (i.e., Seller's designated shipping facility). Title and risk of loss or damage to the Goods shall pass from Seller to Buyer at the shipping point upon delivery to the carrier. Buyer assumes full responsibility for resolving any claims with the carrier or its insurance provider in the event of misdelivery, loss or damage, including those cases where insurance and transportation have been secured by Seller at Buyer's request. Buyer acknowledges that any shipping dates communicated or otherwise indicated by Seller are approximate and are contingent upon prompt receipt by Seller of all information, parts, materials and approvals to be supplied by Buyer, if any.

17. **Default Shipping Address:** If Buyer has not designated a shipping destination or address to Seller within twenty-four (24) hours of Seller's estimated ship date, Buyer agrees that Seller shall be permitted to immediately ship the Goods either to Buyer's billing address or to any other tentative shipping address provided by Buyer at the time of placement of the Order.

18. **Taxes:** Buyer acknowledges the prices specified for the Goods are exclusive of any present or future sales, use, excise, or any other taxes applicable to the sale of the Goods. All applicable taxes shall be set forth separately by Seller on Buyer's invoice for the Goods.

19. **Surcharge:** In connection with each sale of Goods, Seller reserves the right, at any time, in its sole discretion and without advance notice, to impose a surcharge in the event of increased costs due to factors beyond its reasonable control, including but not limited to raw material price fluctuations, regulatory changes, tariffs, embargoes, or extraordinary supply chain disruptions. Any such surcharge will be charged to Buyer on a pass-through basis and included on Buyer's invoice as a separate line item.

20. **Payment Terms:** Provided that Buyer satisfies Seller's credit criteria and subject to Section 14, Buyer shall have thirty (30) Days from the date indicated on each invoice received from Seller to remit payment to Seller for the Goods. Buyer agrees that time shall be of the essence with respect to Buyer's payment obligations hereunder. All payments due to Seller hereunder shall be paid in U.S. denominations by check, wire transfer, or ACH transfer of immediately available funds, or such other method as Seller may approve from time to time. Payment instructions will be provided to Buyer either in Seller's invoice or on Seller's letterhead. Buyer must telephonically verify any change to the payment instructions provided by Seller by calling Seller's Accounts Receivable Department. Seller reserves the right, at any time, to impose more restrictive payment terms on future shipments of Goods based on Buyer's payment history or current credit worthiness. Buyer agrees to pay Seller's reasonable attorneys' fees incurred in collecting past due amounts owed.

21. **Late Payment:** Buyer agrees that any balances that are unpaid after thirty (30) Days shall be subject to a monthly service charge equal to one and one-half percent (1.5%) of the total overdue balance owed to Seller or the maximum amount permitted under applicable law, whichever is greater. In addition to other remedies available to Seller, should Buyer fail to pay for any Goods when due, Seller reserves the right to revoke any credit extended to Buyer for the Goods, cancel any open Orders for Goods that Buyer may have placed with Seller during the period of delinquency, or suspend delivery of Goods until Buyer remits full payment to Seller for any outstanding Orders or charges.

22. **Security Interest:** Seller shall have a purchase money security interest in the Goods until payment therefor is received in full. Buyer agrees to do all acts necessary to perfect and maintain such security interest in favor of Seller.

23. **Patent Infringement:** Seller agrees upon the written request of Buyer, to indemnify and hold Buyer harmless against all Losses that arise out of or result from any claims alleging that any of the Goods infringe any U.S. patent or trademark owned by a third party. Seller shall have no obligation under this Section for (a) any Goods modified by either by Buyer or Buyer's agent without express written permission from Seller; (b) any claims of infringement based upon the use of the Goods by Buyer or Buyer's agent in conjunction with other products or components, technology, machinery, equipment or processes not sold or supplied to

Buyer by Seller either with, as part of, or in connection with the Goods; (c) use of Goods expressly prohibited under these terms and conditions (if any), or (f) for any claims not related directly to the Goods.

Any and all models, drawings, sketches, parts and other information supplied by one party to the other shall remain the property of the party who shall have supplied it. The Goods are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license or right to Buyer, expressly or by implication, to manufacture, duplicate or otherwise copy or reproduce any of the Goods or any part thereof. Seller retains all title, right, and interest to the intellectual property rights of the Goods and any modifications to Goods.

**24. Privacy:** Seller's Privacy Policy, available at <https://cdtechno.com/privacy-policy/>, is incorporated into these Terms. For Buyers who are residents of countries located in the European Economic Area ("EEA"): Seller is the controller of personal information collected from residents of countries located in the EEA. Where permitted by applicable law, Buyer agrees that Seller may need to transfer Seller's personal information to the United States or jurisdictions that may not be deemed to provide the same level of data protection as Buyer's home country. Buyer further agrees that notwithstanding Buyer's consent, such a cross-border transfer of data may be necessary for the performance of a contract between Buyer and Seller or for contracts concluded in the interest of Buyer between Seller and another natural or legal person.

Buyer represents that Buyer has read and accepts the provisions of Seller's Privacy Policy, and specifically consents to the processing, sharing, and cross-border transfer of Buyer's personal information as may be applicable or required.

**25. Waiver:** Except as otherwise expressly provided herein, no waiver, alteration or modification of any of the provisions hereof or any right granted hereunder shall be effective unless such waiver is in writing and signed by a duly authorized officer or employee of Seller. Any waiver (express or implied) by either party of any default or breach of this Agreement shall not constitute a waiver of any other subsequent default or breach. These terms and conditions shall not be modified, varied or supplemented by any course of dealing, usage of trade or otherwise except as agreed in writing signed by the parties hereto.

**26. Authority of Agents:** Buyer acknowledges that Seller's distributors and sales representatives have not been granted any authority from Seller to modify any of these terms and conditions on behalf of the Seller, to make additional representations or offer additional warranties concerning the Goods which are not otherwise expressly provided herein, or to otherwise legally bind the Seller.

**27. Governing Law:** This sale transaction shall be governed, construed and enforced solely by the laws of the State of Delaware. Buyer and Seller further agree that venue for any action to enforce or interpret these terms and conditions shall be adjudicated exclusively in a state court located in Montgomery County, Pennsylvania, or in the federal courts for the Eastern District of Pennsylvania and all parties hereby consent to the jurisdiction of such court in any such action or proceeding and waive any objection to venue based on inconvenient forum. Buyer and Seller hereby waive all rights under and agree that this agreement shall not be governed by Article 2 of the Uniform Commercial Code or any version of the U.N. Convention For The International Sale of Goods. Buyer and Seller hereby irrevocably waive any right to a jury trial in connection with this Agreement or any breach hereof.

**28. Notices:** All notices, requests, demands and other communications required or permitted hereunder shall be in writing and delivered by registered mail to the respective addresses of the parties listed on the applicable Order. Notices shall be deemed to have been duly given, made and received upon actual receipt by the recipient.

**29. Successors and Assigns; Assignment:** Buyer may not assign or delegate any of its rights or obligations under this Agreement or any purchase order without the prior written consent of the Seller. Any attempted assignment or delegation in violation of this Section will be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

**30. Export Controls:**

a. Buyer acknowledges that certain U.S. export control and economic sanctions laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR) (22 CFR 120, et seq.), the Export Administration Regulations (EAR) 15 CFR 730-774, regulations of the Bureau of Alcohol, Tobacco, and Firearms (BATF) (27 CFR 447, et seq.), and regulations maintained by the U.S. Treasury Department, Office of Foreign Assets Control (OFAC) (31 CFR 500-599) (collectively, the "Export Control Laws") may apply to the performance of this Agreement and/or any purchase order. Buyer shall comply at all times with all applicable Export Control Laws.

b. Buyer represents that it has obtained all registrations and licenses necessary to perform its obligations under this Agreement and/or each purchase order. Buyer shall not transfer any export controlled items, technical data, technology, or service, unless the Buyer is registered with appropriate U.S. authorities and

obtains all required export licenses, license exceptions, or license exemptions, as applicable, under applicable Export Control Laws.

c. Buyer represents that neither Buyer nor any parent, subsidiary, or affiliate of Buyer is included on any of the restricted party lists maintained by the U.S. Government, including, but not limited to the Specially Designated Nationals List administrated by OFAC, the Denied Persons List, Unverified List or Entity List maintained by the U.S. Commerce Department's Bureau of Industry and Security (BIS), or the List of Statutorily Debarred Parties maintained by the U.S. State Department's Directorate of Defense Trade Controls (collectively, "Restricted Party Lists"). Buyer shall immediately notify the Seller if Buyer, or any parent, subsidiary, or affiliate of Buyer becomes listed on any Restricted Party List or if Buyer's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. or non-U.S. government entity or agency.

**31. Anti-Corruption:**

a. Buyer acknowledges and agrees that it is aware of and familiar with the provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd-1, et seq., and all other applicable anti-corruption laws or regulations ("Anti-Corruption Laws") and further agrees that it shall comply with and take no action and make, offer, or receive no payment or other advantage in violation of or that might cause Buyer or the Seller to be in violation of any Anti-Corruption Law.

b. Buyer will indemnify, defend and hold the Seller harmless from and against any Losses suffered or incurred in connection with a breach of Section 30 or this Section 31 by Buyer and/or its affiliates, employees, agents or representatives.

**32. Code of Conduct:** Buyer hereby covenants and agrees that it accepts and shall comply with C&D Technologies' Business Partner Code of Conduct, available at <http://www.cdtechno.com/Legal>, as it may reasonably be amended by Seller from time to time.

**33. Entire Agreement:** The terms of this Agreement are intended by the parties as a final expression of their agreement with respect to such terms and also as a complete and exclusive statement of such terms. No failure by Seller to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right.

**34. Severability:** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**35. No Set-Off.** Buyer's obligation to make the payments provided for in this Agreement and to perform its obligations hereunder shall not be affected by any circumstances, including, without limitation, any set-off, deduction, counterclaim, recoupment, withholding, defense or other right which Buyer may have against Seller or otherwise.

**36. Recycling of Lithium Products.** Notwithstanding anything to the contrary herein, the following applies to any sale of Goods wherein some or all of the Goods include lithium-ion battery products: Buyer acknowledges that the Seller has no control over, and is not responsible or liable for, the manner in which the Goods will be used, sold, stored, shipped, disposed of, recycled or otherwise dealt with by the Buyer (individually and collectively herein "Buyer's Use"). The Buyer therefore agrees, to the extent allowable under applicable Federal, State and local laws, rules, regulations and orders ("Applicable Laws"), (a) to remain solely liable and responsible for the disposal or recycling of the Goods in strict compliance with all Applicable Law, and (b) to indemnify, defend and hold Seller harmless from any claim, demand, fines, penalties, liability or damages related to Buyer's Use, including, without limitation, arising out of the enforcement of Applicable Law.

**Terms and Conditions of Resale**

**If the Buyer is purchasing the Goods for resale, the following additional terms and conditions will apply:**

**37. Terms of Resale:** Any resale of the Goods by Buyer to one or more third parties (each, a "Customer") will be made on the same terms and conditions (and subject to the same limitations) set forth herein, and Buyer will not purport to bind Seller to any duties, obligations or liabilities other than those expressly set forth herein. Without limiting the generality of the foregoing, Buyer shall not extend any warranties or guarantees, orally or in writing, respecting the performance, design, quality, merchantability or fitness for purpose of the Goods, in addition to or in excess of C&D Technologies' Standard Warranty (and Buyer shall expressly exclude all other warranties, express or implied).

**38. Resale Pricing; Risk of Collection:** Resale prices for the Goods shall be established by Buyer in its sole discretion. Buyer shall not be paid any commission or other compensation by Seller for any sale or resale of Goods. Buyer's sole compensation for such sale/resale is the amount by which the resale price of Goods to a Customer

exceeds the sale price charged by Seller to Buyer for such Goods, if any.

39. **Standard of Conduct; Compliance with Law:** In reselling the Goods, Buyer will at all times conduct itself in an ethical and professional manner in accordance with all Applicable Laws, including without limitation all Export Control Laws and Anti-Corruption Laws. Without limiting the generality of the foregoing, Buyer will (a) avoid deceptive, misleading or unethical practices that are, or might be, detrimental to Seller, the Goods or the public; (b) make no false or misleading representation with respect to Seller or the Goods; (c) obtain and maintain all registrations and licenses necessary to perform its obligations under this Agreement in accordance with Applicable Laws; and (d) procure and maintain insurance of such types and in such amounts as are sufficient to support its obligations hereunder, naming Seller as an additional insured.

40. **Cooperation with Respect to Customers:** Buyer will (a) promptly respond to all inquiries from Customers with respect to the Goods, including complaints; (b) cooperate with Seller in dealing with any Customer complaints concerning the Goods and to take any action requested by Seller to resolve such complaints; and (c) cooperate with Seller in any retrofits, recalls, parts changes and similar adjustments and modifications with respect to the Goods required by and in accordance with instructions received from Seller.

41. **Warranty Claims:** In the event that Buyer or any of its Customers wish to return any allegedly defective Goods under the Standard Warranty provisions, Buyer shall be responsible for making all arrangements for such return, including payment of shipping and insurance charges. Buyer must obtain a return authorization from Seller prior to shipment, and return such Goods to Seller's designated return location in accordance with the packing and other instructions provided by Seller.

42. **Limitation of Liability:** Seller's obligations and liabilities to Buyer and its Customers in connection with the Goods, including warranties, are limited to those provided in Seller's Standard Warranty and as provided herein. IN NO EVENT SHALL SELLER AND ITS AFFILIATES BE LIABLE TO BUYER, BUYER'S CUSTOMERS OR ANY END-USER OF THE GOODS FOR USE OF THE GOODS WITH ANY PRODUCT OR SERVICE NOT PROVIDED EXCLUSIVELY BY SELLER. SELLER SHALL NOT BE LIABLE TO BUYER, BUYER'S CUSTOMERS OR ANY END-USER OF THE GOODS AS A RESULT OF ANY DELAY OR FAILURE TO PERFORM DUE TO ACTS OF GOD, FIRE, FLOOD, LABOR STRIKE OR DISPUTE, WORK STOPPAGE, TERRORISM, WAR, COMMERCIAL IMPRACTICALITY, UNAVAILABILITY OF RAW MATERIALS, VENDOR DELAYS OR ANY OTHER CAUSE BEYOND THE REASONABLE CONTROL OF SELLER.

IN NO EVENT SHALL SELLER AND ITS AFFILIATES BE LIABLE TO BUYER, BUYER'S CUSTOMERS, OR TO ANY END-USER OF THE PRODUCTS FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EXCESS REPROCUREMENT COSTS AND/OR DAMAGES FOR DELAY ARISING FROM ANY CAUSE IN CONNECTION WITH THE GOODS OR THESE TERMS AND CONDITIONS, WHETHER FROM BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY OR TORT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE MAXIMUM AGGREGATE AMOUNT OF MONEY DAMAGES FOR WHICH SELLER MAY BE LIABLE TO BUYER, ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBDISTRIBUTORS, CUSTOMERS OR ANY THIRD PARTY UNDER THIS AGREEMENT OR IN CONNECTION WITH THE RELATIONSHIP OF THE PARTIES, RESULTING FROM ANY CAUSE WHATSOEVER, WILL BE LIMITED TO AMOUNTS ACTUALLY PAID BY BUYER TO SELLER FOR THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY.

43. **Proprietary Rights:**

- a. Buyer acknowledges that the Goods contain proprietary and confidential property of Seller which is protected by U.S. patent, copyright, trade secret and other laws, as well as certain international treaties and/or conventions. Buyer agrees that Seller owns all, right, title, and interest in and to all patents, trademarks, trade names, inventions, copyrights, know-how, trade secrets and other intellectual property and proprietary rights (collectively, "Proprietary Rights") relating to the Goods and the design, manufacture, marketing, sale, operation or service thereof. Buyer further agrees that it will not, directly or indirectly, take any action or permit any third party to take any action, in derogation of Seller's Proprietary Rights in the Goods and/or the aforementioned laws, treaties and conventions.
- b. The Goods are offered for sale and are sold by Seller subject in every case to the condition that such sale does not convey any license, expressly or by implication to manufacture, duplicate or otherwise copy or reproduce any of the Goods or any part thereof. Buyer will take appropriate steps with Buyer's Customers to inform them of and assure compliance with the restrictions contained in this paragraph.
- c. Buyer will acquire no right, title or interest in Seller's name, logotypes and trademarks (collectively, "Trademarks"), and Buyer will not use any such Trademarks as part of Buyer's corporate or tradename or permit any third party to do so without the prior

written consent of Seller.

- d. Buyer will not, without the prior written consent of Seller, remove or alter any patent numbers, Trademarks, notices, serial numbers, labels, tags or other identifying marks, symbols or legends affixed to any Goods or containers or packages.

44. **Indemnity:** Buyer shall indemnify, defend and hold Seller, its affiliates, and their respective officers, directors, shareholders, employees, agents, representatives, successors and assigns harmless from and against any loss, damage, claim, liability, fine or other expense (including, without limitation, attorneys' fees and expenses of litigation) arising out of or in relation to Buyer's resale of the Goods and/or any breach of these terms and conditions by Buyer, its subdistributors or any of their respective directors, officers, employees or agents. The minimum insurance coverages required hereunder shall not be deemed to limit Buyer's liability hereunder.

45. **Relationship of Parties:** Buyer shall act at all times as an independent contractor, not as a partner, joint venturer, agent, servant or employee of Seller. Further, Buyer shall not be deemed a franchisee of Seller, and the relationship of the Parties shall not be subject to the franchise laws of any jurisdiction. Buyer and its employees are not authorized to act as legal agents of Seller, and shall have no authority to legally bind or obligate Seller in any manner, to accept service of process on behalf of Seller, or to settle any claim against Seller.