



Terms and Conditions of Sale

1. Controlling Provisions

Generally: This document including the provisions on the face hereof, (the "Contract") constitutes an offer by Hydro Electronic Devices, Inc. ("Seller") to provide the products and/or services described herein (the "Products") to the buyer to which this offer is addressed ("Buyer"). If this document is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein. Buyer's acceptance of this offer is limited to the terms, covenants and conditions contained in this offer. Seller hereby objects to and rejects any additional, different or varying terms proposed by Buyer previously or that Buyer may propose in the future, unless Seller expressly assents to such terms in writing. Such proposal of additional, different or varying terms by Buyer shall not operate as a rejection of Seller's offer unless such variances are in the terms of the description, quantity, price or place or date of delivery of the Products, and Seller's offer shall be deemed accepted without such additional, different or varying terms. No performance by Seller under any purchase order shall be deemed an acceptance of any conflicting provisions of a purchase order form submitted by Buyer. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain or vary any of these terms. **SELLER'S AGREEMENT TO PROVIDE THE PRODUCTS IS EXPRESSLY LIMITED TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN, NOTWITHSTANDING ANY LANGUAGE IN BUYER'S PURCHASE ORDER, IF ONE EXISTS, OR OTHER WRITING OR ORAL REPRESENTATION. THIS CONTRACT, INCLUDING ALL ITEMS EXPRESSLY INCORPORATED BY REFERENCE, CONSTITUTES THE FINAL EXPRESSION OF THE TERMS BETWEEN SELLER AND BUYER REGARDING THE PRODUCTS AND IS A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. ANY TERMS, CONDITIONS, NEGOTIATIONS OR UNDERSTANDINGS WHICH ARE NOT CONTAINED IN THIS CONTRACT SHALL HAVE NO FORCE OR EFFECT UNLESS MADE IN WRITING AND SIGNED BY SELLER AND BUYER.** Seller's sales representatives are without authority to change, modify or alter the terms of this Contract.

Acceptance: Buyer shall be deemed to have made an unqualified acceptance of this offer and the terms and conditions herein on the earliest of the following to occur: (a) Seller's receipt of a copy of this Contract signed by Buyer; (b) Buyer's payment of any amounts due under this Contract; (c) Buyer's delivery to Seller of any material to be furnished by Buyer; (d) Seller's delivery of the Products; (e) failure by Buyer to notify Seller to the contrary within seven days of receipt of this Contract or (f) any other event constituting acceptance under applicable law.

Quotations: Written quotations are void unless accepted within 30 days from date of issue. Other Seller publications are maintained as sources of general information and are not quotations or offers to sell.

Governing Law: This Contract shall be governed by and construed according to the internal laws of the State of Wisconsin, including, without limitation, the Uniform Commercial Code as adopted in Wisconsin. Neither this Contract nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Contract or the relationship of the parties shall be brought in a Court situated in the State of Wisconsin. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court. Upon termination of this Contract for any reason, Seller shall have all of the rights and remedies provided by law, including, without limitation, the rights of a secured party under Chapter 409, Wisconsin Statutes or any successor statute or similar statute in the jurisdiction where Buyer is organized, located, or stores the Products. Any action by Buyer for breach of this Contract must commence within one year after the cause of action has occurred.

Severability; Waiver: The invalidity of any provision or clause of this Contract shall not affect the validity of any other provision or clause hereof. Seller reserves the right to correct clerical or similar errors relating to price or any other term shown in this Contract. Seller's failure to insist, in any one or more instances, upon performance of any term, covenant or condition of this Contract shall not be construed as a waiver or relinquishment or any right granted hereunder or the future performance of such term, covenant or condition.

Compliance With Laws: Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, sale, lease and/or disposal of the Products including, without limitation, to the extent applicable, the U.S. Export Administration Act and all regulations thereunder.

2. Delivery

Generally: Seller shall deliver the Products F.O.B. Seller's facility at 2120 Constitution Avenue, Hartford, WI 53027 (the "Facility"). For sales to customers or deliveries outside the United States, Seller shall deliver the Products EX WORKS the Facility. "EX WORKS" shall be defined in accordance with INCOTERMS 2000 of the International Chamber of Commerce, as amended from time to time. All risk of loss, damage or delay shall pass from Seller to Buyer upon Seller's delivery of the Products to the Facility. Partial shipments shall be permitted. All installment shipments shall be separately invoiced and Buyer shall pay such separately invoiced amounts in accordance with their invoice due dates, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. Buyer agrees to pay all transportation, delivery, and tax costs. Seller shall retain title for Products until Seller receives payment in full therefor.

Firm Delivery Window: All orders are considered firm within 4 weeks of the confirmed ship date. Buyer is responsible for charges related to an order change in accordance with standard terms and conditions.



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Delivery Dates: All delivery dates are approximate. Delivery dates given by Seller are based on prompt receipt of all necessary information regarding the order and will be acknowledged once a ship date has been confirmed. Seller will use reasonable efforts to meet such delivery dates, but does not guarantee to meet such dates. Failure by Seller to meet any delivery date does not constitute a cause for cancellation and/or for damages of any kind. Any cancellation of an order in full or in part are subject to the terms of this agreement.

Delivery Delays: Any delay in delivery due to causes beyond Seller's reasonable control, including but not limited to those causes listed in Paragraph 14 below, or due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (a) failure to supply adequate instructions; (b) failure to arrange for pickup; (c) failure to supply or approve necessary data in a timely manner; (d) requested changes; or (e) failure to provide documents required for Seller to effect delivery, Seller will store all Products at Buyer's risk and expense, and if prices are higher at the time of actual delivery, Buyer shall pay such higher prices. Buyer shall pay all storage costs, material costs, and expenses upon Seller's demand.

Claims: Claims for shortages or other errors must be made in writing to Seller within ten days after Seller's delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

Orders: Buyer shall ensure that its orders are received by Seller on a timely basis in view of the requested delivery dates. Given the custom nature of the Products, lead times required by Seller will vary. Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Contract, whether or not the order or change order so states. Unless otherwise agreed in writing, the minimum net value of an order must be \$150 and meet other requirements such as minimum order quantity.

3. Prices; Taxes

Prices: Unless prices are stated on the face hereof, prices shall be Seller's most recent acknowledgment price to Buyer. Unless otherwise stated on the face hereof, prices are in U.S. Dollars, F.O.B. the Facility (EX WORKS the Facility for sales to customers or deliveries outside the United States). Seller quotations are firm only if the buyer enters an order within the timeframe stated on the quote or 30 days from the date of the quotation, whichever timeframe is shorter. Seller standard prices at time of shipment may, at Seller's option, apply to those quantities actually delivered over 12 months. Prices are subject to change without notice however, Seller will endeavor to provide at least 30 days written notice of any changes. Upon notification of a price increase of goods, all orders in backlog which are shipped within 12 weeks of the increase notification will be invoiced at the previous price.

Blanket Purchase Orders: Blanket purchase orders (BPO's) can be placed by the Buyer for a 12 month period or 6 months if it includes an additional 6 month forecast. Regardless of the BPO duration and in all cases, the customer commits to including releases for the full quantity over the timeframe specified to meet the MRP system requirement for entry. Pricing and lead times related to a BPO will be confirmed when placed and are dependent on the release schedule given. All quantities identified in a BPO must be shipped within 12 months of placement. If Buyer only accepts shipment of a quantity less than the BPO, Seller reserves the right to back-charge according to the rate applicable to the lower volume accepted and any other applicable charges.

Taxes: Buyer shall pay or reimburse Seller on demand for all taxes, fees and costs including, but not limited to any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, value added tax, duty, customs agent or broker fees, license, inspection or testing fee, freight costs, insurance, consular fees or any other tax, fee or charge of any nature whatsoever, including interest, imposed on, in connection with or measured by any transaction between Seller and the Buyer, in addition to the prices quoted or invoiced. Seller reserves the right to add such amount to the purchase price for payment in advance by Buyer.

4. Terms of Payment

Generally: Unless otherwise stated on the face hereof, full invoice amount is payable within 30 days of invoice date.

Seller's Rights: Notwithstanding the foregoing, terms of payment on all orders are subject to the prior written approval of Seller's credit department. If Buyer does not pay Seller any amount due under this Contract or any other agreement when such amount is due or if Buyer defaults in the performance of this Contract, Seller may, without liability to Buyer and without prejudice to Seller's other lawful remedies (i) terminate Seller's obligations under this Contract; (ii) declare immediately due and payable all Buyer's obligations to Seller; (iii) change credit terms with respect to any further work; (iv) suspend or discontinue any further work; and/or (v) repossess the Products. Seller reserves the right to change credit terms from time to time upon notice to Buyer. Seller reserves the right to require advance payment for engineering costs. Buyer agrees to reimburse Seller for all costs and fees including, but not limited to attorneys' fees and repossession fees, incurred by Seller in collecting any sums owed by Buyer to Seller. Buyer agrees to pay a late payment charge of 1-1/2% per month, or the maximum amount allowable by law, whichever amount is greater, on all amounts not paid in full when due, payable on Seller's demand. Buyer shall not set off amounts due to Seller against claims against Seller.

Security Interest: In partial consideration for Seller's sale of Products to Buyer, Buyer hereby grants to Seller and Seller hereby retains a security interest in all Products sold to Buyer and documents relating to such Products now or hereafter in the possession of or under the control of Buyer, title to which might at any time be determined to have passed to Buyer, including, without limitation, all inventories of the Products or any other product bearing any trademark or trade name of Seller, returns or



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repossessions and the proceeds, including insurance proceeds and proceeds from products in which the Products were an input, of all of the foregoing, together with the additions and accessions thereof, to secure all of Buyer's obligations to Seller under this Contract and all other obligations of Buyer to Seller. Buyer agrees to execute such financing statements, continuation statements and other documents including, but not limited to pledge agreements, and to take such actions as may be required by Seller to evidence or perfect the security interest granted herein and the interest of Seller. Seller is authorized in Buyer's name or otherwise to take such actions as permitted under this Contract or applicable law, including, without limitation, signing Buyer's name, and Buyer hereby appoints Seller as its attorney-in-fact for such purpose.

5. Cancellations, Changes and Returns

Cancellations: All orders are considered firm within 4 weeks from the ship date acknowledged by Seller. Any undelivered Products may be cancelled by Buyer only upon written approval of an authorized representative of Seller. In the event of any cancellation of an order by Buyer, Buyer shall pay to Seller its reasonable costs and expenses, plus Seller's usual rate of profit for similar work, or such other cancellation charges as may apply pursuant to Seller's policies in effect from time to time. Buyer shall be responsible for any production, engineering or any other charges incurred by Seller prior to cancellation or default by Buyer.

Changes: Buyer may not alter or modify its order or any part thereof without Seller's prior, written consent. Seller reserves the right to change the price, terms of payment and delivery dates for any Products affected by any alterations or modification to which it consents. If Buyer requests that an order be expedited, Seller may impose a 20% expedite fee in addition to the quoted price. If Buyer initiates a request that an order be expedited and then withdraws that request, Seller will impose a \$150 fee in addition to the quoted price.

Returns: No Products may be returned to Seller without its prior, written authorization and Products may be returned only on the terms and conditions specified in such authorization. Returned Products must be of current manufacture, unused and in resaleable condition, and securely packaged to reach Seller without damage. Any cost incurred by Seller to put Products in first class condition will be charged to Buyer. Returned Material Authorization ("RMA") numbers issued by Seller are required prior to shipping any Product back to Seller for any reason. Any Product returned to Seller without a valid RMA number will be refused and returned at Buyer's expense. All packages shipped to Seller must be freight prepaid. Buyer shall clearly mark all returns with the RMA number in large print on the outside of the box and on the address label. Ship to: HED, Inc., 2120 Constitution Avenue, Hartford, Wisconsin 53027; RMA #XXXX-XXXX. All Products returned to Seller shall be subject to a 20% restocking charge plus the cost of freight, packaging, insurance and any other costs.

6. Limited Warranty

Seller warrants to the first purchaser of the Products that such Products will be free from material defects in workmanship and materials under normal use and service for a period of one year from Seller's delivery hereunder. The warranty period on a repaired unit is 30 days from the date of repair for workmanship, and 12 months from the date of repair for replacement parts. There is **NO WARRANTY** for any part, product or component installed, serviced, or replaced at any location other than as designated by Seller in writing. There is **NO WARRANTY** if the Product is opened, altered, or repaired by anyone other than Seller personnel. Product designs do not offer user serviceable parts. There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, neglect, alteration, misuse, accidents, normal wear and tear, damage, or deterioration due to environmental or natural elements, failure to follow Seller's instructions or improper or inadequate installation, storage, repair or maintenance. There is **NO WARRANTY** for any Engineering Samples, Prototypes, Pre-Production units, etc. (as designated by the use of suffixes ES, PP, etc. with the Part Number). This warranty does not cover parts furnished but not produced or manufactured by Seller, and Seller's sole obligation with respect to such parts shall be limited to assigning or transferring to Buyer any written warranty extended to Seller by the manufacturer of such parts to the extent such warranty may reasonably be assigned or transferred. However, Seller does not adopt, guarantee, or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer.

Remedy: Seller's sole and exclusive obligation under this warranty (and Buyer's sole and exclusive remedy) shall be, upon prompt written notice by Buyer during the warranty period and immediately upon Buyer's discovery of any breach, to either, at Seller's option, repair or replace without charge, F.O.B. Seller's Facility, any defective Product or part thereof expressly warranted herein by Seller against defects and found by Seller in its sole discretion to be defective and covered by this warranty or, solely at Seller's option, credit Buyer for the purchase price paid for such Product or part. For customized parts, Seller shall not typically offer credit for the purchase price paid as a warranty remedy. Seller shall be given the right to inspect and test Products claimed to be defective. Seller will provide Buyer with written instructions regarding return of any Products to Seller for inspection and testing or for replacement or repair. Buyer shall not return Products to Seller without Seller's written authorization and instructions. Repair or replacement of a Product shall not extend the warranty term. Warranty returns must have a prior authorization in the form of an RMA number and are handled on a first received, first served basis. Neither incoming nor outgoing freight is included in warranty coverage or repair prices. Seller does not accept unauthorized debit memos. Debits issued against Seller without authorization or for any Product that is determined by Seller not to be covered by Seller's limited warranty will be immediately posted to Buyer's past due balance. Seller's standard inspection and test charges shall apply to all Products returned and found by Seller to be functioning within the approved specifications for that Product and not in breach of the above limited warranty. Buyer shall promptly pay Seller's invoice in connection with such charges. **SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY,**



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NEGLIGENCE OR OTHER TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR SELLER'S ACTS OR OMISSIONS OR OTHERWISE. This warranty covers only replacement or repair of defective Products or parts thereof at Seller's main facility and does not include the cost of field service travel and living expenses, labor, inspection, removal or installation of new Products or parts or normal maintenance.

LIMITATION ON DAMAGES: IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, INDIRECT, SPECIAL OR OTHER DAMAGES. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THIS CONTRACT SHALL BE LIMITED TO THE MONIES PAID TO SELLER FOR THAT DEFECTIVE PRODUCT.

Any assistance Seller provides to or procures for Buyer outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the warranty.

Seller will not reimburse Buyer for any expenses incurred by Buyer in repairing, correcting or replacing any defective Products, except for those incurred with Seller's prior written permission.

7. DISCLAIMER OF OTHER WARRANTIES

SELLER AND BUYER AGREE THAT THE EXPRESS WARRANTIES IN THE PRECEDING SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty. Prior to using or permitting use of the Products, (including hardware and software), Buyer shall determine the suitability of the Products for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith. Buyer agrees that Seller has no post-sale duty to warn Buyer or any other party about any matter or, if such duty exists, Seller satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post-sale duty to warn its customers and indemnifies Seller against any Damages in connection with such duty or failure to warn.

8. Engineering Data; Tools

All engineering data, design information, specifications for Seller's Products, schematics and engineering and shop drawings used in the completion of this order are and shall remain Seller's property. Buyer shall not copy, reproduce, distribute, publish or communicate to any third party such data without the prior, written permission of a properly authorized representative of Seller. Seller hereby gives its permission to the Buyer to distribute product data or operation and maintenance information to the end user. All tools, dies, artwork and fixtures relating to Products, including Products manufactured to specifications provided by or on behalf of Buyer, shall be and shall remain Seller's exclusive property.

9. Patent Infringement and Defects in Buyer's Specifications

Orders manufactured to specifications, drawings, designs or descriptions provided by or for Buyer are executed only with the understanding that Buyer hereby agrees to indemnify and hold harmless Seller and Seller's Indemnified Parties (as defined below) from any and all damages sustained by any of them, including, but not limited to, reasonable attorneys' fees, resulting from any action or threatened action against Seller or Seller's Indemnified Parties for (a) infringement of the patents or proprietary right of any other person, or (b) injury to person or property, including death, relating to defects in specifications, drawings, designs or descriptions provided by or for Buyer.

10. Indemnification and Insurance

Indemnification: Buyer hereby releases and agrees to indemnify, defend and hold harmless Seller, its shareholders, officers, agents, employees, affiliates, successors, assigns and third-party suppliers ("Seller's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, loss, suits, demands, fines, penalties, judgments, omissions, damages or expenses whatsoever, including, without limitation, actual attorneys' fees and costs ("Damages") incurred by or against Seller or any of Seller's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (i) misrepresentations, breach of the warranties, representations, covenants or agreement contained in this Contract or any law by Buyer or any of Buyer's shareholders, directors, officers, employees, affiliates, representatives, agents, successors or assigns ("Buyer's Parties"), or (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties, or (iii) losses, damages or injuries caused by Buyer's products, Buyer's specifications, designs, approvals or instructions provided to Seller, or due to improper, imprudent or unsafe application or use of the Products or otherwise; or (iv) any Product recalls, except to the extent solely and directly relating to Seller's breach of this Contract. Prior to settling any claim, Buyer will give Seller an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Seller's written consent. In the event of any recall affecting the Products, Seller shall have the right to control the recall process and Buyer shall fully cooperate with Seller in connection with the recall.

Insurance: Buyer shall maintain and have in effect at all times during the Contract, and for a period of three years thereafter, Commercial General Liability Insurance, which includes (without limitation) coverage for business automobile, transit and other



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transportation liability, bodily injury liability, personal injury liability, property damage liability, theft, advertising injury liability, medical payments, products liability and products-completed and completed operations liability coverage, Workers' Compensation Insurance and Contractual Liability Insurance incorporated in Buyer's Commercial General Liability Insurance policy covering the defense and indemnification agreement and other obligations of Buyer under this Contract. At Seller's option, Seller shall be named as an additional named insured under each in amounts and with carriers acceptable to Seller with a Best's rating of not less than "A". Buyer shall at Seller's request deliver copies of the policy or policies of insurance to Seller. Such policies shall provide a waiver of subrogation against Seller as the additional named insured and contain no cross-liability exclusion. Buyer agrees that the parties intend that Buyer's insurance coverage will be primary over any other potentially applicable insurance. Buyer shall ensure that any umbrella or excess liability coverage shall not treat the naming of Seller as an additional named insured as a coverage change that voids or terminates such coverage. The policies should state that they may not be cancelled or amended without 60 days prior written notice to Seller.

11. Confidential Information; Trademarks:

Confidential Information: Buyer acknowledges that all trade secrets, designs, specifications and other Confidential Information (as defined below) which may be disclosed to it by Seller shall at all times, both during and after expiration or termination of this Contract for any reason, remain the exclusive property of Seller and that Buyer shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all knowledge and information disclosed by Seller to Buyer orally or in writing, or acquired by Buyer through observation, that provides Seller with a competitive advantage, regarding Seller's products, technology, inventions, formulas, know-how, services, forecasts, sales methods, customer lists, customer usages and requirements, financial information, business plans, strategies and future business relationships, disclosed with the exception of such information which: (i) was already part of the public domain at the time of the disclosure by Seller; (ii) becomes part of the public domain through no fault of Buyer (but only after and only to the extent that it is published or otherwise becomes part of the public domain); (iii) was in Buyer's possession prior to the disclosure by Seller and was not acquired, directly or indirectly, from Seller or from a third party who was under a continuing obligation of confidence to Seller; or (iv) is received (after the disclosure by Seller) by Buyer from a third party who did not require Buyer to hold it in confidence and did not acquire it directly or indirectly from Seller under a continuing obligation of confidence. Except as necessary to perform its duties under this Contract, Buyer shall not use or disclose any of such Confidential Information, but shall use the greater of the degree of care required by this Contract or the same degree of care given its own trade secrets and confidential information. Upon expiration or termination of this Contract for any reason, Buyer shall, within 15 days, surrender to Seller all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible objects and all copies thereof relating to trade secrets and other Confidential Information and all of Seller's property. Buyer shall be permitted to destroy rather than return all analyses, extracts, and summaries prepared by Buyer which contain Confidential Information, and such destruction shall be certified in writing to Seller by an authorized officer of Buyer who has supervised such destruction. Nothing in this Contract shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Seller with broader protection than that provided herein.

Trademarks: During the term of this Contract, for so long as Buyer is in compliance with its obligations hereunder, Seller grants Buyer the nonexclusive, nontransferable, nonsublicensable right to use such trademarks as Seller may designate in writing from time to time (the "Trademarks") solely for the purpose of advertising, soliciting sales of, and selling Products in accordance with the terms of this Contract. Nothing in this Contract shall be construed to give Buyer any right to use any of the Trademarks on or in connection with the sale of any goods or services other than Products, and Buyer agrees not to make, or allow any of its affiliates to make, any such use. Any use of Seller's trademarks or other intellectual property shall be subject to Seller's prior written approval in each instance and such restrictions as Seller may, in its sole discretion, impose from time to time. Seller may revoke this license at any time in its sole discretion. Buyer's use of the Trademarks, and any and all goodwill associated therewith, shall inure to Seller's benefit. Buyer agrees that neither it nor its affiliates will seek to register any Trademark, or any other trademark, service mark, or trade dress owned by Seller or its affiliates, and if Buyer or any of its affiliates does obtain such a registration, Buyer or its affiliate shall immediately assign the same to Seller. Buyer acknowledges and agrees that Seller owns all right, title, and interest in and to the Trademarks. Except as otherwise agreed by Seller, Products sold by Buyer shall bear Seller's Trademark, and Buyer shall not remove or efface such Trademark. Buyer will not sell any of the Products except in connection with such Trademarks, and will not repackage the Products in any manner and resell such Products utilizing a different trademark. Any use of Seller's Trademarks in advertisements or promotion must be preapproved in writing by Seller. Buyer and its affiliates agree to take all steps which Seller may from time to time consider to be necessary to perfect or protect Seller's rights in the Trademarks including, without limitation, executing all necessary assignments, declarations, and other documents requested by Seller from time to time. Upon expiration or termination of this Contract for any reason, Buyer and its affiliates shall take such steps and execute such documents as Seller requests to cause Seller to own all rights in the Trademarks and to terminate any rights Buyer may have to use the Trademarks. Buyer shall inform Seller promptly of any potential or actual infringement of any of Seller's Trademarks and shall provide all assistance and information required by Seller, at Seller's expense, in connection with any such infringement.

12. Assignment

Neither party may assign these terms and conditions without the prior written consent of the other party provided, however, that Seller may assign these terms and conditions in whole or in part to any of its affiliates and/or perform through subcontractors. Subject to the foregoing, these terms and conditions shall inure to the benefit of, and be binding upon, the parties' successors and assigns.



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13. Independent Contractor

Buyer is an independent contractor and neither Buyer nor any of its employees or agents shall be considered an employee or agent of Seller. Neither Buyer nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on Seller's behalf.

14. Force Majeure

Notwithstanding any other provision herein to the contrary, Seller shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, public health crisis, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding Seller's available supply or any other cause beyond Seller's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Seller may, at its option and without liability, prorate its deliveries, cancel all or any portion of the contract to the extent affected by the event of force majeure and/or extend any date upon which performance is due hereunder.

15. Survival

The provisions found in sections 1, 4, 8, 9, 10, 11, and 15 and the warranty and damage limitations in sections 6 and 7, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the parties' agreement for any reason. All of Seller's remedies herein are cumulative and not exclusive of any other remedies available to Seller at law, by contract or in equity.