

## TERMS AND CONDITIONS OF SALE

### Definitions

Unless expressly stated otherwise, in these Terms and Conditions of Sale the following expressions have the following meaning:

- “BACKGROUND INTELLECTUAL PROPERTY”** means all Intellectual Property (a) existing prior to the effective date of this Agreement or prior to the date Buyer and Seller began any technical cooperation relating to the goods or services contracted, whichever is earlier, or (b) acquired or developed after such date and outside the scope of this Agreement.
- “BUYER”** refers to an individual or juristic entity making a purchase from the Seller.
- “FOREGROUND INTELLECTUAL PROPERTY”** means all Intellectual Property except Background Intellectual Property. Each Party retains ownership of its Background Intellectual Property. Each Party owns all Foreground Intellectual Property created by such Party without input from the other Party.
- “INTELLECTUAL PROPERTY”** means any inventions, technological innovations, discoveries, designs, formulas, know-how, business methods, computer software, ideas, creations, writing, lectures, illustrations, photographs, scientific and mathematical models, improvements to such items, and all recorded material defining, describing, or illustrating such items, whether in hard copy or electronic form, and all registered or unregistered rights in such items, including but not limited to, patents, trademarks, service marks, trade secrets and copyrights.
- “ORDER”** means Purchase Order delivered to ACC by Customer.
- “PRODUCT”** means goods and/or services to be supplied by the Seller to the Buyer
- “SELLER”** means Amphenol Canada Corporation otherwise referred to below as ACC.
- (1) ACCEPTANCE, FORMATION, AND MODIFICATION** The following terms and conditions of sale (the “Terms”) apply to all offers (as defined below) and sales made by Seller, except as otherwise agreed in writing and signed by a duly authorized representative of Seller. A written communication issued by Seller to the buyer (“Buyer”) that incorporates the Terms (whether labelled “quote”, “proposal”, “acknowledgment”, or otherwise, any of which is collectively or individually referred to as an “Offer”) is an offer to sell the goods and/or services exclusively on the offered Terms. All sales by Seller are subject only to these Terms and the Offer, which, upon acceptance, is the “Agreement.” The Agreement is conditional upon Buyer’s acceptance of these Terms exclusively. The Terms are the only terms upon which Seller transacts with Buyer and shall prevail over any of Buyer’s terms. Any terms proposed by Buyer that are additional or different from the Terms in any way are expressly rejected by Seller and do not constitute a counteroffer. Seller’s failure to object to any term in any communication or document from Buyer, received before, after, or on the date of the Agreement, including provisions appearing in, incorporated by reference in, or attached to Buyer’s purchase order, does not constitute an acceptance thereof or a waiver of any of the Terms. All transactions, including electronic commerce, between Buyer and Seller will be governed solely by the Terms, notwithstanding any conflicting or additional terms on Buyer’s website, portal, or application, or any purported acceptance of such conflicting or additional terms by Seller. Any act by Seller (including commencement of production or shipment) is conditioned upon the Terms and does not constitute acceptance of any terms different or additional to the Terms. Any act by Buyer including, but not limited to, Buyer’s issuing a statement of work, issuing a nomination letter, providing specifications, issuing or placing an order to purchase any goods or services, accepting delivery of any goods or services, paying for any goods or services, or indicating in some other manner Buyer’s acceptance of Seller’s Offer, constitutes Buyer’s acceptance of these Terms. None of the Terms may be added to, modified, superseded, or otherwise altered unless approved by Seller in a writing signed by a duly authorized representative of Seller.
- (2) ENTIRE AGREEMENT** These Terms will govern all purchases of goods or services by Buyer from Seller. The Agreement constitutes the entire agreement between the parties supersedes all prior oral or written quotations, proposals and communications between the Buyer and Seller related to the goods and services.
- (3) PAYMENT** Payment is due Net 30 days from the date of shipment. If, in the judgment of Seller, the financial condition of Buyer at any time does not justify continuance of production or shipment on the terms of payment specified, Seller may require full or partial payment in advance. Pro rata payments shall become due as shipments are made. If shipments are delayed by Buyer, payments shall become due from the date when the Seller is prepared to make shipment. If manufacture is delayed by the Buyer, payment shall be made based on the contract price and the percentage of completion. Goods held for the Buyer shall be at the risk and expense of the Buyer.
- (4) PRICES** Prices for the goods shall be Seller’s list prices, except as otherwise agreed by the parties in writing. All quotations made by Seller are valid for 30 days unless otherwise indicated in writing by Seller. Prices indicated in a quotation or proposal may be increased upon notice to Buyer due to market conditions. Errors or omissions appearing on the face of any quote are subject to correction by Seller.

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- (5) **INTEREST AND ATTORNEY'S FEES** If any invoiced amount remains unpaid after the due date, interest will accrue on such unpaid balance at a rate of 1.5% per month (compounded monthly), or the highest rate allowable by law, whichever is lower, until paid in full. Buyer will pay all damages, costs and expenses, including reasonable attorney's fees, court costs and/or collection agency fees, that Seller incurs in the enforcement of these Terms against Buyer.
- (6) **TAXES** Unless otherwise stated Seller's prices do not include Federal, Provincial, excise, duties, tariffs, assessments or similar taxes. Consequently, in addition to the price specified herein, the amount of any present or future sales, use, excise, or similar tax applicable to the sale of the products herein shall be paid by Buyer, or in lieu thereof Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities.
- (7) **DELIVERY; TITLE AND RISK OF LOSS** Incoterms: Delivery of the goods shall be Ex Works (Incoterms 2020) Seller factory. Title and risk of loss shall vest in Buyer upon delivery of the goods or damage, and other incidents of ownership shall pass to Buyer upon delivery of goods to common carrier ("the carrier"). Any and all claims for loss, damage, or shortages in transit should be made directly to the carrier, and any actual packaging shortages must be reported by Buyer to Seller within 10 days after receipt of the merchandise. No deductions for any loss, damage, or shortage in transit will be allowed on the invoice.
- (8) **SHIP DATE** The ship date stated on an order acknowledgment or otherwise agreed by the parties is Seller's best approximation of the anticipated ship date and shall not be deemed to represent a fixed or guaranteed ship date. Seller shall not be liable for any losses, costs, damages, charges or expenses caused directly or indirectly from any delay in shipment of the goods.
- (9) **TESTING; DESIGNS** The stated prices do not include any qualification testing, test data or the granting of any rights to Buyer for design, drawings or inventions. Buyer's inspection and/or testing of the goods, if any, shall be conducted at its own expense, using qualified testing and inspection personnel, and in accordance with agreed practices and, in any event, in a commercially reasonable manner. If performed at Seller's facility, Buyer shall not disrupt Seller's ordinary operations. Seller will assist or participate in the testing or inspection only if agreed to by Seller in writing, including agreement on compensation for any non-customary procedures.
- (10) **SERVICE CHARGES AND TOOLING** Any Non-Recurring Engineering charges or other service charges paid by Buyer shall not be deemed to grant Buyer any right, title or interest in any tools, dies, jigs, fixtures and items of like nature, or in any design, engineering, trade secret, patent, Intellectual Property (defined below), or other proprietary rights, and such items shall at all times be and remain the sole property of Seller.
- (11) **CHANGES**
- (a) Changes initiated by Buyer: Buyer may request in writing changes to the specifications, fit, form, function, appearance, or performance of the goods and services. Seller may refuse the request if it is unfeasible or would substantially affect Seller's performance or cost. In that case, Seller shall within a reasonable time advise Buyer of the expected impact on cost, timing or other term of performance. Thereafter, Buyer and Seller shall negotiate in good faith on the cost of implementing the change and an adjustment to price, schedule, or other term of performance. If the parties are unable to reasonably agree on an equitable adjustment, Seller may either: (a) proceed with the change and equitably adjust the price, schedule or other relevant terms to account for the impact of the change; or (b) decline to proceed with the change and be equitably compensated for costs incurred in expectation of an agreement, including but not limited to, compensation for engineering or tooling costs.
  - (b) Changes initiated by Seller: The Seller reserves the right to make changes to material, process, sub-tier Sellers, manufacturing location or any other change without any notice to or approval from the Buyer. Where Seller chooses to notify Buyer of changes with possible significant impact on form, fit and function of the Products, the Seller shall proceed with the order unless within 5 days of receipt of such notification, the Buyer communicates its disapproval of such change to the Seller by way of a stop work order. Failure to issue a stop work order within the stipulated time shall bar the Buyer from rejection of the goods for non-conformance.
  - (c) Product Discontinuation, Obsolescence: Seller reserves the right to discontinue manufacturing and sale of Products at any time and shall give Buyer written notice of the discontinuation in accordance with Seller's Obsolescence Policy.
- (12) **QUANTITIES** Seller reserves the right to over or under-ship the quantities ordered by Buyer by 5% in the case of components and by 10% in the case of cable and wire products, where manufacturing processes make it difficult to provide the exact quantity specified.
- (13) **ALLOCATION** In the event of inability for any reason to supply the total demand for the goods specified in a Purchase Order, Seller may allocate its available supply among any or all Buyers, as well as departments and

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- divisions of Seller, on such basis as it may deem fair and reasonable without liability for any failure of performance which may result therefrom.
- (14) **LIMITATIONS ON RELEASES AND FORECASTS; RESCHEDULING OF ORDERS** Buyer acknowledges that Seller will rely on Buyer's releases and forecasts to provide the goods in an efficient and effective manner, including but not limited to procuring materials, arranging labor and scheduling and configuring Seller's plant. Releases and forecasts shall in all cases be reasonable and in accordance with Seller's lead time. If Buyer fails to do so: (a) Seller shall have no liability if it is unable to fulfill releases despite best efforts; and (b) Seller will be equitably compensated for incremental costs of fulfilling the releases, such as, without limitation, idled labor, in the case of a downward variance or overtime labor or expedited shipping of materials, in the case of an upward variance. **Provided that** rescheduling of orders at Buyer's instance shall be subject to Seller's sole and exclusive discretion and treated on a case-by-case basis.
- (15) **INTELLECTUAL PROPERTY OWNERSHIP** Each Party retains ownership of its Background Intellectual Property. Each Party owns all Foreground Intellectual Property created by such Party without input from the other Party. Any Foreground Intellectual Property created with input from the other Party ("Joint Foreground Intellectual Property") is owned by Seller. Buyer hereby irrevocably transfers, conveys and assigns all of Buyer's right, title and interest in such Joint Foreground Intellectual Property to Seller. Buyer will cooperate (and cause its employees to cooperate) in executing any documents or taking any other actions necessary or convenient to perfect Seller's rights in such Joint Foreground Intellectual Property. Seller grants no rights or licenses to its Background or Foreground Intellectual Property, except that Seller grants Buyer the right to offer for sale and sell goods Buyer has purchased from Seller and the right for Buyer and its customers to use such goods. For the avoidance of doubt, the foregoing license does not include any rights to make or have made goods or services, procure goods or services from sources other than Seller, or otherwise use Seller's Background or Foreground Intellectual Property for any other purpose.
- (16) **CONFIDENTIALITY** All non-public, confidential, or proprietary information of Seller, including but not limited to trade secrets, Intellectual Property, business information, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, and rebates, that is disclosed by or on behalf of Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with these Terms ("Confidential Information") is strictly confidential, is provided solely for the use of performing these Terms, and may not be disclosed to any person, corporate division or entity, or copied, unless authorized in advance by Seller in writing. Upon Seller's request, Buyer will promptly return all Confidential Information and any copies thereof. Seller will be entitled to injunctive relief for any violation of this provision, without having to post bond or establish the insufficiency of a remedy at law. This provision does not apply to information that is: (a) in the public domain, through no fault of Buyer, at or subsequent to the time such Confidential Information was disclosed to Buyer by Seller; (b) rightfully known by Buyer free of any obligation of confidence at the time of disclosure to Buyer by Seller, as evidenced by Buyer's written records; or (c) rightfully obtained by Buyer from a third party without similar restriction from such party and the disclosure of which from such third party does not constitute a violation of an obligation by such third party to Seller, each as evidenced by Buyer's written records.
- (17) **ACCEPTANCE** All goods will be deemed accepted unless Buyer notifies Seller of rejection within three days of delivery. Buyer may reject the goods only for material non-conformities to the warranties in Section 17.
- (18) **EXCLUSIVE EXPRESS WARRANTY; DISCLAIMER OF IMPLIED WARRANTIES** For a period of one year after the date of delivery, Seller warrants that the goods: (a) will be free of defects in material and workmanship and (b) will be free of liens and encumbrances when shipped to Buyer. Buyer shall notify Seller in writing within ten (10) calendar days after discovery of the failure of any good to conform to the warranty set forth above, shall describe in commercially reasonable detail in such notice the symptoms associated with such failure, and shall immediately provide to Seller the opportunity to inspect such good as installed, if possible. The notice must be received by Seller within one year after the date of delivery, but no later than ten (10) days after discovery. Unless otherwise directed in writing by Seller, within thirty (30) calendar days after submitting such notice, Buyer shall package the allegedly defective good in its original shipping carton(s) or a functional equivalent and shall ship it to Seller. Within a reasonable time after receipt of the allegedly defective goods and verification by Seller that the goods fail to meet the warranty set forth above, Seller shall correct such failure by, at Seller's option, either (i) modifying or repairing the goods or (ii) replacing the goods. Such modification, repair or replacement and the return shipment of the goods with minimum insurance to Buyer shall be at Seller's expense. Buyer shall bear the risk of loss or damage in transit and may insure the goods. Buyer shall reimburse Seller for transportation costs incurred for goods returned but found by Seller not to be defective. Modification or repair of goods may, at Seller's option, take place either at Seller's facilities or at Buyer's premises. If Seller is unable to modify, repair or replace goods to conform to the warranty set forth above, then Seller shall, at Seller's option, either refund to Buyer or credit to Buyer's account the purchase price of the goods less depreciation calculated on a straight-line basis. **THE TERMS OF THE APPLICABLE WARRANTIES, AS SET FORTH ABOVE, ARE THE SOLE AND EXCLUSIVE WARRANTY TERMS THAT SHALL HAVE ANY FORCE AND EFFECT, AND**

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SUCH TERMS ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY EXCLUDED.

### **(19) WARRANTY EXCLUSIONS; LIMITATION OF EXPRESS WARRANTY**

- (a) Buyer shall be fully responsible for ensuring that its needs and requirements are met and fulfilled by the goods ordered in its purchase order. Under no circumstances shall Seller be responsible for, or held liable in respect of, any statement or representation relied upon by Buyer which is not included in Seller's Offer. Any samples, models, drawings, affirmations of fact, descriptions, or advertising issued or published by Seller and any descriptions of the goods contained in Seller's marketing materials or websites are for informational purposes only and shall not create any warranty of any kind.
- (b) Unless otherwise expressly provided in the Agreement, Seller does not warrant: (i) the adequacy of the specifications provided by Buyer; (ii) design; (iii) that Seller or the goods are certified or approved by any entity or organization or are in compliance with any industry standards, guidelines or procedures; or (iv) the goods will comply with the requirements of any safety or environment code or regulation of any federal, state, municipality or other jurisdiction. Buyer affirms that it has not relied upon Seller's skill nor judgment to select or furnish the goods for any particular purpose beyond the specific express warranties in the Agreement and that any design provided by Seller is based on information provided by Buyer. Seller provides no warranty as to prototype goods or as to goods used by Buyer in any program or application other than the specific program identified in Seller's Offer for the goods.
- (c) Seller shall not be liable for any breach of warranty arising out of the failure of a directed supplier to provide conforming directed supplies. Seller shall not be liable for any breach of warranty arising from a third party's assembly of the goods. Seller's warranties shall apply only if the goods: (i) have been installed, maintained and used in conformity with instructions furnished by Seller from time to time, if any, and otherwise in conformity with the highest industry practices; (ii) have been subjected only to normal use for the purpose for which the goods were designed; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been improperly stored; (v) have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the goods; (vi) have been used in accordance with the specifications; (vii) have not been exposed to conditions not indicated in the specifications; and (viii) have been fully paid for. Seller's warranties are not assignable and are not for the benefit of any third party.

### **(20) EXPORT SALES**

Buyer represents that it is not an entity sanctioned by US and/or other applicable export laws and regulations nor is it otherwise owned or controlled by or acting on behalf of any person sanctioned by US and/or other applicable export laws and regulations. Buyer acknowledges that goods, software, or technical information provided under this Agreement may be subject to U.S. and/or other export laws and regulations. Buyer agrees that it will not divert, use, export or re-export such goods, software, or technical information contrary to United States, Canada and/or other applicable export laws and regulations to include for prohibited end-use and/or proliferation activities. Buyer expressly acknowledges and agrees that it will not export, re-export, or provide such goods, software, or technical information to any entity or person within any country that is subject to United States, Canada, United Nations and European Union economic sanctions imposing comprehensive embargoes without obtaining prior authorization. Buyer also expressly acknowledges and agrees that it will not export, re-export, or provide such goods, software, or technical information to entities and persons that are ineligible under United States law to receive such goods, software, or technical information, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List without obtaining prior authorization from the United States Government. Buyer agrees to sign written assurances and other export-related documents upon Seller's request to assist Seller in verifying compliance with export laws and regulations.

### **(21) TERMINATION AND RETURNS**

On products classified as non-standard, that is, products fabricated to individual customer requirements, drawings, specifications, and/or customer design as contracted to standard products offered by Seller for general sale, Seller reserves the right to fabricate the entire quantity ordered in one production run, although shipments will be made in accordance with the Buyers requested schedule. In the event of cancellation of such non-standard products, any components, subassemblies, and/or finished assemblies on hand or in production in quantities equivalent to the full production run for the entire quantity ordered plus normal overrun, shall be considered as part of applicable cancellation charges. The Buyer may cancel the order only upon payment of reasonable cancellation charges, which shall take into account expenses already incurred, and commitments made by the Seller. Returns will not be accepted unless authorized by Seller which authorization shall not be unreasonably withheld. All products manufactured to Buyer's specifications or special requirements are not subject to return.

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- (22) **ITAR EXCEPTION** The Seller being a Canadian Company is registered under the Canadian Controlled Goods Program (CGP), which operates in conjunction with the International Traffic in Arms Regulation (ITAR) and thereby enjoys the Canadian exemptions under the ITAR Part 126.5 on license free transfers of defence articles as well as exemptions from approval requirements for intra-company, intra-organization, and intra-governmental transfers to employees who are dual nationals or third-country nationals pursuant to Part 126.18. The Seller's compliance with ITAR provisions is to the extent of its compliance with the Defence Production Act and the Controlled Goods Regulations governing the Controlled Goods Program.
- (23) **REQUIREMENTS FOR MOISTURE SENSITIVE DEVICES (MSD) AND ELECTROSTATIC DEVICES (ESD)** MSD/ESD specific requirements are not applicable to ACC manufactured products.
- (24) **QUALITY MANAGEMENT SYSTEM (QMS); FOREIGN OBJECT DAMAGE (FOD) PREVENTION** The Seller shall maintain a Quality Management System (QMS) in accordance with the requirements of ISO 9001:2015 and AS9100 and a Foreign Object Damage (FOD) Prevention program in accordance with the requirements of AS/EN/SJAC 9146.
- (25) **NIST SP 800-171; CMMC Certification** The Seller has credible cyber-security measures in place for the protection and preservation of Customer information. The Seller has not fully implemented the 110 NIST controls and has not entered its self-assessment score into the Supplier Performance Risk System (SPRS). The Seller has a System Security Plan (SSP) and requisite Plans of Action and Milestones (POA&Ms) in place for prompt remediation of any identified gaps with the 110 NIST controls. By placing an order with the Seller, you are waiving any requirement for compliance with NIST SP 800-171 and/or related cybersecurity requirements.
- (26) **NADCAP** The Seller is not accredited by the National Aerospace and Defense Contractors Accreditation Program (NADCAP). By placing an order with the Seller, you are waiving any requirement for NADCAP accreditation or certification of the Seller or its subcontractors or sub-tier Sellers as the case may be except otherwise expressly and specifically agreed to by the Seller in writing.
- (27) **TOOLING** All tools required to produce the products covered by this quotation are to remain the property of Seller.
- (28) **USE OF DATA** Any specifications, drawings, technical information, or other data furnished by Seller to Buyer shall remain Seller's property, shall be kept confidential by Buyer, and shall be returned at Seller's request.
- (29) **RECORD RETENTION** The Seller shall maintain on file at their facility all inspection and test records for a maximum of ten (10) years from delivery of the last item on this purchase order.
- (30) **PATENT INFRINGEMENT** Seller shall, with respect to any goods or services designed solely by Seller, indemnify Buyer from all damages and costs resulting from any claim that such goods or services constitute a direct infringement of any United States patent, provided that Buyer notifies Seller in writing of such claim within ten (10) calendar days of Buyer's receipt of such claim and Seller is given the right to control the defense of any such claim, provided, however, that Seller shall have no obligation under this section to the extent such claim results from any alteration or modification of such good or services by Buyer or others; from Seller's compliance with features, designs or specifications provided by Buyer; the combination, operation or use of the goods or services with other goods or services not furnished by Seller; or use of the goods or services in a manner not intended by Seller. Buyer agrees to fully defend, indemnify, and hold Seller harmless from any and all costs, expenses, damages, judgments or losses of any kind, including reasonable attorney's fees, arising from any claim, suit or demand that any goods or services provided by Seller according to Buyer's features, design, specifications, or instructions infringe any third-party Intellectual Property, including patents.
- (31) **EXCLUSIVE REMEDIES, LIMITATION OF LIABILITY, INDEMNITY** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY OTHER WRITING, SELLER'S TOTAL LIABILITY FOR ANY CLAIM OR DAMAGE, INCLUDING CLAIMS ALLEGING NEGLIGENCE OR GROSS NEGLIGENCE, ARISING OUT OF AND/OR IN ANY WAY RELATED TO THESE TERMS OR THE MANUFACTURE, SALE OR DELIVERY OR USE OF SELLER'S GOODS OR SERVICES WILL BE LIMITED TO THE DIRECT DAMAGES BUYER ACTUALLY INCURS NOT TO EXCEED THE LESSER OF: (A) \$50,000 OR (B) THE PURCHASE PRICE OF THE AFFECTED GOODS DURING THE THREE (3) MONTH PERIOD PRECEDING THE EVENT WHICH GAVE RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR IN ANY OTHER WRITING, IN NO EVENT WILL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOSS OF PROFIT, LINE DOWN COSTS OR CLAIMS OF THIRD PARTIES),

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HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING CLAIMS ALLEGING NEGLIGENCE OR GROSS NEGLIGENCE. THESE LIMITATIONS APPLY EVEN IF BUYER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. By accepting delivery of the goods ordered, Buyer agrees that it indemnifies and holds harmless Seller from and against all claims, loss, damage and liability, including without limitation for personal injury, property damage or commercial loss of whatever kind, directly or indirectly arising from or relating to the hazards inherent in Buyer's facilities or activities. Buyer assumes the risk and agrees to indemnify Seller against and hold Seller harmless from all liability relating to (i) assessing the suitability for Buyer's intended use of the goods and of any system design or drawing and (ii) determining the compliance of Buyer's use of the goods with applicable laws, regulations, codes and standards. Buyer retains and accepts full responsibility for all warranty and other claims relating to, or arising from, Buyer's products which include or incorporate goods or components manufactured or supplied by Seller. Buyer is solely responsible for any and all representations and warranties regarding the products made or authorized by Buyer. Buyer will indemnify Seller and hold Seller harmless from any liability, claims, loss, cost or expenses (including reasonable legal fees) attributable to Buyer's products or representations or warranties concerning same. Neither Party shall have any indemnity obligation, whether by express or implied contract or implied by law, except as stated in Sections 30 and 31.

- (32) APPLICABLE LAW AND JURISDICTION**
- (a) This Agreement shall be governed by the substantive laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to any conflicts of laws provisions thereof. For the purpose of all legal proceedings, this Agreement will be deemed to have been made and performed in the Province of Ontario and the courts of the Province of Ontario will have exclusive jurisdiction to entertain any action arising under this Agreement. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT.
  - (b) The United Nations Convention on Contracts for the International Sale of Goods will not, for any purpose, govern or apply to the sale of goods and services or any transactions, performance or disputes hereunder.
- (33) GENERAL TERMS**
- (a) All terms of payment are subject to approval of Seller's reasonable credit approval requirements. Buyer represents to Seller that it is solvent. In the event that Buyer's financial condition shall become impaired prior to full payment to Seller, Buyer shall notify Seller immediately. If Seller, in its sole judgment, finds Buyer's financial condition unsatisfactory to Seller, Seller may exercise any or all of the following options: demand immediate payment; require payment in advance; suspend all further deliveries; reclaim any goods not paid for; terminate this Agreement upon written notice to Buyer, without limitation of any other rights or remedies it has herein or under law.
  - (b) Buyer grants the Seller a security interest in the goods specific in a Purchase Order and replacements thereto to secure payment of any or all amounts outstanding from time to time. Seller may file, at Buyer's expense, any financing statements or other documentation pursuant to perfect or evidence the Seller's security interest.
  - (c) All orders and release schedules placed by Buyer and accepted by Seller are considered firm and may not be canceled, rescheduled, or changed in any way without prior written approval by Seller. Buyer assumes all risks and agrees to pay the full purchase price for each Purchase Order placed by Buyer.
  - (d) Seller may terminate this Agreement in whole or in part, with or without cause, upon 60 days advance written notice to the Buyer.
  - (e) In the event of Buyer's default of any of its obligations hereunder, Buyer shall be liable for all of Seller's damages, including its loss of actual or anticipated profits, reasonable attorney's fees, costs of collection, in addition to any other remedies available to Seller under law.
  - (f) Seller's failure to insist upon strict performance of any of the Terms shall not be deemed a waiver of any rights or remedies that Seller may have and shall not be deemed a waiver of any subsequent breach or default of any Terms.
  - (g) Seller shall not be liable for any failure to carry out its obligations under this Agreement where such failure is due to any condition or event beyond its or its Seller's reasonable control, including but not limited to fire, windstorm, flood, earthquake, or other Acts of God; strikes, lockouts or other work stoppages; wars, riots, or civil commotion; government priorities, allocations, regulations or restrictions; interference or restraint of public authority, (whether legal or not); explosion or accident; epidemic or quarantine restrictions; failure of its suppliers or subcontractors; shortage of raw materials or labor; or any other cause, (whether or not of the same kind as those herein specified.) If there is such a delay, Seller will have a reasonable extension of time in which to complete performance.
  - (h) Headings are for convenience only and shall not be used in construing and interpreting this Agreement.
  - (i) The term "including" shall be construed to mean "including, without limitation" and shall serve as a term of enlargement rather than a term of restriction.
  - (j) Neither this Agreement nor any rights hereunder may be assigned by Buyer, without the prior written consent of Seller. Seller may assign its rights, liabilities, and obligations hereunder to any affiliate or subsidiary without prior written notice.

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- (k) These Terms shall be severable such that the invalidity or unenforceability of any portion or provision of these Terms shall in no way affect the validity or enforceability of any other portion or provision. The balance of these Terms shall be construed and enforced as if it did not contain such invalid or unenforceable portion or provision.
- (l) The provisions of Sections 3-10, 15, 16 and 30-33 shall survive the termination of the Agreement for any reason.