

**Brown, LLC, a Minnesota limited liability company d/b/a EPCO**  
**Lyle Industries LLC, a Minnesota limited liability company**  
**NAS Nalle Automation Systems, LLC, a Delaware limited liability company**  
**Louis G. Freeman Company, LLC, an Ohio limited liability company**

## **BROWN MACHINE GROUP TERMS AND CONDITIONS OF SALE**

### **1. GENERAL.**

These Terms and Conditions of Sale ("Terms") shall apply to all sales of all goods ("Goods") and services ("Services"), including but not limited to the Remote Services (as defined below) by each of the entities described above (each, a "Seller") to the buyer identified in Buyer's order, whether placed through Seller's website ("Website") or via a purchase order issued by Buyer (each, an "Order"). In the case of Orders placed through the Website, these Terms are an integral part of the Website Terms of Use that apply generally to the use of the Website. Buyer should also carefully review the Website Privacy Policy prior to purchasing any Goods or Services through the Website. No Order shall be binding on Seller until such Order has been accepted by Seller. An Order will be deemed accepted by Seller (a) when a deposit is required by Seller, upon the later of Seller's issuance of a written order acknowledgement or receipt of such deposit; or (b) when a deposit is not required by Seller, upon the earlier of Seller's issuance of a written order acknowledgment or commencement of the performance of such Order. An Order accepted by Seller may be canceled by Buyer only with the written consent of Seller and upon terms satisfactory to Seller.

### **2. SCOPE OF AGREEMENT.**

These Terms may be supplemented or modified by any further terms and conditions set forth in Seller's quotations, proposals and other documents issued by Seller relating to the transactions to which these Terms and Conditions apply (collectively, "Seller Documentation"). In the event of a conflict between these Terms and the Seller Documentation, the terms of the Seller Documentation shall govern. Any documentation issued by Buyer, including but not limited to any purchase order of Buyer, that contains terms and conditions in addition to or inconsistent with these Terms, including but not limited to penalties or liquidated damages for Seller's failure to meet delivery dates or any other reason, are hereby rejected and shall not be binding upon Seller unless acceptance thereof is expressly made in writing by an authorized representative of Seller. Failure of Seller to object to provisions contained in any purchase order or other communication from Buyer already or hereafter proposed shall not be construed as a waiver of these Terms nor an acceptance of any such provisions. These Terms and the Seller Documentation (together, the "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, whether written or oral. Seller shall not be required to utilize any third party service selected by Buyer for invoicing, insurance and/or safety certification, or any other purpose in connection with the Order, regardless of Seller's acceptance of such Order, and the Order shall remain in full force and effect regardless of Seller's election to not utilize any such service. In the event that Seller does elect to utilize any such third party service, (a) any terms and conditions agreed to by Seller in connection with such third party service shall apply solely as between Seller and such third party service provider, and shall not apply as between Buyer and Seller; (b) any such terms and conditions that are additional to or different from the terms and conditions of this Agreement are hereby rejected; and (c) the Order shall be governed solely by the terms and conditions of this Agreement. No agent of Seller has authority to modify or waive any provision hereof, and no claimed modification, termination or waiver of any provision of the Agreement shall be valid as against Seller unless signed by Seller's duly authorized representative. Seller reserves the right to correct clerical and stenographic errors at any time.

### **3. PRICING.**

All price and delivery quotations made by Seller are conditioned upon this Agreement. Prices are subject to change without notice, provided that Seller will not change the prices of any Goods or Services after it has accepted the Order for such Goods or Services. Price quotations or proposals, unless otherwise stated, will automatically expire in 10 calendar days.

### **4. TAXES AND OTHER CHARGES.**

All prices are exclusive of, and Buyer is responsible for payment of, (a) all fees and costs for any goods or services provided by a third party at Buyer's request in connection with an Order (collectively, "Third Party Fees"); and (b) all sales, use, value-added, excise, import/export or other similar taxes, tariffs, fees, duties and other charges of any kind imposed by any governmental authority on the production, storage, sale, transportation or use of the Goods or Services, whether enacted prior to or after the date of acceptance of the Order (collectively, "Tax"). Notwithstanding anything to the contrary herein, in the event that any Tax is enacted or imposed by any governmental authority after the date of Seller's acceptance of the order, Seller may, at its option, immediately terminate the order by written notice to Buyer, without liability to Buyer. In the event Seller shall be required to pay any such Tax or Third Party Fee, (i) Seller may require Buyer to pay such Tax or Third Party Fee directly; or (ii) Seller may pay such Tax or Third Party Fee and Buyer shall reimburse Seller therefor; or, in lieu of such payment of any Tax by Seller, Buyer shall provide Seller at the time the Order is submitted with an exemption certificate or other document acceptable to the governmental authority imposing such Tax.

## **5. SELLER'S RIGHT TO SHIP.**

Seller shall have the right to ship the Goods in installments, on the shipping date specified or as soon thereafter as the Goods or any installment thereof is ready for shipment. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. If Buyer has not accepted delivery of the Goods or any installment thereof within fourteen (14) days after such Goods or installment thereof is ready for shipment, Seller reserves the right to: (a) transport and/or store the Goods at the Buyer's risk and expense (including but not limited to expenses for storage at Seller's facility), whereupon all risk of loss or damage (but not title) shall pass to Buyer, and (b) declare the full purchase price and all other amounts hereunder due and payable immediately. Upon Buyer's confirmation that it will accept delivery of the Goods and payment of the full purchase price, the storage costs, and all other amounts due under the Agreement, Seller shall make the Goods available for delivery to Buyer by its carrier.

## **6. TITLE; RISK OF LOSS.**

Title to and risk of loss of the Goods shall transfer from Seller to Buyer when the Goods are made available to Buyer's carrier at Seller's facility. If Seller is installing its Goods on Buyer's premises, title to and risk of loss of the Goods will transfer upon completion of the installation Services. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this Section constitutes a purchase money security interest under the Uniform Commercial Code. Failure to pay any amounts under this Agreement when due shall permit Seller, in its sole discretion, to declare all obligations of Buyer immediately due and payable, and in such event, Seller shall have all the rights and remedies of a secured party under applicable law. In connection with the security interest granted herein, Seller is expressly authorized, at its discretion, to file one or more financing statements or other notices under applicable law naming Buyer as debtor and Seller as secured party. Buyer shall execute such documents requested by Seller to record and otherwise perfect this security interest.

## **7. BUYER ITEMS.**

In the event that Buyer is furnishing any designs, specifications, parts, tooling or products for remanufacturing in connection with Seller's performance of the Goods or Services (collectively, "Buyer Items"), risk of loss of all Buyer Items shall remain with Buyer.

## **8. DELAY.**

Any shipment or delivery date is an estimate only and is conditioned upon timely receipt of all necessary information, parts, government approvals, import permits, Buyer Items, approvals from Buyer, and deposits, if applicable, and in the event of delay occasioned by Buyer the shipment and delivery dates shall be extended for the time lost by reason thereof including, but not limited to, (a) Buyer's failure to timely pay any deposit; and (b) in the case of special tooling, any interval between receipt of Order and receipt by Seller of complete information to proceed with design and manufacture.

## **9. PAYMENTS.**

Payment terms are as set forth in the Seller Documentation. If Seller fails to render any payment within ten (10) days of the due date, Seller reserves the right to impose interest charges. Buyer shall reimburse Seller for any costs of collection, including but not limited to attorneys' and collections fees. 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 originally specified, or Buyer fails to render any payment or pay any deposit when due, Seller may suspend its performance hereunder and require full or partial payment in advance. Seller reserves the right to ship such Order and make collection by sight draft with Bill of Lading attached or on a C.O.D. basis or any other terms approved in writing by Seller. Each shipment shall be considered a separate and independent transaction and payment thereof shall be made accordingly. If shipments are delayed by Buyer, payments shall become due on the date when Seller is prepared to make shipment.

## **10. DELIVERY.**

All prices are exclusive of, and Buyer is responsible for payment of, all costs of shipping, insurance, rigging and drayage charges. Buyer shall promptly reimburse Seller if Seller pays any such charges. Unless otherwise stated in the Seller Documentation, all prices quoted are F.O.B. Seller's facility.

## **11. INSURANCE.**

During the term of this Agreement, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (a) commercial general liability insurance, including completed operations, in a sum no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and (b) umbrella/excess coverage in a sum no less than \$5,000,000, with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in this Agreement. Buyer shall name Seller and its affiliates as an additional insured on all such insurance policies. Buyer shall have its insurer(s) waive its right of subrogation against Seller on all insurance carried by Buyer. All such policies shall be primary and not contributory in relation to any other policies in which Seller or its affiliates are named or additional insureds.

## **12. ACCEPTANCE OF GOODS.**

Regardless of whether transportation is arranged by Buyer or Seller, Seller shall not be responsible for damage or loss in transit and all claims must be made by Buyer directly to the carrier. If Buyer is unable to make any such claim directly against the carrier, Seller shall process and forward such claim and shall use commercially reasonable efforts to facilitate the resolution of such claim. In the event of shortage or incorrect Goods, a claim must be made in writing against Seller within fifteen (15) days of the date of delivery. Buyer's failure to make any such claim shall constitute unqualified acceptance of the Goods and a waiver of all such claims by Buyer. Seller may, at Seller's option, require Buyer to (a) provide photographs or other documentation of such claim, and (b) make the Goods available for inspection by Seller or its authorized representative in order to substantiate the grounds for such claim.

## **13. ASSEMBLY, INSTALLATION AND COMMISSIONING.**

If so specified in the Seller Documentation, Seller will furnish technicians to supervise installation and start-up of the Goods, at Buyer's expense and at Seller's rates then in effect, plus traveling and expenses unless otherwise specified in the Seller Documentation. The cost of all such Services are in addition to the price of the Goods unless otherwise specified in the Seller Documentation. All other labor will be supplied by Buyer. Buyer will place the Goods at points of assembly or installation, prepare the installation site and perform all other obligations of Buyer associated with installation and start-up specified in the Seller Documentation. Seller assumes no obligation with respect to electrical connections and will not supply motors or switches except as specifically provided in the Seller Documentation.

## **14. REMOTE ACCESS AND MAINTENANCE.**

Seller shall provide remote diagnostic, tracking and monitoring services ("Remote Services") on eligible Goods, as specified in the applicable Order, using certain remote monitoring, diagnostic, and tracking tools, firmware and related documentation, personal computers or notebooks, maintenance manuals and other documentation owned or licensed by Seller ("Remote Services Materials"), which may include but are not limited to the Seller platform that provides an interface with Buyer's hardware equipment and which Buyer may access via a web browser through the web portal ("Seller Platform"). Such Remote Services Materials may be stored within the Goods, on Buyer's premises, on Seller's systems or on a third party cloud storage solution, in Seller's sole discretion.

Except as expressly set forth herein, only Seller will be authorized to access and/or use the Remote Services Materials. Remote Services Materials will always remain the sole and exclusive property of Seller or its licensors and will be deemed to be Seller's Intellectual Property Rights, as defined herein, and Buyer is not granted any right, title or interest in or to the Remote Services Materials pursuant to this Agreement. Except as expressly permitted herein, Buyer must not use, access, modify, copy or relocate the Remote Services Materials or allow any other person to do so. Buyer must return or allow Seller to de-install such Remote Services Materials upon the earlier of Seller's demand or upon the termination of the Remote Services.

Buyer has and will retain sole control and responsibility over the operation, maintenance, and management of, and all access to and use of, Buyer's information technology infrastructure, including without limitation, computers, software, hardware, and networks, whether operated by Buyer or through the use of third party services ("Buyer's Systems"). Buyer acknowledges and agrees that in order to allow Seller to perform the Remote Services, Buyer must (i) provide internet connectivity to its equipment; (b) provide IT addressing information and such other information relating to Buyer's Systems as Seller may require to perform the Remote Services; and (c) otherwise set up and maintain Buyer's Systems in accordance with Seller's requirements for the Remote Services. If Buyer refuses to allow Seller to provide the Remote Services, disables or interferes with the Remote Services Materials, or requires Seller to use or fails to adequately maintain or grant Seller access to Buyer's Systems (as defined below) to perform the Remote Services, Buyer acknowledges that Seller may be prevented from providing the Remote Services. In such circumstances, (a) Seller will not be liable for any failure or delay in providing the Remote Services in accordance with this Agreement; and (b) Seller may charge Buyer additional fees to provide the Remote Services and the costs incurred for on-site diagnosis and repair services which otherwise could have been performed through Remote Services, at Seller's standard rates for service/repairs, including travel expenses. If Buyer requires Seller to provide Remote Services through Buyer's Systems, Buyer hereby grants Seller access to Buyer's Systems as necessary or convenient to perform the Remote Services. Seller will not be liable for any kind of loss or damage, or any stoppage or downtime to Buyer's Systems or related equipment, as a result of Seller's access to Buyer's Systems. Buyer agrees that Seller has no obligation to perform the Remote Services through the Buyer's Systems.

Trending data, e.g., error log files, voltages, equipment diagnostics checks, and system information, performance data, and other information (collectively, "Monitoring Data"), may be routinely collected by Seller as part of the Remote Services. The Monitoring Data shall be exclusively owned by Seller, and Buyer hereby irrevocably assigns to Seller all of Buyer's right, title and interest in or to the Monitoring Data. Seller hereby grants to Buyer a non-exclusive, perpetual, irrevocable, world-wide and royalty free right and license to use the Monitoring Data for its own internal business purposes. Seller may share the Monitoring Data with certain third parties. These third parties may include equipment suppliers, Seller's licensors or other third party service providers who assist Seller in providing the Remote Services Buyer requests. Seller will make reasonable efforts to include obligations of confidentiality in its agreements with such third parties. Furthermore, Seller will not knowingly share any of Buyer's Monitoring Data with or disclose that

Buyer utilizes the Remote Services to any competitor of Buyer.

Buyer shall not, and shall not assist or permit any third party to: (a) copy, rent, lease, lend, sell, sublicense, assign, distribute, re-distribute, publish, transfer, or otherwise make available the Remote Services Materials, to any other person or third party for any reason; (b) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Remote Services Materials or any part thereof; or (c) otherwise access or use the Remote Services Materials beyond the scope of authorization granted under this Agreement or in violation of applicable laws.

Neither Seller, nor its personnel, are obligated to: (a) take any steps to identify, prevent, or correct any illegal or abusive activity that is evidenced by Buyer data made available to Seller under this Agreement; or (b) archive for future reference or otherwise maintain any reproduction of Buyer data.

#### **15. SELLER PLATFORM LICENSE**

If a subscription is purchased for the Seller Platform pursuant to an Order, Seller grants Buyer, subject to the terms of this Agreement, a limited, revocable, non-exclusive, non-sublicenseable, non-assignable, and nontransferable license to access and use the Seller Platform for Buyer's internal business purposes. All rights in and to the Seller Platform not expressly granted herein are reserved to Seller. Except for the limited rights granted herein, nothing in this Agreement shall transfer to Buyer any right, title, or interest in or to Seller Platform. This Agreement does not allow Buyer to use the Seller Platform on any electronic device that is not owned or otherwise controlled by Buyer. Buyer's right to access and use the Seller Platform is only effective during period(s) of access and use subscription rights granted to Buyer pursuant to an Order. Seller may, directly or indirectly suspend, terminate, or otherwise deny any Buyer's or another's access to or use of all or any part of the Seller Platform, without incurring any resulting obligation or liability, at any time for any reason. This Section does not limit any of Seller's other rights or remedies, whether at law, in equity, or under this Agreement.

#### **16. INTELLECTUAL PROPERTY.**

All intellectual property rights, including but not limited to all technical data, processes, designs, drawings, engineering data, U.S. and foreign patents, patent applications, patent rights, trademarks and service marks (including common law rights, applications and registrations therefor), copyrightable and un-copyrightable works (including those in computer programs, drawings, designs, documentation and specifications), copyright registrations, trade secrets, proprietary rights in information (including in data, inventions, discoveries, know-how, formulas, processes, technical information and business information), license rights under the intellectual property rights of third parties and all other intellectual property rights whether or not subject to statutory registration or protection (collectively, "Intellectual Property Rights") in, or relating to, the Goods or Services, are owned by or licensed to Seller. Seller shall retain all right, title and interest in and to Seller's Intellectual Property Rights, and the sale of any Goods or Services to Buyer in no way conveys to Buyer, either expressly or by implication, any ownership or license whatsoever therein. In the event that Buyer should, by operation of law or otherwise, be deemed to have obtained any rights to any of Seller's Intellectual Property Rights, Buyer hereby assigns its entire, right, title and interest in and to such Intellectual Property Rights to Seller. Buyer further agrees to execute any and all documents that may be reasonably necessary to effect such assignment to Seller. Buyer shall retain all right, title and interest in and to all Intellectual Property Rights in the Buyer Items; provided, however, that Buyer grants to Seller a nonexclusive, irrevocable, worldwide, royalty-free license to use the Buyer Items for the performance of this Agreement.

#### **17. CONFIDENTIALITY.**

All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, or any of the foregoing in connection with the Seller Platform or Maintenance Materials, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

#### **18. WARRANTY.**

Seller warrants that (a) all Goods will be free from defects in material and workmanship for a period of six (6) months from the date of shipment of the Goods; and (b) all Services, other than the Remote Services, will be free from defects in workmanship for a period of six (6) months from the date of completion of the Services.

Seller will, at its option, repair, replace or correct any and all Goods, or re-perform any Services, other than the Remote Services, that are called to Seller's attention prior to the expiration of the applicable warranty period and fail to conform to the applicable warranty, as determined by Seller's inspection of such Goods or Services, at Seller's sole cost and expense. This warranty shall not obligate

Seller to pay any costs of labor performed by Buyer or a third party selected by Buyer. Upon Seller's request, Buyer shall ship any Goods which are the subject of a warranty claim to the facility designated by Seller for inspection by Seller, freight pre-paid and at Buyer's expense. Such repair, replacement, or re-performance shall not extend the applicable warranty period. THE FOREGOING WARRANTIES EXTEND TO BUYER ONLY AND NOT TO BUYER'S CUSTOMERS, USERS OF BUYER'S PRODUCTS OR ANY PERSON ACQUIRING THE GOODS FROM BUYER OR ANY UNTRAINED PERSON USING THE GOODS.

Seller customarily makes changes from time to time which are intended to improve the design and construction of its Goods, and Seller does not warrant replacement of the Goods or any parts thereof with Goods or parts of later or improved design or construction. Accordingly, any illustrations, specifications or other descriptive material which may have been submitted to the Buyer will not necessarily be current at the time of delivery of the Goods and, hence, are intended to present a general description of the Goods and are not to be deemed to constitute a part of this Agreement or a warranty as to particular Goods specifications.

The warranties set forth herein shall not apply to: (a) parts which have a normal life under six (6) months; (b) normal wear and tear; (c) Goods or parts damaged by misuse or failure of Buyer to observe proper maintenance, lubricating or operating procedures; (d) improper use of the Goods, whether intentional or unintentional; (e) Goods that have been repaired, altered or modified by any party other than Seller; (f) abuse, misuse or neglect; (g) Goods that have been repaired, altered or maintained with parts not approved by Seller; (h) Goods affected by abnormal conditions of temperature, moisture or corrosive matter; or (i) defects, loss or damage caused by Buyer Items.

The warranties set forth herein shall not apply to any components, units or products purchased by Seller from a third party supplier ("Third Party Products"). Any warranties made or given by such third parties which are assignable by their terms shall be assigned to Buyer. If any warranties made or given by such third parties are not assignable, Seller shall use reasonable commercial efforts to enable Buyer to receive the benefit from such warranties.

THE REMEDIES SET FORTH IN THIS SECTION 18 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE WARRANTIES SET FORTH IN THIS SECTION 18. THE REMOTE SERVICES AND REMOTE SERVICES MATERIALS ARE PROVIDED TO BUYER "AS IS" AND "WITH ALL FAULTS AND DEFECTS," WITHOUT WARRANTY OF ANY KIND. SELLER MAKES NO OTHER WARRANTIES, WHETHER EXPRESSED, STATUTORY OR IMPLIED, WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CONFORMANCE TO DESCRIPTION OR WARRANTIES ARISING FROM COURSE OF DEALING, TRADE PRACTICE OR OTHERWISE.

SELLER MAKES NO WARRANTIES WITH REGARD TO THE ACCURACY, RELIABILITY, COMPLETENESS, COMPREHENSIVENESS, QUALITY, FUNCTIONALITY, TIMELINESS, SPEED, AVAILABILITY, OR ACCESSIBILITY OF ANY INFORMATION SUPPLIED, OR IN CONNECTION WITH THE REMOTE SERVICE. SELLER DOES NOT WARRANT THAT THE REMOTE SERVICES AND REMOTE SERVICES MATERIALS, WILL BE OPERATIONAL, UNINTERRUPTED, SECURE, ERROR-FREE, OR VIRUS-FREE. BUYER ACKNOWLEDGES AND AGREES THAT USE OF THE REMOTE SERVICES MATERIALS, AND SELLER'S USE OF BUYER'S SYSTEMS, IF APPLICABLE, IS AT BUYER'S SOLE RISK AND BUYER RECOGNIZES THAT SELLER DOES NOT WARRANT AGAINST INTERFERENCE WITH BUYER'S ENJOYMENT AND USE OF GOODS, THAT ERRORS WILL BE CORRECTED, OR THAT THE FUNCTIONS CONTAINED REMOTE SERVICES MATERIALS WILL MEET BUYER'S REQUIREMENTS. SELLER DOES NOT GIVE ANY WARRANTY THAT ALL GOODS MALFUNCTIONS, DAMAGES AND DEFECTS SHALL BE DIAGNOSED AND/OR REPAIRED PURSUANT TO THE REMOTE SERVICES.

Seller does not represent or warrant that the Goods or Services will comply with any standards or requirements of legislation, regulations or guidelines for the regulation or protection of occupational environment, health or safety, which have been or may be enacted or promulgated in any jurisdiction and Seller EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR ANY FAILURE TO COMPLY WITH ANY SUCH LEGISLATION, REGULATIONS OR GUIDELINES UNLESS SEPARATELY AGREED TO BY SELLER IN WRITING.

#### 19. SAFETY.

Buyer will (a) employ and maintain any safety guards, controls, warning signs and other safety devices and features for use with the Goods; (b) provide all warnings and instructions, which may reasonably be required for the safety of persons according to the location and use of the Goods by the Buyer; and (c) operate and maintain the Goods in accordance with good lock-out/tag-out practices and all requirements under applicable law. Buyer will not alter or misuse the Goods in any manner which may constitute a danger to persons.

#### 20. INDEMNIFICATION.

Buyer shall release, indemnify, defend and hold harmless Seller, its affiliates, and their officers, directors, members, managers, employees, agents, successors and assigns from and against all losses, damages, liabilities, deficiencies, claims, actions, judgments,

settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification under this Agreement, whether third party or direct, regardless of whether or not such claim, damage, loss or expense is caused in part by negligence or other act of Seller, arising out of or relating to: (a) Buyer's negligence or willful misconduct; (b) any Buyer Items, including but not limited to any third party claim of infringement of Intellectual Property Rights arising out of or related to the Buyer Items; (c) Buyer's breach of this Agreement, including but not limited to its obligations under Section 19 above; (d) personal injury, death or damage to property arising out of the condition of Buyer's premises; (e) the design, construction, formulation or composition of any product manufactured or handled by the Goods; and (f) Buyer's violation of applicable law. Seller agrees to give the Buyer prompt notice of any such action, claim or demand and may, at the option of Seller offer to the Buyer the defense of the claim. Buyer may not enter into any settlement without Seller's prior written consent.

#### **21. LIMITATION OF LIABILITY.**

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, BUYER WAIVES ANY CLAIM AGAINST SELLER FOR ITS OWN LOST PROFITS OR LOSSES DUE TO BUSINESS INTERRUPTIONS, OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SPECIAL DAMAGES, HOWEVER THE SAME MAY BE CAUSED, REGARDLESS OF THE FAULT, NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE OR OTHERWISE), PRE-EXISTING DEFECT OR STRICT LIABILITY OF SELLER, DIRECTLY OR INDIRECTLY ARISING OUT OF ANY GOODS OR SERVICES PROVIDED BY SELLER UNDER THIS AGREEMENT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND EXCEPT FOR WARRANTY CLAIMS UNDER SECTION 18, BUYER AGREES THAT SELLER'S ENTIRE LIABILITY, AND BUYER'S EXCLUSIVE REMEDY, IN LAW AND EQUITY OR OTHERWISE, WITH RESPECT TO ANY SERVICES OR GOODS PERFORMED OR PROVIDED BY SELLER UNDER THIS AGREEMENT, IS SOLELY LIMITED TO THE AMOUNTS PAID BY BUYER FOR THE GOODS AND SERVICES TO WHICH THE APPLICABLE CLAIM RELATES.

#### **22. TERMINATION.**

In addition to any other remedies that may be provided under this Agreement or at law or in equity, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with this Agreement; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. In the event of termination of this Agreement for any reason, in addition to all other rights and remedies available to Seller, (i) Buyer shall pay Seller for all Goods provided, Services performed, labor costs incurred, work-in-progress and all materials ordered by Seller to fulfill the Order prior to the effective date of termination, and (ii) Seller may apply any amounts already paid by Buyer to the foregoing.

#### **23. CHOICE OF LAW.**

The rights and obligations of the parties hereunder shall be governed by and construed under the law of the State of Michigan, U.S.A., without regard to its conflicts of law provisions, and the parties hereby agree to submit to the exclusive jurisdiction of the United States District Court for the Eastern District of Michigan or any state courts located in Gladwin County, Michigan for purposes of any litigation involving this Agreement or the Goods or Services sold hereunder. The parties to this Agreement and any of their affiliates, assignees or successors waive the right to a trial by jury on any claim relating to or arising out of this Agreement.

#### **24. ASSIGNMENT.**

This Agreement shall not be assignable by Buyer, except with the prior written consent of the Seller. Any purported assignment in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

#### **25. RELATIONSHIP OF PARTIES.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

#### **26. NO THIRD PARTY BENEFICIARIES.**

This Agreement is solely for the benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

#### **27. SEVERABILITY.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

#### **28. SURVIVAL.**

Provisions of this Agreement which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, Sections 4, 6, 9, 16, 17, 18, 19, 20, 21, 22, 23, 27 and 30.

**29. AMENDMENT AND MODIFICATION.**

This Agreement may only be amended or modified in a writing stating specifically that it amends this Agreement and is signed by an authorized representative of each party.

**30. FORCE MAJEURE.**

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of the Agreement when such failure or delay is caused by the acts or omissions of Buyer or results from acts or circumstances beyond Seller's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, governmental actions, war, terrorist threats, national emergency, insurrection, epidemic, strikes or other labor disputes, or restrains or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or telecommunications breakdown or power outage.

**31. SEVERAL LIABILITY.**

Each Agreement constitutes a separate and independent agreement between Buyer and each Seller. It is hereby agreed and understood among the parties that there is no joint and several liability between or among any Sellers and Buyer, each Seller shall be severally liable to the extent of its respective obligations and liabilities hereunder, the specific party identified as Seller in the applicable Order or Seller Documentation shall be the party responsible for such Agreement, and no Seller shall be deemed a guarantor or surety with respect to the obligations or liabilities of any other Seller. If Buyer has a claim or cause of action against a Seller based on breach or non-performance of this Agreement by a Seller, Buyer's claim or cause of action shall be solely against the Seller which provided the applicable Goods or Services to which the claim or cause of action relates.