



## EBERHARD TERMS & CONDITIONS

The following terms and conditions are included below:

1. Website Terms & Conditions
2. Terms & Conditions of Purchase
3. Terms & Conditions of Sale

### Website Terms & Conditions:

Welcome to the Eberhard Manufacturing Company division of The Eastern Company Internet Website (the "Eberhard Website"). Eberhard Manufacturing Company and its affiliates (collectively, "Eberhard") provide their goods and services to you subject to the following terms and conditions. **By visiting or using the Eberhard Website, including submitting electronic purchase orders, you accept these terms and conditions.** Please read them carefully. If you do not agree with these terms and conditions, you should immediately cease use of the Eberhard Website.

#### 1. PRIVACY NOTICE

**Customer Information.** Eberhard receives and stores any information you leave or enter on the Eberhard Website or give Eberhard in any other way, including, for example, your name, e-mail address, password, computer and connection information, phone number, mailing address, credit card information, purchase and Eberhard Website use history. Eberhard uses such information to respond to your requests, improve customer service, complete sales transactions, communicate with you, manage the Eberhard Website, and tell you about the products and services Eberhard offers. Eberhard will not disclose your information to any third parties other than to conduct the business of Eberhard, including the fulfillment of your order, if ordered directly on this Eberhard Website. Eberhard may disclose your information to third party service providers who may fill orders, deliver packages, send postal mail and e-mail, remove repetitive information from customer lists, analyze data, provide marketing assistance, provide search results and links (including paid listings and links), process credit card payments, and provide customer service. Third party service providers may have access to your information needed to perform their functions, but have agreed not to use it for any other purpose.

**Release of Information.** Eberhard releases account and other personal information when Eberhard believes release is appropriate to comply with the law; enforce or apply these Conditions of Use and other agreements; or protect the rights, property, or safety of Eberhard, our users, or others. This includes exchanging information with other companies and organizations for fraud protection and credit risk reduction.

**Security.** Eberhard uses reasonable safeguards to protect your information received and stored from your use of the Eberhard Website from unauthorized access, use, modification, or disclosure.

#### 2. LICENSE TO USE EBERHARD WEBSITE





**Limited License.** Eberhard grants you a limited license to access and make personal use of this site solely for your review of the goods and services offered by Eberhard, and your possible purchase of goods from Eberhard, and you agree not to download or modify it, or any portion of it. This site or any portion of this site may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without express written consent of Eberhard. You may not use any meta tags or any other "hidden text" utilizing Eberhard's name or trademarks without the express written consent of Eberhard. Any unauthorized use or use inconsistent with these terms shall automatically terminate the permission or license granted by Eberhard herein.

**Intellectual Property.** All content included on the Eberhard Website, such as text, graphics, logos, button icons, images, audio clips, digital downloads, data compilations, and software, is the property of Eberhard or its content suppliers and protected by United States and international copyright laws. The compilation of all content on this site is the exclusive property of Eberhard and protected by U.S. and international copyright laws. In addition, Eberhard, ILC Solutions Secured, World Lock, CCL, Padlock Design and other product and service names, graphics, logos, page headers, button icons, scripts, appearing on the Eberhard Website are trademarks, registered trademarks or trade dress of Eberhard or The Eastern Company in the U.S. and/or other countries. Eberhard trademarks and trade dress may not be used in connection with any product or service that is not Eberhard's, in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits Eberhard. All other trademarks not owned by Eberhard or The Eastern Company that appear on this site are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored by Eberhard. Nothing contained on the Eberhard Website should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of Eberhard's or The Eastern Company's intellectual property displayed on the Eberhard Website without the written permission of Eberhard. You agree that you will not use any robot, spider, scraper or other automated means to access the Eberhard Website for any purpose. Additionally, you agree that you will not: (i) take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure; (ii) copy, reproduce, modify, create derivative works from, distribute, or publicly display any content (except for your Information) from the Eberhard Website without the prior expressed written permission of Eberhard and the appropriate third party, as applicable; (iii) interfere or attempt to interfere with the proper working of the Eberhard Website or any activities conducted on the Eberhard Websites; or bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Eberhard Websites.

### **3. SALES TRANSACTIONS FOR PRODUCTS PURCHASED DIRECTLY FROM THE EBERHARD WEBSITE**

**Account Access.** If you use this site for the direct purchase of goods or services, you are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account or password, including, without limitation, electronic submission of purchase orders (also referred to herein as "Internet Purchase Orders").





**Refusal of Service.** Eberhard reserves the right to refuse service, terminate accounts, remove or edit content, and/or cancel orders in its sole discretion.

**Internet Purchase Orders.** Internet Purchase Orders may generate an automatic confirmation and response e-mail. Any automatic confirmation and response e-mail is subject to correction prior to delivery due to errors, changing market conditions, product discontinuation or unavailability, typographical errors, or any other reason. The Eberhard Website pages are an invitation for you to make us an offer to buy the products and/or services described, and Eberhard's delivery constitutes acceptance of your offer. Eberhard will notify you of any corrections or changes and ask for your approval before Eberhard completes your order. Eberhard will not complete your order until Eberhard has your approval. Eberhard reserves the right to limit sales, including the right to prohibit sales to resellers, even after Eberhard has received and confirmed your order. All Eberhard sales are subject to Eberhard's Terms and Conditions of Sale. Commencement of any work by Eberhard or acceptance of delivery of any goods under your purchase order shall constitute your acceptance of Eberhard's Terms and Conditions of Sale. In the event of a conflict between Eberhard's Terms and Conditions of Sale and the terms in this Section 3 (Sales Transactions) with regard to the sale of products and/or services pursuant to an Internet Purchase Order, the terms in this Section shall govern.

**Pricing.** Prices and specifications are subject to change without notice and are valid only on the day the order is placed. Eberhard Website prices, e-mail offers and other advertisements are subject to correction. Published prices do not include shipping, sales tax and insurance. Proof of purchase and postage may be required for rebates.

**Shipment.** Delivery dates are estimates only and are based on manufacturer inventory and normal shipping conditions (shipping conditions and actual ship dates may vary). Shipping and handling charges will be added to the price of any products and/or services purchased by Internet Purchase Order via the Eberhard Website. Eberhard reserves the right to make partial shipments until a purchase order is shipped complete. Eberhard will notify you if products and/or services have been discontinued and/or are no longer available, and such products and/or services will be cancelled from pending purchase orders with a credit for any paid, but unshipped products and/or services.

**Risk of Loss.** All products and/or services purchased from the Eberhard Website are made pursuant to a shipment contract. This means that the risk of loss and title for such items pass to you upon Eberhard's delivery to the carrier, at Eberhard's shipping point. Eberhard will not be responsible for goods lost in transit. Purchaser is solely responsible for filing claims with the carrier for losses. Claims for shortages in shipment not chargeable to the carrier must be reported within ten (10) days from receipt of merchandise.

**Eberhard Products and Services.** Eberhard reserves the right to modify and/or discontinue products and/or services, at any time, and at Eberhard's sole discretion.

**Return Policy.** If you are not satisfied with your purchase and you return products within thirty (30) days of receipt, you may exchange the product or receive a refund or credit, according to this Return Policy, provided the returned products are in the same condition as the date shipped ("as new" condition), and





returned in the original box and packaging, along with a copy of the Internet Purchase Order, shipping documents, proof of delivery, and any warranty cards. No Eberhard product or part can be returned for credit unless written authorization has been given in advance. Merchandise returned must be identified as to the original date of purchase, purchase order number, and shipper's name and address. Service and handling charge is 15% of net billing price, except in the case of defective parts. Any freight paid by Illinois Lock will be deducted from the amount of credit issued, except in the case of defective parts. Merchandise returned in unsaleable condition will not be acceptable. The return of obsolete, discontinued, modified or special parts is not permissible. Eberhard reserves the right to charge for all work completed or materials purchased when an order is canceled or reduced prior to shipment, where special or modified parts are involved. Eberhard reserves the right to assess an additional cancellation charge, other than the normal 15% handling charge, in the event the quantity canceled is in excess of our normal stock requirements. Prices are subject to change in the event purchaser receives original order quantity.

**Limited Warranty.** Eberhard strives to produce quality products at reasonable prices. If you are not satisfied with our product because of a defect, we will repair or replace the defective part or parts free of charge for a period of one year from the date of purchase. In the event you claim that the product contains a defect, simply notify Eberhard of the defect, and we will arrange for repair or replacement. The sole and exclusive remedy against Eberhard relating in any way to a product defect shall be the repair or replacement of defective parts as provided for under this LIMITED WARRANTY. No other remedy, including, but not limited to, incidental or consequential loss, is available. This LIMITED WARRANTY shall not be deemed to have failed of its essential purpose so long as Eberhard is willing and able to repair or replace defective parts in the manner prescribed in this LIMITED WARRANTY. Any action for breach relating to the sale of an Eberhard product must be commenced within one year after the cause of action has accrued. This LIMITED WARRANTY IS IN LIEU OF ANY OTHER WARRANTY, EXPRESS OR IMPLIED, AND ALL SUCH WARRANTIES ARE EXCLUDED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

#### **4. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

**DISCLAIMER.** THIS SITE IS PROVIDED BY EBERHARD "AS IS" AND "AS AVAILABLE" BASIS. EBERHARD MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THIS SITE OR THE INFORMATION, CONTENT, MATERIALS, OR PRODUCTS INCLUDED ON THIS SITE. YOU EXPRESSLY AGREE THAT YOUR USE OF THIS SITE IS AT YOUR SOLE RISK. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, EBERHARD DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EBERHARD DOES NOT WARRANT THAT THIS SITE, ITS SERVERS, OR E-MAIL SENT FROM EBERHARD ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. EBERHARD WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THIS SITE, INCLUDING, BUT NOT LIMITED TO DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES. FOR PRODUCTS PURCHASED DIRECTLY ON THIS SITE, EBERHARD'S LIABILITY, IF ANY, IS EXPRESSLY LIMITED TO THE PURCHASE PRICE OF ANY PRODUCT PURCHASED BY ELECTRONIC PURCHASE ORDER SUBMITTED PURSUANT TO THIS EBERHARD WEBSITE.





**Website Links.** In the event any website is linked to the Eberhard Website, such linked website is not under the control of Eberhard and Eberhard is not responsible for the content of any linked website or any link contained in a linked website, or any changes or updates to such websites. Eberhard may provide links to you only as a convenience, and the inclusion of any link does not imply endorsement by Eberhard of the website. Descriptions of, or references to, products, publications or sites not owned by Eberhard do not imply endorsement of that product, publication or linked website. Eberhard has not reviewed all material linked to the Eberhard Website and is not responsible for the content of any such material. Your linking to any other sites is at your own risk.

**Indemnity.** You will indemnify and hold us (and our officers, directors, agents, subsidiaries, joint ventures and employees), harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your breach of this Agreement, or your violation of any law or the rights of a third party.

## **5. MISCELLANEOUS**

**Applicable Law.** By visiting the Eberhard Website, you agree that the laws of the State of Illinois, without regard to principles of conflict of laws, will govern these Conditions of Use and any dispute of any sort that might arise between you and Eberhard. Notwithstanding the foregoing, the Eberhard Website may be viewed internationally and may contain references to products or services not available in all countries. References to a particular product or service do not imply that Eberhard intends to make such products or services available in such countries.

**Contact Information.** Toll free number (USA and Canada): 800-733-3907.

**Force Majeure.** Eberhard's failure to perform any term or condition of these Conditions of Use as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, pandemics, acts of God, embargoes or governmental restrictions, accidents, power failures, sabotage, riots, lack of transportation, or damage or destruction of any network facilities or servers, shall not be deemed a breach of these Conditions of Use.

**Dispute Resolution.** Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. If either party commences litigation concerning any provision of the Agreement or if the parties agree to alternative dispute resolution, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney's fees in such litigation or mutually agreed upon alternative dispute resolution, provided if each party prevails in part, such fees will be allocated in the manner as the court or mediator determines to be equitable in view of the relative merits and amounts of the parties' claims.

**Terms & Conditions of Purchase:**





**1. Acceptance.** Eberhard Manufacturing Company division of the Eastern Company ("Eberhard"), or an affiliate (the "Affiliate") identified on the purchase order ("Order"), is the Buyer and is herein referred to as ("Eberhard"), and the company selling products ("Products") or services ("Services") to Eberhard is referred to as ("Seller"). These terms and conditions of purchase ("Terms"), any Eberhard purchase order ("Order") and all documents incorporated by specific reference herein ("Eberhard Documents," together with these Terms, the "Agreement"), constitute the complete terms governing the purchase of Products and Services. EBERHARD HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY SELLER, WHETHER CONTAINED IN ANY FORMS OR ON SELLER'S WEBSITE, AND ANY SUCH ADDITIONAL OR DIFFERENT TERMS WILL BE OF NO EFFECT. No site usage agreement or any other click through agreement on a website will have any binding effect whether or not Eberhard clicks on an "ok," "I accept," or any similar acknowledgment. Delivery of a purchase order acknowledgment by Seller, commencement of any work by Seller or Seller's shipment of the Products will manifest Seller's assent to the Agreement. Additional or different terms may be specified in the body of an Eberhard Document or agreed to in writing by the parties. In the event of a conflict, the following order of precedence will apply: (a) terms agreed to in writing and executed by an authorized representative of Eberhard; (b) Eberhard Document terms; (c) these Terms.

**2. Affiliates.** Eberhard shall have no liability for purchases by its Affiliates, nor will Eberhard be regarded as a guarantor under the Agreement. Seller waives any right to assert liens, claims or security interests against Eberhard or any other Affiliate for the obligations of another Affiliate. However, for the purposes of calculating volume discounts or rebates, if any, purchases made by Affiliates will count towards Eberhard's aggregate purchases.

**3. Invoicing.** Pricing and Payment Terms. All prices are firm and shall not be subject to change. Prices are complete and no additional charges may be added without Eberhard's written consent. Such charges include all labor, supervision, materials, overhead and other costs associated with the manufacture, sale and delivery of the Products and Services, including all excise, value added, sales and use taxes. Eberhard shall pay for all Products purchased hereunder within 60 days after receipt of an undisputed invoice, or as otherwise agreed to by the parties. All invoices for the Products must reference the Order number, amendment or release number, Buyer's part number, Seller's part number where applicable, quantity of pieces in the shipment, number of cartons or containers in the shipment, bill of lading number, and other information required by Buyer. If Seller breaches any provision of the Agreement, or if any person or entity asserts a claim or lien against Eberhard relating to Seller's breach, Eberhard may withhold from any payments due or to become due to Seller an amount sufficient to protect Eberhard from all claims, losses, damages and expenses. Seller warrants that the prices charged for the Products or Services or similar products or services are the lowest prices charged by Seller to any other customer under similar conditions. If Seller charges any other customer a lower price for such similar products or services, Seller must notify Eberhard and apply that price to the Products and Services ordered hereunder.

**4. Forecasts and Product Shortages.** Any forecast provided by Eberhard is non-binding and not a commitment by Eberhard to purchase such quantities of the Products. Seller shall promptly notify







Eberhard of any Product shortages or any pending disputes or litigation which may jeopardize Seller's ability to perform under the Agreement.

**5. Cancellation or Modification.** Eberhard may cancel any Order, in whole or in part, by providing Seller written or electronic notice of cancellation: (a) with respect to Products that have not been custom designed to Eberhard's proprietary specifications, at any time prior to Seller's shipment of such Products without further obligation or liability to Seller; or (b) with respect to Services, at any time prior to completion and Eberhard will only be liable either (i) for the Services actually performed up to the date of termination or (ii) if payment of fees is dependent upon delivery of deliverables, for the conforming deliverables actually delivered up to the date of termination. Eberhard may make changes in specifications, materials, packaging, method of transportation and time and place of delivery at any time by notifying Seller. Seller must give Eberhard prompt notice if the changes affect the price or delivery schedule. If Eberhard proceeds with the changes, the parties will negotiate an adjustment to the price or delivery schedule consistent with the Agreement. Seller will make no changes to the Product, including the specifications, design, materials, manufacturing location, or processes, without Eberhard's prior written consent.

**6. Delivery.** Incoterms 2010 will apply to all shipments except those entirely in the USA. Unless otherwise indicated on the Order, all Products shall be delivered FCA Eberhard's designated delivery point (Incoterms 2010). Seller shall use the carrier designated by Buyer and ship and mark the packaging in accordance with the carrier's or Buyer's instructions. Title and risk of loss for the Products shall transfer to Buyer upon delivery and acceptance of the Products at the named place of delivery in accordance with the applicable Order. If, in order to comply with Eberhard's required delivery date, it becomes necessary for Seller to ship by a more expensive way than specified in an Order, any increased transportation costs shall be paid for by Seller, unless the necessity for such rerouting or expedited handling was caused solely by Eberhard. If delivery of Products is not or will not be completed by the date indicated on the Order, Eberhard may cancel the Order by notice effective when received by Seller, purchase substitute Products elsewhere, and charge Seller for any loss incurred. 100% on-time delivery is required. If Seller fails to deliver the Products by the delivery date, the purchase price will be reduced by an amount equal to 1% of the original price for each business day that the failure continues. Eberhard is not obligated to accept early deliveries, late deliveries, partial deliveries or excess deliveries.

**7. Packaging; Marking; Shipping.** Seller will: (a) properly pack, mark, and ship Supplies according to the requirements of Buyer, the involved carriers and the country of destination; (b) route the shipments according to Buyer's instructions; (c) label or tag each package according to Buyer's instructions; (d) provide papers with each shipment showing the Order number, amendment or release number, Buyer's part number, Seller's part number (where applicable), number of pieces in the shipment, number of containers in the shipment, Seller's name and number, and the bill of lading number; and (e) promptly forward the original bill of lading or other shipment receipt for each shipment according to Buyer's instructions and carrier requirements. Seller will provide all special handling instructions that are





needed to advise carriers, Buyer, and their employees how to take appropriate measures while handling, transporting, processing, using or disposing of the Supplies, containers, and packing.

**8. Inspection / Non-Conforming Shipments.** Payment for Products delivered hereunder or acceptance of delivery will not constitute acceptance by Eberhard of such Products. Eberhard may inspect 100% or a sample of Products, at Eberhard's option, and may reject all or any portion of a shipment if Eberhard determines a Product to be defective or nonconforming. Products rejected and Products supplied in excess of quantities called for under an Order may be returned to Seller at Seller's expense. Eberhard will not be required to make any payment for such Products.

**9. Warranty.** Seller warrants that all Products shall: (a) conform to all Eberhard specifications; (b) conform to any sample or model; (c) be free from defects in design, workmanship and materials; (d) be new and free from liens or encumbrances; (e) be adequately packaged, marked, and labeled in accordance with Eberhard's requirements and all applicable laws; (f) be merchantable and fit for the intended purpose, and (g) not infringe on the Intellectual Property (as defined below) of any third party. Inspection, testing, acceptance or use of the Products will not affect Seller's obligations under this warranty. Seller's warranty will run to Eberhard, its successors, assigns and customers and users of the Products. With respect to Services, Seller warrants that (a) it will perform Services in a timely, competent and professional manner and in accordance with industry standards; (b) its employees and agents providing Services will have the proper skill, training and background so as to be able to perform the Services in a competent and professional manner, and where applicable, shall be certified, licensed or otherwise authorized as necessary to perform the Services; (c) the Services and any deliverables shall conform to any applicable specifications or statement of work.

**10. Remedies.** If the Products do not comply with the Product warranty (such Products referred to as "Nonconforming Products"), Seller shall, at Eberhard's sole discretion, promptly repair or replace any Nonconforming Products free of charge, or grant Eberhard a credit or full refund in an amount equal to the purchase price of the Products. Seller is responsible for all costs incurred by Eberhard in connection with the nonconformity, including costs associated with the unpacking, sorting, examining, repacking and reshipping. Seller shall pay for all recall costs arising out of or in connection with the Nonconforming Products. If Seller is unable to remedy such nonconformity within Eberhard's required time frame, Eberhard may take steps to remedy the nonconformity, and in such case, Seller shall reimburse Eberhard for any costs incurred by Eberhard.

**11. Limitation of Liability.** EBERHARD SHALL NOT BE LIABLE, AND SELLER WAIVES ALL CLAIMS AGAINST EBERHARD, FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, DOWN TIME, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON EBERHARD'S NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY IN TORT AND/OR ANY OTHER CAUSE OF ACTION. EBERHARD'S LIABILITY IN CONNECTION WITH THE AGREEMENT OR THE PURCHASE OF PRODUCTS OR SERVICES SHALL NOT EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES FOR WHICH THE CLAIM IS MADE.

**12. Ownership of Intellectual Property.** All rights to and in any and all intellectual property existing prior to the date of the Order and embodied in the Products designed and/or manufactured by Seller are the







sole and exclusive property of Seller, including but not limited to patent rights, trademarks and service marks, copyright rights and trade secrets ("Intellectual Property"), except with respect to the specifications and all other materials and information provided to Seller by Eberhard which shall remain the exclusive property of Eberhard. Seller acknowledges that Eberhard and The Eastern Company own all rights in Eberhard's names, trademarks and service marks and agrees that Seller has no right and will not use such names or marks in any manner. Seller hereby grants to Eberhard all right, title and interest

in and to any and all Intellectual Property and other materials, ideas, inventions, methods, processes, data, databases and other information created, produced or composed by Seller or any of Seller's representatives, suppliers, or affiliates specifically for Eberhard in the course of or pursuant to the performance of work under the Order and any similar previous oral or written agreements with Eberhard. Seller agrees that such materials are "works made for hire" under applicable copyright laws ("Work Product"), and as such, Eberhard is considered the author of such works. To the extent any such works are not considered "works made for hire," Seller hereby waives any rights under the U.S. Copyright Act, 17 U.S.C. § 101, et seq., to terminate this transfer, as well as any moral rights that may exist in the work, including but not limited to the right of attribution and the right of integrity. Eberhard grants to Seller the right to use the Intellectual Property and the Work Product solely for the purposes of performing under the Order.

**13. Confidential Information.** All information furnished or made available by Eberhard to Seller in connection with the Products or Services shall be held in confidence by Seller. Seller will not use (directly or indirectly), or disclose to others, such information without Eberhard's prior written consent. These obligations will not apply to any information that: (a) at the time of disclosure was or thereafter becomes generally available to the public by publication or otherwise through no breach by Seller of any obligation herein; (b) Seller can show by written records was in Seller's possession prior to disclosure by Eberhard; or (c) is legally made available to Seller by or through a third party having no direct or indirect confidentiality obligation to Eberhard with respect to such information. Seller agrees that it will not make use of, either directly or indirectly, any of the Confidential Information that it receives or has received from Eberhard, other than for the purpose for which the Confidential Information has been disclosed.

**14. No Publicity.** Seller will not advertise, publish or disclose to third parties (other than to Seller's professional advisors on a need-to-know basis) in any manner the fact that Seller has contracted to furnish Buyer the Products covered by the Order or the terms of the Order, or use any trademarks or trade names of Buyer in any press release, advertising or promotional materials, without first obtaining Buyer's written consent.

**15. Indemnification.** Seller agrees to defend and indemnify Eberhard, its suppliers, customers, users, and licensors, and each of their affiliates, employees, shareholders, officers, directors and agents ("Indemnified Parties"), from and against any and all loss, liability, demand, claim, damage, injury, loss of profits or expense (including attorneys' fees) arising out of or relating to: (a) any breach of Seller's representations, warranties or obligations; (b) any act or omission by Seller, its officers, employees or





agents (including Seller's subcontractors and their employees and agents); (c) any claim of infringement or misappropriation of any third-party intellectual or proprietary right, including claims for royalties or license fees, in connection with the purchase, use or sale of the Products; and (d) death or any bodily injury, damage to property or any other damage or loss resulting or claimed to result in whole or in part from the Products. Each Indemnified Party may, at its option, be represented by its own counsel in any action, the expenses of which shall be borne by Seller.

**16. Insurance.** Seller will maintain, at its own expense, the following insurance policies: (a) Commercial General Liability in an amount of not less than \$5,000,000 each occurrence and in the aggregate for bodily injury and property damage and \$5,000,000 any one person or organization for personal and advertising injury for premises operation, products/completed operations, blanket contractual liability, and broad form property damage; (b) Workers' Compensation in full compliance with the laws of any applicable state and/or country, at not less than statutory limits; (c) Commercial Automobile Liability for owned, hired and non-owned motor vehicles in an amount not less than \$5,000,000 combined single limit; and (d) Employer's Liability and Occupational Disease in an amount of not less than \$5,000,000 each accident for bodily injury and \$5,000,000 each employee and in the aggregate for disease. The limits of coverage required may be satisfied by a combination of primary and excess or umbrella insurance policies. Except for Workers' Compensation, Seller shall include Eberhard and its affiliates as an Additional Insured on all required insurance policies described above. Upon Eberhard's request, Seller shall provide Eberhard a certificate of insurance evidencing such coverage and requiring no less than 30 days' advance notice to Eberhard before any cancellation of such coverage

**17. Spare Parts and Special Tooling.** Seller will maintain the capability to supply and provide technical support for spare parts for a period of seven years after the delivery of the Products or for such longer period as may be required by law. Seller will give Eberhard a last time buy option at the end of such seven year period, and shall offer any follow on products that are compatible with the Products. Seller will notify Eberhard 90 days in advance prior to Seller's withdrawal of any Product(s). Eberhard may provide patterns, dies, fixtures, molds, jigs or other tools or directly or indirectly pay for tools for use in making Products ("Special Tooling"). Unless approved in writing by Eberhard, Seller shall not (i) remove or relocate any Special Tooling, make any changes to Special Tooling; (ii) use the Special Tooling for any other products or any other customer other than for those Products provided to Eberhard under this Order; (iii) make any changes to Special Tooling; or (iv) reverse engineer any Special Tooling. Seller shall use all Special Tooling solely for manufacturing Products as specified by Eberhard in writing. Special Tooling shall remain Eberhard's property, be segregated from Seller's property, and be individually marked as Eberhard's property. Seller shall maintain Special Tooling in good condition and repair or replace it at Seller's cost if lost, damaged, destroyed, or otherwise rendered unfit for use. Upon Eberhard's request, Seller shall transfer possession of the Special Tooling to Eberhard free and clear of liens and encumbrances and at the time and place designated by Eberhard.

**18. Consignment.** Buyer may notify Seller that it wishes to have Products sold to a location on a consignment basis (a "Consignment Location"). Buyer will deliver to each Consignment Location the quantity and type of Products ordered by Buyer ("Consignment Products"). Buyer will notify Seller monthly of its use of the Consignment Products, and Seller may bill Eberhard for such use of the





Consignment Products. Title to Consignment Products passes to Buyer only after Buyer uses the Consignment Products. Buyer may, at any time upon written notice to Seller, terminate further purchases of Consignment Products for any Consignment Location and Buyer may purchase some or all of the remaining Consignment Products. Any Consignment Products not purchased by Buyer will be returned to Seller at Seller's cost and risk of loss. All other provisions of the Agreement apply to Consignment Products, except to the extent this section conflicts with any other provision of the Agreement.

**19. Software.** In the event the Products include or incorporate Software developed, owned or licensed by Seller ("Software"), Seller hereby authorizes Eberhard to sell, resell and or license the Software to Eberhard's customers. Use of the Software by Eberhard's end user customers shall be subject to Seller's End User License Agreement, if applicable (the "EULA"). In the event Seller's end user customer reasonably objects to any provisions of the EULA, Seller shall cooperate in good faith with Eberhard in making commercially reasonable modifications to the EULA. In the event of a conflict between these Terms and the EULA, these Terms shall govern.

**20. Compliance.** Seller agrees to comply with all federal, state, local and foreign rules, regulations, ordinances and laws applicable to Seller's obligations hereunder and Seller's manufacture and sale of the Products and Services, including import/export laws, labor laws, and anti-corruption laws. Seller also agrees to comply with all applicable environmental, health and safety laws, and laws against slavery, human trafficking and child labor.

**21. Conflict Minerals.** Upon request of Eberhard, Seller shall determine whether any Products contain tin, tantalum, tungsten, gold or any other material that is designated under applicable rules of the Securities and Exchange Commission ("SEC") as a "conflict mineral." If no Product contains one or more conflict minerals that are necessary to the functionality or production of such Product within the meaning of applicable SEC rules and interpretations, Seller shall, upon request, certify to Eberhard that none of the Products contains such conflict minerals. If any Product contains one or more such conflict minerals, Seller shall certify to Eberhard the country of origin of any such conflict mineral or that the conflict mineral came from recycled or scrap sources within the meaning of those terms under applicable SEC rules. If Seller is unable to identify the country of origin, and the conflict mineral(s) in question did not come from recycled or scrap sources, Seller shall in good faith conduct an inquiry of its relevant suppliers as to the country of origin of such conflict minerals, and such inquiry shall comply with then-existing standards under SEC rules for the conduct of a reasonable country of origin inquiry. In the event that Seller is or becomes aware that any conflict minerals that are necessary to the functionality or production of any Products originated from a "covered country" within the meaning of the SEC's conflict minerals rules and did not come from recycled or scrap sources, Seller shall make a good faith effort to determine whether such conflict minerals came from a processing facility certified as conflict free by a recognized industry group that requires an independent private sector audit of the smelter or from an individual processing facility that has obtained an independent private sector audit that is publically available, and to provide written documentation of such determination. Seller shall also





take such additional actions and provide such additional information requested by Eberhard as may be necessary in order for Eberhard to be or remain compliant with applicable laws, rules and regulations relating to conflict minerals.

**22. Customs.** The Seller shall make available to the Eberhard and any party designated by Eberhard any and all documents and data necessary to effect customs clearance, including the importer security filing and shall provide any assistance deemed necessary by Eberhard.

**23. Quality Requirements.** Seller will conform to the quality control standards and inspection system that are established or directed by Eberhard. Seller will also participate in supplier quality and development programs of Buyer or as directed by Eberhard. Upon Eberhard's request, Seller will participate in and comply with all Supplier Manuals and supplier performance evaluations. Seller acknowledges Eberhard's reliance upon Seller's expertise. In the event that any of Eberhard's specifications or other requirements may result in any negative impact to the Product, Seller shall immediately notify Eberhard in writing of all ramifications of such direction. Any reviews, audits, inspections, acceptance quality levels, approved vendor lists, bill of materials, or approvals by Eberhard will not relieve Seller of its obligations.

**24. Audit.** Seller shall maintain complete and accurate records, books of account, reports and other data necessary for the proper administration of the Agreement on a generally recognized accounting basis. Such materials shall include any rebate programs and any other special pricing program extended to Seller. Eberhard may audit and inspect Seller's books and records. If any audit or inspection reveals an error or irregularity in the computation of prices or any other costs, an appropriate adjustment shall be made by Seller. Further, if such audit or inspection demonstrates that an error or irregularity occurred and caused the prices to be computed in Seller's favor, then Seller shall pay all costs and expenses incurred by Eberhard with respect to such audit or inspection. Seller shall, at Eberhard's request, permit Eberhard or a third party designated by Eberhard to have reasonable access to designated areas within its facilities directly relating to the production and packaging of the Products for the purpose of performing production and quality audits. Eberhard shall conduct any such audit only during Seller's normal working hours.

**25. Relationship of the Parties.** Nothing in the Agreement or the course of dealing of the parties may be construed to constitute the parties hereto as partners, joint venturers or as agents for one another or as authorizing either party to obligate the other in any manner.

**26. Force Majeure.** If the performance by either party or any obligation under the Agreement is prevented, restricted or interfered with by any act of God, fire or other casualty, embargo, war or violence, riot or act of terrorism, pandemic, accident, sabotage, strike, flood, or any law, order, proclamation, ordinance, demand or requirement of any governmental agency or similar event beyond such party's reasonable control (each, an "Event of Force Majeure"), such party shall promptly give the other party written notice of the Event of Force Majeure. Delays caused by labor disputes, changes in cost or availability of raw materials or components based on market conditions, or scheduled downtime for maintenance shall not constitute an Event of Force Majeure. No later than 48 hours after the occurrence, Seller will provide written notice describing such delay and assurance of when the delay will





be cured. During the delay, Eberhard may at its option: (a) cancel any Orders and purchase Products or Services from third parties without liability; (b) to the extent available, require Seller to deliver all finished goods, work in process, tooling, and parts and materials produced or acquired for work under the Order; or (c) have Seller provide Products or Services from other sources and at the price set forth in the Order.

**27. Assignment; Binding Effect.** No assignment of any rights or interest or delegation of any obligation of Seller under the Agreement may be made without the prior written consent of Eberhard. Any attempted assignment will be void. Buyer may assign the Agreement or otherwise transfer its rights and/or obligations under the Agreement. The Agreement will inure to the benefit of and be binding upon each of the parties hereto and their respective permitted successors and assigns.

**28. Remedies and Waiver.** Except as specifically set forth herein, all rights and remedies under the Agreement are cumulative, and the exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided by the Agreement, by law or in equity. If Eberhard fails to insist upon strict compliance with the Agreement, Eberhard's actions will not constitute a waiver of Seller's default or any other existing or future default, or affect Eberhard's legal remedies.

**29. Bankruptcy.** If either party becomes insolvent, is unable to pay its debts when due, files for or is the subject of involuntary bankruptcy, has a receiver appointed or has its assets assigned, the other party may cancel any unfulfilled obligations hereunder without liability for such cancellation.

**30. Dispute Resolution.** Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. If either party commences litigation concerning any provision of the Agreement or if the parties agree to alternative dispute resolution, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney's fees in such litigation or mutually agreed upon alternative dispute resolution, provided if each party prevails in part, such fees will be allocated in the manner as the court or mediator determines to be equitable in view of the relative merits and amounts of the parties' claims.

**31. Survival.** Any provisions in the Terms which, by their nature, extend beyond the termination or expiration of any sale of Products or Services, will remain in effect until fulfilled.

**32. Severability.** If any provision herein is held to be unlawful or unenforceable, the remaining provisions herein will remain in effect.

**33. Integration and Modification.** The Agreement constitutes the entire agreement between Eberhard and Seller with respect to the Products and Services, and supersedes any prior agreements,





understandings, representations and quotations with respect thereto. No modification hereof will be of any effect unless in writing and signed by the party to be bound thereby.

#### **Terms & Conditions of Sale:**

**1. Acceptance.** The following terms and conditions of sale are applicable to all Quotations from Eberhard Manufacturing Company division of The Eastern Company and its affiliates ("Seller") and to all Purchase Orders from Seller's customers ("Purchasers") and are the only terms and conditions applicable to the sale of Seller's products or services, except those relating solely to prices, quantities, delivery schedules, terms of payment, invoicing, shipping instructions, the description and specifications of the products, and similar matters set forth in Purchaser's Purchase Orders, provided that such Purchase Orders are accepted by Seller and that such terms are not inconsistent with the terms and conditions set forth herein or in Seller's Quotations. **SELLER HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY PURCHASER, WHETHER OR NOT CONTAINED IN ANY OF PURCHASER'S BUSINESS FORMS, AND SUCH ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS SHALL BE VOID AND OF NO EFFECT UNLESS SPECIFICALLY AGREED TO BY SELLER IN WRITING.** Purchaser's acceptance of products or services ("Products or Services") called for in said Purchase Order shall constitute its acceptance of the following terms and conditions of sale (this "Agreement"). Any changes to this Agreement must be in writing and signed by Seller.

**2. Inspection; Non-Conforming Shipments.** The inspection rights granted to Purchaser under this paragraph will not affect or alter the payment terms or the timing of Purchaser's payment obligations, Seller grants Purchaser the right to inspect goods for a period of fifteen (15) business days after delivery ("Inspection Period"). Purchaser must notify Seller of any goods that do not conform to the terms applicable to their sale within the Inspection Period, and afford Seller a reasonable opportunity to inspect such goods and cure any nonconformity. If Purchaser fails to provide Seller with notice of nonconformity within the Inspection Period, Purchaser shall be deemed to have accepted the goods. Purchaser will have no right to return any goods without Seller's prior written authorization. Any return authorized by Seller must be made in accordance with Seller's return policies then in effect as noted in the Eberhard Website Conditions of Use and must be accompanied by a Return Goods Authorization ("RGA") from Seller. Purchaser will be responsible for all costs and expenses associated with any authorized returns of goods and will bear the risk of loss or damage of such goods. Seller, in its sole discretion, may reject any return of goods not approved by Seller in accordance with this paragraph or otherwise not returned in accordance with Seller's then-current return policies.

**3. Quotations.** Written Quotations are valid for 30 days from the date of the Quotation unless otherwise notified. All Quotations by Seller are subject to change or withdrawal without prior notice to Purchaser unless otherwise specifically stated in the Quotation. Quotations are made subject to approval by Seller of Purchaser's credit. No purchase order for the sale of Products or Services covered by Seller's Quotation shall be binding on Seller unless and until approved and accepted in writing by







Seller by the issuance of an Order Acknowledgement form or upon the shipment of products or commencement of services by Seller.

**4. WARRANTY. RETURN OF PRODUCTS TO SELLER WILL NOT BE ACCEPTED WITHOUT PRIOR WRITTEN AUTHORIZATION. SELLER WARRANTS ONLY THAT THE PRODUCTS OR SERVICES SOLD HEREUNDER (A) WILL CONFORM TO THE DESCRIPTION, IF ANY, ON THE FACE HEREOF, (B) WILL BE CONVEYED FREE AND CLEAR OF ANY LIEN, SECURITY INTEREST OR ENCUMBRANCE CREATED BY SELLER OR ANY PARTY CLAIMING BY, THROUGH OR UNDER SELLER AND (C) WILL BE FREE FROM SUBSTANTIAL DEFECTS IN MATERIAL AND WORKMANSHIP UNDER NORMAL USE GIVEN PROPER INSTALLATION AND MAINTENANCE FOR A PERIOD OF SIX MONTHS FROM THE DATE OF SHIPMENT. ANY CLAIM ON ACCOUNT OF DEFECTIVE PRODUCTS OR SERVICES FOR ANY OTHER CAUSE WHATSOEVER SHALL CONCLUSIVELY BE DEEMED WAIVED BY PURCHASER UNLESS WRITTEN NOTICE THEREOF IS GIVEN TO SELLER PROMPTLY AFTER ANY PRODUCTS OR ANY SERVICES ARE PROVIDED HEREUNDER. SELLER SHALL HAVE THE RIGHT EITHER TO REPLACE OR REPAIR ANY DEFECTIVE PRODUCTS, TO REFUND THE PURCHASE PRICE UPON RETURN OF THE PRODUCTS OR TO GRANT A REASONABLE ALLOWANCE ON ACCOUNT OF SUCH**

**DEFECTS, AND SELLER'S LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR DEFECTIVE PRODUCTS SHALL BE LIMITED SOLELY TO REPLACEMENT, REPAIR, REFUND OR ALLOWANCE AS SELLER MAY ELECT. SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INVESTIGATE ALL CLAIMS AND NO PRODUCTS SHALL BE RETURNED TO SELLER UNTIL AFTER INSPECTION AND APPROVAL BY SELLER AND RECEIPT BY PURCHASER OF A RGA.**

**5. DISCLAIMER OF FURTHER WARRANTIES. EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE) WITH RESPECT TO ITS PRODUCTS OR SERVICES.**

**6. LIMITATION OF LIABILITY AND REMEDIES. SELLER SHALL NOT BE LIABLE, AND PURCHASER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR COMMERCIAL LOSSES, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE OR BREACH OF WARRANTY OR STRICT LIABILITY IN TORT OR ANY OTHER CAUSE OF ACTION, EVEN IF SELLER MAY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL SELLER'S LIABILITY UNDER OR IN CONNECTION WITH THE SALE OF PRODUCTS BY SELLER EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE. SELLER WILL NOT BE LIABLE TO PURCHASER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE.**

**7. Prices.** Prices are in U.S. Dollars and are subject to change without notice. All orders are accepted subject to Seller's price in effect at time of shipment.

**8. Title/Risk of Loss/Delivery.** All Products shall be shipped F.O.B. Seller's plant and shall become the property of Purchaser upon delivery to the carrier. Purchaser shall assume all risk and liability for loss, damage, or destruction after delivery to the carrier. Unless mutually agreed upon, shipping dates are





approximate and are based upon prompt receipt of all necessary information. Seller reserves the right to ship items in a single or in multiple shipments.

**9. Force Majeure.** Seller shall not be liable for failure to perform or delay in performance or delivery of any Products or Services due to (a) fires, floods, pandemics, war, acts of God, embargoes, power failures, damage to network facilities, strikes, or other labor disputes, accidents, acts of sabotage, riots, acts of or precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the control of Seller. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Products or Services among itself and its customers in such manner as Seller, in its judgment, deems fair and equitable.

**10. Cancellation.** Upon acceptance by Seller of Purchaser's Purchase Order, such Purchase Order cannot be cancelled, terminated or modified by Purchaser in whole or in part except with Seller's consent in writing and then only upon terms and conditions to be agreed upon which shall include protection of Seller against all losses. Purchaser shall indemnify Seller for any costs incurred, including material and labor costs, in connection with any Purchase Order that Purchaser desired to cancel, terminate or modify, plus pay a cancellation charge of 30% of the initial quoted charge.

**11. Tooling/Molds/Dies.** Unless otherwise agreed in a writing signed by Seller, all material, equipment, facilities, and special tooling, (which term includes but is not limited to tools, jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, and manufacturing aids and replacements thereof), used in the manufacture of the Products covered by any Purchase Order shall remain the property of Seller. Any material, tooling, or equipment furnished to Seller by Purchaser shall be and remain the personal property of Purchaser with the title to and right of possession remaining in Purchaser.

**12. Taxes.** Purchaser shall pay to Seller, in addition to the purchase price, the amount of all fees, duties, licenses, tariffs, and all sales, use, privilege, occupation, excise, or other taxes, federal, state, local, or foreign, which Seller is required to pay or collect in connection with the Products or Services sold to Purchaser.

**13. Quantities.** Unless otherwise agreed in writing, any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Purchaser's order and the stated price per item will continue to apply.

**14. Waiver.** No failure of Seller to insist upon strict compliance by Purchaser with the terms and conditions of this Agreement or to exercise any right accruing from any default of Purchaser shall impair Seller's rights in case Purchaser's default continues or in case of any subsequent default by Purchaser. Waiver by Seller of any breach by Purchaser of this Agreement shall not be construed as a waiver of any other existing or future breach.





**15. Credit Approval.** All shipments to be made hereunder shall at all times be subject to the approval of Seller's credit department. Seller may invoice Purchaser and recover for each shipment made pursuant to this Agreement as a separate transaction without regard to any other shipment. If Purchaser is in default under this Agreement or any other order or agreement with Seller, or if, in Seller's sole judgment, the financial responsibility of Purchaser is or becomes unsatisfactory, then Seller may, at its option and without prejudice to any of its other remedies, (a) defer or decline to make any shipments hereunder except upon receipt of satisfactory security or cash payments in advance, or (b) terminate all Purchase Orders of Purchaser.

**16. Litigation Costs.** If any litigation or arbitration is commenced between Seller and Purchaser concerning any provision of this Agreement or related Purchase Order, the party prevailing in the litigation or arbitration is entitled, in addition to such other relief that is granted, to a reasonable sum as and for their attorneys' fees in such litigation or arbitration, provided that if each party prevails in part, such fees shall be allocated in such manner as the court or arbitrator shall determine to be equitable in view of the relative merits and amounts of the parties' claims.

**17. Assignment and Delegation.** No assignment of any right or interest or delegation of any obligation or duty of Purchaser under this Agreement may be made without the prior written consent of Seller. Any attempted assignment or delegation will be wholly void and totally ineffective for all purposes.

**18. Integration Clause.** This Agreement constitutes the entire contract of sale and purchase between Seller and Purchaser with respect to the products covered by this Agreement and supersedes any prior agreements, understandings, representations, purchase orders and Quotations with respect thereto. No modification hereof shall be of any force or effect unless in writing and signed by the party claiming to be bound thereby.

**19. Ownership of Intellectual Property.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, software, code, data and other information or intellectual property disclosed to Purchaser by Seller or incorporated into the goods associated with the Quotation, and all rights therein (collectively, "Proprietary or Confidential Information") will remain the property of Seller and will be kept confidential by Purchaser in accordance with these terms and conditions. Purchaser shall have no claim to, nor ownership interest in, any Proprietary or Confidential Information and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written request from Seller. Purchaser acknowledges that no license or rights of any sort are granted to Purchaser hereunder in respect of any Proprietary or Confidential Information.

**20. Infringement and Indemnification.** (a) Except as set forth below, Seller agrees to defend, indemnify and hold the Purchaser harmless against any claims, costs, damages, liability and expenses resulting from actual or alleged patent, trademark, or copyright infringement, misappropriation of confidential information, or violation of any other intellectual property right, domestic or foreign, that may arise from the sale or use of any item or Product that is owned by Seller and that pertains to the subject matter of this Quotation (provided that the item or Product is not modified in any way by the Purchaser or any other party, and that the item or Product is used in the manner intended by Seller). If a suit or





claim results in any injunction or any other order that would prevent Seller from supplying any part, software or product falling under this Quotation, or if the result of such a suit or claim would, in the reasonable opinion of Seller's counsel, otherwise cause Seller to be unable to supply such parts or products, Seller shall have the right, at its option, if it so chooses, to do one or more of the following: (i) secure an appropriate license to permit Seller to continue supplying said parts or products to Purchaser; (ii) modify the appropriate part, software or product so that it becomes non-infringing, provided that any modification does not cause any material change to the operation or performance of the part or product; or (iii) replace the appropriate part, software or product with a non-infringing but practically equivalent part or product. (b) Purchaser agrees to defend, indemnify and hold Seller harmless against any claims, costs, damages, liability and expenses resulting from actual or alleged patent, trademark, or copyright infringement, misappropriation of confidential information, or violation of any other intellectual property right, domestic or foreign, that may arise from the making, using or selling of any part, software or product or using any process that is owned by the Purchaser or is designed or specified by the Purchaser and that pertains to the subject matter of this Quotation. (c) If any claim is made by a third party on the basis of which indemnification may be sought under this paragraph, the party entitled to indemnification (the "Indemnified Party") shall give written notice of such claim to the party liable for such indemnification (the "Indemnifying Party") promptly after the Indemnified Party has actual notice of such claim. The Indemnifying Party shall have the right to defend and/or settle such claim at its expense, provided that it does so diligently and in good faith. The Indemnified Party shall cooperate with such defense and/or settlement and shall have the right to participate in (but not to control) such defense and/or settlement at its expense. No settlement shall be entered into unless the Indemnified Party shall be released from all liability for such claim.

**21. Construction.** All sales, agreements for sale, offers to sell, proposals, acknowledgments and contracts of sale, including, but not limited to, purchase orders accepted by Seller shall be considered a contract under the laws of the State of Illinois, USA, and the rights and duties of all persons, and the construction and effect of all provisions hereof, shall be governed by and construed according to the laws of the State of Illinois, USA.

**22. Inspection/Damage.** If any product should arrive at Purchaser's destination in a damaged condition or should a shortage exist, the damage or shortage shall be immediately called to the attention of the delivering carrier and Seller and in case of damaged products, a joint inspection of the loaded vehicle by representatives of the carrier and Seller shall be arranged. Any loss occasioned by damage in transit will be for Purchaser's account and claims for such loss shall be made solely against the carrier.

**23. Terms of Payment.** Unless otherwise expressly agreed to by Seller in writing, terms of payment are net 30 days from the date of Seller's invoice. No discount shall be allowed on transportation charges. Purchaser agrees to pay interest on overdue invoices at the rate of 1½% per month, but not higher than the highest rate permitted by law. All invoices are due and payable in United States dollars at Seller's address specified on the invoice.

**24. Technical Data.** All physical properties, statements and recommendations are either based on tests Seller believes to be reliable based on its experience, but they are not guaranteed.





**25. Product Use.** User is responsible for determining whether any Product is fit for a particular purpose and suitable for user's method of application. Accordingly, and due to the nature and manner of use of Seller's products, Seller is not responsible for the results or consequences of use, misuse or application of its products by anyone.

**26. Inventory.** Except as provided in Section 9 and 13 hereof, Seller will neither accept return of product, or packing material, nor be responsible for their destruction.

**27. Cumulative Remedies.** The remedies herein reserved by Seller shall be cumulative and in addition to any other legal remedies available to Seller, at law or in equity.

**28. Limitation of Actions.** Notwithstanding any contrary statute of limitations, any cause of action for any alleged breach of this Agreement or related purchase order by Seller shall be barred unless commenced by Purchaser within one (1) year from the accrual of such cause of action.

**29. Jurisdiction and Venue.** Any dispute arising out of or related to the Agreement will be governed by and construed according to the laws of the State of Illinois and litigated exclusively in a state or federal court located in Cook County, Illinois. The parties hereto expressly release and waive any and all rights to a jury trial and consent to have any dispute heard solely by a court of competent jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement. If either party commences litigation concerning any provision of the Agreement or if the parties agree to alternative dispute resolution, the prevailing party is entitled, in addition to the relief granted, to a reasonable sum for their attorney's fees in such litigation or mutually agreed upon alternative dispute resolution, provided if each party prevails in part, such fees will be allocated in the manner as the court or mediator determines to be equitable in view of the relative merits and amounts of the parties' claims.

**30. Severability.** If any provision of this Agreement shall be held to be unlawful or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

