

ELEKTRA USA, INC.  
TERMS AND CONDITIONS OF SALE

**NOTICE:** ALL TRANSACTIONS BETWEEN ELEKTRA USA, INC., A NORTH CAROLINA CORPORATION (“**SELLER**”) AND BUYER (“**BUYER**”), AND ALL DOCUMENTS PERTAINING TO SUCH TRANSACTIONS, ARE SUBJECT TO AND CONDITIONED UPON THESE TERMS AND CONDITIONS OF SALE (“**TERMS**”), AND THESE TERMS ARE INCORPORATED BY REFERENCE INTO AND ARE A PART OF ALL TRANSACTIONS BETWEEN SELLER AND BUYER. NO TERM CONTAINED IN ANY BUYER CORRESPONDENCE OR ANY SALES DOCUMENTS ISSUED BY BUYER, OTHER THAN BUYER'S ACCEPTANCE OF THESE TERMS, SHALL BECOME A PART OF A TRANSACTION BETWEEN THE PARTIES OR BIND SELLER.

1. Order Process; Acceptance; Additional or Conflicting Terms.
  - (a) “**Sales Documents**” include any quotation, proposal, statement of work, service request, order acceptance, and invoice issued in writing (including via email or electronically) by an authorized representative of Seller. Buyer’s purchase of Products (defined below) from Seller, and any Services (defined below) Seller provides, will be governed solely by these Terms and any applicable Sales Documents issued by Seller in connection with such Products and Services (collectively, the “**Contract**”). In no event will Buyer’s terms in any purchase order, service request, commercial document, website, communication or otherwise apply to, nor will Buyer’s proposed additional or different terms modify, a Contract unless Seller expressly accepts Buyer’s specific terms in writing by including such specific terms in the Contract. **Seller hereby objects to and rejects any additional or different terms or conditions proposed by Buyer or contained in any purchase order, statement of work, service request, commercial document, Buyer’s website or other correspondence from Buyer, regardless of any knowledge Seller may have of such terms, and such terms will not bind Seller or be applicable to the transaction (even if Buyer’s purchase order is referenced in the Sales Documents).** If any of these Terms conflict with the Sales Documents, the specific terms in the applicable Sales Documents will prevail over these Terms to the extent of such conflict. The applicable terms of any revised or later Sales Document will control over such terms in a prior, similar Sales Document. No other terms or changes, modifications, amendments or waivers of any terms in a Contract will apply to Seller unless in writing and signed by an authorized representative of Seller.
  - (b) All sales of products and any other goods sold by Seller (individually, “**Product**” and collectively, the “**Products**”) and services performed by Seller (“**Services**”) are subject to final written acceptance in North Carolina by Seller, and no orders are binding on Seller until so accepted. All sales of Products and Services are contracts entered into in North Carolina and then only in accordance with the Sales Documents. Seller will sell Products and provide Services to Buyer in the quantities and at the times set forth in the Sales Documents. Buyer may order Products by submitting written purchase orders via email to the email address set forth in the Sales Documents that reference Product(s), quantity per Product, and requested delivery date. Buyer may request Services by submitting a written statement of work/service request via email to the email address set forth in the Sales Documents, describing the Services and referencing a performance date.
  - (c) Any purchase order submitted by Buyer must clearly state the following: (i) identification/customer reference; (ii) Product quantity desired; (iii) part number or Product ID; (iv) Price (as referenced in Seller’s Sales Documents, but subject to confirmation by Seller); (v) method of payment; (vi) desired date of delivery; (vii) purchase order number; and (viii) Buyer’s delivery address (collectively, a “**Buyer’s Order**”). Seller will transmit an email to Buyer to confirm Seller’s registration and acceptance of Buyer’s Order, which will confirm the delivery date, price, payment conditions and quantities of Buyer’s Order (the “**Order Confirmation**”). It is

Buyer's responsibility to confirm the accuracy of all the Order Confirmation's terms, and Buyer has one business day after receipt of Order Confirmation to alert Seller of any divergence from Buyer's Order's specifications, or the Terms. Following this period, all Order Confirmation terms are considered final. Should Buyer not receive an Order Confirmation from Seller within one business day of Buyer's Order submission, Buyer should contact Seller to confirm any errors in Buyer's Order.

- (d) Buyer may not cancel or change a Contract except with the prior written consent of Seller. In such event, Buyer shall pay any cancellation or modification charges and all costs incurred by Seller in connection with the cancellation or modification, as applicable. No cancellations or changes will be considered if received by Seller within three business days of a Buyer's Order's shipment date. Seller shall have the right to make any changes to the Products or Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the nature or quality of the Products or Services. Seller may change a Sales Document at any time to correct mathematical or clerical errors.

2. Price; Payment.

- (a) All prices for Products and Services will be as stated in writing by Seller in its Sales Documents and, prior to Seller's written acceptance of a purchase order, prices are subject to change by Seller at any time without notice. If no price has been stated in the Sales Documents, the price will be Seller's standard price in its catalogs or price lists in effect at the time of delivery or performance, as the case may be, and as increased to account for costs of changes or modifications to the Products or Services for the particular Contract. Unless expressly stated otherwise in the Sales Documents, all prices must be in writing and are in U.S. dollars. Unless expressly stated otherwise in the Sales Documents, Buyer will also reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of Services.
- (b) Unless expressly stated otherwise in the Sales Documents, prices for Products shall assume delivery is made EXW (Ex-Works Incoterms 2020) Seller's facility stated in the Sales Documents, excluding standard packing, handling, shipping, transportation or other in-transit costs. Additionally, if Seller arranges shipping for Buyer, Seller shall have no obligation to pass along all or any discounts or rebates it may receive from any handler, broker, shipping carrier, third party transportation provider, or similar vendor.
- (c) The prices do not include any sales, use, revenue, personal property, excise, privilege, transfer or other taxes or governmental charges, nor any tariffs, duties or assessment, arising out of or related to Products, Services or their respective purchase and sale which may be imposed by any governmental authority, all of which will be the obligation of, and paid by, Buyer. If Seller pays any such tax, duty or assessment, or shipping and handling fee, Buyer will reimburse Seller in accordance with the terms of **Section 2(e)** below. Buyer is responsible for obtaining and providing to Seller any certificate of exemption or similar document required to exempt any sale from sales, use or similar tax liability.
- (d) The prices of Products are based on the approximate delivery times and schedules stated in the Sales Documents. In the event that, between the date of the purchase order on the Sales Documents and the date of delivery of the Products, there is an increase in cost to manufacture and/or deliver the Products for any reason, then, unless expressly stated otherwise in Seller's Sales Documents, Buyer agrees that the amount of such increase shall be added to the price of the Products or Seller may cancel the Contract. Further, should there be changes adverse to Seller in currency fluctuations with the country in which Products are manufactured, import duties or transportation costs affecting the Products or price between the date of a Contract and

the date of delivery of the Products, Seller may adjust the price to be paid by Buyer for Products and may add the amount by which currency rates, duties and transportation costs change.

- (e) Unless expressly stated otherwise in the Sales Documents, payment terms are “net 15” after Seller’s invoice date. Invoices received by Buyer shall be considered complete and correct unless Buyer objects within five (5) days after its receipt of the invoice. Buyer will pay all amounts due in full, and without deduction or setoff regardless of any dispute that may arise between Buyer and Seller, net without discount for shipping or other transfer, regardless of any dispute or controversy that may arise. Any required down payment or other prepayment is nonrefundable, but will be applied to the purchase price. Buyer shall make all payments under a Contract by wire transfer or such other payment method as Seller may state from time to time and in U.S. dollars. Following any payment, Buyer shall immediately send an email confirming the payment to the email address set forth in the Sales Documents. Buyer is responsible for all foreign exchange, wire transfer and other bank fees. The date of payment will be the date Seller receives payment in full. If at any time, in its sole discretion, Seller has any doubt or concern as to Buyer’s financial standing, solvency, creditworthiness or ability to perform its obligations, Seller may decline to make shipments, discontinue performance of Services, and terminate a Contract (in whole or in part), except upon receipt of a deposit or other satisfactory security or advance payment shipment; Seller may also, as applicable: (i) demand pre-payment for all Products and/or Services; and (ii) demand immediate payment of all outstanding (and not-yet-due) invoices. Buyer shall not withhold, offset or recoup any amounts it owes to Seller under a transaction, Contract, or otherwise against any other amount Buyer claims Seller owes to it, regardless of any dispute that may arise between the parties. Seller may, in its sole discretion, apply payments by Buyer to the oldest invoice first and in the following order: accrued costs, accrued interest, price for Products.
- (f) If Buyer fails to make any payments as and when due or otherwise defaults, then: (i) interest will accrue from the date the payment was due until payment is received in full at the lower of one and one-half percent (1.5%) per month or the maximum amount allowed by applicable law; and (ii) Seller may take any or all of the following actions: (1) suspend performance under the applicable Contract or any other Contract with Buyer; (2) terminate the applicable Contract for default or any other Contract with Buyer; (3) require Buyer to pay the full Contract price and any interest, fees, taxes, or assessments and other charges immediately; and (4) take any other actions or pursue any other rights or remedies. To the extent allowed by applicable law, Buyer will further reimburse Seller for all costs incurred in collecting any late payments or overdue amounts, including attorneys’ fees and expenses. Failure by Seller to charge interest on late payments or to exercise its other rights and remedies will not be construed as a waiver of any other legal or equitable remedies.

3. Delivery.

- (a) Unless expressly stated otherwise in Seller’s Sales Documents, all deliveries of Products are EXW (Ex-Works Incoterms 2020) at Seller’s facility stated in the Sales Documents, or such other location as designated by Seller in the Sales Documents (“**Delivery Point**”). Any Services shall be performed at the location set forth on the Sales Documents issued by Seller. Unless expressly stated otherwise in Seller’s Sales Documents, Buyer will take delivery of Products when Products have been made available at or delivered to the Delivery Point. Delivery shall be deemed to have been completed at the time Seller delivers the Products to the Delivery Point, unless Buyer acquires physical or constructive possession of the Products, wherein such Products shall be considered delivered as of the time Buyer acquires physical or constructive possession (“**Delivery Date**”). Unless expressly stated otherwise in Seller’s Sales Documents, all risk of loss of Products shall pass to Buyer when Seller delivers the Products EXW (Ex-Works Incoterms 2020) at the Delivery Point stated in the Sales Documents. Delivery and

performance are conditional on the timely receipt by Seller of documents necessary for the completion of the purchase order and any required down payments or periodic payments.

- (b) Unless expressly stated otherwise in Seller's Sales Documents, the prices do not include any transportation, insurance, installation, training setup, storage or packaging costs and Buyer is responsible for all such costs. Seller may make partial or early deliveries. Notwithstanding any requested delivery dates by Buyer, the delivery date in the Order Confirmation will control. The ultimate delivery date and time in transit is solely dependent on Buyer's location and Seller will not be liable for any delay or failure to deliver all or any part of any purchase order for any reason. Buyer may request expedited delivery, although Seller makes no guarantees as to the availability of Products or a delivery date. Seller reserves the right to charge any costs associated with expedited delivery to Buyer, should Seller accept any expedited delivery requests in writing. Seller shall not be liable for any delay in the delivery of Products or performance of Services caused in whole or part by a supplier, contractor or agent of Seller; by a Force Majeure event; or by Buyer or its affiliates, suppliers, contractors or agents, including requests for modifications to any Contract, or Buyer's failure to provide Seller with adequate delivery instructions, or any other instructions that are relevant to the design, production or delivery of Products or performance of Services. Seller will not be responsible for any damage to Products caused by a carrier and Buyer's sole recourse for such damage will be against the carrier.
- (c) If Buyer does not take delivery of the Products at the Delivery Point, Seller may, at its sole discretion, store the Products at Buyer's sole risk of loss until Buyer picks the Products up, and Buyer shall be liable for all related costs and expenses (including storage and insurance). All Product deliveries from Seller to Buyer are subject to and conditioned on Seller's receipt of Products or materials from its suppliers. Should the fulfilment of the Contract be delayed or become impossible due to the delay or failure of Seller's supplier(s), Buyer shall not be entitled to a claim against Seller for damages or for any other reasons.

#### 4. Acceptance.

(a) Buyer shall inspect all Products and Services immediately upon their delivery or performance, and prior to use or resale. Immediately and no later than ten (10) days after delivery of a Product or completion of a Service, Buyer must give written notice to Seller of any claim Buyer makes based upon any alleged shortage, defect or discrepancy of Products sold or Services provided, based upon the condition, grade, patent defects in or quantity of Products, and such notice must indicate the basis of the claim in detail, state the invoice number, invoice date, and information, such as a serial number, on the Product itself or the Product label or packaging. Buyer's failure to comply within the time specified in this **Section 4** constitutes Buyer's irrevocable acceptance of Products delivered or Services provided and will bind Buyer to pay to Seller the full price of such Products or Services.

(b) Products sold will not be returned without Seller's prior written consent and then only DDP (Incoterms 2020) Seller's facility as specified in the Sales Documents, plus a restocking fee equal to 15% of the Contract price of the Products returned and in accordance with Seller's then current return policies (for example, Buyer may be required to include the original packaging slip). Buyer shall pre-pay any other transportation charges for any authorized returns of Products.

(c) Buyer shall follow any instructions, recommendations and limitations that Seller gives with respect to setup, operation, maintenance, repair and servicing of Products. Buyer assumes all risk of injury to persons and property arising out of or related to its failure to follow instructions, recommendations and limitations of Seller and all resulting problems with the operation of the Products. If Seller has agreed in a written statement of work to provide assistance to Buyer in connection with Buyer's use of Products or for other related Services, then all terms of the statement of work will apply.

5. **Limited Warranty.**
- (a) Subject to the provisions in these Terms and in the Sales Documents, Seller warrants that: (i) when Products are delivered to Buyer, Products will materially comply with Seller's corresponding technical data sheet for such Products, if any, as of the date of the Sales Documents and that the Products are free from any defects in workmanship and materials, and (ii) when Services are performed, Services will have been performed in a workmanlike manner in accordance with generally recognized industry standards in the United States for similar services. The warranties provided in this **Section 5** are hereinafter referred to collectively as the "**Limited Warranty**." Unless expressly stated otherwise in the Sales Documents, the Limited Warranty shall expire twelve (12) months after the Delivery Date of a Product or one (1) month after Seller has performed Services (each, a "**Warranty Period**"). The Limited Warranty regarding Services is limited to coverage of those Services then rendered and does not extend to any serviced, underlying or otherwise associated with any Products. The Limited Warranty is conditioned upon Buyer following the claims process outlined in **Section 7** below, which Seller may change from time to time. This Limited Warranty extends to Buyer only, and not to any resale customer of Buyer or end consumer, and is non-transferable. In the event of a Product resale by Buyer, Buyer is solely responsible for any and all warranties and other claims resulting from Products and for any representations or warranties made by Buyer to its customers and any end-customers. Buyer will not refer to Seller or the Limited Warranty in any manner in connection with its resale of Products. Buyer is solely responsible for proper selection of Services and Products as well as for their intended use, application and processing, and Buyer has tested Products or otherwise determined their suitability for Buyer's intended use. As such, Buyer should not rely on Seller to ensure that the Services performed or Products purchased will meet any standards or specifications.
- (b) Any depictions, statements, claims, advertising, technical advice, trials, projections, diagrams, samples, drawings, illustrations, and other descriptions or other information from Seller or its affiliates, applicable to Products, Services, or a Contract, whether included in catalogs, datasheets or otherwise, are descriptions or approximations only, and do not constitute any specifications, representations, warranties, or guarantees, implicitly or explicitly.
- (c) No employee, dealer, distributor, sales representative, or any other person or entity is authorized to offer any different or additional warranties or remedies, or to change the Limited Warranty, without the signature of an authorized officer of Seller. No descriptions, representations and other information or claims made by an employee, dealer, distributor, sales representative, or any other person or entity affiliated with Seller are binding on Seller.
- (d) EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY PROVIDED IN THIS **SECTION 5**, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, STATUTORY OR OTHERWISE, REGARDING OR RELATING TO PRODUCTS, SERVICES OR ANY CONTRACT, AND SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS AND IMPLIED, WRITTEN OR ORAL, WITH RESPECT TO PRODUCTS AND SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

6. **Limited Warranty Exclusions.** The Limited Warranty does not cover: (a) accessories or peripherals not manufactured by Seller, which will be subject only to any transferable warranty the manufacturer of such product may issue; (b) damage to Products during or after delivery; (c) damage caused by normal wear and tear; (d) user error, including unsuitable or improper use; (e) use under circumstances or resale for uses exceeding Seller's specifications or limitations or contrary to any instructions or information from Seller; (f) unauthorized use, or unauthorized or improper installation,

repair, modification or alteration; (g) improper storage; (h) defects or failures of Products sold or Services performed arising from, in whole or part, Buyer's instructions, information, design, plans or other non-Seller specifications; (i) faulty or negligent treatment; (j) any warranties or representations given by Buyer on resale of Products or use of Services; (k) repackaging or rebranding; (l) modification or alteration of Products or Services; (m) abuse or accidents; (n) faulty assembly or commissioning by Buyer or third parties related to Buyer; (o) improper maintenance, unauthorized repair or alteration; (p) unsuitable operating equipment or media; (q) chemical, electrochemical or electrical influences; (r) use of unsuitable working material; or (s) damage caused by excessive moisture, temperature outside the operational range, or natural calamities. The Limited Warranty on the Products is subject to marginal, technically unavoidable discrepancies in quality, color, touch, size, weight or design, and do not confer any right of Buyer to make a Warranty Claim. Buyer will be solely responsible for the correct use, application, and circumstances in which Seller's Products are used, modified or applied, alone or in conjunction with other products.

7. **Buyer's Limited Warranty Claims**. Buyer must give Seller detailed written notice of any Products or Services which Buyer alleges do not conform to the Limited Warranty, stating the alleged non-conformities (each, a "**Warranty Claim**"). Any Warranty Claim must be made within ten (10) days after Buyer is aware of the alleged non-conformity and, in any event, within the Warranty Period. The Limited Warranty expires when, and no claims may be made after, the Warranty Period ends. Buyer will follow Seller's then current Warranty Claims process. At Seller's request, Buyer will allow Seller access to the Products to inspect the Products and Services evaluate the alleged non-conformity and, upon request of Seller, will return, at Buyer's expense, any alleged non-conforming Product to a location designated by Seller for Seller to inspect the Products and evaluate the alleged non-conformity. For any Products that Seller determines do not conform to the Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, will be, at Seller's choice, in its sole discretion and within a reasonable time, to repair or replace such non-conforming Product, or to refund the purchase price for such non-conforming Product. For any Services that Seller determines do not conform to the Limited Warranty, Seller's sole liability and obligation, and Buyer's sole and exclusive remedy, will be, at Seller's choice, to correct or repeat such Services, or refund the amount charged by Seller for such Services. Unless otherwise agreed by Seller in writing, Buyer shall pay for any travel and related expenses by Seller's personnel to the installation site. This Limited Warranty does not cover any allegedly defective Products or Services if Seller is not permitted to inspect such Products or Services. In the event Seller determines that any Products or Services are not covered by this Limited Warranty, Buyer shall pay all of Seller's expenses for inspection, handling, repair and replacement.

8. Limitation of Liability.

(a) SELLER'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO A CONTRACT, OR PRODUCTS, OR SERVICES, OR THE USE (OR INABILITY TO USE) ANY PRODUCTS OR SERVICES, WHETHER IN WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE AMOUNT BUYER PAID TO SELLER FOR THE PARTICULAR PRODUCTS OR SERVICES AT ISSUE.

(b) IN NO EVENT WILL SELLER OR SELLER'S AFFILIATES BE RESPONSIBLE FOR ANY LOSS, LIABILITY, INJURY OR DAMAGE ARISING OUT OF OR RELATING TO (I) BUYER'S DETERMINATION AS TO THE SUITABILITY OR FITNESS OF THE PRODUCTS OR SERVICES FOR A PARTICULAR PURPOSE, (II) THE USE OR APPLICATION OF THE PRODUCTS OR SERVICES, ALONE OR IN CONJUNCTION WITH OTHER PRODUCTS OR DEVICES, OR (III) THE NEGLIGENCE OR WILLFUL MISCONDUCT OF BUYER, OR (IV) FROM DEFECTS OR DEFICIENCIES IN BUYER'S OTHER EQUIPMENT.

(c) IN NO EVENT WILL SELLER OR SELLER'S AFFILIATES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, WHETHER ARISING FROM THE SALE OF THE PRODUCTS OR PROVIDING OF

SERVICES, THE INSTALLATION AND/OR SETUP OF ANY PRODUCTS, ANY TRAINING, ANY SERVICES, ANY DEFECT IN THE PRODUCTS OR SERVICES, ANY NON-CONFORMITY WITH WARRANTIES, ANY USE OR INABILITY TO USE THE PRODUCTS, OR OTHERWISE, REGARDLESS OF THE THEORY OF RECOVERY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL SELLER OR SELLER'S AFFILIATES BE LIABLE FOR DAMAGES TO GOODS OR MATERIALS PROCESSED IN OR HANDLED WITH THE PRODUCTS. THESE TERMS CONTAIN BUYER'S SOLE AND EXCLUSIVE REMEDIES RELATING TO THESE TERMS, A BREACH OF THESE TERMS, THE SALES DOCUMENTS, THE PRODUCTS OR THE SERVICES, REGARDLESS OF THE THEORY OF RECOVERY.

9. **Insurance.** Buyer will maintain commercial general liability, personal injury and property damage insurance policies, including wrongful death coverage, for the total price of all Products purchased by Buyer under each Contract, with a nationally recognized insurance company. All such insurance policies will name Seller and its affiliates as additional insureds, and will require at least thirty (30) days prior written notice to Seller of any modification, cancellation or termination of any insurance policies. Buyer will require its insurer(s) to waive all rights of subrogation against Seller, its affiliates and their insurers. Buyer will immediately deliver to Seller a certificate of insurance meeting the requirements listed in this **Section 9**. In addition, upon request by Seller from time to time, Buyer will deliver to Seller a current certificate of insurance and a complete copy of the foregoing insurance policies.

10. **Indemnity.** Buyer agrees to indemnify and hold harmless Seller and its affiliates, and their respective officers, directors, employees and agents, from and against any and all third party claims, actions, suits, damages, liabilities, costs, obligations, and expenses (including attorneys' fees and expenses) arising out of or relating to: (i) Buyer, its employees, agents, or customers' selection, installation, setup, use of, incorporation of, modification of, or application of the Products alone or in conjunction with other products, or Services; (ii) any processing or modification of Products in any manner by Buyer, its employees, agents, or customers; (iii) claims regarding warnings or failure to warn of dangers related to Products; (iv) any violation or failure to comply with applicable laws and regulations, including those pertaining to health and/or safety; (v) any intentional or negligent act, or misrepresentation by Buyer, its employees or agents; (vi) any breach of warranty or misrepresentation (express or implied) made by Buyer, its employees or agents; (vii) any violation, misappropriation, or infringement of any patent, trademark, copyright or other intellectual property rights of any person or entity arising out of or related to compliance with Buyer's design, specifications, drawings, samples, models, or instructions or Buyer's use of a Product with other goods; (viii) use of a Product or Services inconsistent with or exceeding Seller's specifications, limitations or recommendations; (ix) any breach by Buyer of any terms of a Contract; (x) any personal injury or property damage arising out of Buyer's or its personnel's acts or omissions; (xi) unauthorized repair or alteration; or (xii) Buyer's gross negligence or willful misconduct. At Seller's request, Buyer shall also defend Seller and its affiliates, at Buyer's expense, against any such claim made against Seller or its affiliates.

11. **Confidentiality, Intellectual Property; No License.** Buyer may have access to certain proprietary and/or confidential information and to other property (including trademarks) owned or used by Seller and its affiliates, whether in oral, written, electronic or other form or media. Buyer acknowledges and agrees that all such proprietary and/or confidential information and other property will remain the property of Seller and its affiliates and that, upon Seller's request, Buyer shall return or destroy all proprietary and/or confidential information (in any and all forms) and shall return to Seller all such other property of Seller and its affiliates. Buyer shall not, without Seller's prior written consent (which consent may be withdrawn at any time), copy for any purpose or disclose to any third person, entity or organization any aspect of any such proprietary and/or confidential information, and will not use, except internally to perform its obligations under a Contract, any such proprietary and/or confidential information or other property of Seller or its affiliates. All intellectual property rights,

including patents, trademarks, and copyrights arising out of or in connection with the Products and provision of Services, as well as the exclusive right to manufacture the Products, shall be the sole and exclusive property of Seller and its affiliates. Buyer agrees that Seller's sale of Products and provision of Services does not grant to Buyer any license or intellectual property or similar right applicable to or in any Products or Services, or in any information or documents (including estimates, projections, drawings, calculations, recipes or instructions) Seller provides to Buyer, and Buyer waives any and all such rights. Seller and its affiliates retain ownership in and control over all intellectual property, including patents, trademarks, copyrights, know-how, and goodwill applicable to or arising out of a Product or a Service. Buyer shall not name or designate any Seller information or Product or Service in any patent application. Buyer may not alter or remove, and will abide by, any patent, trademark, copyright, trade secret, proprietary or other notices, serial numbers, labels, tags or other identifying marks, symbols or legends contained on or in a Product (including containers or packages). If Buyer acquires any intellectual property or similar rights in or relating to any Products purchased under a Contract (including any rights in any trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, then such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either Seller or Buyer.

12. **Termination or Suspension**. Without limiting Seller's other rights and remedies available under a Contract, applicable law or in equity, Seller may suspend or terminate performance and delivery, if: (a) Buyer fails to perform or observe any of its obligations under a Contract between Seller and Buyer or under other existing or future contracts between Seller and Buyer or otherwise, including payment of any purchase price, fees or charges when due; (b) there is a change in the control or management of Buyer; (c) Buyer ceases to conduct its operation in the normal course of business; (d) Buyer becomes insolvent or files for bankruptcy or has a bankruptcy proceeding filed against it; (e) Buyer fails to pay all amounts due in full to Seller within thirty (30) days of the date of the invoice for a sale of Products; (f) Buyer makes an assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of all or part of Buyer's property; (g) Seller deems Buyer's credit unsatisfactory for any reason; or (h) a Force Majeure Event (as defined below) occurs. Seller may also suspend performance or terminate any Contract, without liability or obligation to Buyer, if Seller reasonably believes that its performance may violate applicable laws, regulations or orders of a governmental authority. In addition to other provisions in these Terms, Seller shall not be in breach unless: (i) such breach is material; and (ii) Buyer gives Seller prior written notice stating in reasonable detail the alleged breach and Seller has failed to cure such breach within the longer of thirty (30) days from such notice to cure or, if such breach cannot be cured within thirty (30) days, such longer time as is reasonably necessary so long as Supplier commences the cure within thirty (30) days after receipt of Buyer's notice.

13. **Compliance with Laws; Policies**. Buyer shall conduct its business in complete compliance with all applicable Federal, State, foreign and/or local laws, orders, regulations, directions, restrictions, and limitations. Buyer shall bear any and all additional responsibilities and costs arising from any such laws, regulations, orders and the like. Buyer shall obtain and maintain at all times during the term of any Contract all required certifications, credentials, registrations, licenses and permits necessary to conduct its business. Buyer will comply with all applicable export or import laws and regulations relating to the Products and information. In the event the Products must be registered in a particular country for Buyer or others to import or use the Products or to resell them to its customers, then Buyer shall notify Seller and Seller will, in its sole discretion, determine if Seller wishes to seek registration of the Products in such location. Buyer will have no right to register the Products in any location. Seller is not responsible for any impact existing or future laws, regulations, orders and the like may have on the Products or Services or the use or inability to use the Products. Seller shall not be bound or required to comply with any code of conduct, sustainability, or other policies of Buyer. Seller shall use commercially reasonable efforts to comply with its own corporate policies, which can be made available to Buyer upon written request, and subject to change from time to time; provided, however, that Seller shall

under no circumstances be liable directly or indirectly to Buyer or to any third party for Seller's failure to comply with its corporate policies.

14. **Force Majeure.** Seller will not be liable or responsible, nor be deemed to have defaulted under or breached a Contract, and its performance (and delivery dates and delivery periods) will be deemed extended for any failure or delay in fulfilling or performing any provision of a Contract, when such failure or delay is caused by or results from acts beyond the reasonable control of Seller, its affiliates, or either Seller's or its affiliates' respective subcontractors or suppliers, including the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake, explosion, epidemic, or pandemic; (c) war, invasion, hostilities (whether war is declared or not), terroristic threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect after the date of the Contract; (f) national or regional emergency; (g) strikes, labor stoppages or labor slowdowns or other industrial disturbances; (h) changes in the law; (i) delays in obtaining or the inability to obtain labor, materials, Products or Services through usual sources at normal prices; and (j) other similar events beyond the reasonable control of Seller or its affiliates, and their respective subcontractors or suppliers.

15. **Limitation on Actions.** Buyer must commence any action or proceeding that arises out of or relates to a Contract, Seller's breach of a Contract, or Products or Services within the earlier of: (a) one (1) year after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose. Any action or proceeding Buyer does not commence within such period will be forever barred and Buyer waives the right to file any action or proceeding arising directly or indirectly from a Contract under any longer statute of limitation. The Contract contains Buyer's sole and exclusive remedies relating to a Contract or Products or Services regardless of the theory of recovery.

16. **Choice of Law; Venue; Jurisdiction.** The transaction and Contract, and any matter, dispute or controversy arising out of or relating to the transaction, Contract or Products or Services will be governed by North Carolina law, excluding its conflicts of law principles, and the provisions of the 1980 United Nations Convention on the International Sale of Goods ("**UNCISG**") are expressly excluded. Buyer and Seller agree that the North Carolina State Courts sitting in Mecklenburg County and the United States District Court for the Western District of North Carolina, shall constitute the sole and exclusive judicial forum(s) and venue and, therefore, will have sole and exclusive jurisdiction over the adjudication and resolution of any and all matters, disputes and controversies arising out of or relating to a transaction, a Contract, or Products or Services; except with respect to Seller's claim or any action instituted by Seller: (a) for equitable or comparable relief including an action for temporary or permanent injunctive relief; (b) for recovery of possession of Products, such as replevin, claim and delivery, attachment or the like; (c) to collect any amounts owed by Buyer; or (d) to join or implead an action in which Buyer is a party.

17. **Relationship.** Seller is an independent contractor. Nothing in a Contract will be construed as creating a partnership, association or joint venture between the parties. Buyer will have no power or authority to enter into any commitment on behalf of or otherwise bind Seller on any matter including making any representation or warranty on behalf of Seller. No employee of either party will be deemed to be an employee of the other party.

18. **Notice.** All notices will be in writing, on original letterhead, signed by Buyer and sent via certified mail, return receipt requested, or by express mail or personal delivery to the address of 2002 Eastwood Road, Wilmington, NC 28403. Facsimile and emails will not be accepted as notices, unless followed up by the original signed notice. The effective date of such notice will be the date Seller receives it. A notice will be deemed effectively given and received: (a) upon personal delivery; (b) if delivered by overnight courier, on the next business day after delivery to the overnight courier service; and (c) if sent by registered or certified mail, three business days after delivery to the U.S. postal

service; provided, however, that any written communication containing such information actually received by a person will constitute notice for all purposes of these Terms.

19. **Miscellaneous.** A Contract contains the entire agreement and understanding of the parties relating to the subject matter and supersedes all previous and contemporaneous agreements, understandings, proposals, negotiations or discussions, usages of trade and courses of dealing, whether written or oral, between the parties. A Contract will be binding on, and will inure to the benefit of, the parties and their respective successors, heirs and permitted assigns. Buyer may not assign (including by operation of law) all or any portion of its rights or obligations under a Contract without Seller's prior written consent, and any purported assignment without that consent will be void and of no effect. No assignment will relieve Buyer of any obligations under a Contract. Any consent, approval or agreement required or allowed by Seller may be given or withheld by Seller in its sole discretion and must be in writing and signed by an authorized representative of Seller to be effective. No delay or failure by Seller to exercise or enforce any of its rights or remedies under a Contract will be construed as a waiver of such rights or remedies. The express waiver of any right or remedy in a particular instance will not constitute a waiver of that right or remedy in any other instance. If any provision of these Terms or any Sales Documents is held to be invalid, illegal or unenforceable by any court of competent jurisdiction, then such provision(s) will be deemed to be severable and these Terms and any Sales Documents will then be construed and enforced in accordance with the remaining provisions. As used herein, the words "including", "include" and "includes" will not be deemed to be limiting. The Contract and these Terms may be amended or modified only by a written agreement, signed by both parties, expressly amending or modifying the Contract or these Terms.

Last revised June 2024.