DIAL TOOL INDUSTRIES, LLC
201 S Church St, Addison, IL 60101
312-278-4700 | www.DialTool.com

GENERAL TERMS AND CONDITIONS OF SALE
EFFECTIVE JANUARY 1, 2025

1. **Application**. These General Terms and Conditions of Sale (Terms) apply to: (a) all proposals and quotations submitted by **Dial Tool Industries, LLC** and its affiliated companies (Seller); (b) all purchase orders received by Seller; and (c) all sales of goods and services sold by Seller. Any services to be provided by Seller, whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included as part of an installation), will be considered ancillary to a sale of goods, and the Uniform Commercial Code, Convention for the International Sale of Goods, or other applicable law will apply to all goods and services to be provided by Seller (Goods).

2. **Formation**. A written quotation issued by Seller is an offer to sell. Buyer will be deemed to have accepted the provisions of these Terms and an agreement will be formed by any of the following: (a) signing and returning to Seller a copy of any quotation; (b) sending to Seller a written acknowledgment of the quotation; (c) placing a purchase order or giving instructions to Seller respecting manufacture, assortment, or delivery of the Goods (including instructions to bill and hold) following receipt of any quotation; (d) failing to cancel a pending purchase order within 10 days after receiving these Terms; (e) accepting delivery of all or any part of the Goods; (f) paying for all or any part of the Goods; or (g) indicating in some other manner Buyer's acceptance of these Terms. All sales by Seller consist only of these Terms and those in other documents which are referred to in these Terms or are attached hereto or in a document provided or signed or issued by Seller and referencing the transaction (all of which constitute the Agreement). Seller objects to all terms proposed by Buyer.

3. **Integration and Modification**.

A. Revocation. The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of Seller's quotation (according to its terms), Seller's actions in reliance on Buyer's oral acceptance of a written or oral quotation, or Buyer's receipt of the Goods, will constitute a binding contract under the terms of the Agreement.

B. Complete Integration. The Agreement is a final, complete and exclusive statement of the Agreement of Buyer and Seller. An order or an amendment submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to or inconsistent with these Terms), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller will be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is given that Seller objects to any such terms or conditions in Buyer's purchase order or other document or communication. Seller will not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions.

C. Modification. SELLER IS WILLING TO NEGOTIATE WRITTEN CHANGES TO THESE TERMS SIGNED BY SELLER, BUT SELLER RESERVES THE RIGHT TO MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS TO COVER SELLER'S ESTIMATED COST OF SUCH CHANGES. No modifications, limitations, waivers

or discharge of the Agreement or any of its terms will bind Seller unless in a writing signed by Seller's authorized employee at its home office. Notwithstanding anything to the contrary in this Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement will affect Buyer's previously accrued liabilities to Seller. Seller may correct unilaterally mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or custom in the trade will not modify or waive any right of Seller.

D. Parties. The Agreement is only for the benefit of Buyer and Seller, except all disclaimers and limitations applicable to Seller will be also for the benefit of Seller's affiliates, agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers also apply.

E. Acknowledgments. Buyer and Seller acknowledge that: (i) they are merchants in respect to the Goods produced by Seller; (ii) they have had an opportunity to review the Agreement; and (iii) the provisions of the Agreement are reasonable when considered as a whole.

4. **Authority of Seller's Agents**. No agent, employee or representative of Seller has authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement. An affirmation, waiver, representation or warranty will not be deemed to be part of the basis of the Agreement and will not be enforceable, unless it is expressly included within the Agreement, it is not a part of the basis of the Agreement.

5. **Prices, Payment, and Risk of Loss**.

A. Prices. Prices contained in individual written quotations or proposals are firm only for a period stated therein and otherwise for 30 days from the date of the quotation, after which they are subject to market increase. After the firm price period, the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. Any pricing based on a package quote is integrated and may only be awarded on an entire-package basis. If Buyer awards individual parts in a package, Seller reserves the right modify pricing. ANY PRICE COMMITMENT FOR MORE THAN ONE YEAR REQUIRES THE WRITTEN APPROVAL OF AN OFFICER OF SELLER AND ANY ACTIONS OTHERWISE INDICATING ACCEPTANCE DO NOT REPRESENT ACCEPTANCE OF A PRICE COMMITMENT FOR ANY LENGTH OF TIME. Prices do not include design or validation costs. Prices do not include taxes and Buyer must pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt from such taxes. All prices are in United States dollars and must be paid in the currency in the quote at the location specified in Seller's invoice. Buyer must pay all government fees levied on the installation and inspection of the Goods, and to reimburse Seller for such payments, Buyer to pay Seller upon receipt of Seller's invoices.

B. Risk of Loss and Title. The Agreement is for a shipment contract and, unless otherwise stated in a writing signed by Seller, the Goods will be delivered EXW Seller's dock or as stated in quote and agreed with Buyer. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier and Buyer is responsible for selecting its preferred freight carriers and is responsible for their performance including but not limited to delays, damage and / or scheduling errors caused by Buyer's freight carrier. Seller's breach of the Agreement will not affect the passing of the risk of loss to Buyer notwithstanding

any provision of law to the contrary. Notwithstanding the transfer of the risk of loss, title to the Goods will remain with Seller until Buyer pays for the Goods in full.

C. Price Adjustments. If any delay in delivery beyond the date of delivery scheduled at the time of entry of the order is requested or otherwise caused by Buyer, Seller will adjust the price under the provisions of this subsection. The current pricing is only valid for 90 days and that at the expiration of each 90-day period following agreement, Seller may unilaterally adjust and condition further supply on a new price, among other reasons, to cover Seller's increased cost of performance due to, among other circumstances: volume fluctuations and increases in the costs of labor, materials, production or transportation and change in specifications or directions or in the law or other conditions beyond Seller's reasonable control after the date of any quotation. Seller reserves the right to increase the purchase prices of the Goods in proportion to any increase in cost to Seller of raw materials from the date of quotation to the date of shipment. If the market price of any applicable raw material materially increases more than 3% in a 30-day period, after shipping stock within that 30-day period at the current price, any remaining stock or new production will be at an increased price to be negotiated at seller's discretion, which must be exercised in good faith and reasonably. Any agreed-upon price reductions: (i) will apply only to the value-add portion of the piece price and will not include the raw material portion of the piece prices; (ii) will not apply to any directed-buy or recommended-buy content, whether subcomponent or raw material; and (iii) may be delayed, at Seller's reasonable discretion, if either outstanding money is owed to Seller, or if actual production volumes are not within at least 80% of volumes estimated in request for quotation package.

D. Seller will retain 100% of all value-added or value-engineering or other savings that are the result of its efforts aimed at cost reduction whether these changes occur before or after the start of production. Seller and Buyer will equally share, 50%/50%, all value-added or value-engineering or other savings that are the result of joint engineering efforts aimed at cost reduction whether these changes occur before or after the start of production. Prices for goods and tooling are valid only for volumes quoted, with the ability to provide additional volume of 15% for short-term surge requirements of not more than 30 days within any 365-day period, and any demand for additional volume beyond 30 days are subject to additional tooling charges or price adjustment. Buyer must provide sufficient notice to Seller in writing before any volume ramp-up of more than 15%, and compensate Seller for any increased costs. During periods of volumes lower than 15% below stated estimates, Seller may dismiss some or all workers and may not be able to timely re-hire and train workers to meet volume ramp-up and will not be responsible for any resulting supply interruptions. To ensure proper safety, repair, and maintenance of equipment, and to protect its costs, Buyer may not require Seller to meet the maximum production volumes for longer than four consecutive weeks. If Seller is expected to produce for longer than such period, Seller may adjust the pricing to address any additional repairs and maintenance required for equipment and tooling or take any other action that is deemed necessary. Lead time for tooling is a minimum of ___ weeks, and Seller will not kick-off tooling until receipt of a purchase order from Buyer accepting the Terms or other tooling agreement. If Buyer pays Seller in lump-sum payment terms for tooling, Seller will not use the tooling for serial production until it has been paid in full. In all cases, tooling will not be released to the Buyer until Seller has been paid in full. Tooling payment will not be delayed if such is caused by Buyer's recommended or directed sub-suppliers.

E. Changes at Buyer's Request. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, treating, coating, plating, material or process capability data, logistics requests including but not

limited to Advanced Shipping Notices if Buyer requires with shipment, and other performance by Seller, required by changes requested by Buyer to the Goods, schedule or any other performance by Seller after the date of any quotation. Seller is not obligated to perform any such changes, but will be compensated for them if Seller complies with such requested changes.

F. Shipping and Packaging. Except as otherwise provided in the Agreement, Seller will not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of the Agreement. Use of expedited freight, if required, requires Seller's agreement and the most economical freight will be used. If such charges are specifically included in the price, any increase in rates for such services becoming effective after the date the price is quoted to Buyer will be added to the price. All Goods will be packed for shipment by Seller in accordance with its standard practices. Buyer will provide all returnable containers. Expendable packaging will be quoted separately, if required, and subject to review and adjustment every six months according to market conditions. It is Buyer's responsibility whether or not Seller arranges shipping to determine whether additional packaging procedures and materials are appropriate for the shipment of Goods. Buyer will pay Seller for the additional procedures and materials. Buyer will pay Seller for additional handling charges for small, expedited or other shipments outside Seller's normal and ordinary course of business. As an example only, requests for drop shipments must be in writing and an additional charge will apply.

G. Invoices and No Debits Without Consent. Invoices may be rendered separately for each shipment (including any early shipment) made by Seller. Buyer must pay all invoices net 30 days after the date of shipment. Seller may change any payment term in the Agreement to Buyer on seven days' written notice. Buyer may not debit, offset, or chargeback any amount payable to Seller without Seller's written consent.

H. Installments. Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale, and Buyer must pay timely the price for each installment which is delivered. Any Goods indicated as back-ordered now or in the future will be considered an installment delivery. A failure to pay for an installment within the time for payment is a material anticipatory breach of other installments by Buyer.

I. Terms. Unless Seller expressly agrees in a signed writing: i) payment terms for all Goods produced for Buyer must be 30 days from date of shipment ii) payment terms for all engineering changes and Buyer's Property, including but not limited to fixtures, gauges, tooling and related property will be 100% upon shipment of first sample.

J. Payment Demand and Acceleration. If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may demand immediate payment in full or a documentary letter of credit approved by a U.S. bank acceptable to Seller or other financial security for such payment or other obligations. In addition, all amounts owed by Buyer to Seller will be accelerated and payable immediately if Buyer fails to make any payment on time and as otherwise required or if Buyer sells or transfers the line of business for which the Goods are purchased or is a participant in a merger or other reorganization

K. Export/Import Fees. All export and import permits and licenses and the payment of all export and import tariffs, duties, and customs fees will be the responsibility of Buyer.

L. Carrying Charge. All amounts not paid to Seller when due will incur a carrying charge of 1.5% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.

M. Buyer's Cooperation. All amounts due on installation or other event which requires the action or cooperation of Buyer which Buyer fails to supply timely will become due upon such failure.

N. Letters of Credit. If the Agreement permits or requires the use of a letter of credit, the letter of credit must be a documentary letter of credit assignable, irrevocable, confirmed by a United States bank with a payment office in California acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading. Buyer will pay all costs related to the letter of credit.

O. Right of Offset. Seller may offset or recoup any amounts owed by Seller or an affiliate of Seller to Buyer or an affiliate of Buyer against any amounts owed by Buyer or an affiliate of Buyer to Seller or an affiliate of Seller. Buyer waives any right of offset or recoupment and will pay all amounts owed to Seller when due regardless of any claim of Buyer regarding warranties or other issues arising under contract, tort, statute or otherwise. Payment of such amounts under written protest will not constitute a waiver by Buyer of its claims.

P. Allocation of Payments. Seller may allocate payments from Buyer among outstanding invoices in Seller's discretion.

Q. Exchange Rate. Goods ordered under the Agreement which are procured by Seller from sources outside the United States are predicated on the rate of exchange in force at the time of the quotation (or Order if there is no quotation). If the rate of exchange between the United States dollar and the currency of the country from which the Goods are procured by Seller varies between the date of the quotation (or Order if there is no quotation) and delivery of the Goods, the price of the Goods will be increased or decreased accordingly to compensate Seller for such variation in the rate of exchange.

R. Retention. If retention of any portion of the price is permitted under the Agreement, it will be paid upon the earlier of written acceptance of the Goods and 30 days from substantial completion of Seller's obligations.

S. Samples. Samples of Goods and sample test reports will be provided by Seller only upon Seller's consent and at prices established by Seller or written agreement with Buyer.

T. Raw material and Energy. Buyer will place raw material on its resale program, if applicable. For all other raw material, Buyer and Seller will agree on an equitable raw material adjustment mechanism. If no index is agreed upon, Seller may adjust pricing if raw material prices increase to account for market changes. Index prices will be separate from an equitable surcharge amount based on market conditions. Buyer and Seller will agree on an equitable energy adjustment mechanism. If no index is agreed upon, Seller may adjust pricing if energy increase to account for market changes.

6. **Manufacturing**. Seller may elect to provide Goods for supply under this Agreement or to procure such goods from third-party subcontractors or suppliers, and those

sources may include countries outside the country of manufacture. To the extent that any requirements imposed by a governmental authority may limit or preclude the acceptance of products manufactured or sourced outside the United States (or from particular countries) or impose additional duties or other cost on products from such country of manufacture, Seller will have the option to shift the source of manufacture or supply to claim a *Force Majeure* and terminate the Agreement without liability to Seller.

7. **Delivery and Releases**

A. Shipping Dates. Shipping dates are estimates based on Seller's present engineering and capacity and scheduling, may be dependent on lead times for outside contractors and second operations, and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping dates are approximate and will be computed from the date of entry of the order on Seller's books. Timely delivery is dependent on Buyer providing Seller with the minimum lead time quoted by Seller and Seller's prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment and other conditions as specified in the Agreement, and of all drawings, information, and approvals convenient or necessary to provide the Goods and/or to grant any credit terms in the Agreement.

B. Method and Cost of Shipment. Seller will deliver the Goods by tendering the Goods on its docks for placement in the possession of a carrier and, without liability, will make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. Seller will generally follow Buyer's shipping instructions but may make reasonable changes without liability and at Buyer's cost. On Buyer's request, Seller will obtain and send to Buyer documents necessary to enable Buyer to obtain insurance. Seller is not responsible to prepay transportation or insurance costs. Unless expressly agreed otherwise, Buyer must pay all handling and other charges incidental to transportation. Buyer must pay all expedite costs and fees including those that result from Buyer's failure to provide Seller the quoted lead time unless delay was exclusively due to the fault of Seller in which case Seller will be responsible for the incremental difference between the normal delivery costs and expedited delivery costs. Buyer is responsible for making any claim against the carrier and other handlers of the Goods after delivery to Buyer as provided above.

C. Forecast, Finished Goods, and Raw Material. Each month, Buyer will provide Seller with a rolling forecast matching the Seller's longest quote lead time of its anticipated purchases of the Goods (Forecast), which will take into consideration Buyer's existing inventory. Seller may rely on these Forecasts, and: (i) the first quarter, or three months, of each Forecast are Firm with respect to finished Goods [or longer if agreed to]; and (ii) the two quarters, or six months of each Forecast are Firm with respect to raw material. For clarity, "Firm" means that Buyer is committed to purchasing from Seller. Buyer may not cancel firm orders and must timely pay for and pick up all finished goods. Seller has not obligation to accept new firm orders until Buyer pays for and takes delivery of all finished goods.

8. **Delay of Shipment or Performance Excused for Various Reasons**.

A. Delayed Shipment. If shipment or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the Goods at the place of manufacture or elsewhere at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay in shipment, full and final payment for Goods is due

and payable within the terms listed on Seller's invoice after Buyer is notified that the Goods are ready for shipment. If Seller is unwilling to accommodate Buyer by holding such Goods, Buyer must accept shipment immediately.

B. Delayed or Failed Delivery. All inspection, delivery and other dates for Seller's performance are estimates only. In addition, Seller will not be in default because of its delay or failure to deliver or perform under the Agreement resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order, pandemic, or endemic (ii) shortages of raw materials or labor; (iii) the lack of usual means of transportation, fires, floods, explosions, strikes or other work actions, or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance; (iv) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise; (v) failure of Seller's suppliers to perform including third party's failure to provide Directed Source Supplies. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of 30 days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or waive such delay and establish a new delivery schedule. Seller will not be responsible costs or delays caused by Buyer-directed or Buyer-recommended subsuppliers. Buyer will not debit Seller for such issues unless the directed supplier agrees in writing to corresponding debits from Seller.

C. Supply Allocation. Whenever Seller's supply of the Goods, materials or means of production is insufficient to meet the estimated delivery schedule or in the event of any occurrence mentioned above in Subsections A and B, Seller, in its sole discretion, may allocate its supply to its own use or other customers.

D. Effect. This Section will be effective even as to events described in Subsections A, B and C which exist on the date of a quotation or of contract formation.

E. Storage. If Buyer requests storage of Goods before final delivery, Seller will attempt to provide or arrange such storage, but a reasonable charge for storage as computed by Seller plus all expenditures incurred for space, insurance, and handling will be charged to Buyer. Invoices for Products stored at Buyer's request will be provided at the beginning of the storage period and periodically thereafter, and payment will be due net 30 days from the date of invoice.

9. **Inspection, Testing and Rejection**.

A. Testing. If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative will be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. On request, Seller will quote to Buyer additional charges required to conduct any additional procedures requested by Buyer which may be acceptable to Seller. Quotes do not include price or tooling costs for prototype parts, which will be quoted separately.

B. Rejection. All manuals, drawings, specifications, technical documentation, samples, prototypes and Goods will be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven days of receipt or other reasonable time established by Seller. Buyer will have seven days after receipt of the

item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, Buyer must send a sufficient number of sample parts to Seller for testing so that it will arrive no later than 10 days after receipt of the item by Buyer. Failure to so act will constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED. Buyer may reject the Goods only for material non-conformities and all non-material non-conformities will be resolved under the express warranty. If Buyer rejects any tender of the Goods and if requested by Seller, Buyer must return them to Seller, express, collect, within three days after such request. A failure to so return constitutes an irrevocable acceptance. No attempted revocation of acceptance will be effective, and Buyer will be limited to any available remedies specifically provided in the Agreement. Seller will advise Buyer within a reasonable time as to a disposition of the Goods rejected, whether to sort, destroy, return, or otherwise dispose of them. There will be no limitation on the period of time in which Seller may cure any non-conformity or breach, provided it continues to make reasonable efforts to cure.

C. Inspectors. If the Agreement requires, or Buyer or Seller requests in writing, inspection or testing before shipment, and upon notification by Seller that the Goods are ready for inspection or testing, Buyer will provide at the place of manufacture, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check the Goods for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven days, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance before shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing will be at Buyer's expense.

D. Testing Facilities. Buyer will provide, at its cost and risk of loss, all materials, fixtures, tooling and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Buyer for testing or inspection will be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal. If the Goods include the necessary fixtures and tooling, the inspection or testing at the place of manufacture may be performed on production or other equipment similar to, but other than, that identified to the Agreement.

E. Delivery Shortages. Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven days of receipt.

F. Expenses. Any expense incurred by Buyer in the inspection or testing of the Goods will be paid by Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or non-conformity.

G. Claims. If Buyer claims delivery of material not as ordered, he must notify Seller within 10 days of receipt of shipment. If such claim is sustained, Seller will repair, replace, credit or complete order within the limitations of No. 5 – QUANTITIES. Charges for repair or inspection of parts by Buyer without prior authorization will not be responsibility of the Seller. Seller may inspect the goods on Buyer's premises or of taking back the goods and deciding whether to replace goods or credit Buyer. Claims for shortage of

goods must be presented within 10 days after receipt and must state our packing slip number, number of cartons received, gross weight received to the nearest pound, and net weight of the parts received to the nearest 10^{th} (.10) of a pound. Any claim for shortage not presented in accordance with this provision will not be honored. Seller will not allow claims on those goods further processed by Buyer resulting in change of dimensions or characteristics from parts as ordered.

H. Tolerances / Specifications. All dimensions must be limited by a specific tolerance. When Buyer purchases to its own specifications, Seller will not be responsible for the design and fitting of parts.

I. Maintenance. Buyer shall afford Seller adequate opportunity to perform adequate repairs and maintenance on its equipment and tooling in order to ensure that the life of these items and worker safety standards are maintained.

J. Inspection. Inspection by Seller is made on a sample basis only. If a broader inspection or 100% inspection is required, it is at Buyer's expense. Acceptable quality levels must be established by Buyer in writing *before quotation* by Seller.

10. **Assumption of Risk**. Buyer assumes all risks of using the Goods alone and in connection with other equipment. Seller has no responsibility to determine the adequacy of the foundation, utilities, skills of Buyer's staff, or any other matter. Buyer assumes all risk of using the Goods in its location and in connection with other equipment or improvements.

11. **General Express Warranties**.

A. General. Seller warrants to Buyer only, subject to the disclaimers and limitations of the Agreement, that Goods to the extent performed by Seller will be free from defects in workmanship, excluding design, at the time of delivery, and will repair or replace Goods that fail due solely to manufacturing defects in workmanship, which are discovered within the period of six months from the delivery date to Buyer. Under no circumstances will the warranty period extend beyond 12 months from the date of delivery of the alleged non-conforming or defective Goods to Buyer. When Buyer purchases to his own specifications, Seller will not be responsible for the design and fitting of Goods, and/or the function of Goods. This is not a warranty of performance, but a limited warranty as to the condition of the Goods at delivery. Because the Goods may be subject to a wide variety of use, installation, maintenance and cleaning, the warranty is only against such defects and not against any other failures such as, but not limited to, those due to normal wear and tear, normal maintenance, and unknown causes. Perishable items are excluded from this warranty against defects.

B. Nonmaterial Changes. Seller warrants to Buyer only that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated in these Terms and Seller's published and internal standards. Seller may, in its discretion, also rely on any generally accepted industry standards.

C. Warranty Requirements. Seller's warranties will apply only if the Goods: (i) have been installed, maintained and used in conformity with the highest industry practices; (ii) have been subjected to normal use for the purpose for which the Goods were designed, intended and approved for in writing by Seller; (iii) have not been subjected to misuse, negligence or accident; (iv) have not been altered or repaired by persons other than Seller in any

respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods; and (v) have been fully paid for.

D. Records. Buyer must create, maintain, and make available to Seller, permanent records of the installation, maintenance, use and disposition of the Goods.

12. **Patent Warranties**. Seller disclaims any implied warranty of non-infringement. If the designs or specifications are furnished by Buyer, Buyer warrants that they do not infringe on any patent or other intellectual property right and must indemnify and hold harmless Seller from any claims of infringement against Seller relating to their use by Seller.

13. **Disclaimer and Limitation of Express Warranties**. There are no express warranties other than those contained in the Agreement, and they are not assignable. Any representations as to performance and other matters, except as contained in the Agreement, were for illustrative purposes only, and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there will be no third-party beneficiaries to the express warranties contained in these Terms. Seller does not warrant any portion of the Goods not conceived, designed, developed or manufactured by Seller (whether or not specified by Buyer), but Seller must assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. Seller is not responsible for any errors or omissions or for any loss or damage resulting from any descriptions, shipping specifications, illustrations, representations as to quality or capabilities, or any other information. Such information provided by Seller is intended for general information only. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines or procedures unless specifically contained in the Agreement. Seller will not be quality or warranty issues related to Buyer-directed or Buyer-recommended subsuppliers. Buyer will not debit Seller for such issues unless the directed supplier agrees in writing to corresponding debits from Seller.

14. **Remedies and Limitation of Seller's Liability**.

A. General. Defective or non-conforming Goods or parts thereof discovered during the express warranty period will be repaired or replaced by Seller without any additional charge and shipped to Buyer, FOB Seller's plant, for reinstallation by Buyer at its cost, subject to the terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer must, exercising reasonable judgment and within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller will determine upon examination to be defective or not in conformity with the express warranties contained in these Terms. Seller will also reimburse Buyer for any costs incurred in the repair or replacement of defective Goods which had been installed during production of a new vehicle in an amount not to exceed the purchase price paid by Buyer for the Goods that fail due to a defect covered by Seller's express warranty. Goods cannot be deemed defective or non-conforming if Seller cannot duplicate the alleged failure. If the alleged failure can be duplicated by Seller, Seller will discuss the potential causes with Buyer, and then determine whether the failure is due to a non-conformity or defect attributable to Seller. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price. Seller may provide such repairs itself or through its third-party contractors. Buyer's remedies are limited (even in the event of Seller's default of its warranty obligations or a failure of an item to meet its intended purpose) exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO:

LOSS PROFITS OR REVENUES; INCREASED COSTS; DAMAGE TO EQUIPMENT, TOOLING, PREMISES, OR WORK-IN-PROCESS; COST OF CAPITAL; COST OF PURCHASED POWER; SUBSTITUTE OR ADDITIONAL EQUIPMENT, FACILITIES OR SERVICES, PRODUCTION INTERRUPTION OR START-UP; OR THE CLAIMS OF THIRD PARTIES FOR SUCH DAMAGES. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability statutes, or otherwise, except as specifically provided by applicable law as modified and limited in these Terms. The replacement or repair of Goods by Seller does not give rise to any new warranty, and the warranty period provided for in these Terms will not be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date the repaired or replacement Goods are delivered to Buyer.

B. Buyer's Obligations. Buyer must contact Seller to request warranty coverage, a return authorization number, and other instructions relating to the return of Goods. If requested by Seller, Buyer must issue a new purchase order or amendment to Seller for replacement parts, subject to Seller issuing a credit memo if Buyer's claim for warranty coverage is approved. Buyer must comply with Seller's return instructions (including return of the Goods) within 30 days or the claim will be deemed conclusively to have been abandoned. Buyer is responsible for properly tagging, identifying and packing returned Goods. Goods returned without compliance with the above procedures must be returned to the sender at sender's cost.

C. Defense and Indemnification. Buyer must defend and indemnify Seller from all liability for claims, damages, losses and expenses incurred: (i) as a result of the use or disclosure of Seller's confidential or proprietary information (except in the performance of the Agreement) by Buyer or its contractors; and (ii) as a result of the advice, direction, information and/or specifications furnished by Seller to, and relied on by, Buyer's contractors to the extent the liability exceeds any liability as limited by the Agreement had the advice, direction, information and/or specifications been furnished to, and relied on by, Buyer.

D. Prior Written Consent. Seller will not be liable for any costs related to a recall, service campaign or similar action without its prior written consent. Seller's maximum obligation in any such activity (including the provision of replacement Goods and all other costs) will not exceed Seller's average annual sales to Buyer of the specific Good.

E. Scope of Liability. Under no circumstance will Seller's liability exceed Buyer's uninsured loss. Buyer waives any right of subrogation. Buyer waives any right of indemnity or subrogation as to third-party claims, in excess of any applicable insurance carried by Seller.

F. Substantial Compliance. Seller will not be liable for any damages for breach of any provision with which it has substantially complied.

15. **Disclaimer of Implied Warranties**. SELLER DISCLAIMS ALL IMPLIED WARRANTIES AND SIMILAR OBLIGATIONS (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY, WHETHER OTHERWISE ARISING BY LAW, CUSTOM, USAGE, TRADE PRACTICE, COURSE OF DEALING, OR COURSE OF PERFORMANCE, as to the performance or capabilities of the material as heat treated, or the heat treatment. There are no warranties which extend beyond those express warranties contained in the Agreement. Buyer affirms that it has not relied upon Seller's skill nor judgment to select or furnish the Goods for any particular purpose beyond the specific express warranties in the

Agreement. Any design provided by Seller is based on information provided by Buyer. Seller may rely entirely on information provided by Buyer and is under no obligation to verify such information or take any action to obtain explanatory or supplemental information from Buyer or third parties. Buyer's approval of drawings and/or prototypes constitutes Buyer's acceptance and waiver of any responsibility for a failure to consider information provided by Buyer. Any modifications of drawings, prototypes and other work of Seller after approval by Buyer will be at Buyer's expense at Seller's normal rates for services and materials. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in the Agreement.

16. **Design, Parts, Service and Training Provided by Seller**. All design, application engineering, parts, labor, service, if any, provided by Seller or its agents and contractors (including those provided under purchase orders after the Agreement) related to the Goods (whether or not covered by warranty) are subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Buyer will pay Seller for all non-warranty work in advance or upon such other terms as may be agreed. Seller may have access to the Goods during or after installation of the Goods. Seller is not under any duty to inspect the Goods for any defects or any improper use or modification of the Goods nor to correct or advise Buyer of any such condition, use or modification which is observed. Any notification which may be given is voluntary and subject to all limitations and disclaimers in the Agreement.

17. **Responsibility for Safety**.

A. Buyer's Obligations. Goods designed and manufactured by Seller are capable of being used in a safe manner, but Seller cannot guarantee their safety under all circumstances. BUYER MUST INSTALL AND USE THE SERVICES IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE. It is Buyer's or other user's responsibility to provide all proper dies, devices, tools, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, operation, setup, or service of the Goods. Buyer should comply with all safety standard, including without limitation, ANSI Safety Standards, OSHA and similar municipal, federal and state regulations, and other sources to insure the safe use of the Goods.

B. OSHA Compliance. Seller believes that the Goods will be in substantial compliance with the general requirements of federal OSHA regulations directly associated with operator safety and noise level control. The technical detail of the complete OSHA regulations and the existence of many other safety, environmental, and similar standards render it impracticable to provide any other compliance unless Buyer requests compliance with specific sections or paragraphs of OSHA or other standards and such standards are included in Seller's quotation. Because of changes which occur in OSHA, state codes, local codes and user safety and other programs, Seller must be advised by Buyer in writing if it desires specific modifications in the Goods required for compliance. A quotation will be submitted for such requested modifications.

18. **Indemnification**.

A. Third Parties. Buyer will indemnify Seller from any and all third-party claims, damages and expenses (including reasonable attorney fees) under theories of

tort, product liability, negligence (ordinary or gross), warranty, contract, statute or otherwise arising out of the production, use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller. Seller is under no obligation to indemnify Buyer for any reasons.

B. Buyer's Indemnity for Unsafe Use. If Buyer fails to comply with the obligations set forth in this subsection, Buyer will indemnify and save Seller from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of the Goods and all warranties of Seller will become automatically void. Buyer will notify Seller promptly, and in any event within 30 days, of any accident or malfunction involving Goods which results in personal injury or damage to property and will cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods and Buyer's reports regarding the Goods for Seller's inspection. If Buyer fails to provide such notice and cooperation to Seller, Buyer will indemnify Seller from any claims arising from such accident or malfunction whether or not the Goods are non-conforming or defective.

19. **Security Interest**. In addition to any security interest granted by the UCC or other law, Buyer grants a security interest to Seller in all Goods and Buyer's Property, and related documents, and proceeds and products from Buyer's Property, to secure all obligations of Buyer to Seller, whether or not arising under the Agreement. Seller may file a financing statement and at Seller's request, Buyer will sign financing statements and other documents, evidencing and confirming the security interest. Buyer grants Seller an irrevocable power of attorney to sign Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Buyer must provide a lien waiver from all third parties to whom the Goods may be delivered. Buyer must provide a landlord's waiver of any lien rights at the premises to which the Goods are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others and take other actions to repossess all Goods in which it has a security interest. In case of a default by Buyer, Buyer irrevocably appoints Seller as its agent to obtain possession of the Goods and related documents. Seller may install and activate procedures or devices to make the Goods or Software non-operative upon Buyer's default. The Goods will be and remain strictly personal property and retain their character as such, no matter whether on permanent foundation or in whatever manner affixed or attached to building or structure, or for what purpose the Goods may be used. Buyer will maintain the Goods in a segregated area and not co-mingle any Goods which are not fully paid. Buyer may not sell, exchange, transfer, convey, mortgage, pledge, hypothecate or grant a security interest in any Goods which are subject to the Agreement if payment thereof will not have been made in full to Seller. Buyer will immediately advise Seller in writing of any damage to, change in location of, or seizure of, any of the Goods the price of which has not been paid to Seller.

20. **Proprietary Information**.

A. Buyer's Rights to Confidentiality. Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or before the time of the disclosure.

B. Seller's Rights to Confidentiality. All proposals, plans and other information furnished by Seller, in any form, during bidding, negotiating and performing the

Agreement, are confidential and the property of Seller, whether or not marked "Confidential", and may not be shown or disclosed to any other bidder, and may not be shown or disclosed to any other third party or used by Buyer except as may be necessary for the selection or use of the Goods and Seller provides Buyer with written consent.

C. Patentable Features. Any design, invention or other information developed by Seller in the performance of the Agreement will remain the property of Seller, whether or not Seller charges for design, research, development, testing, or similar services. Any patentable features developed by Seller will be the property of Seller and Seller will be under no obligation to refrain from using in its business any information, manufacturing processes or unpatented disclosures which may pass to it from Buyer in the performance of the Agreement, except as provided in Subsection A.

D. Drawings and Calculations. Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.

E. Buyer's Obligations. Buyer must treat as confidential any business proposal from Seller and all technology made available, directly or indirectly to Buyer by Seller and by Seller's licensors, including but not limited to drawings, schematics, specifications, bills of material, test results, analysis, recommendations, models, and designs, and Buyer may use such proposal and technology only to evaluate its business relationship with Seller and to enable Buyer to perform under the Agreement. Buyer may not disclose, or authorize or instruct Seller to disclose, any confidential or proprietary information of Seller to any third party that is not bound by contract to at least the same duty of confidentiality to Seller as is Buyer. In addition, only those employees and contractors of Buyer having a need-to-know and bound by contract by the same confidentiality provisions as Buyer may be given access to such technology. Buyer must maintain, for Seller's inspection, written records which must include the names and address of such employees and contractors granted such access. Buyer will indemnify Seller from all expenses and damages related to the improper use or disclosure by Buyer or its employees and contractors. Business proposals and technology of Seller may be protected by patent, copyright, trademark and other law. No license or other right to business proposals or technology is granted to Buyer.

20. **Intellectual Property.** Any Intellectual Property owned or licensed by Seller and used by Seller in connection with the performance of its obligations will remain the exclusive property of Seller and its licensors, as the case may be. Nothing in this Agreement will be deemed to grant Buyer any license or any other rights in such Intellectual Property. The term "Intellectual Property" includes without limitation all of the following: (i) inventions, discoveries, patents, patent applications and all related continuations, divisional, reissue, utility model, design and process patents, applications and registrations thereof, certificates of invention; (ii) works, copyrights, registrations and application for registration thereof; (iii) computer software programs, data and documentation; (iv) trade secrets, confidential information, know-how, techniques, designs, prototypes, enhancements, improvements, work-in progress, research and development information; and (v) all other proprietary rights relating to the foregoing.

21. **Solvency of Buyer**. Buyer represents that it is solvent, able to pay the price for the Goods, and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it must notify Seller. Buyer's acceptance of delivery will be a reaffirmation of Buyer's solvency, and that there has not been a material adverse change to Buyer's financial condition.

22. **United States Government Regulations**. Buyer may not engage in any transaction with respect to the Goods, by way of resale, lease, shipment or otherwise, which violates any statute or regulation of the United States of America, or any other applicable laws.

23. **Fair Labor Standards Act**. Seller certifies that any Goods produced in the United States will be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the U.S. Fair Labor Standards Act, as amended, and of the regulations and orders of the U.S. Department of Labor issued under Section 14 thereof. No other certifications or waivers regarding payments to Seller's suppliers or laborers are required, or any other applicable laws.

24. **Duration, Cancellation, and Termination**. Buyer will be obligated to buy all of its requirements of the Goods for the entire life of the program, including refreshes and extensions, and service parts. Seller may re-price at the end of the end of production date in the request for quotations. Seller may terminate upon six months' advance written notice to Buyer. If Buyer cancels or terminates any Forecast and / or this Agreement for any reason, Buyer must immediately purchase all finished Goods, raw materials, and work in process that were purchased to produce, or fall within, the Firm quantities the preceding Section. Buyer will compensate Seller for unrecovered cost (including unamortized capital and ED&T) and cancellation costs from Seller's suppliers. Seller has no obligation to manufacture parts until all Goods subject to Firm releases have been paid for. With respect to the work in process, Buyer is obligated the pay the then-current purchase price. Buyer is also obligated to immediately reimburse Seller the cost of manufacture and liquidated damages (including labor, engineering, unamortized development cost, equipment time and overhead) computed using Seller's standard internal costing procedures, plus 15% of the sale price of the Goods. BUYER AND SELLER ACKNOWLEDGE THE GREAT DIFFICULTY OF PROVING DAMAGES FOR THE CANCELLATION OF PRODUCTS SUCH AS THE GOODS, AND THE REASONABLENESS OF THIS LIQUIDATED DAMAGES PROVISION.

25. **Breach**.

A. Default. If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover the Goods in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.

B. Compensation. Seller will be awarded interest, consequential and incidental damages and costs (such as interest and actual reasonable attorney fees) in any proceeding to enforce its remedies in which it obtains relief or damages or in which it prevails in the defense of any action by Buyer.

C. Security. Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment. If Buyer does not post such security, Seller may cease performance of its obligations, and enforce its remedies for Buyer's default.

D. Cumulative Rights and Limitations. All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, except that Seller will be entitled to only a single full recovery.

E. Good Faith. Seller will not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

F. Waiver. Seller's failure or delay in enforcement of any provision will not constitute a waiver of a breach or of that provision.

26. **Consequential, Incidental, and Other Damages**. BUYER AND THIRD PARTIES ARE NOT ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. This limitation will be enforced regardless of whether Seller has defaulted in its warranty or other obligations or the limited warranty is held to fail of its essential purpose. Any legal inability to limit or restrict the right of Buyer or a third party to such damages will not affect the right of Seller to indemnification hereunder, and under no circumstance will Buyer recover more than the purchase price. UNDER NO CIRCUMSTANCES WILL SELLER'S LIABILITY FOR CLAIMS FOR NON-DELIVERY OR OTHER NON-PERFORMANCE, DEFECTIVE PERFORMANCE, NON-CONFORMING GOODS, DEFECTIVE GOODS OR OTHERWISE EXCEED THE AMOUNT RECEIVED BY SELLER FOR THE PERFORMANCE OR SHIPMENT WHICH CONTAINED THE NON-CONFORMING GOODS, DEFECTIVE GOODS OR SUCH OTHER EVENT GIVING RISE TO THE CLAIM.

27. **Claims**. COMMUNICATIONS CONCERNING DISPUTED DEBTS OR OTHER CLAIMS, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT OR MUST BE DELIVERED TO THE PRESIDENT OF SELLER.

28. **Service Parts**. This Agreement covers production Goods only, and not service parts. If Buyer requires goods beyond date of last production of such vehicle model for which the goods were supplied, Buyer and Seller will renegotiate as they see fit.

29. **Force Majeure**. Seller will not be responsible for any delay or failure in any performance due, without limitation, to acts of God, war, warlike conditions, blockade, embargoes, riots, governmental restriction, duty, or tariff, labor disturbances, unavailability of anticipated usual means of supplies, materials, or labor, transportation or loading facilities, wrecks, pandemics, epidemics, quarantine, fire, flood, earthquake, explosion, any unforeseen change in circumstances, or any other causes beyond its reasonable control.

30. **Commercial Activity; Absence of Immunity**. Buyer represents that it is subject to civil and commercial law with respect to its obligations, and the making and performance by it of the Agreement constitute private and commercial acts rather than public or governmental acts. Buyer represents that it and its property are not entitled to immunity on the grounds of sovereignty or otherwise form the jurisdiction of any court or from any action, suit, set-off or proceeding, or service of process in connection otherwise, arising under the Agreement.

31. **Limitations of Actions**. A proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the Agreement cannot be filed nor maintained by Buyer unless: (i) it is commenced within one year after the cause of action has accrued; (ii) Buyer has given timely written notice to Seller of the details of its claim as provided in these Terms; and (iii) Buyer pays all amounts due to Seller or deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of warranty or any other provision of the Agreement accrues no later than shipment of the Goods to Buyer whether or not installation or other post shipment services are required by the Agreement.

32. **Choice of Law**. THE AGREEMENT IS GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAWS OF ILLINOIS, EXCEPT AS PROVIDED IN THESE TERMS. The U.N. Convention on the International Sales of Goods does not apply.

33. **Jurisdiction.** THE FEDERAL AND STATE COURTS COVERING UNITED STATES OF AMERICA, ILLINOIS HAVE EXCLUSIVE JURISDICTION OVER BUYER AND SELLER AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT OR ANY CONTROVERSY ARISING FROM THEIR RELATIONSHIP, UNLESS WAIVED IN A WRITING SIGNED BY SELLER AND SUBJECT TO ANY RIGHT OF ARBITRATION WHICH MAY BE PROVIDED BY THE AGREEMENT. Any declaration of unenforceability of a provision will be as narrow as possible and will not affect the enforceability of the other provisions. A tribunal with jurisdiction reform a provision of the Agreement, at the request of Seller, to the extent minimally required for enforcement.

34. **Arbitration**. At Seller's election, all controversies and claims arising out of or relating to the Agreement, or the breach thereof, will be settled solely by arbitration held in United States of America, Illinois, but Seller may also elect to institute, before formation of the arbitration panel, an action for a claim and delivery or replevin action to enforce its security or other interests in the Goods. The arbitrator(s) may enter an interim award that the Goods be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereon. No demand for arbitration hereunder may be filed by Buyer. The arbitrator(s) will be bound by the terms of the Agreement and will not apply any principles of *ex aequo et bono* nor allow any claims not specifically permitted by the Agreement. The arbitrator(s) may include the fees of the arbitration tribunal and arbitrators in an award. The arbitration proceedings and the award will be confidential.

35. **Severability**. Any provision found to be unenforceable by a final unappealed order entered by the court or tribunal will be severed from this Agreement. Such severance will be as narrow as possible and may not affect the remainder of this Agreement in such action and other actions, unless the court or tribunal also finds, on the request of Seller that without such provision as originally written, the Agreement is not likely to meet the reasonably commercial expectations of Buyer and Seller and in such case, the court or tribunal will enter an equitable judgment of rescission, termination or reformation of this Agreement as necessary to reach an equitable result.

36. **Assignment**. No right or interest in the Agreement may be assigned by Buyer without the prior written consent of the Seller. Any assignment attempted by Buyer will be void and ineffective for all purposes unless made in conformity with this section.