



Last revised: 02.09.2022

**TERMS AND CONDITIONS**  
**CUSTOMER WEBSITE PURCHASES**  
**NORTH AMERICA**

PLEASE READ THE FOLLOWING CAREFULLY. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AS A CUSTOMER (AS DEFINED BELOW) AND REDARC CORPORATION AND ITS AFFILIATES (COLLECTIVELY, “REDARC” OR “US”) AS SUPPLIER (AS DEFINED BELOW). THESE TERMS AND CONDITIONS, TOGETHER WITH ALL AMENDMENTS, AND COLLECTIVELY WITH ALL APPLICABLE REDARC RULES AND POLICIES, INCLUDING THE REDARC [PRIVACY POLICY](#), CONSTITUTE THE “AGREEMENT” BETWEEN YOU AND SUPPLIER REGARDING OFFERS FOR PURCHASES BY YOU AS A CUSTOMER FROM THE REDARC NORTH AMERICA WEBSITE (“WEBSITE”). BY USING THE WEBSITE TO SEEK TO MAKE ANY PURCHASE, YOU SIGNIFY THAT YOU HAVE READ THE AGREEMENT AND THAT YOU UNDERSTAND AND AGREE TO BE BOUND BY THE AGREEMENT.

THIS AGREEMENT COVERS IMPORTANT INFORMATION ABOUT PURCHASING FROM US THROUGH THE WEBSITE. THE AGREEMENT INCLUDES INFORMATION ABOUT PRIVACY, FUTURE CHANGES TO THE AGREEMENT, SECURITY INTERESTS, DISCLAIMERS, LIMITATIONS OF LIABILITY, INDEMNITIES, AND CHOICE OF LAW AND VENUE FOR POTENTIAL DISPUTES BETWEEN US.

IF YOU HAVE NOT READ THE AGREEMENT, DO NOT UNDERSTAND OR AGREE TO BE BOUND BY THE AGREEMENT, OR ARE NOT ABLE TO CONSENT TO BE BOUND BY THE AGREEMENT, DO NOT PURCHASE THROUGH THE WEBSITE. IF YOU ARE ACCESSING OR USING ANY PART OF THE WEBSITE AND/OR MAKING PURCHASES ON BEHALF OF ANY BUSINESS, ORGANIZATION, OR OTHER ENTITY OF ANY KIND, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO ACCEPT THE AGREEMENT ON ITS BEHALF AND TO BIND SUCH BUSINESS, ORGANIZATION, OR ENTITY TO THE AGREEMENT.

PLEASE SEE OUR [PRIVACY POLICY](#) FOR A DETAILED DESCRIPTION OF HOW WE COLLECT, USE, AND DISCLOSE INFORMATION ABOUT OUR CUSTOMERS.

## Definitions

1. “**Customer**” means the person, firm, organization, partnership, corporation, trustee of a trust or other entity (including its successors and permitted assigns) to whom goods and/or services are provided by the Supplier.

“**Intellectual Property**” means all intellectual property rights conferred under statute, common law, or equity in any country, including, without limitation, copyright, trademarks, trade secrets, designs, drawings, patents, know-how, secret process and other similar proprietary rights.

“**Supplier**” means REDARC Corporation, a Delaware corporation, and its affiliates.

## Pricing and Payment Terms

2. Unless otherwise agreed in writing, the Supplier will invoice all orders at its current prices, which it may alter with written notice to the Customer.
3. Subject to clause 4, the terms of payment are strictly Net thirty (30) days from the date of the invoice issued by the Supplier (or such other period as designated in the Supplier invoice). The Supplier may, at any time, vary the terms of payment in accordance with the terms and conditions herein.
4. Where the Customer does not have an approved commercial credit account with the Supplier, payment shall be, at the Supplier’s discretion, due and payable:
  - (a) on or prior to delivery of the goods; or
  - (b) by the date designated in the Supplier’s invoice(s).
5. The Customer must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt. If the Customer does not provide timely notice to Supplier that the invoice contains any errors or omissions, the invoice shall be deemed accepted by the Customer.
6. Should the Customer not pay for the goods or services supplied by the Supplier in accordance with applicable credit terms and as provided herein, or as agreed in writing by the Supplier and Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, the Supplier will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.
7. The Customer acknowledges that the Supplier shall be at liberty to charge a surcharge for credit card transactions equal to the merchant fees incurred by the Supplier.

## **Purpose of Credit**

8. Customers with an approved commercial credit account acknowledge and agree that any credit to be provided to the Customer by the Supplier is to be applied wholly or predominantly for commercial purposes.

## **Formation of Contract**

9. Quotations shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. The Supplier, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a contract in accordance with clause 10.
10. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it upon provision of written reasons to the Customer. Only written acceptance by the Supplier of the Customer's offer will complete a contract.
11. Placement of an order, either verbally or in writing, will indicate acceptance of the Supplier's offer and confirm acceptance of this Agreement, including these terms and conditions, as applicable to Customer's acceptance of Supplier's offer. The Customer agrees that it will comply with any ordering procedures (including, without limitation, the required form of any order) advised by the Supplier from time to time.
12. At the Supplier's sole discretion, a deposit may be required. The deposit amount or percentage of the price due will be stipulated at the time of the order of the goods and/or services and shall immediately become due and payable upon the formation of a contract in accordance with clause 10.

## **Variations**

13. Where the Customer requests or directs that any goods and/or services be supplied that are not strictly in accordance with the quotation, then such additional goods and/or services shall constitute a variation, unless otherwise agreed between the parties.
14. The Customer understands and agrees that:
  - (a) all variations must be agreed between the parties in writing prior to the goods and/or services being supplied; and
  - (b) all variations shall be, at the Supplier's discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with the Supplier's current prevailing rates (as amended from time to time).
15. Notwithstanding clauses 13 and 14, and subject to any rights the Customer might have under any relevant legislation, the Supplier reserves the right to vary the quoted price if:

- (a) there is any movement in the cost of supplying the goods and/or services specified in the Customer's order;
- (b) the goods and/or services specified in the Customer's order are varied from the goods and/or services specified in the Supplier's quotation; or
- (c) otherwise provided for in these terms and conditions.

### **Cancellation of Orders**

- 16. Unless otherwise agreed in writing between the parties, the Customer may not cancel an order (or any part of an order) unless the Customer pays to the Supplier (in the Supplier's sole discretion) any and all costs incurred by the Supplier in relation to the cancelled order (or cancelled part of an order) up until and including the date of cancellation.
- 17. Notwithstanding any other rights the Supplier may have under this agreement, the Supplier may cancel any order or delivery of any order by providing written notice to the Customer if the Customer:
  - (a) defaults in payment of any invoice by the due date;
  - (b) enters into liquidation or, in the case the Customer is an individual, becomes bankrupt; or
  - (c) breaches an essential term of this agreement.
- 18. To the fullest extent permitted by law, the Supplier accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of the Supplier exercising its rights under clause 17.

### **Delivery**

- 19. The Customer shall be liable for all costs associated with delivery, including freight, insurance, handling and other charges, unless otherwise agreed in writing.
- 20. The Customer acknowledges and accepts that any estimated delivery or supply of goods provided by the Supplier is an estimate only and the Supplier will not be liable for any loss suffered by the Customer as a result of any delay in the delivery of goods or non-delivery of the goods.
- 21. Delivery will be made within normal weekday business hours only (unless otherwise agreed to in writing).
- 22. Delivery is deemed to occur at the earlier of:
  - (a) the collection of goods from the Supplier by the Customer or any third party on behalf of the Customer; or

- (b) the time of loading of goods at the Supplier's premises for the purpose of delivery to the Customer.
- 23. The Supplier is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the goods.
- 24. The Customer accepts that the Supplier may deliver goods by installments and require payment for each separate installment in accordance with these terms and conditions.
- 25. The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery.

### **Returns**

- 26. The Customer must inspect the goods immediately upon delivery and must within ten (10) days after the date of inspection give written notice to the Supplier, with particulars, of any claim that the goods are not in accordance with this agreement. Further, the Customer must, upon request from the Supplier, allow the Supplier to enter upon any premises occupied by the Customer to inspect the goods that are subject of the claim. If the Customer fails to give notice or refuses to allow the Supplier to inspect the goods, then to the extent permitted by law, the goods must be treated as having been accepted by the Customer and the Customer must pay for the goods in accordance with these terms and conditions.
- 27. The Customer cannot return goods to the Supplier without the written agreement of the Supplier.
- 28. The Customer acknowledges and agrees that any return, other than a return due to a default by the Supplier under this agreement or as otherwise permitted by law, will incur a handling and administration charge of fifteen (15) percent of the purchase price of the returned goods.
- 29. Unless otherwise agreed in writing between the parties, the Customer must pay all costs associated with the return of any goods (either to the Supplier or from the Supplier to the Customer or any third party) including freight, insurance, handling and other charges. Goods to be returned to the Supplier must be packed and wrapped appropriately and must include all original packaging and documentation, along with the original proof of purchase. The Supplier accepts no liability for any damage that occurs to any goods in return transit.

### **Non-Stock Items**

- 30. The Customer acknowledges that orders for non-stock, custom-made, and special goods ("**Non-Stock Items**") may have to be purchased in minimum quantities and that the Customer will be notified if this applies in respect of the Customer's order.
- 31. Notwithstanding anything herein to the contrary, and subject to any applicable law, the Customer acknowledges and agrees that Non-Stock Items are non-refundable and cannot be returned to the Supplier, unless otherwise agreed in writing by the Supplier.

## **Risk**

32. Risk of damage to or loss of the goods passes to the Customer on delivery (as defined in clause 22) and the Customer must insure the goods on or before delivery.
33. If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the goods to the extent of the indebtedness of the Customer to the Supplier. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further inquiries.
34. If the Customer requests that goods are delivered either to an unattended location, left outside, or are left outside the Supplier's premises for collection, the Customer acknowledges that the Supplier will deliver the goods as requested at the Customer's risk.

## **Retention of Title**

35. Until such time as the Customer has made payment in full for the goods and until such time as the Customer has made payment in full of all other money owing by the Customer to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever):
  - (a) title in the goods does not pass to the Customer;
  - (b) the Customer agrees that property and title in the goods will not pass to the Customer and the Supplier retains the legal and equitable title in those goods supplied and not yet sold;
  - (c) the Customer will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods; and
  - (d) the Customer will be entitled to sell the goods in the ordinary course of its business but will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Customer on trust for the Supplier absolutely.
36. The Customer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 35(d) hereof unless and until the funds held on trust are remitted to the Supplier.
37. The Customer agrees that while property and title in the goods remains with the Supplier, the Supplier has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of the Supplier and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.

38. The Customer will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clause 37 where the Customer is otherwise in default of the terms of this Agreement. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, servants or agents.
39. The Customer agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable license to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Customer.
40. For the avoidance of doubt, the Supplier's interest constitutes a "purchase money security interest" pursuant to applicable law.

### **Cancellation of Terms of Credit**

41. The Supplier reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
42. Notwithstanding clause 41, if the Customer defaults in the payment of any amount due to the Supplier pursuant to this Agreement and does not cure such default within seven (7) days after being given notice of such default, the Supplier may terminate this Agreement (to be effective immediately) upon notice to the Customer.
43. Upon the withdrawal of credit in accordance with clause 41, or upon termination of this Agreement in accordance with clause 42, all liabilities incurred by the Customer become immediately due and payable to the Supplier.
44. For the avoidance of doubt, termination of this Agreement will not affect:
  - (a) the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
  - (b) the rights and/or obligations pursuant to this Agreement which by their nature are intended to survive termination of this agreement.

### **Indemnity**

45. The Customer agrees to indemnify and hold harmless the Supplier and its affiliates and suppliers, and its and their directors, officers, principals, owners, partners, members, managers, employees, agents, representatives, third-party contractors, successors, and assigns, and to keep them indemnified and held harmless against any and all claims, demands, causes of action, suits, damages, penalties, fines, judgments, settlements, liabilities, losses, costs, and expenses (including reasonable attorneys' fees) that arise out of the goods and services supplied under this Agreement to the extent arising as a consequence of a default by the Customer under, or a breach by the Customer of, the terms

of this Agreement. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

### **Provision of Further Information**

46. The Customer undertakes to comply with any reasonable written requests by the Supplier to provide further information in connection with this Agreement, including for the purpose of assessing the Customer's creditworthiness, including an updated credit application.

### **Corporations**

47. If the Customer is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or a material change of shareholders, the Supplier may ask for certain of its officers and shareholders to sign a guarantee and indemnity.

### **Trustee Capacity**

48. If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer warrants to the Supplier that:
- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Customer has the right to be reasonably indemnified out of trust assets;
  - (c) the Customer has the power under the trust deed to sign this agreement; and
  - (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier and having the new or additional trustee sign an agreement on substantially the same terms as this Agreement.
49. The Customer must give the Supplier a copy of the trust deed upon request.

### **Partnership**

50. If the Customer enters into this Agreement in its capacity as a partnership, the Customer warrants that all of the partners have signed this Agreement and that all of the partners may be required to enter into a guarantee and indemnity with the Supplier in relation to the Customer's obligations to the Supplier.
51. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.



## **Insolvency**

52. If the Customer becomes insolvent, to the extent permitted by law, the Customer remains liable under this Agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the Customer being insolvent.

## **Waiver**

53. A waiver of any provision or breach of this Agreement by the Supplier must be made by an authorized officer of the Supplier in writing. A waiver of any provision or breach of this Agreement by the Customer must be made by the Customer's authorized officer or other representative in writing.

## **Security/Charges**

54. The Customer charges in favor of the Supplier all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
55. As security for the payment of the amount of its indebtedness to the Supplier from time to time, the Customer irrevocably appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Customer may own, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).
56. Where the Customer has previously entered into an agreement with the Supplier by which the Customer has granted a charge, mortgage or other security interest over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Agreement and will secure all indebtedness and obligations of the Customer under this Agreement. The Supplier may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## **Costs**

57. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer under this Agreement. The Customer must also pay for all taxes (including duties, excises, and levies) payable on this Agreement (if any).
58. The Customer will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.

59. Subject to clauses 62 and 63, payments by, or on behalf of, the Customer will be applied by the Supplier as follows.
- (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 38 and 60.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 66.
  - (c) Thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by the Supplier in its absolute discretion.
60. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 61 herein.
61. Payments allocated (and/or reallocated) under clause 61 and/or 62 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

### **Taxes and Duty**

62. The Customer must pay all applicable sales taxes on any taxable supply made by the Supplier to the Customer under this Agreement. The payment of sales taxes is in addition to any other consideration payable by the Customer for a taxable supply.
63. If as a result of:
- (a) any law becoming applicable to the subject matter of this Agreement; or
  - (b) any changes in law or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

the Supplier becomes liable to pay any tax (including any duty, excise, or levy) in respect of the amounts received from the Customer, then the Customer must pay the Supplier these additional amounts on 48 hours' written demand.

### **Interest Rates**

64. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum or the maximum rate permitted by applicable law, whichever is lesser.

### **Set-off**

65. All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier and the Customer in writing or as required by law.

66. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Customer by the Supplier.

### **Customer's Acknowledgements**

67. The Customer acknowledges that it has the sole responsibility of satisfying itself that the goods supplied by the Supplier are suitable for the use of the Customer or any contemplated use of the Customer and that it has conducted its own investigations and has not relied upon any information, statement, advice or representation by the Supplier of or in relation to:
- (a) the operating and/or performance parameters of the goods;
  - (b) the outcomes that the goods may achieve;
  - (c) the suitability of the goods to any particular application, installation or physical environment; and
  - (d) the appropriateness of the use of the goods.
68. The Customer acknowledges and agrees that:
- (a) any representation as to the operating parameters of the goods provided by the Supplier are representative of laboratory conditions;
  - (b) the actual performance of the goods in situ might be affected by external factors (including, without limitation, environmental conditions) beyond the Supplier's control;
  - (c) incorrect and/or negligent installation, application or use of the goods may cause loss of life, injury and/or damage to property;
  - (d) the Supplier makes no representation, warranty or assurance as to any of the matters listed in clause 69 and that the Supplier shall not be liable for any loss or cost arising from those matters to the maximum extent permitted by law; and
  - (e) EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL PRODUCTS AND SERVICES ARE PROVIDED BY SUPPLIER ON AN "AS IS" AND AN "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, INCLUDING EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, REGARDING (A) THE WEBSITE; AND (B) ANY PRODUCTS AND SERVICES OFFERED THROUGH THE WEBSITE, INCLUDING (WITHOUT LIMITATION) IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. SUPPLIER MAKES NO REPRESENTATION OR WARRANTY THAT ANY MATERIAL OR

CONTENT DISPLAYED ON OR OFFERED THROUGH THE WEBSITE IS ACCURATE, COMPLETE, APPROPRIATE, RELIABLE, OR TIMELY. SUPPLIER ALSO MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE WEBSITE OR ANY GOODS OR SERVICES OFFERED THROUGH THE WEBSITE WILL MEET THE CUSTOMER'S REQUIREMENTS, OR THAT THE CUSTOMER'S ACCESS TO AND USE OF THE WEBSITE AND ANY GOODS OR SERVICES OFFERED THROUGH THE WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE, FREE OF VIRUSES, MALICIOUS CODE, OR OTHER HARMFUL COMPONENTS, OR OTHERWISE WILL BE SECURE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY.

### **Limitation of Liability**

69. In relation to the supply of goods, to the extent permitted by law, the Supplier's liability is limited to:
- (a) replacing the goods or supplying similar goods;
  - (b) repairing the goods;
  - (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
  - (d) providing the cost for having the goods repaired.
70. In relation to the supply of services, to the extent permitted by law, the Supplier's liability is limited to:
- (a) supplying the service again; or
  - (b) providing for the cost of having the services supplied again.
71. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE SUPPLIER, ITS AFFILIATES AND SUPPLIERS, AND ITS AND THEIR DIRECTORS, OFFICERS, PRINCIPALS, OWNERS, PARTNERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, REPRESENTATIVES, THIRD-PARTY CONTRACTORS, SUCCESSORS, AND ASSIGNS, SHALL NOT BE LIABLE FOR (A) DIRECT LOSSES OR DAMAGES IN EXCESS OF THE AMOUNTS PAID OR PAYABLE TO THE SUPPLIER BY THE CUSTOMER UNDER THIS AGREEMENT OR (B) LOSS OF PROFIT, ECONOMIC OR FINANCIAL LOSS, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, CONSEQUENTIAL OR INCIDENTAL LOSSES OR DAMAGES, LOSS OF OPPORTUNITY OR BENEFIT, LOSS OF A RIGHT OR ANY OTHER INDIRECT LOSS OR DAMAGES SUFFERED BY THE CUSTOMER OR ANY THIRD PARTY (INCLUDING, FOR THE AVOIDANCE OF DOUBT, CLAIMS IN RESPECT OF BREACH OF CONTRACT, BREACH OF WARRANTY, AND TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE CLAIMS AND CLAIMS FOR

PERSONAL INJURY OR DEATH)) AS A RESULT OF THE GOODS AND/OR SERVICES SUPPLIED UNDER THIS AGREEMENT EVEN IF SUPPLIER OR ANY OF ITS AFFILIATES OR SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

THE CUSTOMER EXPRESSLY WAIVES AND RELEASES ANY AND ALL RIGHTS AND BENEFITS UNDER SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA (OR ANY ANALOGOUS LAW OF ANY OTHER STATE), WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

### **Intellectual property**

72. The Intellectual Property in all goods shall remain in the Supplier and the Customer shall not have the right or license to use such Intellectual Property without the express written consent of the Supplier.
73. The Customer must not and must not cause, permit or assist any other person directly or indirectly to:
  - (a) copy any Intellectual Property in the goods or record or replicate it by any other means;
  - (b) make copies of or replicate the goods;
  - (c) translate, reverse engineer, decompile or disassemble the goods; or
  - (d) copy, publish, disclose or distribute any documentation associated with the goods (including, without limitation, operating instructions and manuals).
74. For the avoidance of doubt, nothing in this Agreement is intended to or will be deemed to effect any transfer of any Intellectual Property in the goods to the Customer or any third party.

### **Subcontracting and Assignment**

75. The Customer acknowledges that the Supplier reserves the right to subcontract the manufacturing and/or supply of any part of the goods and/or services quoted or any of the goods and/or services to be supplied.

76. Any rights, obligations or benefits created or conferred by this Agreement are not unilaterally assignable by one party and will not be assigned without the prior written consent or approval of the other party.
77. The Customer agrees that it will not unreasonably withhold its consent should the Supplier request to assign rights, obligations or benefits in accordance with clause 78.

### **Miscellaneous**

78. The Supplier makes every effort to ensure the accuracy of information shown in the Supplier's documents, including, without limitation, its catalogs and databases. Such information may contain technical inaccuracies or typographical errors. The Supplier makes no representation or warranty as to the accuracy of such information.
79. The Supplier is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, epidemics, pandemics, acts of God or any other activity beyond the Supplier's control.
80. The Customer will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to record and perfect the security interest granted by the Customer under applicable law.
81. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or applicable law or any originating process, by prepaid post at any address designated by the Customer or any other address later notified to the Supplier by the Customer or the Customer's authorized representative.
82. The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of its rights under applicable law, including law applicable to the repossession of property, and the Customer shall indemnify and hold harmless the Supplier from any claims made by any third party as a result of such exercise.

### **Severability**

83. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
84. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.

### **Variation or Modification of Agreement**

85. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorized officer or other representative of the Supplier at any time by written notice to the Customer. Subject to clause 88, after fourteen (14) days of receipt of the written notice of the variation(s), the variation(s) will be deemed agreed by the Customer.
86. If the Customer does not agree with the variation(s) proposed by the Supplier, it must notify the Supplier in writing within fourteen (14) days from receipt of the written notice that the variation(s) is/are not agreed to. The Supplier and/or the Customer will then be at liberty to suspend/withdraw credit facilities until such time as agreement can be reached between the parties regarding the proposed variation(s). Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by the Supplier without notification.
87. Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
88. Variations requested by the Customer will only be binding upon the Supplier if they are in writing signed by an authorized officer or other representative of the Supplier.

#### **Consent to Register**

89. The Customer hereby consents to the Supplier recording the details of this Agreement with respect to the recordation of any security interest related to this Agreement and agrees to do all things necessary and reasonably required by the Supplier to effect such recordation and the perfection by Supplier of any security interest related to this Agreement.
90. The Customer waives any right or entitlement to receive notice of the recordation of any security interest(s) created by this instrument.

#### **Jurisdiction**

91. The Customer acknowledges and agrees that this Agreement will be governed by the laws of the State of Delaware, USA, without application of any conflicts of laws principles.
92. The Customer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Customer is formed in the State of Delaware.
93. The parties to this Agreement submit to the non-exclusive jurisdiction of the courts of the State of Delaware, USA, including the relevant state and federal courts and courts competent to hear appeals from those courts.

#### **Entire agreement**

94. This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another

affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.

95. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (“**Original Agreement**”) between the Customer and the Supplier, these terms and this Agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
96. For the avoidance of doubt, the Customer understands and agrees that these terms will prevail over, and the Supplier will not be bound by, any conditions (express or implied) added or provided by the Customer, whether in an order or otherwise, unless otherwise agreed in writing by the Supplier.