

STANDARD TERMS AND CONDITIONS OF SALE

1. Terms of Agreement. Any order by a person or entity (“Buyer”) for goods (an “Order”) if accepted is accepted subject to these Standard Terms and Conditions of Sale, which are made a part of and incorporated into any acceptance, acknowledgement, invoice and other document issued by Cornelius, Inc. (“Seller”) in response to such Order (each a “Response”), and any reference thereto shall include these Standard Terms and Conditions of Sale (these “Standard Terms”). No waiver, alteration, or modification of the terms and conditions set forth herein shall be valid unless expressly agreed to in writing by Seller. Any different, additional or conflicting terms or conditions set forth in Buyer’s purchase order or any other document issued by Buyer are expressly objected to by Seller and the terms hereof (including those contained in the applicable Response) shall exclusively govern the purchase and sale of the goods covered by the applicable Response.
2. Delivery Terms.
 - 2.1. All goods sold by Seller to Buyer will be delivered by Seller F.O.B. at Seller’s facility (“Shipping Point”). Seller reserves the right to make partial shipments and to select the means of delivery and carrier. Buyer assumes all risk of loss upon Seller’s delivery of the goods to the carrier at the Shipping Point and Seller shall have no further responsibility for the goods. Buyer agrees to pay (or reimburse Seller if Seller makes such payment for) all loading, freight, shipping, insurance, forwarding and handling charges, taxes, fees, storage, and all other charges applicable to the goods after they are delivered by Seller at the Shipping Point. Buyer shall also pay for all freight charges from point of manufacture. Unless otherwise instructed, all shipments of goods between zero and 200 pounds shall be shipped by United Parcel Service and all shipments of goods over 200 pounds will be shipped by truck. Title to the goods shall be retained by Seller, as a vendor’s lien, until such goods are paid for in full by Buyer. Buyer hereby grants Seller and Seller hereby reserves a purchase money security interest in and to the goods sold to Buyer together with all proceeds thereof to secure Buyer’s performance and payment. Buyer agrees upon Seller’s request to do all acts and execute all documents reasonably necessary to assist Seller’s perfection and maintenance of any such security title and right of possession, including, but not limited to, executing and filing documents with the appropriate governmental agency.
 - 2.2. Unless specifically agreed to in writing, all delivery dates are estimated and any failure by Seller to deliver in accordance with such dates shall not constitute a breach or repudiation by Seller. Seller shall not be liable for any costs or damages incurred by Buyer by reason of any delay in shipment unless specifically agreed to in writing.
 - 2.3. In the event delivery is delayed without fault of Seller, Buyer shall submit payment for goods as set forth herein and bear all costs and expenses incurred by Seller in connection with such delay, including storage and transportation costs.
3. Orders for goods. Buyer shall submit a purchase order (“Purchase Order”) for the goods which shall, at a minimum, include: (a) description of the goods ordered; (b) quantity; (c) price of the goods; (d) requested delivery date; (e) for replacement parts, include the color of such replacement parts; and (f) shipping instructions and shipping address, including a statement that the goods will be shipped “F.O.B. Shipping Point”. All Purchase Orders are subject to acceptance by Seller. Buyer shall be responsible for all additional shipping costs resulting from errors made in connection with telephone orders or confirming orders accepted by Seller.
4. Prices and Payment.
 - 4.1. The purchase price of the goods sold hereunder shall reflect F.O.B. Shipping Point. Prices are subject to change by Seller in the event of any alteration in quantity, design or specification requested by Buyer, any increase in the cost of materials, labor, transportation, utilities or any other factor beyond the Seller’s reasonable control, including, but not limited to, any event of force majeure described in Section 20 of these Standard Terms.

- 4.2. All invoices are due and payable in full within 30 days from the date of the invoice. Interest at the rate of 1.5% per month, or such lesser rate as is the maximum rate of interest permitted by law, shall be charged on all overdue accounts. Buyer shall pay any and all costs of collection including, without limitation, reasonable attorney's fees, whether or not suit is instituted, incurred by Seller in the event collection of any delinquent balance is required.
5. Acceptance of goods. Buyer shall conduct any incoming inspection tests on the goods within 15 days of delivery. In the event of any shortage, damage or discrepancy in or to a shipment of goods, Buyer shall promptly give notice thereof to Seller and shall furnish such written evidence or other documentation as Seller reasonably may deem appropriate. If such evidence indicates, in Seller's reasonable judgment, that such shortage, damage or discrepancy existed at the time of delivery of the goods to the carrier, Seller shall promptly deliver additional or substitute goods to Buyer; provided, however, that Seller may, in its sole discretion, require Buyer to return all damaged goods prior to delivery of substitute goods. If Buyer shall fail to timely give Seller such written notice as provided hereunder, the goods shall be deemed to conform to the warranty and all other applicable terms and Buyer shall be deemed to have accepted the goods and shall pay for the goods in accordance herewith.
6. Cancellation. Accepted orders may not be cancelled or amended by Buyer without Seller's consent. If Seller provides its consent, Buyer shall pay the amount of all expenses incurred by Seller related to the cancelled or amended order, including, but not limited to, for any finished goods, work in progress, and raw materials. Such amount shall be paid in full within 30 days from the date of Seller's invoice related to such expenses.
7. Taxes and Fees. Buyer shall be responsible for and shall pay or reimburse Seller for all taxes, duties, assessments and other governmental charges, however designated, associated with the purchase of goods hereunder, the payment of any amounts by Buyer to Seller, or taxes based on the goods or their use which are or may be imposed under or by any federal, state or local taxing authority; provided, however, that Buyer shall not responsible for any taxes based upon Seller's income. If exempt from taxes and fees, it is the Buyer's responsibility to submit a properly executed tax exemption certificate to the Seller that meets the requirements of the applicable taxing authorities.
8. Product Changes. Seller reserves the right, in its sole discretion and without incurring any liability to Buyer, to: (a) alter the specification for any goods or component thereof; (b) discontinue the manufacture of any goods or component thereof; (c) discontinue the development of any new product, whether or not such product has been announced publicly; or (d) commence the manufacture and sale of new products having features which make any goods wholly or partially obsolete.
9. Buyer's Specifications. Buyer shall be solely responsible for ensuring that all specifications, drawings, information, advice, recommendations or requests provided to Seller by Buyer or any of its agents ("Buyer's Specifications") are accurate and suitable. Examination or consideration by the Seller of any of Buyer's Specifications shall not result in any liability on the part of the Seller. Buyer shall defend (at Seller's request), indemnify and hold harmless Seller, its parent and affiliated companies, and their respective officers, agents and employees from any and all third party damages, liabilities, allegations, claims, lawsuits, demands, judgments, awards, or settlements resulting in any manner from goods produced by Seller in accordance with Buyer's Specifications. This Section 9 shall be construed in favor of providing defense and indemnification.
10. Return Policy.
- 10.1 Seller will only accept returns for goods that conform with the provisions below regarding acceptable procedures for the return of goods, or that have otherwise been previously approved for return by Seller in its sole discretion; provided, however, that no approval will be given for the return of goods after that date which is 90 days after the date that such goods were shipped by Seller.

- 10.2 Upon Seller's written approval and in order for Buyer to return goods hereunder, Seller will provide Buyer with a return goods authorization number (RGA) and, if requested by Seller, bar coded label with which Buyer shall identify the goods to be returned. All returned goods or parts must be sent freight prepaid and be properly marked with the provided barcode label and authorization number.
- 10.3 If Buyer returns goods in the manner required under the provisions of Sections 10.1 and 10.2 above, and if the returned goods are (a) in new, unused condition, unopened and undamaged; (b) in the original insulated shipping container with all the original packaging; (c) in a configuration appearing in Seller's current catalogue; and (d) with respect to returned goods that have an expiration date, received by Seller at least 60 days prior to such expiration date; the returned goods will be accepted by Seller for return with no handling charge. Goods returned that are not in compliance with the foregoing (a) through (d) or that require Seller to incur any additional costs will be subject to up to a 20% restocking fee. Used or discontinued products or parts will not be accepted for credit under any circumstances unless specifically agreed to by Seller in its sole discretion.
- 10.4 A credit will be issued for all goods accepted for return hereunder, in an amount equal to (a) the lesser of the original selling price and the current selling price, minus (b) the applicable handling charge.

11. Warranty and Remedy for Breach.

- 11.1. Express Warranty. Seller warrants to the original Buyer from Seller who buys solely for commercial or industrial uses, or for resale in the ordinary course of business, that each of the products and components thereof (collectively for the purposes of this Section 11, "Products"), which term excludes Excluded Parts as defined below, which are provided "as is" and unwarranted) covered by this Response and described in the Seller Warranty Policy and Procedure Guide shall be free from defects in material and/or workmanship, under normal and proper use and service conditions. For purposes of this Section 11.1, "Excluded Parts" includes water filter cartridges, coin mechanisms, light bulbs, fuses, glass, diaphragms, seals, o-rings, silicone or rubber parts and refrigeration access valves, as well as normal maintenance items.
- 11.2. Express Warranty Limitations. It is not a Product defect, and thus the warranty in Section 11.1 does not apply to, repair, replacement or other service required by or loss or damage resulting from (i) other than normal and proper use and normal service conditions with respect to such Product, (ii) improper voltage, (iii) inadequate wiring, (iv) abuse, (v) accident, (vi) alteration, (vii) misuse, (viii) neglect, (ix) unauthorized repair or the failure to utilize suitably qualified and trained persons to perform service and/or repair of the Product, (x) improper cleaning, (xi) failure to follow installation, operating, cleaning or maintenance instructions, (xii) use of "non-authorized" parts (i.e., parts that are not 100% compatible with the Product) which use voids the entire warranty, (xiii) Product parts in contact with water or the product dispensed which are adversely impacted by changes in liquid scale or chemical composition. It is also not a defect if a Product problem in remote water-cooled refrigeration systems is caused in whole or in part by improperly sized and installed remote cooling towers or systems. It is also not a defect if a failure of a Product refrigeration component (compressor-valves) is caused in whole or in part by a remote condenser system failure, or incorrect sizing, operation or installation thereof. The warranty in Section 11.1 does not cover (i) normal maintenance, cleaning and adjustments or (ii) any Products purchased on an OEM basis. The warranty in Section 11.1 is further limited to the use of that equipment in connection with soft drinks, soft drink syrups, beer, coffee, hot chocolate, tea or food commodities for which use the particular Product has been identified by Seller.
- 11.3. Warranty Period. The "Warranty Period" for each Product is for the time period described in the Seller Warranty Policy and Procedure Guide and such time period shall be measured from (i) the date of installation of such Product, or, (ii) three (3) months from the date of shipment by Seller of such Product, whichever time period begins first.

11.4. Remedy. Seller's sole obligation, and Buyer's sole remedy, in the event of a breach of such warranty shall be to repair, replace (with new or rebuilt replacement), or refund the purchase price thereof, as Seller may determine in its sole discretion at Seller's cost, the defective goods or part(s) thereof; provided, that Buyer (a) promptly sends Seller notice in reasonable detail of the defect (which must be received by Seller during the Warranty Period); (b) provides Seller with such information concerning the failure so that Seller may determine in good faith whether the goods or part(s) thereof are defective; and (c) upon Seller's request, returns the defective goods or parts thereof for inspection by Seller. Buyer shall have no liability to Seller if, and with respect to such goods for which, Buyer fails to adhere to the foregoing procedures. In the event that Seller elects to replace the defective goods or part(s) thereof, its sole obligation shall be to promptly deliver to Buyer such replacement goods or part(s) thereof (replaced goods or part(s) becoming the property of Seller). Installation of such replacement goods or part(s) shall be at the cost and the responsibility of Buyer. In the event Seller elects to repair the defective goods or part(s) thereof, its sole obligation shall be promptly to repair and return such goods or part(s). In connection therewith Buyer shall pay packing and all other similar charges, round trip shipment costs for the repaired goods or part(s), import and export duties, export inspection charges and all other directly related costs applicable for round trip between Buyer's premises and the Seller facility. A Product or component thereof covered by the warranty in Section 11.1 supplied as a warranty replacement will assume the balance of the warranty period applicable to the original measured from the date of replacement. The warranty in Section 11.1 does not include, and Seller will not assume or pay, the expense of travel time or mileage, any premium time of any party other than Seller; any repair, replacement, analysis or any other services or parts furnished by any party other than Seller unless specifically authorized in advance and in writing by Seller. The warranty in Section 11.1 does not include labor for diagnosis, removal or installation of any Products.

11.5. Warranty Claims. Any claim under the warranty in Section 11.1 must be made as promptly as is reasonably possible, but in no event later than sixty (60) consecutive calendar days, after the discovery of the defect. Such claims are to be directed to the CORNELIUS SERVICE DEPARTMENT at 101 Broadway Street West, Osseo, MN 55369 (763) 488-8200.

Any Product covered by the warranty in Section 11.1 must not be returned to Seller without authorization from the CORNELIUS SERVICE DEPARTMENT. Instructions for return will be given with any such authorization. All returned Products must be shipped prepaid to Seller. Return shipping costs of repaired or replacement Products will be prepaid by Seller, except that as to original purchasers in Alaska or Hawaii, Seller will pay shipping costs only to Seattle or San Francisco respectively. Seller will not accept collect shipments. Replaced Products become the property of Seller. Any Product returned to Seller under the terms of the warranty in Section 11.1 must be accompanied by a returned goods tag, properly filled out as to unit model number and serial number and detailed explanation of failure.

Seller may in its discretion direct an Authorized Service Center reasonably proximate to the Buyer to perform its obligations under the warranty in Section 11.1. That Service Center may also perform such other services as the purchase may require at Buyer's expense.

11.5. Limited Warranty. THE WARRANTY SET FORTH IN SECTION 11.1 ABOVE IS INTENDED SOLELY FOR THE BENEFIT OF BUYER. ALL CLAIMS HEREUNDER SHALL BE MADE BY BUYER AND MAY NOT BE MADE BY BUYER'S CUSTOMERS. THE WARRANTY SET FORTH IN SECTION 11.1 ABOVE IS IN LIEU OF, AND SELLER HEREBY DISCLAIMS AND EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. SELLER MAKES NO WRITTEN WARRANTY OF ANY KIND WHATSOEVER TO ANY PURCHASER WHO BUYS FOR PERSONAL, FAMILY OR HOUSEHOLD USE.

11.6. Buyer Warranties. Buyer shall provide a no defect in materials or workmanship warranty with respect to each product sold to an end customer for a period not less than the then remaining

Warranty Period related to such product and afforded to Buyer pursuant to Section 11.1 above. Except with respect to the remedies provided by Seller to Buyer under this Section 11, any other warranties or representations, or remedies for breach thereof, which Buyer may provide to its end customers from time to time shall be the sole responsibility of Buyer, and Seller shall not be bound thereby in any manner whatsoever.

12. Limitation of Remedy and Indemnification.

- 12.1. Delay. Seller shall not be liable for any loss or damage caused by delay in furnishing Products or services or any other performance.
- 12.2. Sole Remedies. The sole and exclusive remedies for breach of any non-warranty obligation of Seller and the sole remedies for Seller's liability of any kind (including liability for negligence) with respect to the goods and services provided to Buyer shall be to use all commercially reasonable efforts to promptly cure such breach, repair or replace the goods, or refund of the purchase price of defective goods, as Seller may determine in its sole discretion. Buyer must commence any suit for a cause of action arising hereunder within one year from the date in which the facts that gave rise to the cause of action first occurred.
- 12.3. Consequential Damages. In no event shall Seller's liability of any kind include any special, indirect, incidental or consequential loss or damage, even if Seller shall have been advised of the possibility of such potential loss or damage.
- 12.4. Damages Amount Limitation. Seller's cumulative liability for damages to Buyer for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, including, but not limited to, negligence, shall be limited to the total contract price of the goods sold hereunder during the past twelve (12) months, plus or minus, as applicable, the amounts of all unpaid accounts payable and receivable between the parties, if any.
- 12.5. Indemnification. Buyer shall defend (at Seller's request), hold harmless, and indemnify Seller, its parent and affiliated companies, and their respective officers, agents and employees for any and all damages, liabilities, allegations, claims, lawsuits, demands, judgments, awards, costs, (including attorneys' fees) or settlements, for (a) injury to person, property, business, or otherwise related to the goods or services sold pursuant to the applicable Response or arising out of, or related to, such transaction, even if, to the extent permitted by law, arising from Seller's negligence; (b) Buyer's negligent or willful acts, or those of its employees and/or agents; and/or (c) Buyer's breach of these Standard Terms. Seller's indemnification rights and remedies and all of Seller's other rights and remedies provided in these Standard Terms shall be non-exclusive rights and remedies for Seller and Seller may pursue any other legal theory or claim, whether based in law or equity, against Buyer. This Section 12.5 shall be construed in favor of providing defense and indemnification.

13. Confidential Information. Buyer acknowledges and agrees that any specifications and all related writings, drawings, designs and similar works provided to Buyer by Seller shall be deemed "Confidential Information." Buyer further acknowledges and agrees that any other information which is disclosed by Seller in any tangible form and is clearly labeled or marked as confidential, proprietary or its equivalent, or information which is disclosed orally or visually, is designated confidential, proprietary or its equivalent at the time of its disclosure and is reduced to writing and clearly marked or labeled as confidential, proprietary or its equivalent within thirty (30) days of disclosure shall be deemed "Confidential Information." All Confidential Information shall be the exclusive property of Seller, and Seller retains all right, title and interest, including copyright, relating to "Confidential Information." Buyer agrees not to use any Confidential Information for any purpose other than as permitted or required for performance by Buyer under the applicable Response and not to disclose or provide any Confidential Information to any third party and to take all necessary measures to prevent any such disclosure by its employees, agents, contractors or consultants. Upon request of Seller or completion of the Purchase Order and/or applicable Response, Buyer shall return all such Confidential Information to Seller and shall certify to Seller that it

has returned all such Confidential Information. The return of Confidential Information shall be complete in every respect, so as to permit an experienced manufacturer to manufacture, assemble, maintain and service the goods and shall include a full drawing package in reproducible form and any revisions or updates, including but not limited to, auto-cad files, fabrication drawings, approved supplier list, test specifications, tooling specifications and drawings, manufacturing assembly instructions, routings, quality assurance protocols, test equipment, specifications and drawings and engineering change notice history.

14. Seller's Literature. Any data, illustrations, examples, models or other information contained in advertising, sales, technical and other literature issued by Seller is provided for general guidance only and shall not form part of any contract unless specifically agreed to by Seller in writing.

15. Intellectual Property Infringement Indemnification.

15.1 Indemnification by Seller. Seller will defend, indemnify and hold harmless Buyer from and against any and all loss, damage, cost or expense (including reasonable attorney's fees) arising as a result of any claim that the goods sold hereunder infringe any third party U.S. patent, copyright, trademark, trade secret or other intellectual property right, provided that: (a) Buyer gives Seller prompt notice of any such claim, and permits Seller, through counsel of Seller's choice, to defend or settle any such claim; and (b) Buyer provides Seller with all needed information, assistance and authority to enable Seller to defend or settle such claim. Additionally, in the event that any good sold hereunder becomes, or, in the opinion of Seller, is reasonably likely to become, subject to any such claim, Seller will, at its sole option and expense, either (y) procure for Buyer the right to continue to use the goods or (z) replace or modify the goods so that they are non-infringing; provided, however, that in the event that Seller determines the remedies in (y) or (z) to be impracticable in the exercise of its sole discretion, Seller may, as Buyer's sole remedy (apart for indemnification as described above), provide Buyer with a refund of the purchase price in exchange for the return of the goods to Seller. Notwithstanding the foregoing, Seller shall have no obligation to Buyer under this Section 15.1 for any matter for which Seller is entitled to indemnity under Section 9 hereof.

15.2 Indemnification by Buyer. Buyer agrees not to violate or infringe upon the intellectual property rights relating to any goods sold under any invoice or hereunder, owned or controlled by Seller, or under which Seller has the right to manufacture or sell. Buyer will defend (at Seller's request), indemnify and hold harmless Seller, its parent and affiliated companies, and their respective officers, agents and employees for any and all damages, liabilities, allegations, claims, lawsuits, demands, judgments, awards, or settlements in the event that Buyer modifies, or combines with any non-Seller goods, any of the goods purchased from Seller, and such modification or combination results in the infringement or alleged infringement of any intellectual property rights of any third party. The sale and delivery of the goods to Buyer hereunder shall in no way transfer to Buyer the right or ownership in any patents, copyrights, trademarks, technologies, designs, specifications, drawings, or other intellectual property incorporated into the goods. This Section 15.2 shall be construed in favor of providing defense and indemnification.

16. Insurance Requirements. Buyer shall procure and maintain workers' compensation coverage sufficient to meet the statutory requirements of every state in which Buyer's personnel are engaged in Seller's work. Buyer agrees from receipt of each applicable Response for a period of no less than two years thereafter it will keep in force and effect commercial general liability and product liability insurance, including contractual liability insurance with minimum primary policy limits of not less than one million dollars (\$1,000,000) per occurrence; and with minimum excess or umbrella policy limits of not less than four million dollars (\$4,000,000) per occurrence insuring against personal injury, bodily injury and property damage. All insurers shall be admitted carriers in the United States, and licensed to do business in each state in which Seller and/or its affiliates operate stores. All insurers shall have an A. M. Best rating of at least an A-VIII. Seller shall be named as additional insured under such policies. Buyer shall furnish to Seller and any party designated by Seller within ten (10) days of written request current certificates of insurance evidencing such insurance, and the policies shall contain a provision that there will be no

cancellation, reduction, or non-renewal in coverage without first giving Seller thirty (30) days prior written notice. Buyer's insurance shall in no way limit Buyer's obligations or liability under these Standard Terms.

17. Ownership of Tooling and other Material/Equipment. All right, title and interest to all jigs, dies, fixtures, special cutting tools, special gauges, special test equipment, computer programs, patterns, other special equipment and manufacturing aids and drawings and any replacements of the foregoing constructed or acquired by Seller in connection with the goods sold hereunder shall vest in Seller, notwithstanding any charges made to the Buyer.
18. Term and Termination. These Standard Terms govern all current and future sales from Seller to Buyer. Seller shall have the right to cancel for default all or any part of Buyer's Order upon the occurrence of any of the following events: (a) Buyer repudiates such Order or any applicable Response, any other Order or Response, or these Standard Terms, (b) Buyer breaches any of the terms of the applicable Response or any of the terms hereof, (c) Buyer makes an arrangement, extension or assignment for the benefit of creditors, (d) Buyer dissolves or otherwise ceases to exist or liquidates all or substantially all of its assets, (e) Buyer becomes insolvent or generally does not pay its debts as they become due or (f) Buyer is adjudicated as bankrupt or files a voluntary petition in bankruptcy. Seller may, at its option, request that Buyer provide adequate written assurance of future performance pursuant to the Uniform Commercial Code as enacted in the State of Minnesota. In such a case, Buyer must provide said written assurance of performance within 10 days of the Seller's written request (excluding the date of mailing). This right of cancellation and the right to request an adequate written assurance of future performance are in addition to and not in lieu of any other remedies which Seller may have in law or equity.
19. Arbitration. Other than when the sole remedy sought is an injunction, any controversy or claim arising out of or relating to this Agreement, or the making, performance or interpretation thereof, including without limitation alleged fraudulent inducement thereof, shall be settled by binding arbitration in Minneapolis, Minnesota by one arbitrator in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Judgment upon any arbitration award may be entered in any court having jurisdiction thereof.
20. Force Majeure. Seller shall not be liable for any failure to perform or delay in performance due to circumstances beyond Seller's control. Circumstances beyond Seller's control shall be deemed to include, without limitation, acts of God or the public enemy, fire, flood, war, governmental action, accident, labor dispute, labor unrest and inability to obtain materials, equipment or transportation.
21. Governing Law. These Terms and Conditions, including any applicable Response delivered in connection herewith, shall be interpreted and construed in accordance with the laws of the State of Minnesota.
22. Entire Agreement; Priority. These Standard Terms, including any applicable Response delivered in connection herewith, and all attachments hereto and thereto and specifications set forth herein and therein, constitute the complete and final agreement between the parties and supersede all prior negotiations and agreements between the parties concerning its subject matter other than the Seller Warranty Policy and Procedure Guide and, to the extent that the Seller Warranty Policy and Procedure Guide conflicts with these Standard Terms, these Standard Terms shall control; provided, however, that (i) to the extent of any conflict between these Standard Terms and the terms of the relevant applicable Response, the terms of the relevant applicable Response will control and (ii) if at the time of delivery of an applicable Response the parties are also party to an in effect Master Supply Agreement or Distributor Agreement, additional terms in the Master Supply Agreement or Distributor Agreement shall also apply, but in the case of conflict between any thereof the order of priority is (a) the relevant applicable Response will control except that the price for any goods shall in any event be determined as set forth in an applicable Appendix to the Master Supply Agreement or Distributor Agreement, (b) the terms of such Master Supply Agreement or Distributor Agreement will control except as described in (a), and (c) these Standard Terms shall apply except in the case of conflict with the relevant applicable Response or such Master Supply Agreement or Distributor Agreement. The relevant applicable Response, any Master Supply Agreement or Distributor Agreement and these Standard Terms and Seller Warranty Policy and Procedure Guide shall govern and control the respective rights and obligations of all goods purchased under such applicable Response

submitted by Seller or its affiliates, to the exclusion of any additional delivery or purchase terms or conditions, whether set out in any acceptance or acknowledgment or otherwise, unless expressly agreed to in a writing signed by both parties.

In addition to these Standard Terms, the applicable Response of which they are a part and any specifications set forth herein and therein, the parties hereto may also be party to a Confidentiality Agreement, a Tooling Agreement and/or an eKANBAN Agreement (each an “Additional Agreement”). The parties agree that: (y) any Additional Agreement executed before the date hereof will survive the issuance of the applicable Response and the effects of these Standard Terms and continue in full force in accordance with its terms and; and (z) these Standard Terms, the applicable Response of which they are a part and any specifications set forth herein and therein will survive the execution hereafter of any Additional Agreement and continue in full force in accordance with its terms except to the extent such Additional Agreement expressly amends them. To the extent there is a conflict between the terms and conditions of such Additional Agreement and these Standard Terms, the terms of such Additional Agreements shall control.

It is understood that the acceptance or acknowledgment of purchase order forms containing provisions different from those set forth herein or in any applicable Response shall not effect any modification thereof. No statement or recommendation made or assistance given by a representative and/or distributor of Seller in connection with the use of any product by Buyer shall constitute a waiver by Seller of any of the provisions hereof or affect Seller’s liability as set forth herein.

23. Notices. Notices and communications shall be deemed given to either party at the address set forth on the applicable invoice (includes any electronic address, if so provided on the invoice): (a) upon the expiration of 5 business days after the date of deposit in the U.S. mail if sent by registered mail, return receipt requested; (b) upon the next business day if sent by recognized overnight supplemental delivery service; (c) the same business date if notice is delivered personally; or (d) upon electronic confirmation of transmission if sent by facsimile or electronic mail.
24. Assignment. Neither Buyer’s rights nor its obligations hereunder may be transferred by assignment, operation of law or otherwise, unless Seller consents to such transfer in writing prior to the occurrence of such transfer.
25. Independent Contractors. The relationship of Buyer and Seller is and shall be one of independent contractors. Nothing shall authorize, or be interpreted as authorizing, either party to bind the other, to incur any liability on behalf of the other, or to act as an agent for the other.
26. Survival. All provisions set forth herein regarding warranty, confidential information, indemnification, liability and limits thereon, and any other provisions that survive by their terms will survive any termination or expiration of any applicable Response delivered in connection herewith pursuant to the terms of such sections.
27. Severability. In the event that any provision of these terms is held to be illegal, invalid or unenforceable under any present or future law, rule or regulation, such provision shall be deemed stricken from these Terms and Conditions, but such illegality, invalidity or unenforceability shall not invalidate any of the other provisions of these Terms and Conditions and the remainder of these Terms and Conditions shall continue in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from these terms. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of these terms a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.
28. Compliance with Seller’s Code of Responsible Business. Buyer acknowledges that Seller has a code of responsible business (the “Code”) which is available upon request. Buyer shall, at all times, conduct, and cause its officers, directors, employees and/or agents to conduct, business ethically and in accordance with the provisions of the Code and any other codes of conduct or policies of Seller, its parent, or affiliates that Seller provides to Buyer or otherwise makes Buyer aware. This Section 28 shall apply whether or not

Buyer is acting pursuant to an applicable Response or otherwise in its relationship with Seller. Buyer agrees that it must be able to demonstrate its compliance with the requirements referred to in this Section 28 at the request of and to the satisfaction of Seller which includes, but is not limited to, Seller having the right to inspect any site involved in work for Seller. If Buyer fails to comply with this Section 28, Seller shall be entitled, in its sole discretion, to terminate the applicable Response or other agreements between Buyer and Seller without penalty to Seller, but with obligations for Buyer to remedy any damages suffered by Seller as a result of such termination or as a result of the breach of the applicable Response by Buyer.