

## U.S. SALES ORDER TERMS &amp; CONDITIONS

**1.01 ACCEPTANCE & APPLICABILITY OF TERMS****(a) Definitions.**

As used herein, "Seller" means MCC Holdings, Inc. or a division thereof, Xomox Corporation or a division thereof, or another subsidiary of Crane Co., which has agreed to provide goods or services pursuant to an order acknowledgement or other agreement which refers to and incorporates these Terms and Conditions. "Buyer" means the legal person or entity entering into such agreement with Seller.

**(b) Effectiveness of Terms & Conditions.**

The terms, conditions, and limitations ("Terms") set forth herein are the only terms, conditions, and limitations to which Seller will agree, constitute the entire agreement between the parties with regard to the subject matter hereof, and supersede all prior statements, proposals, negotiations, and representations, and, to the extent permissible by law, supersede all statutory provisions regarding scope and duration of Seller's warranties and the availability of remedies with regard to such subject matter. Unless specifically agreed to in writing by a duly authorized representative of Seller, Seller shall not be bound by any terms or conditions other than these Terms, whether written or oral, whether contained in Buyer's purchase order, or elsewhere. Any such terms and conditions are hereby expressly objected to and rejected by Seller. If an order or other communication from Buyer includes any term or condition contrary to, or in addition to, these Terms, Buyer's acceptance of the goods and services which are specified in Seller's sales order or other acknowledgement (the "Goods" and the "Services"), after Buyer's receipt of these terms from Seller, shall constitute Buyer's complete and unconditional assent to Seller's Terms notwithstanding anything to the contrary in any such earlier order or communication, unless Buyer clearly instructs Seller in writing, prior to acceptance, to cancel the order. The terms, conditions, and limitations set forth herein can be modified, altered, or added to only by a subsequent written instrument signed by an authorized Seller representative. No inconsistent course of dealing, course of performance, or usage of trade, if any, shall constitute a waiver or serve to explain or interpret these Terms.

**(c) Corrections.**

Seller reserves the right to correct clerical, arithmetic or typographical errors or omissions in quotes, invoices, price schedules, acknowledgements or other relevant documents.

**1.02 PRICE & PAYMENT****(a) Seller's Right to Invoice and Ship.**

If Seller notifies Buyer that the Goods are completed and ready for delivery, or inspection, or other release, and Buyer does not respond within three (3) business days, Seller may ship the Goods on or after the delivery date specified in the applicable order and invoice Buyer. In such case payment will be due according to the payment period specified in Section 1.02(e), and any portions of payment to be triggered by an event following shipment of the Goods will be included in the invoice, rather than delayed to a later date. Seller will also have the option of billing for partial shipments.

**(b) Price.**

Prices in Seller's proposal or quotation are valid for thirty (30) days, unless otherwise noted, and are subject only to the quantities, specifications and conditions received by Seller at the time of the quotation. Seller sources materials on a worldwide basis for optimum cost management and may revise its quotation based on any special sourcing requirements of Buyer. Seller's list prices are subject to change without notice and may be subject to a surcharge due to the price volatility of raw materials.

If Seller incurs any additional costs in packaging or performing any special tests or inspections as requested by Buyer, in addition to those that may be regularly supplied or performed by Seller, Seller will charge such costs to Buyer. Such tests and inspections will be made only at Seller's factory before the date of shipment.

**(c) Minimum Order Requirement.**

Orders for Goods will be subject to a net minimum invoice charge of \$100. Orders for parts are subject to a net minimum invoice charge of \$50.

**(d) Taxes.**

All prices are exclusive of any and all taxes, duties or government fees. In addition to the stated prices and any other charges due, Buyer shall reimburse Seller for all sales, use, excise, value added, goods and services or other taxes that Seller must at any time either pay or collect in connection with the Goods or Services sold by Seller to Buyer. If, under the laws of the Buyer's territory, Buyer is required to withhold any tax on such payments, then the amount of the payment will be automatically increased to totally offset such tax, so that the amount actually remitted to Seller, net of all taxes, equals the amount invoiced or otherwise due. If exemption from any tax, duty, fee or permit is claimed, Buyer shall promptly furnish Seller with proof of exemption satisfactory to Seller and the governing authority, and shall reimburse Seller for any cost or expense, including attorneys' fees, incurred as a result thereof.

**(e) Terms of Payment.**

Unless otherwise agreed, Seller shall invoice Buyer upon shipment, and Buyer shall pay Seller net thirty (30) calendar days from date of invoice, subject to credit approval. Seller, in its sole discretion, may require either that (1) Buyer provide an irrevocable Letter of Credit at sight drawn on a bank acceptable to Seller (in such case all banking charges outside Seller's location shall be for the Buyer's account, and delivery lead time will commence from Seller's receipt of the Letter of Credit, to be advised through Seller's preferred bank); or that (2) Buyer make 100% payment in advance by wire transfer to Seller's preferred bank (in such case delivery lead time will commence from receipt of the Buyer's payment by Seller's preferred bank).

All payments shall be in United States currency, unless otherwise specified in writing by Seller, and shall be made by means acceptable to Seller. The price is payable on the terms set forth herein without deductions, set-offs, counterclaims, back-charges, or any other charges or claims of Buyer whatsoever, and the obligations of Buyer to Seller shall remain unimpaired regardless of disputes which may arise between Buyer and third parties.

**(f) Continued Creditworthiness of Buyer.**

Seller will determine extension of credit in its sole discretion. If, in Seller's judgment, Buyer's financial responsibility is or becomes impaired or unsatisfactory or if Buyer has failed or fails to perform under any contract, Seller shall have the right to demand and Buyer shall provide advance cash payment or security satisfactory to Seller and Seller may withhold shipment until receipt thereof. Overdue payments shall bear interest at the lesser of 1.5% per month or the maximum permitted by law. In addition, Buyer shall pay Seller all costs of collection on overdue accounts including but not limited to reasonable attorney's fees whether or not litigation is commenced in aid thereof. BUYER WAIVES ANY RIGHT OF SET-OFF AND SHALL MAKE NO DEDUCTIONS FROM PAYMENTS DUE TO SELLER OR FOR ANY DAMAGES OF ANY TYPE CLAIMED BY BUYER AGAINST SELLER.

**1.03 SHIPPING, DELIVERY & ACCEPTANCE****(a) Schedule.**

All shipping and delivery dates or schedules stated by Seller are good faith projections only and are not warranties. Shipping schedules are computed from time of order entry. Partial shipments will be made by Seller when ready and invoiced absent a written agreement to the contrary. IN NO EVENT SHALL SELLER BE IN BREACH OF AGREEMENT, LIABLE FOR DAMAGES OF ANY KIND, LIQUIDATED OR UNLIQUIDATED, INCLUDING CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF USE OR LOST PROFITS, DUE TO FAILURE TO MAKE TIMELY DELIVERY OR MEET SHIPPING SCHEDULES. Delay in delivery of any installments shall not relieve Buyer of its obligation to pay for any shipments received prior to such delay or its obligation to accept the remaining deliveries. If Buyer is unable to receive the Goods when tendered, Buyer shall be liable to Seller for any loss, damage, or additional expense incurred or suffered by Seller as a result thereof.

**(b) Quantity & Weight.**

Seller shall not be responsible for the accuracy of shipping weights, which are correct only within the limits necessary for estimating freight charges.

**(c) Returns.**

For Seller to consider Buyer's request to return Goods, such Goods must be:

- (i) of Seller's manufacture,
- (ii) in clean, new, saleable condition,
- (iii) shipped from Seller's factory or a Seller's service center within twelve (12) calendar months preceding the request to return, and the request will not cause inventory to exceed maximum levels established by Seller, and
- (iv) personally inspected by Seller's representative prior to its return.

If a return is allowed at Seller's sole discretion, Seller will credit Buyer's account the invoiced price, less 20% handling cost, and less any freight paid by Seller.

**(d) Terms of Shipment & Title.**

Terms of shipment, unless otherwise specified, shall be FCA Seller's location specified in Seller's sales order or other acknowledgement (INCOTERMS 2010), delivery of the Goods to a common or contract carrier of Seller's option shall constitute delivery to Buyer, and title and risk of loss shall pass to Buyer at such time. Buyer shall pay or reimburse Seller for all shipping and handling charges. Any claims for damage to or loss of Goods in transit shall be filed by Buyer directly with, and shall be the sole responsibility of, the carrier. Buyer shall effect and maintain at its cost insurance for the Goods with a reputable insurer, and shall produce a certificate of insurance upon request by Seller.

**(e) Inspection.**

Unless otherwise agreed, Buyer shall conduct a reasonable and complete inspection of the Goods after Buyer's actual receipt of the Goods. All claims for errors, defects (other than warranty defects), shortages or any other nonconformity in any shipment of Goods delivered to Buyer must be made in writing to Seller's office as specified in the invoice within a period of ten (10) days after Buyer's receipt of such Goods. Buyer's failure to make such claims within such time period shall constitute an irrevocable acceptance of the particular shipment and an admission that such shipment fully complies with all terms, conditions and specifications contained in the terms of sale for such Goods. If Buyer rejects a shipment of Goods or any part thereof, the Seller shall have the right to cure in any reasonable manner the error, defect, shortage or other nonconformity giving rise to the rejection.

Apart from qualified Government inspectors, no inspectors or other representatives of Buyer will be allowed in Seller's plant without advance written notice and approval signed by an authorized representative of Seller.

**1.04 WARRANTY & SERVICE****(a) Scope & Duration.**

(i) Unless otherwise specified, Seller warrants that all Goods sold to Buyer will be free from defects in workmanship and material, for a period of 12 months from the date of shipment.

(ii) Seller makes no express or implied warranty, condition or representation whatsoever, as to service life of such Goods since conditions of usage and experienced service life are outside Seller's knowledge and control.

(iii) Except as expressly set forth in these Terms, Seller's warranty applies only on the conditions that:

(1) Buyer delivers written notice of a warranty claim occurring during such warranty period, not later than a reasonable time after the end of such warranty period and in any case not later than thirty (30) days after discovery of the defect which is the basis for its claim;

(2) Buyer delivers such Goods, at Buyer's sole risk and expense, after receiving written instructions from Seller, to Seller for warranty evaluation, within thirty (30) days after such written notice; however, Buyer shall not be required to deliver defective Goods to Seller if the Goods were destroyed as a result of the defect or of any defect in any part covered in this warranty, and Seller is reasonably satisfied that the Goods were defective at the time of sale;

(3) Seller determines in its sole discretion that such Goods are defective in workmanship or material, the Goods were protected by Buyer from the elements as prescribed by Seller, were not subject to accident, abuse, or misuse, and were installed, operated, inspected, lubricated, and maintained in accordance with the manufacturer's recommendation and specifications, and

(4) the Goods were not subject to a replication (i.e., reverse engineering) program, either formal or informal, sponsored or supported by Buyer or any other entity.

(iv) Buyer must receive approval from Seller prior to starting any on-site work to repair or replace the Goods. Failure to obtain such approval before starting work will void this warranty.

(v) Materials exposed to chemical or reactive processes are not warranted against corrosion or deterioration. Seller assumes no responsibility for the suitability, accuracy or reliability of materials, components, design conditions, specification, data or other items supplied, selected or furnished by Buyer. This warranty shall not apply to cosmetic issues such as chipped paint or surface scale or rust. This warranty shall not apply to Goods which have been disassembled, repaired or altered by other than authorized representatives of Seller, subject to misuse or negligence or accident. New parts or components made by others are warranted only to the extent of the warranty to Seller by the manufacturer or supplier; resale by Seller assigns such warranty to Buyer, and Seller reserves the right to refer Buyer to the manufacturer or supplier for its exclusive remedy if such parts or components are defective.

(vi) Valves supplied with bare stems are warranted only as to the body casting and internal components. However, there is no warranty for operation or functionality of the valve. Such valves are hydrostatically tested at the factory using temporary actuation systems. Seller does not warrant the proper operation, or subsequent effects on valve performance, of actuation systems installed or mounted by anyone other than Seller.

(vii) Catalog illustrations are representations of a certain size of Goods but do not necessarily represent all sizes in all details. Weights in catalogs, price schedules, quotations, and acknowledgements of all Orders are approximate and in no sense guaranteed.

#### **(b) Benefit of Warranty.**

Unless otherwise agreed by Seller in writing, such warranty runs only to Buyer and is non-transferable and non-assignable either directly, indirectly, or by operation of law, and any such purported or attempted transfer or assignment shall be null and void.

#### **(c) Buyer's Remedies.**

Buyer's sole remedy for any breach of Seller's warranty, any damaged or defective Goods supplied by Seller (regardless of whether such defect is discoverable or latent), or for delay or failure to manufacture or deliver, breach of agreement or any other cause whatsoever, including Seller's negligence, **SHALL BE STRICTLY AND EXCLUSIVELY LIMITED TO SELLER'S OPTION OF THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR TO A FULL OR PARTIAL CREDIT OF PURCHASE PRICE** and shall in no event exceed the purchase price of the particular Goods with respect to which defects, losses or damages are claimed. If Seller elects to refund the purchase price to Buyer, Buyer will return the defective Goods (unless the defect has caused the destruction of the item) and title to such returned Goods will transfer to Seller.

**THE WARRANTIES AND CONDITIONS PROVIDED IN THIS ARTICLE ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER HEREBY DISCLAIMS, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES, CONDITIONS AND LIABILITIES OF SELLER AND ALL CLAIMS AND REMEDIES OF BUYER, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY DEFECT IN THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE, AND RECOVERY BASED UPON TORT, WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE AND ANY RECOVERY BASED UPON DAMAGED PROPERTY, OR OTHERWISE BASED UPON LOSS OF USE OR PROFIT OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.**

## **1.05 LIABILITY**

### **(a) Limitation of Liability.**

**NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THESE TERMS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR INDIRECT, REMOTE, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF USE, LOST PROFITS, LOSS OF PRODUCTION, AND LOSS OF PRODUCT, INCIDENTAL, SPECIAL, LIQUIDATED, PUNITIVE, OR OTHER DAMAGES IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, WARRANTY, CONTRIBUTION, INDEMNITY, STATUTE, OR OTHERWISE. EXCEPT FOR SELLER'S INDEMNIFICATION OBLIGATIONS IN SECTION 1.05(B), BELOW, TOTAL AGGREGATE SELLER LIABILITY SHALL IN NO EVENT EXCEED THE TOTAL VALUE OF THE ORDER.** In addition, without limitation of the foregoing, in no event shall Seller be liable to Buyer, any of Buyer's vendors or any end-user for the costs or expenses incurred in or attendant to the removal or reinstallation of any Goods supplied by Seller or for any damage to other property or equipment resulting from any such removal or reinstallation.

### **(b) Infringement Indemnity.**

Seller agrees to indemnify Buyer from and against any loss or damage incurred by Buyer as a result of a final judgment of a court of competent jurisdiction that Seller's Goods infringe a valid United States patent or copyright held by a third party.

Seller's duty to indemnify shall not apply to any (i) Goods provided pursuant to Buyer's designs, drawings, or manufacturing specifications, (ii) Goods used other than for their ordinary purpose, or (iii) claims of infringement resulting from Buyer combining any Goods furnished hereunder with any article not furnished by Seller. Further, Buyer agrees to indemnify and defend Seller to the same extent and subject to the same restrictions set forth in Seller's obligations to Buyer for any suit or proceeding against Seller based upon a claim of infringement resulting from (i), (ii), or (iii) of the preceding sentence.

Buyer shall deliver written notice to Seller (i) within ten (10) days after Buyer first receives notice of any suit or other formal action against Buyer and (ii) within twenty (20) days after Buyer first receives any other allegation or written claim of infringement. Buyer shall give Seller full and exclusive control to conduct the defense or settlement of any suit or other proceeding. At Seller's request and expense, Buyer shall provide reasonable assistance including promptly furnishing to Seller all information and records within Buyer's possession or control which Seller considers relevant or material to any alleged infringement. Because Seller has exclusive control of resolving infringement claims hereunder, in no event shall Seller be liable for Buyer's attorney fees or costs.

In the event any Goods furnished hereunder are determined to have infringed any copyright or patent with respect to which Seller has an obligation to indemnify, Seller may, at its option and expense: (i) procure for Buyer the right to continue to use the Goods; (ii) replace or modify the Goods so that it becomes non-infringing; or (iii) grant Buyer a credit for such product, less a reasonable deduction for use, damage, and obsolescence. Each party's liability in the aggregate for damages under this paragraph is limited to the total value of the order hereunder. Except as required by a final judgment entered against Buyer by a court of competent jurisdiction from which no appeals can be or have been filed, Buyer shall obtain Seller's written approval prior to paying, committing to pay, assuming any obligation, or making any concession relative to any infringement covered by these indemnities. **THE OBLIGATIONS OF SELLER AND REMEDIES OF BUYER HEREUNDER ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND BUYER HEREBY WAIVES, RELEASES, AND RENOUNCES, ALL OTHER INDEMNITIES, OBLIGATIONS, AND LIABILITIES OF SELLER AND ALL OTHER RIGHTS, CLAIMS, AND REMEDIES OF BUYER AGAINST SELLER.**

### **(c) Work on Buyer's Premises or Buyer's Customer's Premises.**

If applicable, Buyer shall obtain any labor or work permits required for Seller to work on Buyer's premises. If Seller's work under these Terms involves operations by Seller on the premises of Buyer or one of Buyer's customers, Seller shall take all precautions reasonable and necessary to prevent the occurrence of any injury to persons or property during the progress of such work, and Seller shall indemnify and hold harmless Buyer or its customers from and against any and all suits, liabilities, demands, costs and expenses (including reasonable attorneys' fees) for injuries to persons, loss of life or damage to property to the extent arising out of the willful misconduct or negligence of Seller, its agents, employees or subcontractors, in proportion to its fault as compared to any other tortfeasors, including Buyer. However, Seller shall not be obligated to indemnify Buyer against any loss, damage, or expense to the extent caused by the fault of the Buyer, its agents, employees, or subcontractors.

## **1.06 CHANGES**

Except as specifically agreed by Seller, an order which has been accepted by Seller is not subject to changes in specifications or changes in time of delivery. Changes in specification or changes in time of delivery will be permitted if Seller specifically approves such adjustment in writing. Changes or modifications may result in additional costs which will be to Buyer's account. Changes to specifications may also require adjustment of the delivery schedule, and Seller will advise Buyer as soon as practicable of any such adjustments. Additional costs and/or changes to delivery time in respect of any changes requested by Buyer must be agreed upon prior to Seller's implementation of any change order.

## **2.01 DISPUTE RESOLUTION & GOVERNING LAW**

**(a) Dispute Resolution.**

Buyer and Seller agree to submit any and all claims, demands, disputes, controversies, differences or misunderstandings arising out of or relating to these Terms, or the failure or refusal to perform the whole or any part hereof, to arbitration conducted in accordance with the International Arbitration Rules of the American Arbitration Association (“AAA”), except where those rules conflict with this provision, in which case this provision controls. Arbitration shall be conducted before a single arbitrator unless the amount in dispute exceeds \$250,000. If the amount in dispute exceeds \$250,000, it shall be decided by three arbitrators, one to be selected by each party and the two party-appointed arbitrators to agree upon the third. The arbitration shall be held in Houston, Texas. Absent agreement of the parties, or an order by the arbitrator(s) based upon compelling evidence of need, there shall be no discovery in the arbitration. The arbitrators shall be authorized to award costs and attorney’s fees or to allocate them between the parties. Any court with jurisdiction may enforce this clause and enter judgment on any award.

If any of the terms, conditions, or limitations set forth herein or on the face hereof is held in violation of applicable law, the provision shall be interpreted as if such provisions are in full force and effect to the extent legally permitted or, if such provision is prohibited in its entirety, it shall be null and void, and the remaining terms, conditions, and limitations shall remain in full force and effect. Seller and Buyer agree that any action for breach of these Terms or any contract of sale between the Buyer and Seller must be commenced within one (1) year of the date of the alleged breach.

**(b) Governing Law.**

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any contract of which these Terms form a part. The law of the State of Texas, excluding its conflict of laws provisions, shall apply in interpreting these Terms and shall apply to all questions arising in connection with the quotation, order acknowledgment, the sale of Goods or Services covered hereby, any contract of which these Terms form a part, and any claims related to the foregoing.

**3.01 GENERAL TERMS; TERMINATION****(a) Integration.**

Any contract of which these Terms form a part and the terms of the Seller’s corresponding invoice, represent the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings between them with respect to the subject matter. Any representations, promises, warranties or statements by any representative or agent of Seller that differ from the Terms shall be given no force or effect. Any change, amendment, or modification of any of these Terms must be made in writing and signed by Seller. Titles incorporated herein are for reference purposes only and do not have any legal effect.

**(b) Force Majeure.**

If Seller is unable carry out its obligations under any contract of which these Terms form a part either wholly or in part due to a cause described in this Section 3.01(b), such obligations shall be suspended during the continuance of such hindrances and the obligations of any contract of which these Terms form a part shall be extended for such periods as may be necessary for the purpose of making good any suspension of deliveries so caused. Seller shall not be liable for loss or damage resulting from delay or failure of delivery or performance due to Seller’s plant conditions, accident, equipment breakdown or equipment malfunction; strike, differences with workmen, lockout, or any labor shortage or difficulty; fire, flood, accident, quarantine restrictions, earthquake, tornado, epidemic, or other casualty or act of God; act of terrorism, war, riot, civil disobedience, or other emergency, or acts of civil or military authorities; compliance with orders, priorities, or requests of any government agencies or courts or arbitrators; embargoes; failure of suppliers of Seller to meet delivery schedules, or any shortage of raw materials however caused; inability or delay in obtaining labor or materials; inability or delay in obtaining cars, trucks, fuel, or machinery necessary for transportation; or any cause, condition, or contingency beyond the reasonable control of Seller, whether similar to those enumerated or not. In the event of any of the foregoing, Seller may apportion its production and all stock material among its customers as it considers equitable.

**(c) Termination for Convenience.**

Buyer shall not be entitled to return any Goods or terminate all or any part of an order prior to delivery without written approval from Seller, pursuant to section 1.03(c) (Returns). Such approval will be conditioned upon Buyer’s payment of cancellation charges. Unless otherwise specified, cancellation charges are as follows:

- (i) After order placement by Buyer but before any procurement by Seller: 10% of the total order value will be invoiceable – payable 30 days after invoice date.
- (ii) After first procurement by Seller but before commencement of manufacture: 50% of the total order value will be invoiceable – payable 30 days after invoice date.
- (iii) After commencement of manufacture but before completion of manufacture: 75% of the total order value will be invoiceable – payable 30 days after invoice date.
- (iv) After completion of manufacture (including assembly) 100% of the total order value will be invoiceable – payable 30 days after invoice date.

**(d) Termination for Cause.**

Upon failure or refusal of Buyer to accept conforming Goods, or upon any other default by Buyer, Seller shall be entitled to exercise all remedies to which Seller may be entitled by law or in equity, including specific performance. Seller shall also be

entitled to recover all costs incurred by it in connection therewith, including reasonable attorney’s fees.

**(e) Seller’s Remedies.**

The remedies for Seller set forth in these Terms are cumulative and in addition to any other remedies provided in law or equity. No delay or failure by Seller to exercise any right or remedy shall impair in any manner whatsoever any of such rights or remedies, or be construed to be a waiver of any breach or acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude other or further exercise thereof or the exercise of any other right or remedy. The terms, conditions, and limitations herein may be enforced by Seller at any time in whole or in part. Buyer shall pay all costs and expenses paid or incurred by Seller in enforcing its rights hereunder, including without limitation reasonable attorneys’ fees and court costs.

**(f) Assignment & Delegation.**

Neither party may assign its rights or delegate its obligations under any contract of which these Terms form a part except with the written permission of the other party.

**3.02 INTELLECTUAL PROPERTY & DATA RIGHTS****(a) Intellectual Property.**

The Buyer acknowledges that any and all intellectual property rights, except for Buyer-supplied designs, used in connection with the provision of Goods and/or Services and any parts thereof are and shall remain the sole property of the Seller or of such other party as may be identified therein. In the event of any advancement of the existing intellectual property rights or any new know-how being generated or arising from the performance of or as a result of the provision of Goods and/or Services, the Buyer acknowledges that the same and all intellectual property rights therein shall belong to the Seller exclusively.

**(b) Tools, Dies, & Molds.**

Any equipment including tools, dies and molds which Seller constructs or acquires for the Buyer, notwithstanding any charges therefor, shall be and remain Seller’s property whether or not in Seller’s possession and control.

**(c) License to Buyer.**

Seller grants to Buyer a non-exclusive, non-transferable (except as provided within this clause), limited license to use Seller’s proprietary information solely as provided as part of and in conjunction with the use of the Goods provided hereunder. All title, ownership rights, and intellectual property rights in and to such proprietary information shall remain with the Seller, and Buyer shall not (i) modify, translate, reverse engineer, decompile, disassemble, or otherwise copy such proprietary information or create derivative works based upon such intellectual property; (ii) distribute, rent, lease, sell, transfer, sublicense, assign or otherwise transfer or allow others to use rights in or to such proprietary information, or (iii) remove, obscure or alter any notices or labels identifying or indicating Seller’s ownership of such proprietary information.

**(d) Confidentiality.**

“Confidential Information” means information, whether of a technical, business or other nature, disclosed by or on behalf of Seller to Buyer which (i) is not generally known to the public; (ii) is identified by Seller as proprietary or confidential or (iii) by the nature of the circumstances surrounding the disclosure ought to be treated as proprietary or confidential. Buyer shall hold all Confidential Information of Seller, whether disclosed by Seller to Buyer in connection with Seller’s provision of Goods or Services hereunder or otherwise, in confidence and shall not reproduce, use, or disclose such Confidential Information in whole or in part to any third party without the prior written consent of the Seller and shall take reasonable precautions to safeguard the secrecy thereof. Upon request by Seller, Buyer agrees to sign a non-disclosure agreement with Seller, and such other non-disclosure agreements as may be required by Seller’s suppliers and customers.

**3.03 LAWS & REGULATIONS****(a) Compliance with Law.**

Buyer shall comply with all Federal, State, and local statutes and laws and all other requirements having force of law applicable at any time which affect in any manner Buyer’s order or Buyer’s performance thereunder. Buyer shall notify Seller at once of any governmental action, prohibition, or limitation which affects in any manner Buyer’s Order.

**(b) Export Compliance.**

By placing its Order with Seller, Buyer represents and warrants that it is neither subject to any U.S. embargo or trade prohibition or limitation, nor subject to any embargo or trade prohibition or limitation in which the U.S. participates. Buyer agrees that it will not resell or distribute any Goods to any individual or entity prohibited from receiving Seller’s Goods or from dealing with Seller under U.S. law or under any embargo or trade prohibition or limitation in which the U.S. participates. Buyer shall indemnify and hold Seller harmless from and against any and all claims, demands, losses, costs, or liability incurred by Seller as a result of Buyer’s breach of this provision. Seller reserves the right to cancel Buyer’s order, suspend, or terminate Seller’s performance, or take any other action it deems necessary as a result of Buyer’s breach of this provision. This includes selling to any country or entity listed in the Treasury Department’s Office of Foreign Assets Control list (<http://www.treas.gov/offices/enforcement/ofac/>) or the Commerce Department, Bureau of Industry and Security (<http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>).