

# Kingsway Group, Inc.

## Terms & Conditions of Sale

### 1. INTERPRETATION

#### 1.1 In these Conditions:

“**Account**” means an account with the Company that is in good standing as determined by the Company and there has been no delinquency or default in payment of the Purchaser’s obligations with respect to such account.

“**Authorized Representative**” means a person or entity with the actual authority to act for and on behalf of the Company.

“**Company**” means Kingsway Group, Inc, all affiliated companies of Kingsway Group, Inc. that are a seller of Goods or Services to the Purchaser under a Contract, and each of their successors and assigns.

“**Conditions**” means these Terms & Conditions of Sale (as amended from time to time by the Company).

“**Contract**” means any agreement entered into by the Company and the Purchaser for the sale and purchase of Goods or Services which, in any case, will be subject to these Conditions.

“**Goods**” means any goods to be supplied by the Company to the Purchaser (including any part or parts of them) pursuant to a Contract.

“**Parties**” means the Company and the Purchaser. Each of the Company and the Purchaser are individually referred to as “**Party**.”

“**Purchaser**” means the person, firm or company with whom the Contract is made by the Company whether directly or indirectly through an agent who is acting for or instructed by or whose actions are ratified by such person, firm or company.

“**Quotation**” means a quotation for the supply of Goods or provision of Services issued by the Company.

“**Services**” means the services (if any) to be provided to the Purchaser by the Company pursuant to the Contract.

#### 1.2 The headings in these Conditions do not affect their interpretation.

#### 1.3 A reference to “including,” “includes,” “in particular” or any similar expression will be construed as illustrative and does not limit the scope of the words preceding it.

### 2. OFFERS FOR SALE

#### 2.1 Statements in the Company’s price lists, catalogues and advertisements will not constitute an offer to sell the applicable Goods or Services at any particular price.

#### 2.2 A Quotation is an invitation to the Purchaser to order Goods or Services from the Company and will not constitute an offer by the Company to the Purchaser to enter into a Contract.

#### 2.3 Unless otherwise stated in writing in the Quotation, a Quotation will remain valid for a period of 30 days from the date it is issued to the Purchaser, and, if not accepted within that 30-day period, will thereafter be deemed to have been automatically revoked by the Company.

#### 2.4 The Company may withdraw any Quotation, at any time, during the 30-day period prior to acceptance thereof. Such withdrawal may be made by notice in writing to the Purchaser, in which case such Quotation will no longer be valid notwithstanding that such 30-day period has not expired.

#### 2.5 The Purchaser may submit an Order by:

(a) Accepting a Quotation by email at the following email address: [sales@kingswaygroupusa.com](mailto:sales@kingswaygroupusa.com) (such Quotation having been provided by the Company in response to a specific request for Goods/Services or a scheduled delivery as part of an on-going project subject to a Quotation accepted in accordance with these Conditions) (an “**Accepted Quotation**”); or

(b) Submitting an order form, by regular mail to an address specified in writing by the Company or email to the address listed in Section 2.5(a) (such order form being for the purchase of Goods or Services sent by the Purchaser to, and received by, the Company) (together with an Accepted Quotation, each an “**Order**”); provided, however, that an Order will not be binding on the Company and no Contract will come into existence unless and until the earlier to occur of: (i) the Order being accepted in writing by the Company; or (ii) the Company delivers (in accordance with the Order) the Goods or provides the Services subject to the Order to the Purchaser.

#### 2.6 In respect of any Order which is for Goods being made to specifications, size and/or functional requirements of the Purchaser, prior to the Company’s commencement of production of the Goods, the Purchaser will be required to pay a deposit in an amount equal to 25% of the total price for the applicable Goods.

#### 2.7 In the event that a Purchaser wishes to cancel an Order for Goods ordered to the Purchaser’s specifications or requirements or an Order or Contract is terminated for any reason, the Purchaser will be required to pay the Contract price in full for those Goods produced by the Company prior to the Company’s receipt of a written notice of cancellation, plus 100% of the Company’s costs incurred in purchasing raw materials or components to be used in the manufacture of the Goods and all other out-of-pocket expenses incurred by the Company in connection with the Company’s anticipated manufacture of such Goods (the Company will retain the Deposit and will issue an invoice to the Purchaser for, and the Purchaser will promptly pay, any outstanding balance).

### 3. PRICE

#### 3.1 Unless otherwise agreed in writing by the Company: (i) the price of any Goods will be as set out in the Company’s acceptance of the Purchaser’s Order, (ii) prices stated by the Company are for delivery to addresses in the United States and Canada only, and (iii) the price of all Goods excludes all applicable taxes, tariffs, duties and like charges, the cost of which will be determined at the date of the acceptance by the Company of the Order and will be payable by the Purchaser.

#### 3.2 The Purchaser waives any right to any setoff, recoupment, deduction or other reduction or netting of the price of the Goods. In addition to any right of setoff or recoupment provided by law, the Company may set off and recoup sums owed to the Purchaser and its affiliates or subsidiaries against sums owed to the Company at its election.

### 4. PAYMENT

#### 4.1 The price of the Goods and any additional charges will be paid in full on or before delivery, subject to Section 2.7 above and unless otherwise agreed in writing in accordance with Section 16, or unless the Purchaser has an Account. In the event that the Purchaser has an Account, the price of the Goods and any additional charges will be paid in full no later than the 30<sup>th</sup> day of the month following the date the invoice is submitted by the Company to the Purchaser.

#### 4.2 The Company is entitled to close any account, at any time, at its sole discretion. In that event, the balance of the account will be due and payable to the Company immediately.

#### 4.3 Time of payment is of essence with respect to the Purchaser’s payment obligations to the Company pursuant to the Contract.

#### 4.4 Without prejudice to any other rights of the Company, whether arising pursuant to the terms hereof or at law, in the event that the Purchaser fails to pay when due the price or any part thereof or any other sum due hereunder in accordance with these Conditions:

- (a) the Company will be entitled to charge interest at the highest rate allowable by law or at the rate of 4% per annum above the Michigan money judgment interest rate from time to time in force, whichever is greater, on all sums which remain payable by the Purchaser from the date on which such sums become payable until payment in full has been received by the Company. Notwithstanding the foregoing, if the interest rate specified in these Conditions or in any Contract, Order or Quotation is higher than that permitted by law, the Parties agree that the interest rate will be reduced to the highest rate permitted by law under the circumstances;
  - (b) The Company will be entitled to suspend any and all ongoing or future deliveries and refuse to make delivery of any Goods or provide any Services ordered by the Purchaser whether under the same or any other Contract with the Company, without incurring any liability whatsoever to the Purchaser, until payment in full of all sums due from the Purchaser to the Company have been received by the Company. The Company may also treat all or any Contracts, Orders, or Quotations between the Company and the Purchaser as terminated, provided that such termination will not relieve the Purchaser of any of its payment obligations to the Company; and
  - (c) The Company will be entitled to recover all costs and expenses (including all attorneys' and other professionals' fees and expenses) incurred by the Company in the collection or recovery of sums due to the Company by the Purchaser and in connection with any other breach of the Contract by the Purchaser. The Purchaser hereby agrees to indemnify, defend, and hold harmless the Company and its officers, directors, employees, agents, affiliates and assigns in respect of all such costs and expenses.
- 4.5** To the extent that the Company owes any amounts as a result of any claim made against Purchaser that arises out of any Order, Quotation or Contract, that amount will be net of any amount Purchaser owes to the Company.

**5. PROPERTY AND RISK**

**5.1** The Purchaser acknowledges that before entering into a Contract, and accepting delivery of any Goods and/or the provisions of any Services from the Company, it has expressly or, by placing an Order, impliedly represented and warranted that: (i) it is not Insolvent; and (ii) there are no facts or circumstances that exist which would entitle any person or entity to institute any Insolvency Proceeding against it. "Insolvent" means if the Purchaser (a) is unable, or admits in writing its inability, to satisfy creditors or discharge liabilities because liabilities exceed assets; (b) is unable, or admits in writing its inability, to pay debts as they generally mature; (c) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; (d) files on its behalf or consents to an Insolvency Proceeding; (e) has an Insolvency Proceeding filed or instituted against it; (f) applies to a court for the appointment of a receiver, trustee or custodian for any of its assets; (g) has a receiver, trustee or custodian appointed for any of its assets (with or without its consent); (h) commences a self-liquidation of its assets, (i) fails to make a payment in part or in whole under the Contract or any additional charges in respect of the Goods or Services and those payments remain unpaid after the date on which it became due, (j) is or becomes in default of any of its obligations under the Contract, an Order, or Quotation, or (k) ceases or threatens to cease to carry on its business in the ordinary course. "Insolvency Proceeding" means any proceeding commenced by or against the Purchaser under any provision of the U.S. Bankruptcy Code, the Canadian Companies' Creditors Arrangement Act, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with its creditors or proceedings seeking reorganization, winding up, dissolution, liquidation, arrangement or other similar relief.

**5.2** Until such time as the Purchaser has paid the Company in full the price of, and all additional charges in respect of, Goods supplied:

- (a) will remain the sole and absolute property of the Company and the Company will reserve the right to dispose thereof;
- (b) the Purchaser will be in possession of any Goods delivered to the Purchaser solely as bailee at will for the Company, and must use its best efforts to protect the Company's interests in the Goods;
- (c) the Purchaser must cooperate fully with the Company in the delivery, assembly, and commissioning of the Goods at any facility used by the Purchaser, including, consenting to and facilitating the Company's prompt access to those facilities;
- (d) the Purchaser will maintain, use, and safeguard the Goods in a commercially reasonable manner at the Purchaser's sole cost and expense. The Purchaser will comply with all of the Company's instructions regarding the maintenance and use of the Goods. The Purchaser will maintain the Goods in compliance with all industry standards and all health and safety regulations, restrict the use and operation of the Goods to safe, careful and qualified personnel who are selected, employed and controlled by the Purchaser, and prohibit anyone other than authorized personnel of the Purchaser from making any repairs or adjustments to the Goods, in each case unless otherwise authorized in advance and in writing by the Company. Under no circumstances may the Purchaser alter or modify the Goods without the prior written consent of the Company.
- (e) the Purchaser will place and maintain permanent tags or other permanent conspicuous markings and identifications on the Goods showing that the Company holds all rights, title and interests in and to the Goods, with the Goods marked, at a minimum, with the words: "PROPERTY OF KINGSWAY GROUP, INC." The Purchaser will keep the Goods free from any other markings or labeling which might be interpreted as a claim of ownership of a party other than the Company.
- (f) the Purchaser will not remove the Goods from any facility owned by the Purchaser without Customer's prior written consent. Upon one (1) business day's prior notice, Customer may enter the Facility for purposes of inspecting the Goods and auditing the Purchaser's use of the Goods, and the Purchaser will cooperate fully with Customer in connection with such inspections and audits. Such cooperation will include, without limitation, the Purchaser's consenting to and facilitating Customer's and/or its designee's immediate access to the Facility, employees, books and records with respect to use of the Goods, and to the Goods themselves.
- (g) until the Goods have been resold or used (which, for the avoidance of doubt, is permitted in the context of the Purchaser's normal business operations), the Purchaser will segregate the Goods on the Purchaser's premises, separate from the Purchaser's own Goods and those of any other person or entity in a manner which makes them readily identifiable as the Goods of the Company;
- (h) The Purchaser assumes any and all risk of loss and damage to the Goods from any cause whatsoever; and
- (i) To the fullest extent permitted by law, the Purchaser will not allow any lien (consensual or otherwise), security interest, claim, charge, pledge, condition, equitable interest, option, mortgage, easement, encroachment, right of first refusal, restriction on use, transfer or exercise of any other attribute of ownership, or other encumbrance of any kind (collectively, "**Encumbrances**") to be imposed on the Goods through the Purchaser or as a result of the Purchaser's acts or omissions. If such an Encumbrance is imposed on the Goods, the Purchaser will immediately notify the Company, in writing, thereof and immediately take all actions necessary to promptly remove such Encumbrance. The Purchaser will not include the Goods as collateral with respect to any loan or other borrowings from lenders or otherwise hold itself out as the owner of the Goods. **TO THE FULLEST EXTENT PERMITTED BY LAW, THE PURCHASER WAIVES ANY ENCUMBRANCE OR OTHER RIGHTS OR INTERESTS THAT THE PURCHASER MIGHT OTHERWISE HAVE OR ACQUIRE IN, OR WITH RESPECT TO, THE GOODS.**
- (j) The Purchaser will ensure that Goods that are the property of the Company but that are at the risk of loss of the Purchaser, are insured against all risks at all times. For any given Order or Contract, and until the Goods arising under those Orders or Contracts have been delivered to Purchaser and title has transferred following receipt of payment in full to the Company, Purchaser agrees to name the Company as an additional insured and loss payee on any applicable insurance policy up to the amount of the contract price under the applicable Order or Contract regarding all Goods under those Orders and Contracts. Purchaser will provide to the Company a certificate of insurance evidencing compliance with the insurance requirements set forth above upon execution of any Contract. The Purchaser will provide the Company thirty (30) days' prior written notice of any termination, lapse or material reduction in the amount or scope of coverage.

**5.3** For all Goods sold on the Purchaser's Account as provided in Section 4.1, the Purchaser is permitted by the Company to sell or to agree to sell to a sub-purchaser Goods supplied and delivered by the Company to the Purchaser, notwithstanding that ownership of the Goods has not passed to the Purchaser, on the express condition that such a sale or agreement to sell will, as between the Company and the Purchaser, be made by the Purchaser as principal and not as the Company's agent, and ownership in the Goods will be deemed to pass from the Company to the Purchaser immediately before the time at which ownership in the Goods passes to the sub-purchaser pursuant to the agreement to resell the Goods. Where this Section 5.3 applies, the Purchaser owes a fiduciary duty to the Company and will hold in trust for the Company such part of the proceeds that is equal to the price and additional charges

at which the Goods resold were invoiced by the Company to the Purchaser, and such proceeds will not be combined with any other monies or paid into any overdrawn bank account and will at all times be identifiable as the Company's monies and the Company will have the right to trace the said part of the proceeds.

**5.4** Without prejudice to any other rights of the Company, if the Purchaser becomes Insolvent, at the Company's sole option:

- (a) the Purchaser's right of possession of the Goods will cease;
- (b) the Company may, by its agents, enter any premises where its Goods are stored or are reasonably believed to be stored and repossess the same without prejudice to the obligation of the Purchaser to purchase the Goods. The Purchaser will cooperate fully with the Company in the Company's taking possession of the Goods;
- (c) Subject to Sections 2.7 and 4, the Company may, with or without notice, terminate the Contract; and
- (d) the Purchaser's right of resale under Section 5.3 hereof will cease.

**5.5** The Company may pursue any remedy available to the Company, at law or in equity, to recover amounts due to the Company for the Goods and/or Services for which payment is due.

## **6. DELIVERY**

**6.1** Any date indicated by the Company for the supply or delivery of Goods and/or the provision of Services will not be a contractual term but an indication of the estimated date of supply or delivery only, and in the event of any failure of the Company to deliver or supply the Goods, and/or provide the Services, on such date or the failure of the Company deliver or supply Goods of the correct quantity, quality or description or at all on such date for any reason whatsoever, whether or not due to the negligence of the Company or its agents, will not constitute a breach or repudiation by the Company of any Contract and the Company's liability will be limited to the costs and expenses reasonably incurred by the Purchaser in obtaining replacement Goods of similar description and quality, less any unpaid part of the price of the undelivered Goods; provided, however, that the Company will have no liability to the Purchaser to the extent that the failure is caused by the Purchaser's failure to provide adequate and appropriate instructions, documents, licenses, authorizations or any other act or omission by the Purchaser.

**6.2** Delivery and the Purchaser's acceptance of the Goods will be deemed to have occurred on the first of:

- (a) the delivery of the Goods to the Purchaser's carrier or his agent;
- (b) the delivery of the Goods to the Purchaser's place of business; or
- (c) the delivery of the Goods to such place as the Purchaser may reasonably specify in writing.

**6.3** The Company may deliver the Goods in installments.

**6.4** Except to the extent prohibited by applicable law, the Company will not be liable for loss, misdelivery or partial non-delivery, unless the Company is advised thereof in writing within 3 days of delivery and the Purchaser's claim is made to the Company, in writing, within 5 days of delivery of the dispatch of the Goods from the Company's premises. In any event, the Company will only be liable, at the Company's option: (i) up to the Contract price for the Goods shipped under the applicable shipment, to the extent paid by the Purchaser to the Company, or (ii) for the delivery of replacement Goods for the Goods shipped under the applicable shipment.

**6.5** The Purchaser must immediately notify the Company, in writing, if any Goods are not received within 10 days of date of invoice, or the expected delivery date.

**6.6** Without prejudice to any other rights of the Company, whether arising pursuant to the terms hereof or at law, if the Purchaser (i) fails to provide to the Company, in writing, on or before the agreed date of delivery, all instructions and all documents, licenses, consents and authority which the Company may reasonably require to enable it to make delivery of the Goods in manner satisfactory to the Purchaser or (ii) will otherwise cause or request delay or fail to take delivery, the Purchaser will pay to the Company all storage costs and other expenses incurred and arising from such delay and if such delay continues for a period in excess of 30 days or beyond the expiry of a period of reasonable notice given by the Company, the Company may rescind the Contract and resell the Goods.

## **7. WARRANTY**

**7.1** The Company warrants for a period of one year from the date of delivery: (i) Goods sold pursuant to these Conditions against defects in materials or workmanship under normal use, and (ii) Services provided pursuant to these Conditions to the Company's reasonable efforts to complete the Services.

**7.2** EXCEPT FOR ANY EXPRESS WARRANTY CONTAINED IN THE CONTRACT, THE COMPANY HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY, OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY AND ALL GOODS AND/OR SERVICES FURNISHED BY THE COMPANY PURSUANT TO ANY CONTRACT, ORDER OR QUOTATION, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

**7.3** Immediately upon discovering any purported defect in the Goods, the Purchaser will give written notice thereof to the Company and thereafter, in accordance with the Company's instructions, return the Goods to the Company for examination. The Purchaser further undertakes to prevent further use or distribution of such Goods.

**7.4** Subject to Section 8 below, in the event of the Company's breach of the warranties provided to the Purchaser pursuant to this Section 7.4, the Company will, at its sole option, either: (i) replace any Goods, (ii) repair any Goods, or (iii) refund the contract price of any Goods which have been supplied by the Company and are confirmed by the Company as containing defects in materials or workmanship or which do not conform with the written specifications as required by the Contract; provided that, in the case of defects or non-conformity with description or sample which were apparent on delivery, the Company will be under no obligation to replace, repair or refund the Contract price unless advised of the defect or non-conformity in writing within 5 days of delivery (or of delivery of an installment containing the purportedly defective Goods, if the Goods are to be delivered in installments) and the Goods alleged to be defective or not in conformity with description of the alleged defect and a sample are thereafter returned to the Company for examination in accordance with Section 7.3 above.

**7.5** In cases where the Company exercises its option to replace defective or non-conforming Goods, the replacement Goods will be supplied subject to these Conditions and replaced with comparable models. The Purchaser agrees to return any and all defective or non-conforming Goods prior to receipt of any replacement Goods.

**7.6** In cases where the Company exercises its option to repair defective or non-conforming Goods, those Goods will be repaired either by the Company or its representative, at the Company's sole option, and thereafter in accordance with the Company's instructions return the Goods to the Company for examination.

**7.7** The Purchaser acknowledges that it has not relied on or been induced to enter into the Contract by a warranty, statement, promise, representation or undertaking which is not expressly included in the Contract.

## **8. LIMITATION OF LIABILITY**

**8.1** except to the extent prohibited by applicable law or as expressly provided in Section 7.4 above, the Company, its representatives, employees or agents will not be liable for any loss or damage, whether in contract, tort or otherwise (including but not limited to any liability for direct, indirect or consequential loss or damage of any nature whatsoever), lost profits or other damages or losses arising out of or in connection with any Goods sold or Services provided by the Company in any way whatsoever, whether the same be due to any act, omission or negligence, misrepresentation, breach of any statutory duty, or breach of any condition, warranty or other term of any Contract or otherwise, including any loss or damage arising out of the Purchaser's duties and obligations under any Contract or Order (including those duties and obligations expressly included in Section 9 below).

- 8.2** If, notwithstanding the other provisions in these Conditions, it is determined by a final order of a court of competent jurisdiction that the Company is liable (whether in contract, tort or otherwise and whether or not due to any act, omission or negligence, misrepresentation, breach of any statutory duty, or breach of any condition, warranty or other term of any Contract on the part of the Company or its agents), without prejudice to the other provisions hereof, such liability will not exceed the total amount paid by the Purchaser under the Contracts to the Company for the purchase of the Goods.
- 8.3** Nothing in the Contract or in these Conditions will limit or exclude the Company's liability (if any): (i) to the Purchaser for personal injury or death suffered by the Purchaser that is solely caused by the Company's gross negligence, or (ii) for the Company's fraud or intentional misrepresentation.
- 9. LIGATURE DISCLAIMER AND RESPONSIBILITIES OF THE PURCHASER**
- 9.1** The anti-ligature design characteristics of Goods are not intended to replace or substitute the need for necessary supervision of those who may be at risk, or for other necessary protective measures to be taken in the specific circumstances of usage. The Company does not offer any Goods for sale as being "ligature-free," makes no warranty as to the design of any Goods, and will not be liable for any claims arising from ligature attachment on its Goods.
- 9.2** The Purchaser is responsible for: (i) confirming that all Goods purchased and installed are suitable for the environments they are fitted in and suitable for the Purchaser's particular uses, (ii) following all use and maintenance instructions relating to the Goods, and (iii) providing appropriate and proper training to any and all representatives, employees and agents of the Purchaser that are to operate or otherwise maintain or use the Goods upon the installation of the Goods and on an on-going basis for all periods in which the Goods are used.
- 9.3** Unless otherwise agreed to in writing by the Company, the Purchaser agrees that it is solely responsible for the following: (i) application, use and misuse of the Goods, (ii) installation of the Goods, and (iii) maintenance of the Goods.
- 10. INDEMNITY**
- 10.1** To the fullest extent permitted by applicable law, the Purchaser will indemnify and hold the Company harmless against:
- (a) any and all claims, costs, demands, expenses and liabilities (including any attorneys' or other professionals' fees and expenses incurred by the Company) that are caused in whole or in part or arising out of or in connection with:
    - (i) any act or omission of the Purchaser, (ii) the Purchaser's failure to perform its duties and obligations as required in Section 9 below or from claims allegedly involving the non-performance of those specifically allocated duties and obligations, or (iii) that otherwise arise as a result of actions, errors or omissions within the Purchaser's control (or that are otherwise the Purchaser's responsibility).
  - (b) any and all taxes, tariffs, duties and like charges assessed against the Company, unless those charges were previously agreed to in writing in accordance with Section 16 above; and
  - (c) actual or alleged claims of infringement or other assertions of proprietary rights violations (including patent, trademark, copyright, industrial design right, or other proprietary right, misuse, or misappropriation of trade secret) and resulting loss, damages, costs and expenses suffered by the Company or to which the Company may become liable (including attorneys' and other professionals' fees and expenses incurred by the Company) arising in any way in relation to the Goods or Services contracted, to the extent that any such claim(s) arose out of compliance with the Purchaser's specifications, designs, drawings, directions, samples or prototypes. If the Purchaser uses or sells the Goods in such manner as to infringe any such rights, the Company will not be responsible for such infringement and the Purchaser agrees to indemnify the Company from and against all liability arising therefrom.
- 10.2** In addition to all other obligations of the Purchaser to indemnify and hold the Company harmless pursuant to Section 10.1 above, the Purchaser expressly agrees to indemnify and hold the Company harmless for any and all third party claims, costs, demands, expenses and liabilities (including attorneys' and other professionals' fees and expenses incurred by the Company) that arise from the use of Goods by the Purchaser or any third party, including those claims, costs, demands, expenses and liabilities arising from injury or death from ligature attachment, strangulation, compression, or hanging on or by the Goods. Purchaser agrees to maintain contractual liability insurance within its commercial general liability insurance policy that expressly includes indemnity obligation coverage to the fullest extent of the Purchaser's indemnity obligations pursuant to these Conditions and further agrees to name the Company as an additional insured on that insurance policy regarding all Orders and Contracts. Purchaser will provide to the Company a certificate of insurance evidencing compliance with the insurance requirements set forth above upon execution of any Contract. The Purchaser will provide the Company thirty (30) days' prior written notice of any termination, lapse or material reduction in the amount or scope of coverage.
- 11. SUB-CONTRACTS**
- The Company may, at its sole option, sub-contract the performance of the Contract or any part thereof.
- 12. NO ASSIGNMENT**
- The Purchaser will not transfer, assign or delegate, in whole or in part, any of its rights or obligations under any Order, Quotation, or Contract (including, without limitation, any payment obligation), whether directly or indirectly, by merger, acquisition or contribution to a joint venture, without the Company's prior written consent. The Company may assign any Order, Quotation, or Contract and/or any rights and interests in any Order, Quotation or Contract, without the Purchaser's consent, to any person or entity whomsoever or whatsoever including, without limitation, any of the Company's affiliates (including, without limitation, any parent, subsidiary or division), or to any purchaser or successor to all or any portion of the Company's business or assets.
- 13. PATENTS, LICENSING, TRADE MARKS ETC.**
- 13.1** The Purchaser warrants and represents that it owns or has an unrestricted license to use, and to grant sublicenses or otherwise authorizes third parties to use, any and all designs, drawings, specifications, directions, samples or prototypes provided to the Company for use in the Company's manufacture of the Goods and/or provision of Services.
- 13.2** "IP" means all intellectual property rights, whether now existing or existing in the future, including current and future registered and unregistered rights in respect of copyright, designs, trademarks, trade name, trade dress, service mark, trade secret, database rights, publicity right, privacy right, proprietary know-how, confidential information, patents, inventions and discoveries and all other rights (including moral rights) resulting from intellectual activity in the industrial, scientific, literary or artistic fields, in any jurisdiction throughout the world, including any and all pending applications, rights of registration, reissues, divisions, continuations, continuations-in-part, substitutes, renewals, and extensions with respect thereto, and together with any and all goodwill generated thereby, and any causes of action related to any violation, infringement, dilution or misappropriation thereof. The Purchaser acknowledges that the Company is the owner of the IP throughout the world and that the Purchaser has no rights, title or interest in or to the IP. Any goodwill derived from the use by Licensee of any Intellectual Property will inure to the benefit of the Company. If Purchaser acquires rights in any IP, by operation of law, or otherwise, such rights will be deemed and are hereby irrevocably assigned to the Company without further action by any of the Parties. Purchaser agrees not to dispute or challenge or assist any person or entity in disputing or challenging the Company's rights in and to the IP or the validity of the IP.
- 13.3** The Purchaser is not permitted to use the Company's name, logos, trademarks and service marks for purposes of advertising that the Goods are manufactured by the Company or for any other purpose without the prior written consent of the Company. The Purchaser will ensure that, without the Company's prior written consent any tradenames or marks that the Company uses on or in connection with the Goods are not supplemented by any mark of the Purchaser, interfered with, or obscured.

#### 14. CONFIDENTIALITY

The Purchaser will ensure that, without the Company's prior written consent any confidential information of the Company of which the Purchaser becomes aware (which information will at all times remain the property of the Company) will not be copied, used, or disclosed and that all materials containing such information will be returned to the Company on demand.

#### 15. GOVERNING LAW, JURISDICTION, AND DISPUTE RESOLUTION; MANDATORY ARBITRATION AND CLASS ACTION WAIVER

15.1 Each Contract of sale entered into by the Company will be deemed to have been made in Michigan, U.S.A. and will be governed by the laws of the State of Michigan.

15.2 In the event of any dispute, difference, controversy, or claim arising out of or in connection with these Conditions or any Contract entered into pursuant thereto, and any subsequent amendments thereto, including, without limitation, their formation, validity, binding effect, interpretation, performance, breach, termination, and this dispute resolution clause (a "Dispute"), the Parties agree that the Dispute will be finally settled and resolved by binding, confidential arbitration before a sole arbitrator in Oakland County, Michigan, U.S.A., administered by the American Arbitration Association (the "AAA") in accordance with the AAA Commercial Arbitration Rules, in effect as of the date of the Notice of Arbitration (the "Rules"). The Arbitrator is to issue a reasoned award (i.e., a written decision).

15.3 The Parties agree that arbitration will be the exclusive means of resolving the Dispute, and no Party will refer or attempt to refer the Dispute to any court or other tribunal for resolution.

15.4 The law of the State of Michigan will apply to the arbitration commenced under this Section 15, without reference to principles of choice of law or conflicts of law.

15.5 The Party filing the Notice of Arbitration under the Rules will deliver a copy of the Notice of Arbitration to the other Party at the same time and in the same manner as it delivers the Request to the Administrator of the AAA.

15.6 The arbitral tribunal will consist of a sole arbitrator who will be a Michigan-qualified lawyer, qualified by experience and education to arbitrate disputes concerning commercial agreements and who will be chosen pursuant to the Rules.

15.7 Any amount awarded by the tribunal will be made and payable in U.S. Dollars after any tax or other deduction. The award will include interest from the date of breach, if breach of the Contract is found. The arbitrator will also fix an appropriate rate of interest from the date of the award until the award is paid in full.

15.8 Judgment on any arbitration award may be entered in any court having proper jurisdiction.

15.9 The tribunal will have the authority to enter interim, conservatory, injunctive, and declaratory relief, if appropriate under the applicable substantive law. The tribunal will have the authority to order discovery, but will also have the authority to limit the number of depositions, interrogatories and other means of discovery. The tribunal will also have the power to determine whether a dispute is arbitrable. Notwithstanding anything in this Section 15, each Party retains the right to apply for injunctive relief prior to or during the arbitration, and any such application will not be deemed to be an infringement or waiver of the ability to arbitrate under Section 15, and will not affect the relevant powers reserved to the tribunal.

15.10 Only damages allowed pursuant to the terms of these Conditions or any Contract entered into pursuant thereto may be awarded and, without limitation to the foregoing, the Parties are not entitled to claim, and the tribunal will have no jurisdiction to consider or award, any punitive, exemplary, or consequential damages arising under, arising out of or related to these Conditions or any Contract entered into pursuant thereto, regardless of the legal theory under which such damages may be sought and even if the Parties have been advised of the possibility of such damages or loss.

15.11 The Parties agree to arbitration on an individual basis. In any Dispute, NEITHER PARTY WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST A THIRD PARTY, OR ARBITRATE OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY.

*FOR CANADA PURCHASERS:* If the foregoing dispute resolution and arbitration section is not binding upon you under the applicable law of your jurisdiction, you agree to submit to the jurisdiction of the courts located within Ontario, Canada for the purpose of litigating all Disputes arising out of or relating to these Conditions, which courts will have exclusive jurisdiction over all such Disputes.

#### 16. GENERAL

16.1 Unless the Company expressly states or agrees otherwise, these Conditions apply to the following:

- (a) all Quotations issued by the Company (whether or not accepted by the Purchaser);
- (b) all Orders received by the Company (whether or not accepted by the Company); and
- (c) all Contracts made by the Company and the Purchaser for the purchase and sale of Goods or Services.

16.2 No alteration or addition to or exclusion of these Conditions or any part thereof will be effective unless expressly agreed in writing signed by an Authorized Representative. These Conditions supersede all previous oral or written representations made by or on behalf of the Company to the Purchaser which relate to the Goods, the Services (if any) and/or the subject matter of the Contract. Any additional terms and conditions attempted to be imposed by the Purchaser are rejected by Seller and will not be included in the Contract.

16.3 Except as provided herein, no representative, agent or employee of the Company has authority to modify, amend or exclude these Conditions or any part thereof, or to enter into an agreement to sell on any other terms, or to make any representation or warranty in relation to any Goods supplied or Services provided without the express authority in writing of an Authorized Representative.

16.4 The Purchaser acknowledges and agrees that an Order submitted by the Purchaser to the Company or an acceptance of a Quotation by the Purchaser will be deemed to be an offer by the Purchaser to buy the Goods or Services subject to these Conditions.

16.5 The Company may immediately terminate, in whole or in part, any Order, Quotation or any Contract, at any time and for any reason, without any liability to Purchaser, by giving the Purchaser written notice of termination. Any such termination by the Company will not relieve the Purchaser of its payment of its obligation to pay for any Goods delivered and/or Services provided to the Purchaser prior to the effective date of termination.

16.6 These Conditions will not be subject to waiver unless by written instrument duly executed by all Parties. Waiver of a right or remedy under these Conditions will not be deemed a waiver of any other right or remedy. Forbearance, temporary waiver, or other failure to enforce any right or remedy under these Conditions will not constitute a permanent waiver.

16.7 If the Company is prevented, hindered or delayed, whether directly or indirectly, from making delivery of the Goods or providing Services or any part thereof in accordance with the terms of any Contract or from otherwise performing such agreement or any part thereof by reason of an act or acts of God, war, embargo, riot, strike, lock-out, trade dispute, fire, breakdown, inclement weather, interruption of transport, government action, delay in delivery or non-delivery to the Company of any Goods or materials or by any cause whatsoever (whether or not of like nature to those specified above) outside its control, the Company will be under no liability thereto whatsoever, whether in contract, tort or otherwise, to the Purchaser and will be entitled at its option, by written notice to the Company, to either cancel the contract or to extend the time for performance of the Contract by a period at least equivalent to that during which performance has been prevented, hindered or delayed.

16.8 Except as expressly set forth herein, these Conditions are intended solely for the benefit of the Parties, both of which expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to these Conditions or any Contract entered into pursuant to these Conditions. No person other than a party to a Contract which incorporates these Conditions may enforce any of these terms.