1. Buyer’s Acceptance of Seller’s Conditions. These Terms and Conditions of Sale (“Terms”) are the only terms that govern all purchases of products by Buyer from Seller. Seller’s willingness to enter into this sale is expressly conditioned upon Buyer’s assent to these Terms. Buyer’s receipt of these Terms without prompt written objection thereto or the acceptance of the products by Buyer shall be deemed an acceptance of said Terms in their entirety.

2. Seller’s Acceptance of Terms. Buyer’s receipt of this invoice after it has been billed to Buyer shall be deemed to be Buyer’s acceptance of all terms and conditions of sale as stated herein and no additional terms and conditions of sale will be included in Buyer’s purchase order or acknowledgment. Seller reserves the right to make partial shipments and the contract price shall be adjusted to reflect actual quantities shipped.

3. Delivery. Delivery of all products shall be FOB Seller’s place of shipment unless otherwise agreed in writing by Seller. Title and risk of loss shall pass to Buyer upon tender to the carrier at Seller’s place of shipment. Any delivery dates requested or stated shall be deemed estimates only. Seller reserves the right to make partial shipments and the contract price shall be adjusted to reflect actual quantities shipped.

4. Inspection and Returns. Buyer shall inspect all products within five (5) business days of receipt thereof (“Inspection Period”) and may reject any products which fail in any significant respect to meet Seller’s specifications. In its sole discretion, Seller shall repackage or credit Buyer’s account for the invoice price of such products. Credit against the purchase price will only be accepted on products rejected on Buyer’s initial inspection that Buyer can return to Seller in its original condition and packaging. Buyer shall address returns to Seller before returning any products. The products shall be shipped to Seller prepaid at Buyer’s expense. Warranty replacement items will be returned to Buyer at Seller’s expense. Buyer shall be charged Seller a standard 10% fee for all items determined by Seller to be out-of-warranty or non-defective plus all transportation charges. Under no circumstances shall Seller accept returns of non-defective custom designed products.

5. Advanced Replacement Policy. Seller may ship warranty replacement items to Buyer in advance of its receipt of the defective product. Buyers who do not return defective products within thirty (30) days after receipt of warranty replacement items will be billed in full for all items plus the cost of all transportation charges.

6. Payment. Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller’s invoice or greater per Seller’s invoice or Seller’s order confirmation. Any invoiced amount which is not paid when due will bear interest at the rate of either 18% APR or the maximum rate permitted by law. Buyer shall pay all costs and expenses incurred by Seller in collection of any past due amounts, including collection agency and reasonable attorneys’ fees. Buyer may suspend or terminate performance on any of Buyer’s orders in the event of Buyer’s failure to pay any amount when due (or before breach by Buyer). Buyer has no right to withhold or offset payment under any contract or other obligation.

7. Taxes. Prices are exclusive of, and Buyer shall be responsible for, all federal, state, municipal and other taxes (such as sales, use, value added, or similar taxes) and charges.

8. Security Interest. Buyer grants Seller a continuing purchase money security interest in the products and in any proceeds thereof, until payment of the full purchase price is received by Seller. Buyer shall grant no lien or other interest in the products contrary to Seller’s security interest. If Buyer fails to make any payment of or on account of the purchase price when due, Buyer may, at its option, take exclusive possession of the products wherever and when found and remove the products without legal process, and Buyer shall reimburse Seller for all removal expenses, fees or costs of repossession and collection, including reasonable attorneys’ fees and other costs.

9. Limitation of Liability. IN NO EVENT SHALL SELLER OR ITS SUBSIDIARIES BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, DOWNTIME, DELAY OR OTHER CONSEQUENCES, WHETHER OR NOT ARISING OUT OF, FROM, OR FOR ANY SUCH, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY DAMAGES OTHER THAN RECOVERY OF THE AMOUNT PAID TO SELLER OUT OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER.

10. Force Majeure and other Contingencies. Seller shall not be liable for delays in delivery or performance, or for failure to deliver or perform, due to (i) causes beyond its reasonable control, or (ii) acts of God, acts of civil or military authorities, strikes, riots, civil commotions, labor disputes, floods, epidemics, wage or raw material price increases, transportation or car shortages, or if any claim is based upon use of the products with other products, se

11. Limitations on Warranties. Seller warrants to Buyer that for a period of ninety (90) days from the date of shipment of the products covered by this contract, or otherwise stated by the subject product technical data sheet as supplied by Seller (“Warranty Period”), that such products will meet Seller’s subject specifications and will be free from defects in material and workmanship. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Seller shall not be liable for a breach of the express warranty set forth in this Section 10 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller gives Buyer a reasonable opportunity after receiving the notice to examine such products and Buyer (if requested to do so by Seller) returns such products to Seller’s place of business at Seller’s cost (if defective) for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the products are defective. Furthermore, Seller shall not be liable for a breach of the express warranty set forth in this Section 12 if: (i) Buyer makes any further use of such products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller’s oral or written instructions as to the storage, installation, use or maintenance of the products; or (iii) Buyer alters or repairs such products without the prior written consent of Seller.

12. Limitations on Other Claims. Seller warrants to Buyer that for a period of ninety (90) days from the date of shipment of the products covered by this contract, or otherwise stated by the subject product technical data sheet as supplied by Seller (“Warranty Period”), that such products will meet Seller’s subject specifications and will be free from defects in material and workmanship. EXCEPT FOR THE FOREGOING EXPRESS WARRANTY, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED By LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. Seller shall not be liable for a breach of the express warranty set forth in this Section 10 unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five (5) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Seller gives Buyer a reasonable opportunity after receiving the notice to examine such products and Buyer (if requested to do so by Seller) returns such products to Seller’s place of business at Seller’s cost (if defective) for the examination to take place there; and (iii) Seller reasonably verifies Buyer’s claim that the products are defective. Furthermore, Seller shall not be liable for a breach of the express warranty set forth in this Section 12 if: (i) Buyer makes any further use of such products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller’s oral or written instructions as to the storage, installation, use or maintenance of the products; or (iii) Buyer alters or repairs such products without the prior written consent of Seller.

13. Buyer’s Remedies. Subject to the limitations in Section 12, with respect to any products that fail to conform to the Limited Warranty during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such products; or (ii) credit or refund the price of such products at the pro rata cost to Buyer of the defective plus all transportation charges. Under no circumstances shall Seller accept returns of non-defective custom designed products.