

# Talon Products, LLC

## SALES TERMS AND CONDITIONS



### 1. AGREEMENT:

- 1.1. Talon Products, LLC (hereinafter 'COMPANY'), engages in the manufacture, production, resale and supply of GOODS relating to cable restraint. Talon Products is neither an engineering firm, nor a construction firm and does not provide engineering or installation services. Any and all business undertaken, including any advice, information or services provided by the COMPANY, its employees, agents, members, managers, directors, subcontractors, independent contractors, MANUFACTURER REPRESENTATIVES and/or servants, whether gratuitously or not, by any means, including verbal and/or electronic (e.g. email), is transacted subject to these Sales Terms and Conditions (hereinafter 'AGREEMENT'). Each and every term and condition in this AGREEMENT shall be deemed to be incorporated in and be a binding condition of any agreement, verbal or written, between the COMPANY and any CUSTOMER, collectively 'the parties', except as otherwise specifically stated herein.
- 1.2. COMPANY's offer set forth herein to supply GOODS to CUSTOMER is conditioned upon CUSTOMER's assent to all of the Sales Terms and Conditions contained herein. CUSTOMER's assent shall be deemed to have been given in any one or more of the following ways: (i) the request by CUSTOMER for a SPECIFICATION, samples, commercial proposal or the like for GOODS; (ii) the submission by CUSTOMER of an ORDER with respect to any one or more of the GOODS enumerated therein, notwithstanding the inclusion of additional or inconsistent terms thereon, all of which are hereby rejected; (iii) the submission by CUSTOMER to COMPANY of any instructions relating to GOODS, whether an ORDER for GOODS enumerated therein is placed and irrespective of whether the instructions occur before or after the ORDER is placed; (iv) acceptance by CUSTOMER of GOODS; (v) any other conduct by CUSTOMER consistent with the existence of an agreement whereby COMPANY is to supply GOODS.

### 2. PARAGRAPH HEADINGS:

- 2.1. Paragraph headings are informational, for convenient organizational reference and are not a binding part of this AGREEMENT.

### 3. INTERPRETATIONS:

- 3.1. Notes provide additional clarification of interpretations and are a binding part of this AGREEMENT.
- 3.2. 'ACCEPTANCE' of an ORDER or 'ACCEPTED' ORDER shall mean the COMPANY ACCEPTANCE of the ORDER  
Note: It is reasonably contemplated by the COMPANY that the COMPANY's commercial proposal for GOODS, including the SPECIFICATION and/or any terms or conditions set forth therein, will be accepted by the CUSTOMER when an ORDER is provided by the CUSTOMER or when the CUSTOMER accepts receipt of the goods, whichever occurs first.
- 3.3. The 'AGREEMENT' shall mean the latest revision of the Talon Products, LLC Sales Terms and Conditions that has been transmitted to a CUSTOMER, available for download from the COMPANY's website or made available upon request immediately prior to the ACCEPTANCE of an ORDER  
Note: The COMPANY may, in its sole discretion, update this AGREEMENT from time to time. The CUSTOMER shall be bound by the latest revision of this AGREEMENT that has been either transmitted directly to the CUSTOMER, available for download from the COMPANY's website or made available upon request.
- 3.4. 'AUTHORIZED' or 'AUTHORIZATION' (e.g. AUTHORIZED by the COMPANY) shall mean a document providing formal endorsement from the COMPANY, CUSTOMER or MANUFACTURER REPRESENTATIVE, which shall be signed by an officer or member of each respective entity that is duly authorized to execute the particular transaction by the respective Board of Directors
- 3.5. The 'COMPANY' shall mean Talon Products, LLC, a Delaware Limited Liability Company with offices and loading dock located at 47037 Conrad Anderson, Hammond, Louisiana 70401 USA
- 3.6. The 'CUSTOMER' or 'CUSTOMERS' shall include all companies and persons with whom the COMPANY transacts or proposes to transact business  
Note: A remote purchaser (as defined by the Uniform Commercial Code) of GOODS shall not be considered a CUSTOMER.
- 3.7. 'DELIVERY' of GOODS shall occur and the GOODS shall be deemed to be 'DELIVERED' when the GOODS initially become available for release to the CUSTOMER according to the applicable sales terms as hereinafter stated in Paragraph 9
- 3.8. 'FOB-Talon Products Dock' shall mean COMPANY will bear the expense and risk of placing the GOODS into the possession of the carrier at the COMPANY loading dock located at 47037 Conrad Anderson, Hammond, Louisiana 70401 USA
- 3.9. 'FORCE MAJEURE' shall mean an event as hereinafter stated in Paragraph 13

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- 3.10. The **'GOODS'** shall mean any products, or any portion thereof that are estimated, quoted, sampled and/or sold by the COMPANY, its employees, agents, members, managers, directors, subcontractors, independent contractors, MANUFACTURER REPRESENTATIVES and/or servants
- 3.11. **'INCOTERMS'** shall mean the latest published edition of international rules for the interpretation of trade terms prepared by the International Chamber of Commerce
- 3.12. **'MANUFACTURER REPRESENTATIVE'** shall mean an AUTHORIZED organization or individual that is duly appointed by COMPANY to act as COMPANY's sales representative and to solicit ORDERS for COMPANY's GOODS as defined in a current Manufacturer Representative Agreement
- 3.13. The **'ORDER'** or **'ORDERS'** shall mean the ORDER(S) for purchase placed by the CUSTOMER for GOODS as established by the CUSTOMER's purchase ORDER form, fax or email, or alternately by CUSTOMER's prepayment for GOODS
- 3.14. **'PAY'**, **'PAYMENT'** or **'PAID'** (e.g. invoice PAYMENT for GOODS) shall mean the funds have been received in full, have cleared and are available to the COMPANY
- 3.15. **'PRODUCT SPECIAL'** or **'PRODUCT SPECIALS'** shall mean GOODS; other than STANDARD GOODS, and shall include, but not be limited to special or customized products, STANDARD GOODS that have been modified for a CUSTOMER's or third party's application and STANDARD GOODS that comprise custom features
- 3.16. **'SOLVENT'** in relation to the financial status of the CUSTOMER, shall mean that as of any date of determination:
- 3.16.1. The fair value of the CUSTOMER's liquid assets will exceed their consolidated debt and liabilities, contingent or otherwise; and
- 3.16.2. CUSTOMER will not have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted following such date; and
- 3.16.3. CUSTOMER will not have incurred and does not intend to incur, or believe they will incur, any debts and liabilities, contingent or otherwise, including current obligations, that they do not believe that they will be able to PAY (based on their assets and cash flow) as such debts and liabilities become due (whether at maturity or otherwise)
- 3.17. **'SPECIAL FREIGHT CHARGES'** shall mean any additional charges that are above and beyond the customary charges for the applicable freight class
- Note: SPECIAL FREIGHT CHARGES shall include, but not be limited to ferry surcharge, surcharge for high-cost destinations, excessive dead head surcharge, detour surcharge, CUSTOMER-requested lift gate surcharge, guaranteed delivery surcharge, inside delivery surcharge, surcharge for CUSTOMER-requested notification prior to delivery, CUSTOMER-requested reconsignment surcharge, CUSTOMER-requested diversion surcharge or redelivery surcharge.
- 3.18. The **'SPECIFICATION'** or **'SPECIFICATIONS'** shall mean the description of the GOODS contained or referred to in the later of COMPANY's commercial proposal for GOODS and/or COMPANY's ORDER acknowledgment
- Note: The CUSTOMER shall bear full responsibility for accepting the SPECIFICATION once an ORDER has been ACCEPTED by the COMPANY. SPECIFICATION shall not mean the description of the GOODS contained or referred to in a CUSTOMER or third party document.
- 3.19. **'STANDARD'** GOODS shall mean those GOODS listed in COMPANY's catalogs, data sheets or on the COMPANY website and having a defined catalog number and/or not otherwise referred to as PRODUCT SPECIALS or comprising custom features
- 3.20. **'TRANSMITTAL DATE'** shall mean the US Postal Service postmark date, express mail postmark date, courier service postmark date or electronic correspondence date stamp associated with the transmission of the respective document, package, or the like
- 3.21. **'shall'** constitutes an obligatory term and/or condition
- 3.22. **'will'** constitutes a non-obligatory term of intention and/or condition
- 3.23. **'he'** constitutes a pronoun in the masculine gender, which shall be considered as including the feminine gender, or any other gender identity, as applicable

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#### 4. REVISIONS AND NOTIFICATION:

- 4.1. The COMPANY may only be bound by the signature of an AUTHORIZED and duly appointed COMPANY member or manager. Absent such an AUTHORIZED signature, the COMPANY specifically rejects any other terms and conditions included in any other documents, including terms and conditions that may be implied by trade, custom, practice or course of dealing. Without written authorization of a COMPANY member or manager, no actions on the part of the COMPANY, including silence, shall be interpreted to constitute acceptance by the COMPANY of any terms and conditions supplied by the CUSTOMER, including terms and conditions that may be implied by trade, custom, practice or course of dealing. No employee, agent, director, subcontractor, independent contractor, MANUFACTURER REPRESENTATIVE or servant of the COMPANY may alter, negate or vary any of the terms or conditions of this AGREEMENT.
- 4.2. Any required written notice to COMPANY or CUSTOMER shall be transmitted via US Postal Service, express mail, courier service or electronic correspondence (e.g. email). If original notification is transmitted by electronic correspondence, the date stamp corresponding to the transmittal shall be the effective TRANSMITTAL DATE.

#### 5. PAYMENT:

- 5.1. Time of PAYMENT to the COMPANY is of the essence of this Agreement. Failure to make timely PAYMENT as specified herein will result in material breach.
- 5.2. The CUSTOMER agrees to immediately PAY the prices, taxes, and any applicable charges, including, but not limited to shipping and handling charges, demurrage, insurance, customs duties, tariffs and other miscellaneous charges (e.g. inspection fees charged by the agency responsible for clearing imports) on the GOODS at the time the GOODS are DELIVERED. If any of the applicable charges as defined above are not known when the ORDER is DELIVERED, the CUSTOMER agrees to PAY those applicable charges immediately upon receiving COMPANY invoice.
- 5.3. If the COMPANY extends credit to the CUSTOMER for the GOODS associated with the respective ORDER, the CUSTOMER agrees to PAY invoices upon such terms as have been AUTHORIZED by the COMPANY in writing (e.g. Net 30) from the date listed on the COMPANY invoice.
- 5.4. If the CUSTOMER requests or causes a DELIVERY delay for the GOODS associated with an ORDER; after the GOODS are initially available for release, the CUSTOMER shall agree to an invoice date as of the date the GOODS were initially available. Any such CUSTOMER requests for delayed DELIVERY or delayed release date may result in a storage fee, which shall be 1% per month of the total invoice value, unless otherwise agreed. In such cases of delayed DELIVERY or release date, COMPANY will not be responsible for insuring CUSTOMER's GOODS once these GOODS are initially available for release, irrespective of whether the GOODS are stored on COMPANY premises or outside of COMPANY premises.
- 5.5. By placing an ORDER with the COMPANY, the CUSTOMER represents they are SOLVENT and financially able to satisfy all the obligations as specified in the ORDER and this AGREEMENT.
- 5.6. If the COMPANY cannot confirm that the CUSTOMER's financial condition meets the COMPANY's credit criteria, or if the COMPANY believes the CUSTOMER's financial condition mandates, the COMPANY reserves the right to require full or partial payment prior to manufacture or shipment, even if other sales terms were previously extended.
- 5.7. If the CUSTOMER fails to make a PAYMENT when due:
  - 5.7.1. COMPANY has the right to suspend performance on or cancel any outstanding contracts and/or ORDERS with the CUSTOMER, summarily by notice in writing without compensation to the CUSTOMER, but with the right to be PAID in respect of work and/or GOODS supplied to the CUSTOMER and to be reimbursed the amount of all monies committed and/or paid out on account of the CUSTOMER; and
  - 5.7.2. The CUSTOMER agrees to pay a service charge to the COMPANY on the amount past due at the rate of 1-1/2% per month or the maximum lawful rate, whichever is less, from the date that PAYMENT is due to the date of actual PAYMENT whether before or after judgment, irrespective of any other rights which the COMPANY is entitled to herein; and
  - 5.7.3. In the event of non-PAYMENT, the CUSTOMER agrees to pay the COMPANY all reasonable attorney's fees (as reasonableness is deemed by the court's supervisory determination), court costs and other costs incurred by the COMPANY to collect PAYMENT; and
  - 5.7.4. The COMPANY will be entitled to the full and unrestricted right to the GOODS; to use for itself and any other third party AUTHORIZED by the COMPANY and to sell and apply the proceeds of sale in satisfaction of all sums due to the COMPANY from the CUSTOMER.

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- 5.8. In addition to any right of lien to which the COMPANY may by law be entitled, the COMPANY will be entitled to a general and particular lien on all GOODS of the CUSTOMER in the COMPANY's possession or control (even though the GOODS may have been PAID for) for any monies owed by the CUSTOMER to the COMPANY under the same or any other contract.
  - 5.9. Where PAYMENT is made by means of a Bill of Exchange, check or other negotiable instrument (including, but not limited to electronic funds transfers and wire transfers) the COMPANY will be deemed to have received PAYMENT only when the Bill of Exchange, check or other negotiable instrument has been honored on presentation for payment, notwithstanding that the COMPANY may have negotiated it and received value therefore.
  - 5.10. Until full PAYMENT has been received by the COMPANY for all GOODS whatsoever or howsoever supplied or rendered at any time by the COMPANY to the CUSTOMER:
    - 5.10.1. Should the CUSTOMER or a third party convert the GOODS (or any of the GOODS) into new product(s), whether or not such conversion involves the admixture of any other GOODS or things whatsoever and in whatever proportion, the conversion shall be effected by the CUSTOMER solely as agent for the COMPANY, which shall have the full legal and beneficial ownership of the new product(s) as surety for the full PAYMENT of all sums owed by the CUSTOMER to the COMPANY; and
    - 5.10.2. The CUSTOMER shall keep a record of sales and shall store the GOODS separately from any other property and in such a way that they can be readily identified as being the property of the COMPANY; and
    - 5.10.3. Subject to the terms described herein, the CUSTOMER shall be at liberty to sell the GOODS and the new product(s) as stated herein above in the ordinary course of business on the basis that the proceeds of sale shall belong to the COMPANY to whom the CUSTOMER shall account on demand, provided the CUSTOMER shall have no authority to enter into any contract of sale on behalf of the COMPANY and any contract of sale shall accordingly be concluded in the name of the CUSTOMER.
  - 5.11. The COMPANY may at any time revoke the CUSTOMER's power of sale by notice to the CUSTOMER if the CUSTOMER suspends PAYMENT, threatens to suspend PAYMENT, or is in default in the PAYMENT of any sum whatsoever due to the COMPANY (whether in respect of the GOODS or any other GOODS supplied or rendered at any time by the COMPANY to the CUSTOMER or for any other reason whatsoever) or if any Bill of Exchange, check or other negotiable instrument drawn or accepted by the CUSTOMER in favor of the COMPANY is dishonored on presentation for payment or if the COMPANY has bona fide doubts as to the solvency of the CUSTOMER or the CUSTOMER's ability to fulfil its financial obligations.
  - 5.12. The CUSTOMER's power of sale shall automatically cease if a receiver is appointed or has been entitled to be appointed over any of the assets or the undertaking of the CUSTOMER or a winding up order is made against the CUSTOMER or the CUSTOMER goes into voluntary liquidation (otherwise than for the purposes of reconstruction or amalgamation) or causes a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy.
  - 5.13. Upon cessation or revocation of the CUSTOMER's power of sale under the herein described terms, the CUSTOMER shall place the GOODS and the new product(s) at the ready disposal of the COMPANY, which shall be entitled to freely enter upon any premises of the CUSTOMER or of any third party for the purpose of removing such GOODS and new product(s) from such premises (including severance from the realty where necessary). The cost of any removal, including travel expenses, contract labor expenses and severance from the realty where necessary, shall be borne by CUSTOMER and due to COMPANY.
6. **CANCELLATIONS AND RETURNS:**
- 6.1. Once an ORDER has been ACCEPTED by the COMPANY, any ORDER cancellations shall be subject to a 20% restocking fee in consideration for tooling and raw material commitments, production impact, scheduling disruption, administrative commitment, handling, repackaging, restocking, other financial commitments and a reasonable amount of profit.
  - 6.2. COMPANY will impose a 25% restocking fee for returned GOODS, in consideration for tooling and raw materials commitments, production impact, scheduling disruption, administrative commitment, handling, repackaging, restocking, testing, other financial commitments and a reasonable amount of profit.
  - 6.3. Non-cancellable ORDERS are sold on a "final sale" basis and may not be cancelled, returned, refunded or credited without the CUSTOMER being subject to the complete original sales terms, as if the ORDER were not cancelled.
  - 6.4. ORDERS for PRODUCT SPECIALS are sold on a "final sale" basis and may not be cancelled, returned, refunded or credited without the CUSTOMER being subject to the complete original sales terms, as if the ORDER were not cancelled.
  - 6.5. Prior to any returns of GOODS, CUSTOMER must complete and sign a Return GOODS Authorization form. Upon receipt and approval, COMPANY will issue a Return GOODS Authorization. CUSTOMER shall follow the procedures listed on the Return GOODS Authorization. No returns of GOODS will be accepted unless previously AUTHORIZED in writing.

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- 6.6. Only GOODS that are returned within 30 calendar days of CUSTOMER receipt that are new, unused, in original packaging, undamaged upon return to COMPANY and in saleable condition will qualify for returns.
- 6.7. All returns of GOODS must be shipped prepaid by CUSTOMER to COMPANY. Domestic returns shall be shipped FOB-Hammond, LA 70401. Returns from international locations shall be shipped DDP-Hammond, Louisiana 70401 (INCOTERMS 2010).

### 7. **CUSTOMER REPRESENTATION:**

- 7.1. By placing an ORDER with the COMPANY, the CUSTOMER represents that he is AUTHORIZED to execute documents including, but not limited to ORDERS and ORDER acknowledgments on behalf of himself and his company.
- 7.2. Where the CUSTOMER is acting as a principal and/or AUTHORIZED agent of a third party, or the CUSTOMER is acting with the apparent authority of a third party, the CUSTOMER accepts this AGREEMENT for himself and his company, and is duly AUTHORIZED and does accept this AGREEMENT for any such third party, as applicable. The CUSTOMER has full capacity and shall take all necessary steps, including the obtaining of all necessary licenses and permissions, to enable him to deal in the GOODS. Where acting for a third party and not as a principal, the CUSTOMER accepts personal responsibility to the COMPANY just as if he were acting as a principal and not as an agent for a third party. Any instruction or ORDER given by the CUSTOMER shall not cause the COMPANY to infringe the law of any jurisdictions involved in the transaction.
- 7.3. The CUSTOMER acknowledges that he is trained, experienced, competent, and qualified to evaluate the GOODS for the safety, technical aspects, practical suitability and installation for the intended use.

### 8. **COMMERCIAL PROPOSALS:**

- 8.1. Commercial proposals, including estimates and/or quotations from the COMPANY, whether relating to price, DELIVERY, materials or otherwise howsoever, are given on the basis of immediate acceptance by CUSTOMER, unless otherwise stated on the proposal.
- 8.2. All commercial proposals for GOODS are subject to withdrawal and/or revision by the COMPANY (including those with stated validity periods), for any reason and without obligation or prior notice by the COMPANY. From the date of the initial commercial proposal for GOODS until the date when the ORDER has been ACCEPTED by the COMPANY, the COMPANY will be at liberty to revise the proposal in the event of changes occurring in the costs of raw materials, rates of freight, international currency exchange rates or any other charges of whatsoever nature applicable to the GOODS.
- 8.3. Any dates or times quoted for DELIVERY are understood and agreed to be approximate only. Dates and/or times of DELIVERY are not of the essence of this Agreement. Failure to meet quoted DELIVERY dates or times shall not result in material breach.
- 8.4. Commercial proposals are based on the then existing design and construction of the GOODS, which comprise materials and products from the COMPANY's then existing suppliers. The COMPANY shall have the right to change, discontinue or modify the design and construction of any GOODS and to substitute materials, from time to time and without prior notice to CUSTOMERS.
- 8.5. The COMPANY reserves the right to charge a set-up fee for short runs, prototypes and PRODUCT SPECIALS.
- 8.6. ORDERS for PRODUCT SPECIALS, if accepted by COMPANY, will be subject to a mandatory minimum ORDER quantity.

### 9. **SALES TERMS:**

- 9.1. Domestic sale of the GOODS shall be made FOB-Talon Products Dock, with freight prepaid and added or by third party billing, unless otherwise AUTHORIZED by the COMPANY.
- 9.2. International sale of the GOODS shall comply with each of the provisions below:
  - 9.2.1. International sale of the GOODS shall be made EXW-Talon Products Dock (Ex-Works; INCOTERMS 2010), unless otherwise AUTHORIZED by the COMPANY.
  - 9.2.2. Unless the ORDER is prepaid, the ORDER shall comply with requirements of the Export-Import Bank of the United States.
  - 9.2.3. The ORDER shall specify the ultimate destination for the GOODS.
  - 9.2.4. Within 48 hours of DELIVERY, The CUSTOMER shall provide a written acknowledgment of receipt for the GOODS at the DELIVERY location (e.g. Talon Products, Hammond, Louisiana), which shall be signed by an AUTHORIZED representative of the CUSTOMER. The acknowledgment receipt shall specify the ultimate destination country and certify the GOODS will be imported into the ultimate destination country no later than six (6) months from the invoice date.



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9.2.5. GOODS destined for international destinations inside of North America (e.g. Canada and Mexico) will be packaged according to COMPANY's standard export packaging (e.g. unitized on heat treated, double-face, non-reversible, 2-way wooden pallet; stretch wrapped; maximum overall dimensions of 48x45x96 in. High). GOODS destined for other international destinations will be packaged according to COMPANY's standard export packaging (e.g. unitized on heat treated, double-face, non-reversible, 2-way wooden pallet; stretch wrapped; maximum overall dimensions of 48x40x70 in. High). Optional air freight packaging is available, but will be quoted separately. Any crating, lagging or other special packaging requirement is CUSTOMER's responsibility.

9.3. Prices are stated in US Dollars, unless otherwise indicated, and are exclusive of taxes, shipping and handling charges, demurrage, insurance, customs duties, tariffs and other miscellaneous charges (e.g. inspection fees charged by the agency responsible for clearing imports).

9.4. CUSTOMER acknowledges that pricing of the GOODS has been established based on the agreed allocation of risks contained in this AGREEMENT. If, notwithstanding the provisions of this AGREEMENT, a court of competent jurisdiction determines the CUSTOMER's terms and conditions apply to an ORDER, then COMPANY shall have the right to either:

9.4.1. Modify the prices, including retroactively, according to the additional level of risk and responsibility that CUSTOMER's terms and conditions require COMPANY to undertake; or

9.4.2. Cancel the ORDER any time after such a determination, without liability for the termination other than for the GOODS already DELIVERED according to the provisions herein.

9.5. Shipment of goods will not be insured unless so ORDERED and paid by CUSTOMER. Insurance shall be to the CUSTOMER's account.

9.6. By placing an ORDER with the COMPANY, the CUSTOMER authorizes the COMPANY to act on behalf of the CUSTOMER for the purposes of advancing funds for the settlement of taxes, shipping and handling charges, demurrage, insurance, customs duties, tariffs and any other applicable miscellaneous charges that are owing to CUSTOMER's account.

9.7. Alternate sales terms or INCOTERMS, if extended by COMPANY, may be invoiced as a separate line item and at a later date than that for the GOODS (e.g. after the COMPANY has realized the other applicable charges).

### 10. **SHIPPING OF GOODS:**

10.1. COMPANY may ship the GOODS in multiple installments, which shall be PAID for separately, if so invoiced by COMPANY. Any delay in shipment or defect in any installment(s) shall not entitle the CUSTOMER to cancel any other installment(s).

10.2. The cost of shipping the GOODS to the CUSTOMER, at the place of business specified by the CUSTOMER in the ORDER, shall be at the expense of the CUSTOMER from the time of dispatch of the GOODS from the COMPANY's premises and until the GOODS are received by the CUSTOMER. Unless alternate arrangements have been specifically AUTHORIZED by the COMPANY, during the period after the GOODS have departed the COMPANY's premises, the risk of any loss, damage or deterioration in the GOODS from whatever cause arising shall be borne by the CUSTOMER.

10.3. The CUSTOMER shall inspect the GOODS immediately on receipt and shall within seven (7) calendar days of receipt, give notice in writing to the COMPANY of any allegation of deficiency. No claims for deficiency will be entertained unless a clearly legible and dated signature has been given by the CUSTOMER acknowledging receipt of the GOODS concerned. The COMPANY will not be held liable for GOODS received without signature or received and signed for as 'Not Examined', or other similar status indicating an insufficient CUSTOMER inspection of the GOODS. If the CUSTOMER fails to give such timely notice, the GOODS shall be deemed to be in all respects in accordance with the CUSTOMER's ORDER and the CUSTOMER shall be bound to accept and PAY for them accordingly.

10.4. The COMPANY will be discharged from all liability with respect to improper shipment of the GOODS as follows:

10.4.1. In respect of a partial improper shipment, unless written notice is received by the COMPANY within seven (7) calendar days after the later date of receipt by CUSTOMER or the date when the GOODS should have been received by CUSTOMER; and

10.4.2. In respect of non-receipt of the whole of a consignment or any separate package forming part of the consignment of the GOODS, however caused, unless written notice is received by the COMPANY within seven (7) calendar days of the date when the GOODS should have been received by the CUSTOMER.

10.5. Notwithstanding the domestic freight terms or INCOTERMS applicable to any ORDER for GOODS, demurrage fees charged to the COMPANY, if any, will be to the CUSTOMER's account and subject to the payment terms herein.

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### 11. INSTALLATION:

- 11.1. Installation of GOODS shall be performed by trained, experienced, competent and qualified practitioners of the respective types of installations and who are fully aware of the dangers (e.g. dangers of electricity) and have taken all suitable safety precautions.
- 11.2. The CUSTOMER shall install GOODS in accordance with the applicable COMPANY catalogs, data sheets, installation instructions and COMPANY recommendations, as well as any industry “best practices”, applicable codes, standards, regulations and recommended practices that are applicable to the CUSTOMER’s industry and suitable for the installation. In the case of any unclear language or conflict between the aforementioned documents, the CUSTOMER shall refer the matter to the COMPANY for clarification, prior to placing an ORDER.
- 11.3. The CUSTOMER assumes all risks when applying GOODS contrary to, or in absence of COMPANY catalogs, data sheets, installation instructions, COMPANY recommendations, industry “best practices”, applicable codes, standards, regulations and recommended practices that may be applicable to the CUSTOMER’s industry and suitable for the installation.
- 11.4. CUSTOMER shall determine the safety, technical and practical suitability of the GOODS for the intended use and CUSTOMER assumes all risk and liability whatsoever in connection therewith. CUSTOMER shall ensure the correct GOODS are installed properly for the specific type of installation and exposure, which may include, but not be limited to static or dynamic forces, chemicals, extreme environments, radiation, etc. CUSTOMER miscalculations of product choice voids any warranty.

### 12. LIMITED WARRANTY AND INDEMNIFICATION:

- 12.1. If CUSTOMER is not satisfied with any GOODS from COMPANY, they should immediately contact COMPANY or a MANUFACTURER REPRESENTATIVE.
- 12.2. COMPANY hereby extends the following express warranty, subject to the remedies and limitations set forth herein.
  - 12.2.1. The warranty provisions herein are exclusive and only made to the CUSTOMER.
  - 12.2.2. COMPANY warrants to CUSTOMERS that new GOODS of its own manufacture that are purchased from COMPANY by CUSTOMER with a valid ORDER, and whose invoice has been PAID, will be free from defect due to manufacture for the longer of twelve (12) calendar months from date of DELIVERY or twelve (12) calendar months from date of installation, which in no case shall extend beyond eighteen (18) calendar months from date of DELIVERY.
  - 12.2.3. GOODS obtained without a valid ORDER from CUSTOMER will not be covered by warranty.
  - 12.2.4. COMPANY offers the express warranty on GOODS, including their COMPANY-furnished appurtenances when used together. Any interchange of parts from other manufacturers or suppliers will void any expressed warranty.
  - 12.2.5. CUSTOMER shall indemnify and hold harmless and defend (including attorney fees and all costs) COMPANY. COMPANY shall be held harmless from any claim by parties involved in mixing non-uniform GOODS. COMPANY does not warrant the compatibility of the COMPANY’s products with the products of other manufacturers or CUSTOMER’s or third party application except to the extent expressly represented in COMPANY’s written SPECIFICATIONS.
  - 12.2.6. Upon written notice to COMPANY by CUSTOMER, COMPANY will repair, replace or refund the purchase price minus the reasonable value of the CUSTOMER’s use of the GOODS, at COMPANY’s option, any GOODS of its own manufacture which fail to meet the applicable warranty set forth herein. COMPANY’s sole and exclusive obligation and CUSTOMER’s exclusive remedy under this warranty is the aforementioned repair, replacement or applicable purchase price refund of GOODS.
  - 12.2.7. If COMPANY elects to repair or replace the GOODS under this warranty, the repaired or replaced GOODS will be warranted for the remainder of the warranty term applicable to the originally DELIVERED GOODS. The warranty shall not be extended beyond its original term.
  - 12.2.8. GOODS that are suspected of defect due to manufacture shall be returned to COMPANY in accordance with Paragraph 6.
  - 12.2.9. The defect or failure of any of the GOODS shall not be considered as prima facie evidence of defects due to manufacturing.
  - 12.2.10. On-site service, if requested by CUSTOMER, is not covered by warranty and will be at CUSTOMER’s sole expense, including an hourly billing rate, as well as travel and lodging expenses, which will be included in a commercial proposal that shall be approved by CUSTOMER in advance of the commencement of any COMPANY expenses therefor.
  - 12.2.11. All GOODS or portions thereof which are to be replaced by COMPANY shall become the property of COMPANY and shall be made available by CUSTOMER and returned to COMPANY with transportation prepaid.

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- 12.3. Except as otherwise set forth by the express warranty above, COMPANY provides GOODS on an as-is basis, with no other representation and no other expressed or implied warranty, condition or remedy, statutory or otherwise, including without limitation any warranty of noninfringement, warranty of fitness or warranty of merchantability or warranty of quality or otherwise shall exist in connection with the design, manufacture, sale, performance or use of any of the goods. In addition, COMPANY's warranty does not cover and COMPANY shall have no liability with respect to:
- 12.3.1. Matters not reported to COMPANY in writing within the stated warranty period;
  - 12.3.2. Failure or damage due to normal wear and tear, abnormal wear and tear, misapplication, abuse, misuse, failure to follow COMPANY catalogs, data sheets, installation instructions, COMPANY recommendations, and industry "best practices", applicable codes, standards, regulations and recommended practices that are applicable to the CUSTOMER's industry and suitable for the installation, improper installation, improper storage, improper commissioning, lack of maintenance, improper maintenance, any defect resulting from reliance on CUSTOMER or third party drawings, designs or specifications, exposure to corrosive matter or abnormal or improper conditions of use, including, but not limited to installations that may be determined by COMPANY to be unsafe, exposed to external causes and/or environments in which the GOODS may not operate according to user expectations and/or outside the express use for the GOODS;
  - 12.3.3. GOODS which have been altered in any way after leaving COMPANY's plant;
  - 12.3.4. The fitness or suitability of the GOODS for the purpose or use intended by CUSTOMER or any third party, as well as their compliance with the requirements of any jurisdictional authority;
  - 12.3.5. Results obtained by the use of the GOODS, whether used singly or in combination with other materials, parts, products, components, or other things;
  - 12.3.6. GOODS damaged in shipment or otherwise damaged through no fault of COMPANY;
  - 12.3.7. Any type of aesthetic changes, discoloration, pitting, etc. (e.g. due to exposure to acids/ bases, chemicals, environmental degradation, nuclear radiation, etc.), in which case, COMPANY's only obligation shall be to ensure GOODS comply with COMPANY's published material specifications;
  - 12.3.8. Any type of corrosion, oxidation, etc., in which case, COMPANY's only obligation shall be to ensure GOODS comply with COMPANY's published material specifications;
  - 12.3.9. Any materials, parts, products or components of a system or any system as a whole;
  - 12.3.10. Expenses incurred by CUSTOMER or any third party for installation of GOODS prior to discovery of the alleged defect or expenses incurred in an attempt to correct the same;
  - 12.3.11. Expenses incurred by CUSTOMER or any third party for procurement or installation of substitute products;
  - 12.3.12. Expenses incurred by CUSTOMER or any third party for removal of non-conforming GOODS and/or expenses for the installation of replacement GOODS;
  - 12.3.13. GOODS which are not of COMPANY's manufacture;
  - 12.3.14. GOODS which are resold or otherwise transferred by CUSTOMER to a third party;
    - 12.3.14.1. without fully disclosing to the third party in advance of the sale that COMPANY manufactured the GOODS, or
    - 12.3.14.2. without providing comprehensive third party identification and project application, engineering and installation details to COMPANY in advance of the sale, or
    - 12.3.14.3. without providing COMPANY catalogs, data sheets and installation instructions to third party in advance of the sale, or
    - 12.3.14.4. using CUSTOMER's or other part numbers on the ORDER, rather than COMPANY part numbers, or
    - 12.3.14.5. GOODS when CUSTOMER has violated any part of this Agreement
  - 12.3.15. GOODS which COMPANY is not afforded a reasonable opportunity to inspect and test after COMPANY has received proper notice of alleged defects;
  - 12.3.16. GOODS which cannot conclusively be proven to have proximately and solely resulted from defect due to manufacture.



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12.3.17. Notwithstanding any limitations of liability herein, in cases where an AUTHORIZED agreement or the court's supervisory determination requires the GOODS to possess a warranty of fitness, that fitness shall be specifically limited to the ability of the cable restraints to be positioned on or around the cable(s) that are listed in the currently available COMPANY data sheet for the specific product.

12.4. The limitations of liability and remedy are reflected in and are among the considerations for the price at which the GOODS are quoted and sold by COMPANY. Any modifications so ordered by a court of competent jurisdiction shall result in a retroactive price increase in such a manner that fairly apportions the associated increased cost of operation.

12.5. Any performance specifications for GOODS listed in the COMPANY's catalogs, data sheets, website and any other promotional or technical literature are based on testing performed under controlled laboratory conditions and according to specific test requirements. The tests do not simulate actual conditions and the test results may vary from performance under actual conditions.

12.6. The CUSTOMER must reasonably cooperate with COMPANY in its efforts to perform their obligations under this warranty. All decisions regarding the existence of any defect due to manufacturing or decisions affecting this warranty shall be made by COMPANY in its sole but reasonable good faith determination, and shall be final and binding upon the parties.

12.7. Regardless of the failure of the sole and exclusive remedy, neither the COMPANY, nor its employees, agents, members, managers, directors, subcontractors, independent contractors, MANUFACTURER REPRESENTATIVES or servants, will in any case be liable for direct, indirect, special, incidental, exemplary, punitive or consequential losses or damages including but not limited to commercial loss of any kind, including loss of use or partial use of CUSTOMER's or third party's facility, business interruption, loss of data, loss of time, loss of actual or anticipated revenue, loss of actual or anticipated profits, loss of savings, loss of goodwill, inconvenience, loss of use of the GOODS or any associated equipment, liabilities of CUSTOMER or third party to any other third parties and all other costs or expenses, whether as a result of negligence or breach of warranty or contract, strict liability or other tort, indemnity or any other theory of liability, or for any other reason. The exclusion of consequential damages is an independent agreement, apart from the sole and exclusive remedy.

12.8. In no case whatsoever shall any liability of the COMPANY however arising and notwithstanding any lack of explanation exceed the value of the relevant GOODS (as shown on the COMPANY's invoice to the CUSTOMER) with a maximum liability cap of five thousand (5,000) US dollars per claim. For this purpose, one claim shall be defined as all or any claims arising under one ORDER, irrespective of the number of GOODS supplied under that ORDER or the number of individual installments comprising that ORDER.

12.9. COMPANY does not warrant any products manufactured by third parties. To the extent any warranties extended to COMPANY by a third party manufacturer are transferable, COMPANY will transfer such warranties to CUSTOMER as provided herein. Any enforcement of such third party warranties shall be between the CUSTOMER and the third party.

12.10. This warranty is not transferrable, unless CUSTOMER notifies COMPANY in writing within thirty (30) calendar days after the date when PAYMENT is due to COMPANY. CUSTOMER shall confirm that ownership of the GOODS has transferred to a new owner and shall include the name, address and telephone number of the new owner. Any transfers of ownership of the GOODS in violation of this section shall invalidate this warranty.

### 13. **FORCE MAJEURE:**

13.1. The COMPANY will not be in breach of its obligations hereunder to the extent that performance is prevented, delayed or, in the sole but reasonable good faith determination by COMPANY, made substantially more expensive as a result of one or more of the following contingencies, in addition to any and all events, regardless of their dissimilarity to the ensuing events, deemed to be impracticable or impossible under the law:

13.1.1.any cause beyond the reasonable control of the COMPANY, even though the cause may have been foreseen; or

13.1.2.acts of God; or

13.1.3.actual or threat of natural disasters or severe weather; or

13.1.4.actual or reported loss at air, land or sea, accidents, confiscation, damage, sabotage or theft; or

13.1.5.actual or threat of fire, explosion, smoke, chemical exposure, flood, sinkholes or water damage; or

13.1.6.actual or threat of epidemics quarantine restrictions, or other widespread illness; or

13.1.7.actual or threat of biological, chemical or nuclear contamination; or

13.1.8.acts or threat of civil disobedience, riot, blockade, embargo, import or trade restriction; or

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- 13.1.9. acts or threat of war, terrorism, rebellion, revolution, hostilities, martial law, military action or armed conflict; or
- 13.1.10. acts or threat of cyber-attacks, cyber-terrorism or related malicious computer or network security exploits (including, but not limited to botnets, cross-site scripting, denial of service, logic bombs, malware, phishing, SQL injection, Trojan horses, unauthorized network reconnaissance, viruses, war driving, wiretapping, passive wiretapping, worms and zero-day exploits); or
- 13.1.11. acts or threat of labor disturbance, strike, lockout, differences with workers or other industrial disturbances, whether involving the employees, agents, members, managers, directors, subcontractors, independent contractors or representatives of COMPANY or otherwise, and regardless whether the disturbance could be settled by acceding to demands of a labor group; or
- 13.1.12. actual or threat of governmental nationalization, regulation, requirements, restrictions or interference; or
- 13.1.13. actual or threat of compliance with a request or order of any civil, governmental or military authority or person purporting to act therefore; or
- 13.1.14. changes in freight forwarder, transportation charges or fuel charges from those rates originally estimated; or
- 13.1.15. changes in international currency exchange rates from those rates originally estimated; or
- 13.1.16. actual or threat of interruption or shortage in raw material, parts or components, labor, fuel, power, water, communication, transportation, manufacturing capacity, storage capacity, etc., from the COMPANY's then contemplated source of supply thereof; or
- 13.1.17. actual or threat of business closure, contract breach or default of a distributor, supplier or subcontractor; or
- 13.1.18. any loss or breakdown of plant, property or equipment.
- 13.2. Whenever performance is prevented or delayed by such a contingency, the COMPANY may reduce deliveries in such manner as it may, in its sole, but reasonable good faith determine. However, if performance is only temporarily prevented or delayed, COMPANY agrees to make and CUSTOMER agrees to accept deliveries whenever such causes have been remedied.
- 13.3. Whenever performance is made substantially more expensive by such a contingency, the COMPANY will have the option either to reduce or stop deliveries from one or more facilities, and reduce deliveries as provided above, or to continue deliveries and increase prices in a manner that fairly apportions the associated increased cost of operation.
- 13.4. The COMPANY will not be liable for demurrage or delay resulting from such a contingency.
- 13.5. Performance shall be excused as provided herein even though the occurrence of such a contingency in question may have been foreseen or be foreseeable at the time of contracting or subsequently became foreseeable.
- 13.6. Quantities of GOODS due that are caused to be reduced by such a contingency shall not be required to be made up later by the COMPANY.
- 13.7. Nothing in these aforementioned contingencies shall excuse the CUSTOMER from its obligations to make PAYMENTS when due as provided herein.
14. **INTELLECTUAL PROPERTY AND NON-DISCLOSURE:**
- 14.1. The disclosure of information herein is not a license for CUSTOMER to operate under, or a recommendation for CUSTOMER to infringe any copyrights, patents, trademarks or trade secrets.
- 14.2. Intellectual Property Rights, including existing and future copyrights, patents, trademarks and trade secrets, as well as all COMPANY designs, drawings, specifications, data sheets, installation instructions, manuals and any other COMPANY work product, shall remain the exclusive intellectual property of the COMPANY, or its licensor.
- 14.3. Any reputation in any trade marks associated with the GOODS shall accrue to the sole benefit of the COMPANY, or its licensor, from time to time.
- 14.4. The CUSTOMER shall not repackage or re-label the GOODS and/or remove any copyright, patent or trademark notices, proprietary or confidential legends or any other identification from the GOODS or packaging.
- 14.5. The CUSTOMER shall not use or seek to register any trade mark or trade name (including any COMPANY name) which is identical to, confusingly similar to, or incorporates any trade mark or trade name which the COMPANY or licensor owns or claims rights anywhere in the world.

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- 14.6. If, at any time, it is alleged the GOODS infringe the rights of any third party or if, in the COMPANY's reasonable opinion, such an allegation is likely, the COMPANY may:
- 14.6.1. modify or replace the GOODS without reducing the overall performance of the GOODS in order to avoid the infringement; or
  - 14.6.2. procure for the CUSTOMER the right to continue using the GOODS; or
  - 14.6.3. repurchase the GOODS at the price paid by the CUSTOMER, less depreciation at the rate the COMPANY applies to its own equipment.
- 14.7. The CUSTOMER shall promptly and fully notify the COMPANY of:
- 14.7.1. any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the CUSTOMER's notice; and
  - 14.7.2. any claim by any third party that comes to the CUSTOMER's notice that the sale or advertisement of the GOODS infringes the rights of any party.
- 14.8. At the COMPANY's request, the CUSTOMER agrees to do all such things as may be reasonably required to assist the COMPANY in taking or resisting any proceedings in relation to any infringement or claim referred herein.

### 15. PRIVACY AND NON-ANALYSIS:

- 15.1. By purchasing GOODS from the COMPANY, the CUSTOMER agrees to fully allow the COMPANY to publish non-private details (e.g. company affiliation, project name and project location) to be used as references for the purpose of soliciting future business from new and existing CUSTOMERS.
- 15.2. CUSTOMER agrees not to analyze or facilitate analysis of any GOODS, including portions of GOODS or samples of GOODS using chemical, electrical, magnetic, mechanical, microscopic, physical, radiological, rheological, thermal, or any other means, including reverse engineering. CUSTOMER shall bind its customers to similar non-analysis restrictions, etc., such that everyone involved in commercial transaction of the GOODS is bound to similar non-analysis restrictions.

### 16. LEGAL PRIORITY:

- 16.1. This AGREEMENT shall take priority over the CUSTOMER's standard terms and conditions of business.
- 16.2. By requesting a commercial proposal for GOODS or issuing an ORDER for GOODS, the CUSTOMER confirms and agrees this AGREEMENT is the sole legal agreement governing the terms and conditions related to the commercial proposal and/or subsequent ORDER and that no modified or additional terms or conditions apply and that CUSTOMER has not relied on any statement, promise or representation made or given on behalf of the COMPANY that is not included in this AGREEMENT. These Sales Terms and Conditions, as herein described, shall be a legal and binding contract between the COMPANY and the CUSTOMER and shall supersede any and all existing agreements between the COMPANY and CUSTOMERS touching and concerning the matters herein.
- 16.3. This AGREEMENT is not an expression of confirmation or acceptance of any other terms or conditions contained in any document from CUSTOMER or third party.

### 17. LEGAL COMPLIANCE:

- 17.1. If any legislation is compulsorily applicable to any business undertaken between the parties to this AGREEMENT, these Sales Terms and Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Sales Terms and Conditions shall be construed as a surrender by the COMPANY of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Sales Terms and Conditions be repugnant to such legislation to any extent then such part shall, as regards such business, be void to that extent, but no further.

### 18. EXPORT CONTROLS:

- 18.1. The CUSTOMER shall comply with all U.S. Export Administration Regulations and Department of the Treasury embargo regulations. The CUSTOMER shall fully cooperate with the COMPANY in any official or unofficial investigation, audit or inspection that relates to any export controls, and shall not export, re-export, divert or transfer, directly or indirectly, any GOODS or related technical information, data, documents or materials to any party or destination or for any use that is subject to an embargo or otherwise prohibited pursuant to such controls, unless CUSTOMER has obtained all required U.S. governmental and regulatory approvals, authorizations and licenses.

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### 19. **SEVERABILITY:**

- 19.1. If any illegal, invalid or unenforceable term, provision or part of this Agreement would be legal, valid and enforceable if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 19.2. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such term, provision or part shall to that extent be deemed not to form part of this Agreement, but the enforceability of the remainder of this Agreement shall not be affected.

### 20. **LEGAL JURISDICTION AND VENUE:**

- 20.1. All contracts and/or disputes between the COMPANY and the CUSTOMER, including, but not limited to those touching and concerning this AGREEMENT, whether arising from the AGREEMENT itself or from alleged extra-contractual dealings, interactions, or facts prior to or subsequent to the formation of the AGREEMENT shall be governed by and interpreted in accordance with the laws of the Parish of Tangipahoa, State of Louisiana, and/or the United States of America without regard to the conflict of law principles of any jurisdiction. All contracts and/or disputes between the COMPANY and the CUSTOMER shall remain within the exclusive jurisdiction of the Parish of Tangipahoa, State of Louisiana or United States courts, as applicable. The venue for resolving any legal dispute related to this AGREEMENT shall be Tangipahoa Parish, Louisiana.
- 20.2. The CUSTOMER hereby irrevocably waives any objection that such venue is inconvenient or improper.
- 20.3. The CUSTOMER hereby irrevocably waives its rights to trial by jury in any action or proceeding arising out of this agreement or the transactions relating to its subject matter.
- 20.4. The parties specifically reject The United Nations Convention on Contracts for the International Sale of Goods, which shall not apply to any matters touching and concerning this AGREEMENT, ORDERS for GOODS or commercial proposals for GOODS from the COMPANY.

### 21. **DISPUTE RESOLUTION:**

- 21.1. Any dispute or controversy arising out of this AGREEMENT shall be settled by arbitration in Louisiana, according to the rules of the American Arbitration Association then in effect, with the choice of arbitrator or other non-court appointed officer(s) to be jointly agreed between the COMPANY and CUSTOMER, with any initial fees equally divided between the parties.
- 21.2. Judgment may be entered on the arbitrator's award in any court having jurisdiction.
- 21.3. The arbitrator will not have the power to award any punitive or consequential damages.
- 21.4. Upon resolution of the dispute, the initial fees and consequential charges resulting from the settlement will be apportioned as concluded by the arbitrator or other non-court appointed officer(s).

### 22. **ASSIGNMENT OF CONTRACT:**

- 22.1. The CUSTOMER shall not assign or otherwise deal with the benefit or burden of the whole or any part of this AGREEMENT or any contract with the COMPANY. Any attempted assignment in breach of this AGREEMENT shall be null, void, and invalid.
- 22.2. The rights of the COMPANY under these conditions shall not be affected by any waiver or prior course of dealing.
- 22.3. These conditions shall have effect to the entire exclusion of any other memorandum, agreement or understanding of any kind between the COMPANY and the CUSTOMER touching and concerning its subject matter.

### 23. **ENTIRE AGREEMENT:**

- 23.1. The parties intend that this AGREEMENT,
  - 23.1.1. represents the final expression of the parties' intent and agreement between the parties relating to the subject matter of this AGREEMENT, and
  - 23.1.2. contains all the terms the parties agreed to relating to the subject matter, and
  - 23.1.3. replaces all the parties' previous discussions, understandings, and agreements relating to the subject matter.