



TOYODA MACHINERY USA - JTEKT GROUP
TERMS AND CONDITIONS OF SALE

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1. GENERAL:

These Terms and Conditions of Sale (the "Terms") shall govern the sale of the products, equipment, accessories and/or services set forth on the front/first page hereof (and/or on the quotation, invoice or other document to which these Terms are attached and/or made part of) (collectively, the "Product(s)") from Toyoda Machinery USA Corporation ("Seller") to the Seller's customer/buyer ("Buyer"), regardless of any other purchase order(s)/form(s)/document(s) submitted by Buyer. All purchase orders for the Products shall be subject to acceptance by Seller at its home office. Acceptance is limited to the Terms. Seller rejects any and all other additional, contrary or inconsistent terms and conditions.

2. CANCELLATION:

(a) **By Purchaser.** Buyer may not and shall not cancel any purchase/sale of the Products, without the written consent of Seller. Buyer may request Seller to cancel a purchase/sale of the Products, and at Seller's sole and exclusive discretion, Seller may agree to a cancellation if (i) the purchase order relates to a standard Product (as determined by Seller) and (ii) Buyer pays to Seller an amount equal to (A) fifteen percent (15%) of the sales/invoice price if cancellation occurs within thirty (30) days or less prior to the scheduled shipment date; or (B) ten percent (10%) of sales/invoice price if cancellation occurs more than thirty (30) days prior to the scheduled shipment date. Special Products shall not be subject to cancellation under any circumstances. No cancellations shall be allowed after the scheduled shipment date. In the event of any attempted cancellation or refusal to accept Products that are not subject to cancellation, Buyer shall indemnify Seller for any and all losses sustained by Seller by reason of such attempted cancellation or refusal to accept Products.

(b) **By Seller.** Seller reserves the right to cancel any purchase/sale and/or decline to complete any sale if in Seller's opinion, Buyer's creditworthiness is not acceptable (or has become unacceptable) to Seller at any time prior to the shipment of the Product(s) to Buyer.

3. PRICE/TAXES:

All prices for the Products are (a) F.O.B. Seller's designated shipping point or point of entry, duty paid, (b) exclusive of any and all taxes now or hereafter imposed, together with all penalties and expenses, and (c) exclusive of inland freight, insurance and other costs and expenses relating to the shipment of the Products to Buyer. Buyer shall be responsible for collecting and/or paying any and all such taxes, whether or not they are stated in any invoice. Buyer shall indemnify Seller from and against the imposition and payment of such taxes. Seller may separately bill Buyer for any taxes not included in Seller's invoice and Buyer shall pay said taxes, or in lieu thereof, shall provide Seller with a tax exemption certificate acceptable to taxing authorities. If Seller arranges inland transportation, all costs and expenses relating thereto shall be paid by Buyer to Seller upon presentation of Seller's invoice therefor.

If delivery or installation of the Products is delayed due to the fault of Buyer, all additional expenses incurred by Seller resulting from such delay shall be chargeable to and paid by Buyer. Such expenses shall include charges for additional time required by Seller's service personnel to install the Products (with additional time charged at Seller's customary service rates). Prices, specifications and materials are subject to change without notice, until Seller accepts Buyer's purchase order subject to the Terms. Seller will assign a shipment schedule when a purchase/sale is confirmed.

4. TERMS OF PAYMENT/DELINQUENCY CHARGE:

Payment terms shall be as follows unless otherwise specified and confirmed by Seller in writing:

(a) **Standard Products and Cells/Systems (Except Turnkeys):** Ten percent (10%) down with purchase order, eighty percent (80%) prior to shipment from Seller's designated shipping point, and ten percent (10%) upon delivery to Buyer's dock.

(b) **Turnkeys:** Thirty percent (30%) down with purchase order, thirty percent (30%) upon fixture design completion, thirty percent (30%) upon run-off at Seller's designated run-off site, and ten percent (10%) upon delivery to Buyer's dock.

(c) **Interest:** Seller reserves the right to charge interest at the rate of up to two percent (2%) per month (but not more than the maximum interest rate permitted by applicable law) on all balances not paid by Buyer within the designated payment terms.

(d) **Pro Rata Payments:** All payments are due from Buyer as set forth above. If any shipments or other events are delayed by Buyer, payments shall become due and payable on the date Seller is (or would be) prepared to make shipment, conduct run-offs, etc.



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4. TERMS OF PAYMENT/DELINQUENCY CHARGE (Continued):

(e) **Financial Condition:** Seller reserves the right at any time to revoke any credit extended to Buyer because of Buyer's failure to pay for any goods when due or for any other reason deemed good and sufficient by Seller. Seller shall make no sale or shipment of any Products to Buyer on open account, or in any manner, if at any time the financial responsibility of the Buyer becomes impaired or unsatisfactory to Seller, and the Buyer does not provide full security to Seller, or if at the time of such sale or shipment, Buyer is delinquent in the payment of any account to Seller. In the event Buyer shall be in default of any of the Terms, or becomes insolvent or proceedings are instituted to declare Buyer bankrupt, or a receiver is appointed for Buyer in any court, Seller may, at its option, terminate any sales agreement with Buyer and upon such termination by Seller, any and all claims or demands against Buyer held by Seller shall immediately become due and payable.

In addition, in the event of any default hereunder, Seller shall have the right to disconnect, disable or otherwise render the Products unusable, without any liability to Buyer. Buyer covenants and agrees not to assert any claims or causes of action against Seller relating to or arising out of Seller's disconnection or disabling of the Products. Lastly, any other provisions of these Terms to the contrary notwithstanding, in the event that Buyer fails to pay Seller in full for the Products, Seller shall have no obligations of any nature whatsoever under any warranty of Seller set forth in these Terms.

5. DELIVERY:

Delivery/shipment dates are estimated only. Seller's obligations are subject to delays incident to force majeure and other causes beyond the control of Seller. In the event of any such delays, the delivery of the Products shall be correspondingly extended. Title and risk of loss to the Products shall pass to Buyer at the F.O.B. point. Any damage or loss thereafter shall not operate in any way to release Buyer from any of its obligations hereunder. Seller shall not be liable to Buyer for any loss or damage of any nature whatsoever (including, but not limited to, any loss of income and/or profits, direct, indirect, incidental, special and/or consequential damages) resulting from Seller's delayed performance in the shipment and delivery of the Products for any reason. In the event that shipment of the Products is delayed at the request of Buyer or as a result of any failure by Buyer to be prepared to accept delivery, Buyer shall pay a shipment extension charge to Seller in an amount equal to two percent (2%) per month until Seller has shipped the Products to Buyer.

6. INSTALLATION:

(a) **Installation.** Buyer, at its sole cost and expense, shall furnish such materials, labor and equipment as may be necessary for the prompt placement, assembly and installation of the Products. Buyer shall (i) provide all transportation and necessary rigging services, (ii) provide all utilities required for assembly of the Products, and (iii) provide such other services as may be required to supply electric leads into the Products. If Seller agrees to or is otherwise construed to have directed, supervised, managed, or controlled in any manner the rigging, placement, assembly or installation of the Products, Buyer hereby RELEASES, WAIVES, AND DISCHARGES the Seller and its affiliated and related companies, and their respective shareholders, directors, officers, employees, agents and representatives (the "Released Parties") from any and all liability relating to any personal injury, property damage, loss, and/or any and all claims or demands relating to and/or arising out of or in connection with the Seller's rigging, placement, installation, assembly, servicing, or use and operation of the Products, and training of Buyer's personnel.

Buyer shall indemnify, defend and hold harmless Seller and the Released Parties from and against all claims, losses, liabilities, damages or expenses whatsoever arising out of any alleged bodily injury, death or property damage relating to, arising out of, or in connection with the Seller's or Buyer's rigging, placement, installation, assembly, servicing, or use and operation of the Products and training of Buyer's personnel. In the event the placement, assembly and installation of the Equipment, or any part thereof, is delayed due to the fault of Buyer, any and all additional expenses incurred by Seller arising out of such delays shall be chargeable to and paid by Buyer to Seller upon demand.

(b) **Compliance.** Buyer shall comply in all respects with any and all federal, state and local environmental and pollution laws, rules, regulations and ordinances of any nature whatsoever (the "Environmental Requirements") relating to Buyer's use, operation and maintenance of the Products. Buyer, at its sole cost and expense, shall obtain all permits and licenses required to install and operate the Products and maintain such records as may be required by any Environmental Requirements. Buyer shall assure that the Products and chemicals and solutions used in connection therewith conform to the Environmental Requirements. Buyer shall indemnify Seller from and against any and all damages, liability, costs and expenses arising out of or in connection with any failure to comply with Environmental Requirements.



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7. WARRANTY:

(a) **Warranty.** Seller warrants that the Products sold hereunder will be free from defects in material and workmanship at the time of the completion of installation thereof (as determined by Seller) at Buyer's plant. Seller shall advise Buyer of the date upon which installation has been completed. In the event that any defects in material or workmanship shall arise, be discovered or become evident in the Products within (i) twelve (12) months from the date the Products are installed at Buyer's plant or (ii) fifteen (15) months from the date Seller is prepared to make shipment to Buyer, whichever is earlier, Seller shall repair or replace any defective Products or part thereof, or refund the purchase price thereof, as set forth herein, subject to the limitations set forth in these Terms.

All parts and/or components of a Product(s) alleged to be defective shall at all times be subject to inspection by Seller and Buyer shall not dispose of or otherwise modify or destroy the same before inspection by Seller. All such parts and/or components shall be returned by Buyer to Seller upon Seller's request. Furthermore, all freight and related expenses for the return of any alleged defective parts/components and the shipment and delivery of replacement parts and components to Buyer shall be for the account of Buyer and Buyer shall pay the same and/or reimburse Seller for the same to the extent paid/incurred by Seller.

(b) **Limitations.** SELLER'S WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF SELLER, THE MANUFACTURER OF THE PRODUCTS, AND ANY OTHER ENTITY INVOLVED IN THE MANUFACTURE, SALE, OR SERVICING OF THE PRODUCTS (OR ANY PORTION THEREOF) AND THEIR RESPECTIVE RELATED COMPANIES (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "SELLING COMPANIES"), EXPRESS, IMPLIED OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE. IN NO EVENT SHALL SELLER AND/OR THE SELLING COMPANIES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS.

IN ADDITION, THIS WARRANTY SHALL NOT APPLY TO ANY PRODUCTS OR PORTIONS THEREOF WHICH HAVE BEEN SUBJECT TO ABUSE, MISUSE, IMPROPER INSTALLATION, MAINTENANCE OR OPERATION (INCLUDING, BUT NOT LIMITED TO, THE MATTERS SET FORTH IN SUBPARAGRAPH 7 (c) HEREOF), ELECTRICAL FAILURE OR ABNORMAL CONDITIONS; AND TO PRODUCTS THAT HAVE BEEN TAMPERED WITH, ALTERED, MODIFIED, REPAIRED OR REWORKED BY ANYONE NOT APPROVED BY SELLER. THIS WARRANTY SHALL NOT APPLY TO THE PORTIONS OF THE PRODUCTS NOT MANUFACTURED BY SELLER AND ITS AFFILIATED COMPANIES. SELLER SHALL ASSIGN TO BUYER SUCH WARRANTIES AS SELLER SHALL RECEIVE FROM THE MANUFACTURER(S) OF SUCH PORTIONS OF THE PRODUCTS MANUFACTURED BY MANUFACTURERS OTHER THAN SELLER AND ITS AFFILIATED COMPANIES.

SUCH PORTION OF THE PRODUCTS SHALL BE SEPARATELY WARRANTED BY SUCH MANUFACTURERS. BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY SHALL BE LIMITED TO, AT SELLER'S DISCRETION, THE REPLACEMENT OR REPAIR OF ANY DEFECTIVE PRODUCTS OR PART THEREOF, OR A REFUND OF THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS IN EXCHANGE FOR BUYER'S RETURN OF THE PRODUCTS TO SELLER, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OF ANY NATURE. IN NO EVENT SHALL SELLER'S LIABILITY HEREUNDER OR OTHERWISE ARISING RELATIVE TO THE SALE OF THE PRODUCTS EXCEED IN ANY EVENT OR UNDER ANY THEORY OR CAUSE OF ACTION, THE PURCHASE PRICE PAID BY BUYER TO SELLER FOR THE DEFECTIVE PRODUCT(S).

From time to time, minor warranty service repairs may be required upon the Products. In order to expedite such repairs, Seller, in its discretion, may provide Buyer with technical assistance and instruction with regard to such minor repairs via telephone, and Buyer shall undertake such repairs in accordance with Seller's instructions. No agent, employee or representative of Seller or the Selling Companies has the authority to bind Seller or the Selling Companies to any affirmation, representation or warranty concerning the Products, and unless such affirmation, representation or warranty made by an agent, employee or representative is specifically included within the Terms, it will not form part of the basis of the bargain between Seller and Buyer, and shall not in any way be binding upon or enforceable against Seller or the Selling Companies.

Seller's warranty hereunder is extended to and shall be for the sole and exclusive benefit of Buyer and is not assignable or otherwise transferable to any subsequent buyer or user of the Products, and any sale or other transfer of the Products or any such attempted assignment and transfer of this warranty shall void Seller's warranty, and Seller shall thereafter have no further obligation or liability with regards thereto.



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7. WARRANTY (Continued):

(c) **Further Limitations.** Buyer acknowledges and agrees that operating the Product(s) under certain conditions and/or without trained and qualified personnel may void Seller's warranty hereunder. Specifically, in the event that Buyer:

- (i) does not operate and maintain the Products in accordance with Seller's maintenance and operational literature/manuals and good shop practice;
- (ii) misuses, abuses, damages by accident (or otherwise) or alters the Product(s) (including software) without Seller's written consent;
- (iii) does not use trained maintenance and operating personnel in operating the Product(s);
- (iv) fails to use balanced tooling as required by Seller. (Please see the Toyoda Tooling Manual for specifications on tool balancing. Unbalanced tooling may cause spindle fretting, premature drawbar damage, and tool sticking in the spindle. Minimized tool life and inferior part quality may also occur.);
- (v) disassembles the spindle on a Product(s) without Seller's written consent; or
- (vi) uses oil coolants or highly concentrated synthetic coolants in the Products (because Seller's standard coolant systems are designed for water soluble coolant, and the use of oil based or synthetic coolants may cause premature failure of pumps and valves and will cause damage to seals, paint, rubber covers, and other componentry);

and such act or use causes any damage to the Product(s) or otherwise causes the Product(s) to malfunction or otherwise not operate properly, Seller's warranty hereunder shall be rendered void and of no further force and effect and Buyer shall be solely responsible for all damages arising as a result thereof. Furthermore, all service work related thereto shall be undertaken by Seller on a chargeable basis only.

(d) **Production.** Seller does not make any representations or warranties relative to the speed/performance of the Products in production mode. Buyer shall not be entitled to rely upon any time studies, tests or other trial runs of the Products and the rates at which goods or products may be made on the Products. All such studies are for testing/demonstration purposes only. Buyer acknowledges that production speeds vary upon numerous factors not within the Seller's control, including, but not limited to, accuracy and/or finish requirements, material to be cut, cutting conditions, plant environment, fixturing and tooling, engineering and process design, program changes, Buyer's workforce and/or improper maintenance.

8. SECURITY INTEREST:

Buyer hereby grants to Seller and Seller hereby retains a continuing purchase money security interest in the Products, together with all spare parts, attachments, accessories, accessions, additions, replacements, improvements, modifications and substitutions thereto or thereof, whether heretofore or hereafter acquired by Buyer, together with all proceeds (as presently or hereafter defined by the Uniform Commercial Code ("UCC")) thereof. This security interest shall secure any and all indebtedness, liability and obligations of Buyer to Seller, now existing or hereafter arising. Buyer hereby ratifies any and all filings made against Buyer by Seller prior to the date hereof. Buyer shall keep the Products free from any adverse lien, security interest or encumbrance and will not store the Products or any part thereof or use the same in violation of any statute or ordinance.

If Buyer shall be in default under any agreement between the parties, Seller shall have the remedies of a secured party under the UCC in addition to the rights and remedies set forth herein. Seller may enter the Buyer's premises and remove the Products and/or disable or render the Products unusable by electronic or any other means available to Seller, without liability to Buyer. Buyer agrees to assemble the Products to assist Seller in removing the Products at Buyer's cost and expense. Buyer hereby agrees to pay Seller's costs and expenses, including, but not limited to, reasonable attorneys' fees and court costs for the collection of any amounts owing to Seller under any agreement between the parties or incurred in the repossession of the Products. The security interest granted herein shall survive any termination of any agreement between the parties.



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9. PATENT INFRINGEMENT:

Seller warrants that the Products will not in and of themselves infringe any patent of the United States. Seller's liability hereunder is limited to Seller's defense of any suit or proceeding brought against Buyer based on a claim that the Products when employed in the manner intended by Seller constitute an infringement of any patent of the United States. Seller's liability hereunder is conditioned upon Buyer giving immediate written notice of any such claim made against Buyer, and giving all such information available to Buyer and such assistance as required by Seller relative to such claim, and Buyer's granting to Seller exclusive control of the settlement and litigation of any such suit, proceeding or claim. If Buyer's use of the Products in the manner intended by Seller is finally enjoined, Seller shall, at its option, procure for Buyer the right to continue using the Products, replace the same with non-infringing equipment, modify the Products so they are non-infringing, but equivalent to the Products sold hereunder, or remove the Products and refund the purchase price (less allowance for use, damage and obsolescence).

In no event will Seller and/or Selling Companies be liable for any patent infringement based on the use of the Products for purposes other than those for which they are sold by Seller. Seller makes no warranty against patent infringement resulting from portions of the Products made to Buyer's specifications or the use of the Products in combination with other products or in the practice of any process, and if a claim, suit or action is based thereon, Buyer shall, defend and indemnify Seller and the Selling Companies from and against any and all claims, losses or damages arising therefrom.

10. CONFIDENTIALITY:

All drawings, designs, specifications, manuals and programs furnished to Buyer by Seller shall remain the confidential and proprietary property of Seller. All such information, except as may be found in the public domain, shall be held in strict confidence by Buyer and shall not be disclosed by Buyer to any third parties. Copyright in all materials made available by Seller shall remain in Seller at all times.

11. SAFETY PRECAUTIONS:

Buyer shall require all employees to use all safety devices, guards, and proper safe operating procedures set forth in manuals and instructions furnished by Seller. Buyer shall not remove or modify any such device, guard or sign. It is the Buyer's responsibility to provide all the means that may be necessary to effectively protect all employees from serious bodily injury which otherwise may result from the method of particular use, operation or set-up or service of the Products. If Buyer fails to comply with the provisions of this paragraph or any applicable standards or regulations, Buyer shall indemnify Seller and the Selling Companies from and against all claims, losses or damages arising therefrom.

12. MISCELLANEOUS PROVISIONS:

- (a) These Terms together with all attachments hereto (or to which these Terms are attached) constitute the entire agreement between Seller and Buyer and govern the respective liabilities of Buyer, Seller and the Selling Companies, and supersede any and all prior agreements, representations, correspondence, quotations or understandings heretofore in force between the parties. There are no agreements between Seller and Buyer with respect to the Products except as specifically set forth herein.
- (b) If any term or condition or part of the Terms is held to be invalid, the remaining terms and conditions of the Terms shall not be affected thereby.
- (c) The Terms may be modified, cancelled, or rescinded only by the written agreement of both parties executed by their duly authorized agents.
- (d) No claim arising out of any breach of the Terms may be discharged in whole or in part by waiver or renunciation of such claim unless such waiver or renunciation is in writing and signed by the parties hereto.
- (e) The Terms and any agreement between the parties may not be assigned without the express written consent of the parties hereto. Any attempted assignment of rights or delegation of duties shall be void.
- (f) The Selling Companies shall be extended the benefits and protection of these Terms.
- (g) EXCEPT TO THE EXTENT THAT THE PERFECTION OF THE SECURITY INTEREST GRANTED HEREIN IS OTHERWISE MANDATED BY APPLICABLE LAW, THE AGREEMENT BETWEEN THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REFERENCE TO CONFLICTS OF LAWS PRINCIPLES, AND THE PARTIES HEREBY AGREE THAT THE UNITED NATIONS CONVENTION ON INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THE PURCHASE AND SALE OF THE PRODUCTS.



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12. MISCELLANEOUS PROVISIONS (Continued):

(h) ALL DISPUTES ARISING OUT OF THIS AGREEMENT (OR THE BREACH HEREOF) SHALL BE SETTLED BY SUBMISSION TO ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. SUCH PROCEEDINGS SHALL BE HELD BEFORE THE AMERICAN ARBITRATION ASSOCIATION IN CHICAGO, ILLINOIS BEFORE A PANEL OF THREE (3) ARBITRATORS. ANY JUDGMENT UPON ANY AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. IF ANY SUIT OR PROCEEDING BE BROUGHT IN ANY COURT, THE COURT SHALL, ON APPLICATION OF ONE OF THE PARTIES, STAY THE PROCEEDINGS AND ANY TRIAL UNTIL SUCH ARBITRATION HAS BEEN HAD IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. BUYER WAIVES AND AGREES NOT TO CLAIM OR ASSERT IN ANY PROCEEDING OF ANY NATURE ANY AND ALL CLAIMS WHICH IT MAY HAVE OR HEREAFTER CLAIM TO HAVE FOR PUNITIVE DAMAGES UNDER ANY THEORY WHATSOEVER RELATING TO THIS AGREEMENT OR THE BREACH HEREOF. BUYER HEREBY AGREES THAT THE ARBITRATORS SHALL NOT HAVE THE RIGHT OR AUTHORITY TO ASSESS ANY PUNITIVE DAMAGES AGAINST SELLER.

IN THE EVENT THAT A COURT SHALL FIND THAT BUYER IS NOT BOUND BY THE FOREGOING ARBITRATION PROVISION, BUYER SHALL BRING ACTION ONLY IN A STATE OR FEDERAL COURT LOCATED IN THE FEDERAL DISTRICT ENCOMPASSING THE NORTHERN DISTRICT OF ILLINOIS AND BUYER HEREBY IRREVOCABLY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS WITH RESPECT TO ALL ACTIONS BETWEEN THE PARTIES HERETO. BUYER WAIVES ANY AND ALL OBJECTIONS TO LACK OF JURISDICTION, IMPROPER VENUE AND/OR FORUM NON-CONVENIENS. IN THE EVENT THAT BUYER INSTITUTES ANY ACTION IN ANY OTHER COURT OR FORUM, BUYER SHALL PAY SELLER'S EXPENSES (INCLUDING REASONABLE ATTORNEYS FEES) IN DISMISSING OR TRANSFERRING SUCH ACTION TO A COURT LOCATED IN THE FEDERAL DISTRICT ENCOMPASSING THE NORTHERN DISTRICT OF ILLINOIS.

THE PROVISION OF THIS SUBPARAGRAPH (h) TO THE CONTRARY NOTWITHSTANDING, THE PARTIES EACH RESERVE THE RIGHT TO BRING ANY ACTION FOR EQUITABLE RELIEF IN AN APPROPRIATE CASE, AND THE PARTIES' AGREEMENT TO ARBITRATE HEREUNDER SHALL NOT STAY OR OTHERWISE AFFECT EITHER PARTY'S RIGHT TO PETITION A COURT OF COMPETENT JURISDICTION FOR EQUITABLE RELIEF IN APPROPRIATE CIRCUMSTANCES, PROVIDED HOWEVER, THAT ALL CLAIMS FOR MONEY OR MONEY DAMAGES RELATED THERETO SHALL BE REFERRED TO ARBITRATION AS AFORESAID, ANY SUCH ACTION SHALL BE INSTITUTED SOLELY AND EXCLUSIVELY IN A STATE OR FEDERAL COURT DESIGNATED IN THIS SUBPARAGRAPH (h).

(i) In the event that Buyer shall contest Seller's right to possession in any action relating to the Products, Buyer shall post a bond in the amount of two times the sales price or value (whichever is greater) of the Products to protect Seller's interest therein. Seller shall not be required to post any bond or other forms of security in connection with any action relative to the Products.

13. EXPORT CONTROL:

The Products (and all information, technology, hardware, firmware and/or software contained therein) are sold for use and consumption within the United States only and Buyer shall not export the same. Buyer acknowledges that in the event that Buyer were to export the Equipment, any subsequent export, transfer, resale or other disposition of the Products from the United States must be made in accordance with applicable law. Diversion contrary to U.S. law is strictly prohibited. In furtherance hereof, in the event of any such export, Buyer shall (a) comply with all applicable export/export control laws, rules and regulations of the United States and any other foreign countries, governments, agencies or authorities (collectively, the "Laws"), and (b) not export or re-export the Products in violation of any such Laws, or without all necessary authorizations/licenses. Buyer agrees that the export of the Products may require export control licenses or approvals from the U.S. government or foreign governments/governmental agencies or authorities.

In cases where licenses or approvals are required, Seller has not authorized such export(s) and as such, Buyer shall be solely responsible for obtaining such required licenses or approvals from the appropriate governmental agencies or authorities. Buyer shall indemnify, defend and hold harmless Seller from and against any and all losses, damages, cost and expenses (including reasonable attorney's fees) sustained or incurred by Seller by reason of any failure of Buyer to comply with any such Laws. Buyer shall bear all expenses relating to obtaining any necessary licenses and/or exemptions required under the Laws with respect to any export of the Products from the United States.

Notwithstanding the above, neither the Products nor the underlying information, technology, hardware, firmware or software, may be exported or re-exported to (a) Cuba, Iran, Iraq, North Korea, Sudan, Syria, or any other country subject to U.S. trade sanctions applicable to the Products, (b) individuals or entities controlled by such countries, or to nationals or residents of such countries other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions; or (c) to any named party or individual on the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) Specially Designated Nationals List or on the U.S. Department of Commerce, Bureau of Export Administration Denied Persons List or Entity List, or to any other party or individual subject to other government lists applicable to the Products (or any other similar lists that may be promulgated or maintained by the United States government from time to time hereafter).

Upon request by Seller, Buyer shall provide Seller with all customer information and documentary and other assistance required to maintain strict compliance with the Laws. Buyer shall take all actions as may be necessary to assure that no customer contravenes any Laws or the provisions of any such approvals/licenses or exemptions. Seller shall be relieved of all obligations to provide any Products, spare parts or technical data to Buyer (or its customer(s)) if Buyer (or such customer) violates any Laws, or if any approvals/licenses are suspended or revoked.



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