

## CONTRACT FOR THE SALE OF GOODS

THIS CONTRACT FOR THE SALE OF GOODS (this “**Agreement**”) is entered into as of \_\_\_\_\_ (“**Effective Date**”), and is by and between \_\_\_\_\_, a \_\_\_\_\_ (“**Seller**”), \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ (“**Buyer**”). Buyer and Seller are sometimes referred to herein as the “**Parties**”.

### RECITALS

WHEREAS, upon the terms, covenants, and conditions set forth herein, Buyer desires to purchase and acquire certain goods from Seller, and Seller desires to sell same to Buyer.

NOW, THEREFORE, in consideration of the foregoing, and the terms, covenants, and conditions contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Applicability. This Agreement (which may include an accompanying invoice) comprises the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement prevails over any of Buyer’s or Seller’s general terms and conditions of purchase, regardless of whether or when Buyer or Seller has submitted its purchase order or such terms. Notwithstanding any term or provision of Buyer’s Purchase Order (the “**PO**”) or any other document or instrument to the contrary, fulfillment of the PO does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend this Agreement in any respect.

2. Description of the Goods. The goods that are the subject of this Agreement (the “**Goods**”) are described in the PO dated \_\_\_\_\_, and/or are known by PO or reference number \_\_\_\_\_.

3. Delivery.

a. Time of Delivery.

The Goods will be delivered or available for pick up within a reasonable time after the receipt of Buyer’s PO, subject to availability of the finished Goods.

The Goods will be delivered or available for pick up on the following date:  
\_\_\_\_\_.

b. Delivery Details.

Seller shall not be liable for any delays, loss, or damage in transit. Unless otherwise agreed in writing by the Parties, Seller shall deliver the Goods to the location noted in the PO (the “**Delivery Point**”), using Seller’s standard methods for packaging and shipping of such Goods.



Alternative Delivery Choices (select if and as applicable):

- Buyer shall be responsible for all delivery and loading costs and shall provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.
- Seller shall be responsible for all delivery and loading costs and shall provide equipment and labor reasonably suited for delivery of the Goods at the Delivery Point.

c. Partial Deliveries.

- Seller shall have the right, in its sole discretion, without liability or penalty, to make partial shipments of Goods to Buyer. In such an event, each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- Partial deliveries of the Goods shall not be permitted hereunder.

d. Inability to Deliver. If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4. Non-delivery. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within three (3) business days of the date when the Goods would, in the ordinary course of events, have been received. Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

5. Quantity. Unless otherwise mutually agreed in writing, if Seller delivers to Buyer a quantity of Goods of up to \_\_\_\_ % more or less than the quantity set forth in the PO, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall, and shall pay for such Goods the price set forth in the PO adjusted pro rata based on the quantity actually delivered.

6. Shipping Terms. Unless otherwise mutually agreed in writing, Delivery shall be made FOB SELLER'S LOCATION.



7. Title and Risk of Loss. Except as otherwise expressly provided herein, title and risk of loss shall pass to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code of the laws of Seller's principal place of business.

8. Amendment and Modification. This Agreement may only be amended or modified in writing which specifically states that it amends this Agreement and is signed by an authorized representative of each Party.

9. Inspection and Rejection of Nonconforming Goods.

a. Inspection Period. Buyer shall inspect the Goods within three (3) business days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only the following: (i) product shipped is different than identified in the PO; (ii) products are damaged; or (iii) product's label or packaging incorrectly identifies its contents.

b. Corrective Action. If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Seller's expense and risk of loss, the replaced Goods to the Delivery Point.

c. Remedies. Buyer acknowledges and agrees that the remedies set forth in Section 9 are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under this Section 9, all sales of Goods to Buyer are made on a one-way basis, and Buyer has no right to return Goods purchased under this Agreement to Seller.

10. Price.

a. Purchase Price. Buyer shall purchase the Goods from Seller at the price or prices (the "**Price**") listed in the Seller's quotation to the Buyer. If the Price should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then this Agreement shall be construed as if the increased price were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased price.



b. Taxes. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets

11. Payment Terms.

a. Payment Terms. Unless otherwise mutually agreed in writing, Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by check, electronic transfer, or other immediately available funds, and in US dollars.

b. Late Payments. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at law, Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for seven (7) days following written notice thereof.

c. No Setoff. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise. For the avoidance of doubt, Buyer shall have no setoff rights hereunder.

12. Limited Warranty.

a. Seller warrants to Buyer that for a period of \_\_\_\_\_ days from the date of shipment of the Goods ("**Warranty Period**"), that such Goods will materially conform to the specifications set forth in the Seller's published specifications in effect as of the date of shipment under the corresponding transaction and will be free from material defects in material and workmanship.

**b. EXCEPT FOR THE WARRANTY SET FORTH IMMEDIATELY ABOVE, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) 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.**

c. Products manufactured by a third party ("**Third Party Product**") may constitute, contain, be contained in, incorporated into, attached to, or packaged together with, the Goods. Third Party Products are not covered by the warranty above. For the avoidance of doubt, **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR**



**PURPOSE; (c) WARRANTY OF TITLE; OR (d) 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.**

d. Seller shall not be liable for a breach of the warranty set forth in Section 12(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within thirty (30) days of the time when Buyer discovers or should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

e. Seller shall not be liable for a breach of the warranty set forth in Section 12(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs, or causes or authorizes a third party to alter or repair, such Goods without the prior written consent of Seller.

f. Subject to Section 12(d) and Section 12(e) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part thereof) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

**g. THE REMEDIES SET FORTH IN SECTION 12(f) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 12(a).**

13. Limitation of Liability.

**a. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, 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.**

**b. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**



c. The limitation of liability set forth in Section 13(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

14. Compliance with Law. Both parties hereto shall comply with all applicable laws, regulations, and ordinances, and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that are needed to carry out their respective obligations under this Agreement. The parties shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance.

15. Termination. In addition to any remedies that may be provided under this Agreement, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with its obligations under this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Buyer may terminate this Agreement with immediate effect upon written notice to Seller, if Seller: (i) has not performed or complied with its obligations under this Agreement, in whole or in part; or (ii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

16. Waiver. No waiver by either party of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by the party to be charged. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. Confidential Information. All non-public, confidential or proprietary information of the parties, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by the other party, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," and may not be disclosed or copied unless authorized in advance by such in writing. Upon a party's request, the other party shall promptly return all documents and other materials received from the requesting party. Each party shall be entitled to injunctive relief for any violation of this Section 17. This Section does not apply to information that is: (a) in the public domain; (b) known at the time of disclosure; or (c) rightfully obtained on a non-confidential basis from a third party.

18. Force Majeure. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of



God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage. In any such event, Seller's time for performance shall be extended by a period of time equal to the duration of such force majeure event.

19. Assignment. Neither party shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other party. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves a party of any of its obligations under this Agreement.

20. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. Governing Law. All matters arising out of or relating to this Agreement is governed by and construed in accordance with the laws of the State of \_\_\_\_\_.

22. Arbitration. Any dispute hereunder shall be resolved through binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

23. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth above, or to such other address that may be designated by either party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), electronic mail, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, (b) if the party giving the Notice has complied with the requirements of this Section, and (c) in the case of email, upon confirmation by the receiving party of receipt of the email.

IN WITNESS WHEREOF, the Parties have executed this Asset Purchase Agreement to be effective as of the Effective Date.

**SELLER:**  
Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUYER:**  
Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

