

# HALDEX GENERAL TERMS AND CONDITIONS

Section 2.4 Revised 10-05

## **1. The Contract.**

**1.1 Offer and Acceptance.** Each purchase order Buyer issues (“**Purchase Order**”) is Buyer’s offer to purchase the products (“**Products**”) and services (“**Services**”) identified in that Purchase Order. Any and all terms or conditions set forth in a purchase order or other communication from Buyer that are different from, in addition to or in conflict with these Term and Conditions are objected to by Seller and shall not be effective or binding unless specifically agreed to in writing by Seller. The Purchase Order, to the extent not objected to, these Terms and Conditions and any specifications, drawings, samples and performance requirements proposed by Buyer and accepted by Seller in writing (the “**Specifications**”) will become a binding contract between Buyer and Seller (the “**Contract**”). Buyer may only object to any of the terms and conditions contained herein by providing specific written notice of such objection within ten (10) days of receipt of these Terms and Conditions directed to Manager Credit Services, and faxed to 816-891-7324 or mailed to Manager Credit Services, Haldex Brake Products Corporation, 10930 N. Pomona Avenue, Kansas City, MO 64153. No other objection shall be effective. Any proposed changes to these terms and conditions shall be binding on Seller only if accepted in writing by Seller.

**1.2 Changes.** Buyer may from time to time request reasonable changes, within the scope of the Contract, to the drawings, specifications, materials, packaging, testing, quantity, time or method of delivery or shipment, or other requirements prescribed in the Contract, which changes shall be subject to Seller’s acceptance. At Seller’s option, Seller shall make and Buyer shall accept an equitable adjustment to the Contract prices and times for performance as a result of Buyer’s changes.

## **2. Products and Services; Claims for Shortages and Damaged Merchandise; Errors.**

Contact the appropriate Customer Service Department or your local Haldex Brake Products Friction Center for all claims regarding shortages, errors, or damaged merchandise:

U.S. Customer Service: 800-643-2374  
Canadian Customer Service: 800-267-9247

**2.1 Quantity.** If quantities or delivery schedules are not specified in the Contract, they will be as reasonably determined by Buyer and stated in Buyer’s firm releases issued to Seller from time to time. Buyer may return over-shipments to Seller at Seller’s expense. Packaged items must be purchased in packaged quantities as specified in the Master Distributor Net Price List (L43000) and the Friction Price List (LFG43005). Orders received by Seller for quantities other than those packaged quantities specified in the printed price lists will be increased to the next multiple level. Unless otherwise specifically stated in the Contract, the Contract is not exclusive and Buyer may purchase similar products and services from third parties, subject to **Section 10.1**.

**2.2 Past-Model Service Requirements.** Seller will make Products available to Buyer for Buyer’s past-model service requirements for a period of 10 years after Buyer completes current-model purchases of those Products from Seller; provided, however, that Seller may discontinue such Products prior to the end of such 10 year period if Seller gives Buyer notice of such discontinuation at least thirty (30) days in advance and gives Buyer the opportunity to purchase Buyer’s requirements of such Products. The parties will negotiate in good faith the prices, quantities and delivery terms for past-model service Products based on the availability and cost of needed materials, supplies, and skilled workers, the additional costs for equipment setup, packaging, and the like, and other relevant factors. All prices are subject to change on 30 days notice.

**2.3 Shortages.** Buyer shall check-in each shipment upon receipt. Shortages must be reported within fifteen (15) days from delivery date to receive an adjustment. Report shortages to the appropriate Haldex Customer Service Department (as referenced in Section 2) or your local Haldex Brake Products Service Center. Failure to report shortages within fifteen (15) days can result in loss of adjustment credits.

**2.4 Damaged Merchandise.** For freight collect shipments, claims on merchandise damaged in transit shall be filed by the receiving location against the carrier. For prepaid freight shipments and all parcel shipments, Buyer must forward a copy of the freight bill (noting damaged merchandise) to the appropriate Haldex Customer Service Department (as referenced in Section 2) upon discovery of damage. Haldex will file the claim against the carrier. If at all possible, Buyer should include photos of the damaged merchandise. NOTE: If damage or shortage is suspected at the time of delivery, freight bill should be signed as such with specivid detail where possible.

**2.5 Brake Block Damaged in Riveting.** Contact your local Haldex Brake Products Service Center for an RGA (Return Goods Authorization) Number, PRIOR TO RETURN.

**2.6 General Parts Returns.** Returns of those Products found to be defective prior to being put into service (use) require an RGA (Return Goods Authorization) Number, PRIOR TO RETURN. Contact the appropriate Haldex Customer Service Department (referenced in Section 2).

**2.7 Errors.** Buyer has thirty (30) days from receipt of material to request return of any items ordered or shipped in error (invoice number is required). After thirty (30) days, the standard stock adjustment and general parts return policies will apply. (See Sections 2.3 and 2.6). Contact the appropriate Haldex Customer Service Department (as referenced in Section 2) for approval to return products – PRIOR TO RETURN. Contact the appropriate Haldex Brake Products Service Center for approval to return those products shipped from a Haldex

Brake Products Service Center – PRIOR TO RETURN.

**2.8 *Remanufacture “Special Order” Merchandise.*** There will be a twenty percent (20%) handling and restocking charge assessed for any remanufactured “Special Order” product which Buyer wishes to return to Seller, unless the order was packed and/or shipped in error. Remanufactured “Special Order” product returns require an RGA (Return Goods Authorization) Number, PRIOR TO RETURN. This RGA# obtained from the appropriate Customer Service Representative (as referenced in Section 2).

### **3. Delivery; Freight Policy.**

**3.1 *Packing and Shipment.*** Buyer may specify in the Contract the method of transportation and the type and number of packing slips and other documents to be provided with each shipment. Seller will pack and ship Products in accordance with sound commercial practices. If Seller is required to use Buyer’s returnable packaging, Seller will be responsible for returning the returnable packaging. If Buyer’s returnable packaging is not available, Seller may use expendable packaging and Buyer will reimburse Seller for the reasonable costs of expendable packaging.

**3.2 *Delivery Schedules.*** Seller will deliver Products and Services in accordance with the Contract terms. Unless otherwise stated in the Contract, Products will be delivered FCA Origin (Incoterms 2010) and title and risk of loss will transfer when the Products are available to the freight carrier, to Buyer or to Buyer’s agent at Seller’s facility, whichever occurs earlier. Acceptance occurs at the seller’s dock. All claims for loss or damage in transit must be made as outlined in **Section 2.4**. Buyer will be responsible for additional costs of expedited or other special transportation that Buyer may request.

**3.3 *Freight Charges.*** Freight charges will be as stated in printed Policy and Procedure Manual or contract. Contact the appropriate Customer Service Department for a copy or further information.

**3.4 *Backorder Shipments.*** Backorder shipments of items originally qualifying for prepaid freight will be shipped prepaid. Any item that is backordered will be held up to (fifteen) 15 calendar days once it becomes available for shipment. If another order is placed within the (fifteen) 15 day period, product will be combined for shipment. Buyer may call and ask that product be released if another order has not been placed within the (fifteen) 15 day period.

**3.5 *Freight Carriers.*** Seller will ship prepaid freight shipments via a carrier of its choice. Freight collect shipments will be sent via the carrier requested by Buyer, if at all possible.

**3.6 *Air Freight.*** Air freight on any premium expedited shipment will be shipped collect.

**3.7 *C.O.D. or C.I.A.*** C.O.D. or C.I.A. will only be allowed with prior approval from the Haldex Manager, Credit Services.

### **4. Inspection.**

Buyer may, upon reasonable advance notice to Seller, inspect production processes and Property and conduct testing at Seller’s premises for the sole purpose of verifying Seller’s performance under the Contract. Seller may restrict Buyer’s access as necessary to protect proprietary information. Buyer is not required to inspect Products delivered or Services performed, and no inspection or failure to inspect will reduce or alter Seller’s obligations under the Contract.

### **5. Taxes.**

Unless otherwise stated in the Contract, Buyer shall be responsible all applicable federal, state, provincial, and local taxes related to the purchase of Products and Services, including sales, value added, or similar turnover taxes or charges. Seller will separately invoice Buyer for any sales, value added, or similar turnover taxes or charges that Seller is required by law to collect from Buyer.

### **6. Payment.**

Payment terms are as set forth in the Contract. Seller will submit invoices or other agreed billing communications upon shipment of Products or performance of Services. Unless otherwise agreed, all sales shall be for cash. Where credit has been approved, terms are those set out on the invoice. Seller will accept payment by check or other cash equivalent, including electronic funds transfer. Buyer will pay Seller in the currency specified in the Contract or, if none is specified, in the currency of Seller’s shipping or service location. Unless Seller consents in writing, Buyer may not setoff or deduct amounts owed to Buyer by Seller, Seller’s affiliates or others who are not parties to the Contract. Orders and shipments may be held on all accounts that are delinquent. Accounts on credit hold will lose their original allocation status. A late payment charge will be assessed on all past due invoices.

### **7. Product Warranties.**

**7.1 *Seller’s Warranties.*** Seller warrants to Buyer that (1) the Products will be free from defects in workmanship and materials, and will conform to the Specifications incorporated in the Contract, and (2) Seller has and will transfer to Buyer ownership and good title to Products delivered and Services provided, free of all liens, encumbrances, and rights of third parties (except those created by Buyer or by

Seller, as applicable). The warranty in clause (1) will continue for the warranty period specified in Seller's standard O.E.M. Product Warranty Policy, as such policy may be updated from time to time. A current version of such policy will be provided upon request to Seller or may be found on Seller's website at [www.hbsna.com](http://www.hbsna.com). The warranty in clause (2) will continue for the life of the Products and Services. Unless otherwise specifically stated in the Contract, Seller does not warrant the design of the Products or their fitness for any particular purpose. **THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF AND BUYER HEREBY WAIVES ALL OTHER CONDITIONS, WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE LIABILITY OF SELLER TO THE BUYER, WHETHER IN CONTRACT OR TORT, UNDER SELLER'S WARRANTIES SHALL IN NO EVENT EXCEED THE COST OF REPAIRING OR REPLACING THE PRODUCTS OR REFUNDING THE PURCHASE PRICE THEREOF. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR IMPORT DAMAGES OF ANY KIND.**

**7.2 Non-Conforming Products.** Buyer's sole remedy for Products or Services that do not conform to the warranties in **Section 7.1** will be to reject the non-conforming Products or Services or to require Seller, at Seller's option and expense (including applicable shipping costs), to either repair or replace the non-conforming Products or Services. Buyer must notify Seller of any claim that Products or Services are non-conforming within ten (10) days of receipt of such Products or Services or Seller shall have no liability for such claim. Seller shall not be liable for Buyer's costs or expenses to rework, sort, handle or for freight charges on non-conforming material without the prior written approval of Seller. To the fullest extent possible, Buyer will provide Seller with access to any available warranty data related to the Products and any available field-returned Products. Buyer will also provide Seller with an opportunity to participate in any root cause analysis performed by Buyer concerning the Products.

**7.3 Recalls.** This **Section 7.3** applies to any voluntary or government-mandated offer by Buyer (or the vehicle manufacturer) to vehicle purchasers to remedy an alleged defect that affects motor vehicle safety or to address an alleged failure of a vehicle to comply with an applicable motor vehicle safety standard or guideline (a "**Recall**"). Except as otherwise stated in the Contract, Seller's liability for costs and damages from a Recall resulting in whole or in part from a failure of the Products to conform to the warranties in **Section 7.1** will be negotiated on a case-by-case basis, based on (1) a good faith allocation of responsibility for the Recall, (2) the reasonableness of the costs and damages incurred, (3) the quantity purchased and Contract price of the affected Products, and (4) other relevant factors. To the extent Seller pays for any costs related to a recall, Buyer will cooperate fully with Seller in any efforts by Seller to recover such costs from any third party. As a condition precedent to Seller's liability under this **Section 7.3**, Buyer must (i) notify Seller as soon as practicable after Buyer learns that a Recall being considered implicates the Products, (ii) provide Seller with available performance evaluations, accident reports, engineering investigations, and other data relating to the potential Recall, (iii) provide Seller a reasonable opportunity to participate in inquiries and discussions among Buyer, its customer and governmental agencies regarding the need for and scope of the Recall, and (iv) consult with Seller about the most cost-effective method of modifying or replacing vehicle systems or component parts, including the Products, in order to remedy the alleged defect or non-compliance.

## **8. Product Liability.**

Subject to the limitations on liability contained herein, Seller will indemnify and defend Buyer against third-party claims asserted against Buyer or its customers for bodily injury, death, or property damage and any resulting damages, losses, costs, and expenses (including reasonable legal fees), if and to the extent caused by a breach of Seller's warranties. Seller shall not be liable under this provision or otherwise for (a) Products repaired or modified without the Seller's prior written consent or contrary to the Seller's instructions; (b) Products subjected to improper handling, storage, installation, operation or maintenance, including, without limitation, installation, use or application of Products or any part thereof contrary to the Seller's instructions; (c) any item which is purchased by the Seller as a component part of the Products (such components may be covered by the warranty of their respective manufacturers, but are not covered by Seller's warranty); (d) any damage or deterioration to Products alleged to be in breach of a specific warranty contained in this Agreement which can reasonably be prevented or minimized by Buyer pending repair or replacement of the Products in accordance with any applicable warranty; (e) the design of any Products or part thereof; (f) any normal wear or tear to Products or parts; (g) Products subjected to damage by accident, fire or other casualty, misuse or negligence; or (h) if the serial numbers affixed to the unit by Seller are removed, obliterated or defaced.

The parties will cooperate with each other to determine the root cause of such defect in or failure of the Products and an equitable allocation of responsibility among all responsible parties. Seller may examine and test all available Products that are subject to a third-party claim. Buyer will include Seller in settlement discussions where indemnity has been or will be sought from Seller, and Buyer may not settle or compromise any third-party claim that gives rise to an indemnification claim without Seller's prior written consent.

## **9. Compliance with Laws.**

Seller will use its best efforts to comply with applicable material laws, rules and regulations of the country where the Products are manufactured or the Services are performed that are directly applicable to the Products and/or Services that are the subject of this Contract. Seller will provide Buyer with material safety data sheets regarding the Products and, upon Buyer's request, will provide Buyer with other information reasonably required in order to comply with applicable laws.

## **10. Intellectual Property Rights.**

**10.1 Ownership.** Except as stated in this **Section 10.1**, Seller does not transfer to Buyer any patent, trade secret, trademark, service mark, copyright, or other intellectual property right ("**Intellectual Property Right**") related to the Products or Services, other than the right to incorporate Products purchased from Seller in vehicles and component parts and to sell those vehicles and component parts to the public.

**10.2 Claims.** If a claim for infringement by the Products of a third party Intellectual Property right results, or is likely to result, in an injunction or other order that would prevent Seller from supplying or Buyer from using Products for their intended purpose, Seller will at its option and expense (i) secure a license of the Intellectual Property Right that permits Seller to continue supplying the Products to Buyer, (ii) modify the Products so that they become non-infringing, so long as the modification does not materially alter the operation or performance of the Products, or (iii) replace the Products with non-infringing but practically equivalent Products. At the request of Seller, Buyer will immediately cease using, selling and distributing any allegedly infringing Products. Buyer shall promptly notify Seller of any alleged infringement of any Intellectual Property Rights arising out of the Products and Services.

**10.3 Limitation of Liability.** Seller will have no liability under **Section 10.2** unless Buyer provides Seller with full information, cooperation, and assistance regarding, a claim covered by **Section 10.2**. Seller will have no liability under **Section 10.2** if and to the extent that a claim of infringement is based on (1) a Product modification made by Buyer or a third party, (2) a Product modification made by Seller at Buyer's request, (3) use or interconnection by Buyer of the Product in combination with other products not made or sourced by Seller, or (4) Products made to specifications not provided by Seller.

## **11. Property.**

### **11.1 Buyer's Property.**

(a) Buyer will own the tooling, jigs, dies, gauges, fixtures, molds, patterns, supplies, materials and other equipment and property used by Seller to manufacture, store and transport Products or provide Services ("**Property**") if Buyer or its customer has provided or paid for the Property ("**Buyer's Property**"). Seller will assign to Buyer contract rights or claims in which Seller has an interest with respect to Buyer's Property and execute bills of sale, financing statements or other documents reasonably requested by Buyer to evidence its or its customer's ownership of Buyer's Property. Seller will hold Buyer's Property on a bailment basis and will be responsible for loss or damage to Buyer's Property while in its possession or control. Buyer will be responsible for personal property taxes assessed against Buyer's Property.

(b) Seller will (1) at its expense maintain Buyer's Property in good condition and repair, normal wear and tear excepted, while Buyer's Property is in Seller's possession and control, (2) use Buyer's Property only for the manufacture, storage and transport of Products for Buyer unless Buyer otherwise approves in writing, (3) at Buyer's request and expense, mark Buyer's Property as belonging to Buyer or its customer, and (4) not remove Buyer's Property from Seller's premises without Buyer's written approval. All replacement parts, additions, improvements, and accessories to Buyer's Property will become part of Buyer's Property.

(c) Buyer will pay for Buyer's Property that it is required to purchase at the lesser of (1) the amount specified in the Contract, or (2) Seller's actual cost of the Buyer's Property, if manufactured by a third party, or (3) Seller's actual cost of purchased materials, components and services plus Seller's actual cost of labor and overhead allocable to the Buyer's Property, if manufactured by Seller. Unless otherwise stated in the Contract, final payment for Buyer's Property is due (i) on the vehicle manufacturer's PPAP (Production Part Approval Process) approval date, or (ii) within 90 days after the Property is tendered for PPAP approval if no action has then been taken on the request for PPAP approval.

(d) Seller will return to Buyer upon request, and Buyer may retake possession of, Buyer's Property at any time, with or without cause and without payment of any kind unless otherwise provided in the Contract. As requested by Buyer and at Buyer's expense, Seller will either (1) release the requested Property to Buyer F.C.A. Seller's plant (Incoterms 2000), properly packed and marked in accordance with the requirements of Buyer's carrier, or (2) deliver the requested Property to a location designated by Buyer. If the return or recovery of Buyer's Property renders Seller unable to produce a Product, the return or recovery will be deemed a termination of the Contract with respect to that Product pursuant to **Section 12** or **13**, as applicable.

**11.2 Seller's Property.** Seller will own all Property that is not Buyer's Property ("**Seller's Property**").

## **12. Term and Termination.**

**12.1 Generally.** Each Contract will remain in effect for the term (if any) specified in the Contract unless earlier terminated by either party (1) by reasonable (but not less than 60 days) notice to the other party, or (2) pursuant to **Section 13** or **16**.

**12.2 Long-Term Contracts.** If Buyer terminates a Contract issued for more than one year ("**Long-Term Contract**") before the end of its specified term (other than for Seller's Default), Buyer will (1) purchase completed Products at the Contract price, and (2) reimburse Seller for reasonable costs actually incurred by Seller as a result of the early termination, including the cost to store the items to be purchased and the cost of unreimbursed and unamortized research and development costs, engineering costs, capital equipment, Seller's Property, and supplies and raw materials. If Seller terminates a Long-Term Contract before the end of its specified term (other than for Buyer's Default), Buyer may purchase completed Products at the Contract price. In either case, Seller will at the request of Buyer finish all work-in-progress, which finished Products will be sold to Buyer at the Contract price.

**12.3 Short-Term Contracts.** If Buyer terminates a Contract issued for one year or less ("**Short-Term Contract**") before the end of its specified term (other than for Seller's Default), Buyer will purchase completed Products at the Contract price. If Seller terminates a Short-Term Contract before the end of its specified term (other than for Buyer's Default), Buyer may purchase completed Products at the Contract price. In either case, Seller will at the request of Buyer finish all work-in-progress, which finished Products will be sold to Buyer at the contract price.

**12.4 Property Orders.** If Buyer terminates a Contract for Buyer's Property before it is fully performed (other than for Seller's Default), Buyer will (1) purchase the completed Buyer's Property at the Contract price, and (2) reimburse Seller for reasonable costs actually incurred by Seller as a result of the early termination, including the cost to store the items to be purchased.

### **13. Default.**

**13.1 Events of Default.** Time is of the essence and either party will be in "**Default**" under the Contract if it (1) fails to perform any obligation under the Contract and fails to cure the non-performance within sixty (60) business days after notice from the other party specifying the non-performance, (2) admits in writing its inability to pay its debts as they become due, commences a bankruptcy, insolvency, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors, or (3) becomes a debtor in a bankruptcy, insolvency, receivership, or similar proceeding commenced by a third party that is not dismissed within 30 days after commencement.

**13.2 Remedies.** Subject to **Section 13.3**:

(a) Upon the occurrence of a Default and while that Default is continuing, the non-defaulting party may terminate the Contract by notice to the defaulting party. If Seller is in Default, Buyer may purchase completed Products at the Contract price. If Buyer is in Default, Seller may recover damages resulting from the Default, including (i) the Contract price for completed Products and Services and the cost of work-in-process and raw materials, and (ii) the cost of unreimbursed and unamortized research and development, capital equipment, Property, and supplies that are unique to the Products.

(b) The remedies in this **Section 13.2** are cumulative and are in addition to all other rights and remedies available elsewhere in the Contract or by law.

**13.3 Limitations.** Except as otherwise provided in the Contract, either party may recover actual out-of-pocket damages or costs directly caused by a breach of the Contract by the other party. Neither party shall be liable for any other damages or costs as a result of a breach of the Contract or otherwise arising out of or related to the Contract, such as lost profits or market share, damage to brand value, punitive damages, or any other general consequential, incidental or indirect damages. In addition, Seller's liability for breach of warranty, product liability, or other theories of liability (whether arising under tort, negligence, contract, warranty, strict liability, indemnification, or otherwise), to the extent not otherwise limited herein, will be reasonably determined based on the nature, type, price, and profitability of the Products or Services, industry practices, and the overall volume, scope, and profitability of other business relationships between Seller and Buyer.

### **14. Confidential Information.**

Trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are supplied or disclosed by Buyer or Seller in connection with the Contract, in each case that are marked or otherwise identified as confidential ("**Confidential Information**"), will be deemed confidential and proprietary to, and remain the sole property of, the disclosing party. The receiving party may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under the Contract without in each case the written consent of the disclosing party. Confidential Information will not include information that (1) is or becomes generally available to the public other than as a result of a violation of this **Section 14** by the receiving party, (2) was obtained by the receiving party on a non-confidential basis from a third party who had the apparent right to disclose it, or (3) is legally required to be disclosed. Buyer and Seller will each use the same degree of care (but not less than a reasonable degree of care) to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure. Upon request by the disclosing party, the receiving party will promptly return or destroy the original and all copies of Confidential Information received.

### **15. Assignment and Subcontracting.**

Neither party may assign or subcontract its duties or responsibilities under the Contract to any party other than a parent, subsidiary or affiliated company without the prior written consent of the other party, which will not be unreasonably withheld. Any attempted assignment or subcontracting by either party without the required consent will not relieve that party of its duties or obligations under the Contract or its responsibility for non-performance or Default by its assignee or subcontractor. If Buyer requires Seller to subcontract all or a portion of its duties or obligations under the Contract to a designated subcontractor, Seller will not be responsible for a breach of the Contract caused by that subcontractor's failure to meet its warranty, delivery, or other contractual obligations.

### **16. Excusable Non-Performance.**

A delay or failure by either party to perform its obligations under the Contract will be excused only if (1) caused by force majeure or any other cause not within the reasonable control of the affected party thereto or the party's suppliers experiencing such difficulty and without its fault or negligence and (2) the party unable to perform gives notice of the non-performance (including its anticipated duration) to the other party promptly after becoming aware that it has occurred or will occur. The term "force majeure" shall include, without limitation, acts of God and the public enemy, the elements, fire, explosion, accidents, acts of terrorism, breakdowns, labor disputes, embargoes and any other public disturbance, inability to obtain materials, supplies, permits or transportation facilities, damage to equipment or production or storage facilities, or act or omission by a third party not controlled by the party experiencing such difficulty and any laws, orders, rules,

regulations, acts, restraints of any governmental authority, civil or military.

#### **17. Customs.**

Transferable credits or benefits associated with Products purchased, including trade credits, export credits, or rights to the refund of duties, taxes, or fees, belong to Buyer unless otherwise prohibited by applicable law. Seller will provide Buyer with all information and records relating to the Products necessary for Buyer to (1) receive these benefits, credits, and rights, (2) fulfill any customs obligations, origin marking or labeling requirements, and certification or local content reporting requirements, (3) claim preferential duty treatment under applicable trade preference regimes, and (4) participate in any duty deferral or free trade zone programs of the country of import. Buyer will obtain all export licenses and authorizations and pay all export taxes, duties and fees unless otherwise stated in the Contract.

#### **18. Dispute Resolution. The following section shall apply only to those Contracts for Products or Services delivered by Seller's facilities located within the United States.**

**18.1 *Negotiation and Mediation.*** Buyer and Seller will first endeavor to resolve through good faith negotiations any dispute arising out of or relating to the Contract. If a dispute cannot be resolved through good faith negotiations in a reasonable time, either party may request non-binding mediation by a mediator approved by both parties or, absent that approval, by the American Arbitration Association.

**18.2 *Arbitration.*** If mediation fails to resolve the dispute within 30 days after the first mediation session, the controversy or claim arising out of or relating to this Contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its then-existing commercial Arbitration Rules including the Emergency Interim Relief Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator shall be agreed upon by the parties in the dispute and shall be an individual skilled in the legal aspects of the subject matter of the Contract and the dispute. In the absence of such agreement, the AAA shall appoint an arbitrator from the Kansas City, Missouri metropolitan area in accordance with its then-existing Commercial Arbitration Rules. The place of arbitration shall be in Kansas City, Missouri. The arbitrator will issue a written opinion setting forth the basis for the arbitrator's decision, which may include an award of legal fees and costs. Costs of the arbitration (including Seller's attorney's fees and costs) shall be assessed to Buyer if Seller prevails on a majority of issues in the arbitration. The arbitrator's award will be final and non-appealable absent fraud or manifest error, and judgment on the arbitrator's award may be entered in any court having jurisdiction. The arbitrator will have no authority to enter punitive or other damages not measured by the prevailing Party's actual damages, or limited by these Terms and Conditions except as may be required by statute. While arbitration proceedings are pending, the parties will continue to perform their obligations under the Contract without setoff for any matters being contested in the arbitration proceedings.

**18.3 *Litigation.*** The parties have selected binding arbitration as the sole means to resolve a dispute between them over monetary claims that cannot be resolved through mediation. Either party may pursue through litigation claims that also involve third parties who have not consented to arbitration, claims in litigation commenced by third parties, and claims for injunctive or other non-monetary relief.

#### **19. Miscellaneous.**

**19.1 *Security Interest.*** To the extent any portion of the purchase price of the Products is not paid in full prior to delivery of such Products, Buyer hereby grants to Seller a security interest in the Products described in this Contract and the proceeds thereof to secure payment of any portion of the purchase price remaining unpaid and all other amounts owing by Buyer to Seller. Buyer irrevocably authorizes Seller or its designee to file such financing statements with respect to the Products as Seller may deem appropriate.

**19.2 *Relationship of the Parties.*** Buyer and Seller are independent contractors, and nothing in the Contract makes either party the agent or legal representative of the other party for any purpose. Neither party has authority to assume or to create any obligation on behalf of the other party.

**19.3 *Waiver.*** The failure of either party to enforce any right or remedy provided in the Contract or by law on a particular occasion will not be deemed a waiver of that right or remedy on a subsequent occasion or a waiver of any other right or remedy.

**19.4 *Entire Agreement.*** The Contract constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior oral or written representations or agreements by the parties with respect to the subject matter of the Contract, including Buyer's request for quotation and Seller's quotation unless specifically incorporated in the Contract. There are no agreements, representations, or understandings between the parties other than the written terms of the Contract. Except as authorized in **Section 1.2**, no subsequent terms, conditions, understandings or agreements purporting to modify the terms of the Contract will be binding unless in writing and signed by both parties.

**19.5 *Severability.*** A finding that any provision of the Contract is invalid or unenforceable in any jurisdiction will not affect the validity or enforceability of any other provision of the Contract or the validity or enforceability of that provision in any other jurisdiction.

**19.6 *Interpretation.*** When used in these General Terms and Conditions, "including" means "including without limitation" and terms defined in the singular include the plural and vice versa.

**19.7 *Notices.*** Any notice or other communication required or permitted in the Contract must be in writing and will become effective on the

date of actual receipt if the date of actual receipt is a business day or on the next business day if the date of actual receipt is not a business day.

**19.8 Governing Law.** Unless otherwise agreed in writing, for Products or Services delivered by Seller's facilities located within the United States, the Contract will be governed by and interpreted according to the internal laws of Missouri, without regard to its conflict of laws principles. For Products or Services delivered by Seller's facilities located within Canada, the Contract will be governed by and interpreted according to the internal laws of the Province where Seller's facility is located, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the Contract.