



## STANDARD TERMS AND CONDITIONS OF SALE

The standard terms and conditions of sale contained herein (the "Agreement") apply to all quotations made and purchase orders received (a "Quotation" or "Purchase Order," respectively) by Troy Industrial Solutions, TIS Brewer LLC, TIS Ansonia, LLC and their affiliated entities (each, as applicable, a "Seller") and are the exclusive binding agreement between the parties regarding the products and/or professional services referenced thereon (the "Products" or "Services," respectively). Seller's acceptance of any Purchase Order from a buyer ("Buyer") is conditional upon Buyer's assent to the terms and conditions in this Agreement in lieu of any other terms.

### 1. QUOTATIONS AND PRICING FOR PRODUCTS

- A. *Quotations for Products.* Quotations automatically expire forty-five (45) calendar days from the date issued by Seller unless otherwise stated in a Quotation and are subject to withdrawal by notice within that period. Seller reserves the right to unilaterally extend such Quotation in its discretion. Seller shall have the right in its sole discretion to accept or decline any Purchase Order for Products for any reason.
- B. *Pricing for Products.* Prices shown on published rate schedules and other published literature issued by Seller are not unconditional offers to sell and are subject to change without notice. Seller's prices for Products do not include an allowance for installation and/or final on-site adjustment unless otherwise specified. Prices shall be subject to adjustment to those in effect at time of shipment.

### 2. REPAIR SERVICES

- A. *Service Requests.* Seller shall have the right in its sole discretion to accept or decline any Purchase Order for Services for any reason. For Services requests, Buyer shall forward Seller all data, information and materials supporting the Services request, and such requests shall not be binding upon Seller until accepted by an authorized representative of Seller. Seller shall determine, in its sole discretion, whether or not any requested Services are or will be deemed covered by applicable warranties set forth in Section 12. Services performed by Seller which are not covered by warranties described herein are subject to fees and charges at Seller's then-applicable rates.
- B. *Pricing for Services.* Seller's prices for Services shall be made available to Buyer upon request and are subject to change during the term of the Agreement.

### 3. TAXES

Seller's prices do not include any applicable federal, state, local or foreign sales, use, excise, customs, tariffs, duties or similar taxes and/or import/export fees, exclusive of taxes on Seller's income; and the amount of any such tax which Seller may be required to pay or collect will be added to each invoice unless Buyer has furnished Seller with a valid tax exemption certificate acceptable to the taxing authorities. Buyer agrees to indemnify Seller for any unpaid taxes in the event such exemption is not applicable. Where a Buyer fails to furnish the required documentation, the previously unpaid taxes will be billed to Buyer.

### 4. TERMS OF PAYMENT

- A. *Payments and Service Charges.* Except as otherwise provided herein, payment terms for Products and Services are cash net thirty (30) days from date of invoice. Amounts past due are subject to a service charge of 1.5% per month (or fraction thereof) or maximum contract rate permitted by law, and Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees and court costs. If Seller deems that by reason of the financial condition of Buyer or otherwise, the continuance or production or shipment on the terms specified herein is not justified, Seller may require full or partial payment from Buyer in advance of performance.
- B. *Large Purchase Orders.* The standard method of payment for high value Quotations and/or Purchase Orders may require progressive deposits.



- C. *Partial Shipments.* Buyer agrees to accept partial shipments in satisfaction of a single Order; when partial shipments are made, pro-rata payments shall become due in accordance with the designated terms for each shipment. If Seller accepts partial payment in an amount less than the full amount of any invoice, such acceptance shall neither constitute a waiver of Seller's right to collect the balance nor an accord and satisfaction, notwithstanding Seller's endorsement of a check or other instrument.
  
- D. *ACH and Payment Cards.* Processing fees may apply for payments made by ACH transfer or payment card. When requested by Buyer, Seller will process transactions on behalf of Buyer through the appropriate bank, credit card or debit card network, or third party payment card processor, as applicable, for Buyer's purchase of Products and Services. Buyer hereby consents to such payment processing if and when requested by Buyer, including, without limitation, the consent to access, charge or debit a Buyer's credit card, debit card, bank account or other payment mechanism as directed by Buyer.

## **5. DELIVERY**

Delivery dates indicated in a Quotation and/or Purchase Order are approximate and are based on prompt receipt of all necessary information from Buyer to properly process a Purchase Order. Title to the Products and risk of loss or damage for Products shall pass to Buyer upon delivery of Products by Seller to a transportation carrier.

## **6. SHIPPING & HANDLING**

Shipments are F.O.B. point of shipment, and the manner of shipment shall be at Seller's option, unless otherwise mutually agreed by the parties. Shipping and handling will be paid by Buyer and billed as a separate item on Seller's invoice on the basis of its current pricing policies. All claims for loss or damage during shipment must be filed by Buyer with the carrier and/or Buyer's insurer. It is the responsibility of Buyer to arrange for and obtain insurance coverage for shipment of the Products, if so desired.

Buyer shall inspect Products upon delivery and notify Seller within ten (10) days of Buyer's receipt of any damaged or defective Products or under-shipment by Seller. If Buyer timely notifies Seller of any nonconforming Products during the aforementioned inspection period, Seller shall, in its sole discretion, (a) repair or replace such nonconforming Products, or (b) credit payment for such nonconforming Products. Buyer shall ship, at its expense and risk of loss, the nonconforming Products to Seller's requested facility.

## **7. SUBSTITUTIONS**

Unless specifically restricted on a Purchase Order, Seller reserves the right to substitute the latest superseding design and manufactured equivalent item for a Product or part thereof where the interchangeability of the Product is based on form, fit, and function.

## **8. RESALE OF PRODUCTS**

With prior written approval from Seller and subject to the terms of this Agreement, Buyer may incorporate Products into Buyer's products and services for resale to Buyer's customers. Buyer may pass through to its customers any applicable warranties on the Products provided herein, to the extent transferable. If prior approval is granted, Seller grants to Buyer a revocable, non-exclusive and non-transferable right and license to market, distribute, resell, license and sublicense Products to Buyer's customers. EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, SELLER DISCLAIMS ALL WARRANTIES WITH RESPECT TO PRODUCTS RESOLD BY BUYER, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THE PRODUCTS FURNISHED HEREUNDER.



## 9. CHANGES

Buyer may, with the express written consent of Seller, request changes in the specifications for Products or Services covered by a Purchase Order. If Seller accepts such changes, the contract price and delivery dates for the affected Products and/or Services may be adjusted. Seller shall be entitled to payment for reasonable profit plus costs and expenses incurred by it for work and materials rendered unnecessary as a result of such changes and for work and materials required to effect said changes.

## 10. CANCELLATION

- A. *Cancellation by Buyer.* Once a Buyer's Purchase Order for Products is accepted by Seller, such Purchase Order may not be rescheduled or cancelled by Buyer (in whole or in part) except with the prior written consent of Seller.
- B. *Cancellation by Seller.* Seller reserves the right to cancel any Purchase Order placed by Buyer and accepted by Seller, or to refuse or delay shipment thereof, if Buyer: (i) fails to make any payment owed to Seller, (ii) fails to meet reasonable credit or financial requirements established by Seller, including any limitations on allowable credit, (iii) is declared bankrupt, or (d) otherwise fails to comply with the terms set forth herein.
- C. *Cancellation Fees.* In the event of any cancellation of any Purchase Order by either party, Buyer shall pay to Seller a restocking fee and, if applicable, the reasonable costs and expenses (including engineering expenses and all commitments to its suppliers and subcontractors) incurred by Seller with respect to the Purchase Order prior to receipt of notice of cancellation by Buyer, plus Seller's usual rate of profit for similar work.

## 11. SECURITY AGREEMENT

Buyer hereby grants to Seller, its successors and assigns, a perfected purchase money security interest in and to all of the present and future rights, title and interests of Buyer in Products in order to secure prompt and complete payment of the purchase price of Products and Services. Default in payment of such price or any part of the price when due shall permit Seller, in its sole discretion, to declare all obligations of Buyer immediately due and payable, and in such event, Seller shall have all the rights and remedies of a secured party under applicable law. In connection with the security interest granted herein, Seller is expressly and irrevocably authorized, at its discretion, to file one or more financing statements or other notices under applicable law naming Buyer as debtor and Seller as secured party relating to the Products. Buyer agrees to execute such documents requested by Seller to record and otherwise perfect this security interest.

## 12. WARRANTIES

SELLER EXPRESSLY WARRANTS MANUFACTURED PRODUCTS AND SERVICES ON PRODUCTS FOR REPAIR AS SET FORTH HEREIN. SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY (INCLUDING WITHOUT LIMITATION ALL WARRANTIES WHICH, BUT FOR THIS PROVISION, MIGHT ARISE FROM COURSE OF DEALING, CUSTOM OR TRADE AND INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS). IN ADDITION, THE FOLLOWING SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES OF BUYER FOR ANY BREACH BY SELLER OF ITS WARRANTIES HEREUNDER:

- A. *Manufactured Products.* With respect to Products that are fabricated and/or manufactured by Seller (for purposes of this Section 12, the "Manufactured Products"):
  - I. Seller warrants that Manufactured Products are, at the time of shipment by Seller, free from defects in material and workmanship and conform to pertinent specifications, drawings, and the like if furnished by Seller in writing and/or as otherwise agreed in writing by the parties. The warranty period for each Manufactured Product is eighteen (18) months from the date of its shipment to Buyer. If the warranty period has expired for a Manufactured Product, Seller shall not be liable for any damages of any kind whatsoever.



- II. SELLER'S MANUFACTURED PRODUCTS ARE DESIGNED FOR SPECIFIC APPLICATIONS AND SHOULD NOT BE USED FOR ANY PURPOSE NOT EXPRESSLY SET FORTH IN APPLICABLE PRODUCT DOCUMENTATION. WARRANTIES GRANTED BY SELLER SHALL BE DEEMED VOID FOR PRODUCTS USED FOR ANY PURPOSE NOT EXPRESSLY SET FORTH IN APPLICABLE PRODUCT DOCUMENTATION. Buyer agrees to (c) communicate such restriction in writing to any and all subsequent purchasers or users and (y) defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including incidental and consequential damages, arising from use of Products in any manner not expressly intended by Seller as set forth in applicable Product documentation.
  - III. ALL PRODUCT DOCUMENTATION FURNISHED BY SELLER IS BELIEVED TO BE ACCURATE AND RELIABLE; HOWEVER, BUYER MUST INDEPENDENTLY EVALUATE THE SUITABILITY OF AND TEST PRODUCTS SELECTED FOR THEIR OWN APPLICATIONS. PRODUCTS ARE NOT DESIGNED FOR, AND SHALL NOT BE USED FOR, ANY PURPOSE OTHER THAN THOSE EXPRESSLY SET FORTH IN APPLICABLE PRODUCT DOCUMENTATION SUPPLIED BY SELLER.
  - IV. **SELLER'S LIABILITY SHALL BE LIMITED TO THE DIRECT AND ACTUAL COSTS OF REPAIR OR REPLACEMENT OF A MANUFACTURED PRODUCT AS DESCRIBED ABOVE PROVIDED THE APPLICABLE WARRANTY PERIOD DESCRIBED HAS NOT EXPIRED.** BUYER MUST NOTIFY SELLER OF DEFECTS IN WRITING AND SELLER SHALL HAVE A REASONABLE OPPORTUNITY TO PERFORM ANY APPROPRIATE TESTS TO CONFIRM DEFECTS NOTIFIED BY BUYER TO SELLER. SELLER SHALL ALSO HAVE THE RIGHT TO REQUIRE BUYER TO DELIVER DEFECTIVE PRODUCTS FOR TESTING PURPOSES TO SELLER'S DESIGNATED FACILITY AND BUYER SHALL PAY ALL CHARGES FOR IN-BOUND AND OUT-BOUND TRANSPORTATION AND FOR ANY REMOVAL AND REINSTALLATION CHARGES. BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS CONTAINED IN THIS WARRANTY CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO IT WITH REGARD TO MANUFACTURED PRODUCTS.
- B. *Products for Repair.* With respect to Services provided on Products requiring repair and/or servicing (for purposes of this Section 12, the "Products for Repair"):
- I. Seller warrants that Services performed on Products for Repair are free from defects in material and workmanship and conform to pertinent specifications, drawings and the like if furnished by Seller in writing and/or as otherwise agreed in writing by the parties. The warranty period for Services performed on a Product for Repair is twelve (12) months from the date of shipment to Buyer. If the warranty period for the Services has expired, Seller shall not be liable for any damages of any kind whatsoever.
  - II. **SELLER'S LIABILITY FOR SERVICES PERFORMED ON PRODUCTS FOR REPAIR SHALL BE LIMITED SOLELY TO THE DIRECT AND ACTUAL COSTS OF REPAIR OR REPLACEMENT OF A PRODUCT FOR REPAIR UNDER THIS WARRANTY CLAUSE PROVIDED THE APPLICABLE WARRANTY PERIOD DESCRIBED HAS NOT EXPIRED.** BUYER MUST NOTIFY SELLER OF DEFECTS IN WRITING AND SELLER SHALL HAVE A REASONABLE OPPORTUNITY TO PERFORM ANY APPROPRIATE TESTS TO CONFIRM DEFECTS NOTIFIED BY BUYER TO SELLER. SELLER SHALL ALSO HAVE THE RIGHT TO REQUIRE BUYER TO DELIVER DEFECTIVE PRODUCTS FOR REPAIR FOR TESTING PURPOSES TO SELLER'S DESIGNATED FACILITY AND BUYER SHALL PAY ALL CHARGES FOR IN-BOUND AND OUT-BOUND TRANSPORTATION AND FOR ANY REMOVAL AND REINSTALLATION CHARGES. BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS CONTAINED IN THIS WARRANTY CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO IT WITH REGARD TO SERVICES PERFORMED ON PRODUCTS FOR REPAIR.
- C. *Distribution of Third Party Products.* **EXCEPT FOR THE WARRANTIES STATED ABOVE, ANY PRODUCTS NOT MANUFACTURED BY SELLER ARE SUBJECT SOLELY TO THE WARRANTIES PROVIDED BY THE ORIGINAL MANUFACTURER AND NO ADDITIONAL WARRANTIES WHATSOEVER ARE PROVIDED BY SELLER.**



**D. General Terms Applicable to Warranties.**

- I. If Buyer requests the performance of warranty work provided for under the foregoing warranties outside of the contiguous United States, Buyer shall be required to pay for the travel time, living and travel expenses of any Seller personnel required to perform such warranty work.
- II. The warranties offered by Seller shall not apply to any Products or components thereof which have been subjected to accident, alteration, misuse, neglect, abuse, corrosion, damage by accident or due to disassembly, modification or repair other than by Seller, or failure on the part of Buyer otherwise to ensure proper storage, packaging, installation, operation and maintenance of the Products. Use of Products in improper or non-recommended applications or parts or components used in assemblies not meeting Seller's specifications or quality standards, which cause damage to the Products, will not be covered by these warranties. **WARRANTIES GRANTED BY SELLER SHALL BE DEEMED VOID FOR PRODUCTS USED FOR ANY PURPOSE NOT EXPRESSLY SET FORTH IN APPLICABLE SELLER DOCUMENTATION.**
- III. Deviations from published specifications which do not materially affect performance of Products covered hereby shall not be deemed to constitute defects of material or workmanship or a failure of Products to comply with such specifications.
- IV. The warranties contained herein shall extend only to Buyer and shall not apply to Buyer's affiliates or customers.
- V. **BUYER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS CONTAINED IN THIS SECTION 12 CONSTITUTE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO BUYER WITH REGARD TO SELLER'S PRODUCTS AND SERVICES.**

**13. FORCE MAJEURE**

Seller shall not be liable for any loss, delay or failure to perform resulting from any circumstance, direct or indirect, reasonably beyond its control including, without limitation, fire, flood, accident, explosion, mechanical breakdown, epidemic, pandemic, quarantine restrictions, strike or other labor trouble, plant shutdown, unavailability of or interference with the usual means of transporting Products, or compliance with any law, regulation, order, recommendation or request of any governmental authority. In addition, Seller shall be so excused in the event it is unable to acquire from its usual sources and on terms it deems to be reasonable, any material necessary for manufacturing Products. In the event that there should be a shortage of any Products, Seller may apportion its available Products among its customers in such equitable manner as it deems fair and reasonable. Any delivery date may be extended, at Seller's option, to the extent of any delay resulting from any event as described herein.

**14. INDEMNITY**

- A. Subject to the limitations set forth herein, Seller shall defend any suits brought against Buyer based on a third party claim that its use of Products manufactured by Seller constitute an infringement of a valid patent of the United States, and Seller shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully indemnify Seller therefore, if the infringement claim is based upon (i) the use of Products in connection with goods not manufactured by Seller or in a manner for which the Products were not designed by Seller; (ii) Buyer's design of, or required specifications for, Products; or (iii) use (either by Buyer or its customers) in a manner to cause Products to become infringing.
- B. In case Products or parts thereof are held to infringe a third party's patent and/or the use thereof is enjoined, Seller shall at its expense either, at its option (i) obtain for Buyer the right to continue using such Products or parts thereof, (ii) replace the same with non-infringing Products, (iii) modify the same so that it becomes non-infringing, or (iv) refund the purchase price and the transportation and installation costs thereof. The



foregoing states the entire liability of Seller to Buyer for patent infringement.

- C. In addition to the foregoing indemnity, each party shall hold harmless, and indemnify the other party and its directors, officers, agents and employees from and against any and all loss, liability, damage, or expense actually incurred by the indemnified party (but not including attorney's fees unless such fees are awarded by a court of competent jurisdiction) for any injury or death of persons, including employees of either party, and damage to property, including property of either party, arising out of or in connection with any intentional, willful, reckless or grossly negligent acts by the indemnifying party in connection with this Agreement.

## 15. INTELLECTUAL PROPERTY RIGHTS

- A. *Seller's IP Rights.* All copyrights, patents, trademarks, trade secrets, know-how and other intellectual property or proprietary rights pursuant to the laws of any jurisdiction worldwide ("IP Rights") associated with or relating to Products and Services shall belong solely and exclusively to Seller and/or its licensors, except for Customer IP. Seller and/or its licensors will retain all IP Rights used to create, embodied in, used in and otherwise relating to the Products and Services and any of their component parts (including software). Customer shall have a limited, non-exclusive and non-transferable license to use any software incorporated into Products solely in order to use and operate the Products; however, no other licenses, either express or implied, are granted in any IP Rights of Seller. To the extent that Products incorporate any third-party software licensed by Seller, then, in addition to the terms set forth herein, Customer must comply with any additional terms, restrictions or limitations applicable to such third-party software. If Buyer acquires any IP Rights in or relating to Products and/or Services by operation of law or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller without further action. Buyer shall, at Seller's expense, execute such documents and do such things as are necessary to enable Seller to protect its IP Rights.
- B. *Customer IP.* All right, title and interest in and to Program Language Control supplied by Buyer ("Customer IP") for the manufacture, fabrication and/or repair of Products shall be owned exclusively by Buyer, its affiliates and/or its or their licensors, as applicable. Without limiting the foregoing, Buyer grants Seller a non-exclusive, non-transferable, fully-paid and royalty-free right to use Customer IP solely for the benefit of Customer in fulfilling Supplier's obligations under this Agreement.

## 16. TOOLING

Unless otherwise agreed in writing by the parties, all special tools, dies, molds, jigs and fixtures made or utilized by Seller shall be and remain Seller's property. Should any special tools, dies, molds, jigs or fixtures be furnished by Buyer or contractually be Buyer's property, they shall be held at Buyer's sole risk, and Seller shall have a lien thereon while in Seller's possession to secure all indebtedness whatsoever due from Buyer to Seller, which lien shall be enforceable by sale or court action.

## 17. CONFIDENTIAL INFORMATION

Any documentation, data or other information or guidance supplied by Seller to Buyer and either marked "confidential," or by their nature are reasonably understood to be confidential, are proprietary and confidential to Seller. Buyer agrees to use its best efforts to maintain the confidentiality of any proprietary documentation, data, price quotes or other information or guidance supplied by Seller (whether marked "confidential" or not) and not to disclose or use such documentation, data, price quotes, information and/or guidance in any manner inconsistent with the purpose for which it was disclosed. For the avoidance of doubt, any information shared by Seller in connection with assisting Buyer develop the scope or design for Products or Services are the confidential information of Seller. The confidentiality obligations of Buyer hereunder shall survive for five (5) years after the disclosure of confidential information by Seller; provided, the confidentiality obligations of Buyer with respect to any trade secrets of Seller shall survive indefinitely.

## 18. REGULATORY LAWS AND/OR STANDARDS

Seller takes reasonable steps to keep its Products in conformity with various nationally recognized standards and such regulations as may affect its Products; however, Seller makes no promise or representation that Products will





conform to any federal, state, local or foreign law, ordinance, regulation, code or standard.

## **19. EXPORT CONTROL**

Buyer acknowledges that all shipments by Seller are or may be subject to restrictions and limitations imposed by United States export controls, trade regulations and trade sanctions. Buyer at all times will comply with such sanctions, controls and regulations and will cause compliance with such sanctions, controls and regulations in its use and disposition of Products. If Seller learns, or has reasonable cause to believe, or if any branch or agency of the government of the United States claims, that a violation of any applicable trade sanctions, export controls or trade regulations has occurred or is likely to occur because of any shipment, Seller may, in addition to any other remedy it may have, suspend all shipments to Buyer until: (a) Seller is satisfied that such violation did not occur or has ceased to occur, or (b) such claim is withdrawn or otherwise resolved in favor of Seller. Buyer will indemnify and will hold Seller harmless from and against any claim, loss or liability arising out of any breach of the foregoing covenants contained in this Section 19.

## **20. NUCLEAR LIMITATION OF USE**

Products are not for use in or with any nuclear facility unless specifically so stated in Seller's Quotation. If Seller's Quotation does expressly acknowledge that Products are to be used in or with a nuclear facility, Seller's Special Nuclear Conditions will be attached hereto and shall control. Buyer accepts the responsibility for insuring that Products are not used in violation of this limitation and Buyer shall indemnify and hold Seller harmless from any and all liability (including such liability resulting from Seller's negligence) arising out of said improper use.

## **21. LIMITATIONS ON LIABILITY**

- A. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL OR OTHER DAMAGES WHATSOEVER RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM HEREUNDER OR THE FURNISHING, PERFORMANCE OR USE OF ANY PRODUCTS SOLD PURSUANT HERETO, WHETHER DUE TO BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, PRODUCT LIABILITY, THE NEGLIGENCE OF SELLER, OR OTHERWISE. Such damages shall include, but not be limited to, loss of profits or revenues, loss of use of Products or associated equipment, cost of substitute equipment, facilities, down time costs, increased construction costs or claims of Buyer's customers or contractors for such damages. Buyer agrees that in the event of a permitted transfer, assignment, or lease of Products sold hereunder that Buyer shall secure for Seller the protection afforded to it in this paragraph.
  
- B. IT IS FURTHER AGREED THAT IN NO EVENT SHALL SELLER'S LIABILITY FOR ANY DAMAGES EXCEED THE AMOUNT (IN US DOLLARS) PAID TO SELLER FOR THE APPLICABLE PRODUCT(S) UNDER THE PURCHASE ORDER GIVING RISE TO A CLAIM. THE DAMAGE LIMITATIONS PROVIDED IN THIS AGREEMENT AND THE REMEDIES STATED HEREIN SHALL BE EXCLUSIVE AND SHALL BE BUYER'S SOLE REMEDY. THIS LIMITATION ON LIABILITY SHALL SURVIVE FAILURE OF ANY ESSENTIAL PURPOSE. Certain jurisdictions do not permit the limitation of certain types of liability, so this limitation may not apply to Buyer. Any suit arising hereunder must be commenced within one (1) year from the date the cause of action accrues. Except as provided in Section 14 herein, Seller shall not indemnify any party.

## **22. GENERAL**

This Agreement will be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of law of such state. The UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Buyer hereby agrees that any action arising out of this Agreement will be brought solely in any state or federal court located in the State of New York. Buyer hereby submits to the exclusive jurisdiction and venue of any such court. THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION. No modifications to this Agreement shall be enforceable except when in writing and signed by both parties, unless otherwise expressly stated herein. Any provision hereof which is prohibited or unenforceable shall, as to such jurisdictions, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or



affecting the validity of such provision in any other jurisdiction. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. The terms and conditions contained herein constitute the entire agreement between Buyer and Seller with respect to Products and Services purchased by Buyer, and supersede all prior or contemporaneous negotiations, understandings and agreements. This Agreement and any Purchase Orders shall not be assignable by Buyer without the prior written consent of Seller.

**Seller hereby rejects all terms and conditions (other than quantity of ordered Products) contained in Purchase Orders and otherwise in communications from Buyer that conflict with or are in addition to, the terms contained herein. Seller's failure to object to any of the provisions contained in Buyer's documentation shall not be deemed a waiver of these provisions.**