

**THYSSENKRUPP BILSTEIN OF AMERICA INC.**  
**AFTERMARKET DIVISION**  
**TERMS AND CONDITIONS OF SALE**  
**(WHOLESALE/DISTRIBUTOR)**

1. **GENERAL.** The Aftermarket Division of ThyssenKrupp Bilstein of America, Inc., a Delaware corporation (“Seller”), and buyer (“Buyer”) named on the face of Seller’s quotation, order acknowledgment or invoice, or the contract between Seller and Buyer, to which these Terms and Conditions of Sale (“Terms and Conditions”) are attached or provided with (“the Instrument of Sale”), agree that unless otherwise expressly agreed to in writing by Seller, these Terms and Conditions apply to the materials, goods and/or products (collectively, the “Goods”) listed in any accepted purchase order from Buyer or ordered pursuant to any contract between Seller and Buyer.

2. **ACCEPTANCE/SOLE TERMS.** The provisions set forth herein together with the provisions of the Instrument of Sale constitute all of the terms and conditions of Buyer’s order/contract with Seller. Seller’s acceptance and shipment of Buyer’s order is expressly made conditional on Buyer’s assent to these Terms and Conditions. Any and all terms, conditions or provisions specified by Buyer in Buyer’s purchase order or otherwise (whether oral, typed, written or printed) that in any way change, modify, amplify, differ from or add to these Terms and Conditions, or Seller’s quotation, order acknowledgment or invoice, or any contract between Seller and Buyer, are null and void and of no effect, even if (i) Seller does not expressly object to such terms, conditions or provisions, or (ii) such terms, conditions or provisions are specified subsequent to such other documents. Buyer is hereby put on notice that no terms additional to or deviating from these Terms and Conditions shall become part of the contract unless and until written acceptance of such additional or deviating terms, signed by

an authorized officer of Seller, has been issued to Buyer. Buyer’s acceptance of any Goods supplied by, or on behalf of, Seller shall, without limitation, constitute acceptance of these Terms and Conditions.

3. **PRICE.** Payment is due in the currency shown on Seller’s invoice within thirty (30) days from the invoice date, unless otherwise indicated on the face of Seller’s order acknowledgment or invoice. Prices stated are subject to change, without notice, in the event of (i) alterations in specifications, quantities, designs or delivery schedules, (ii) increases in the cost of labor, raw materials or auxiliary materials, (iii) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing or selling the Goods purchased hereunder, and/or (iv) changes in currency exchange rates. Any such change shall be charged to Buyer’s account. No discount will be allowed unless specifically set forth on the face side of Seller’s order acknowledgment or invoice. Written quotations automatically expire thirty (30) days after the date the quotation is issued and are subject to termination by Seller upon notice to Buyer within such thirty (30) day period. Buyer agrees to pay a delinquency charge of one and one half percent (1.50%) per month on the invoiced amounts not paid within thirty (30) days of the invoice date or, if such rate shall exceed the maximum rate permitted by applicable law, then a delinquency charge calculated at such maximum rate permitted by applicable law. Interest shall be payable monthly in arrears on the first day of each month. Terms of payment include those appearing on Seller’s order acknowledgment or invoice. In the event of any order cancellation, Seller

reserves the right to charge Buyer, and Buyer shall pay, all of Seller's costs through the date of cancellation, including costs of currency commitments or restocking fees. All outstanding payments shall immediately become due and owing should Buyer fail to make any payment when due or should a receiver be appointed for all or any substantial part of Buyer's property or assets, or should a petition in bankruptcy, arrangement or reorganization be filed by or against Buyer pursuant to a provision of any bankruptcy act or any amendments thereto or any insolvency or receivership statute. Seller reserves the right to increase the sale price and/or amend these Terms and Conditions at any time prior to the expected or requested shipment date, provided that written notice of such change or price increase is sent to Buyer at least ten (10) days prior to shipment. Buyer shall be deemed to have accepted such change or increase unless Buyer cancels the order, subject to reasonable charges for expenses incurred (including restocking fees) and work executed by Seller or its suppliers, at least five (5) working days prior to the expected or requested shipment date.

**4. LIMITED WARRANTIES/REMEDIES.**

- a. **Limited Lifetime Warranty**  
 Subject to the limitations and restrictions set forth herein, Seller warrants to the original retail purchaser the following shocks (as more fully identified in Seller's catalog) against any defects in workmanship and/or material:  
**TC (B4)**  
**C**  
**HD (B6)**  
**Sport (B8)**  
**BTS (B12)**  
**PSS (B14)**  
**PSS9 & PSS10 (B16)**  
**5100 (Application Specific)**  
 (collectively, the "Gas Pressure Shocks"). This limited lifetime warranty is valid for the life of each Gas Pressure Shock, so

long as the original retail purchaser owns such shock.

- b. **Limited Two Year Warranty**  
 Subject to the limitations and restrictions set forth herein, Seller warrants to the original retail purchaser that, for a period of two (2) years from the date of purchase, the following shocks (as more fully identified in Seller's catalog) shall be free from defects in workmanship and/or material:  
**Air Suspension Modules (B4)**  
 (the "Air Suspension Shocks").
- c. **Limited Ninety (90) Day Warranty**  
 Subject to the limitations and restrictions set forth herein, Seller warrants to the original retail purchaser that, for a period of ninety (90) days from the date of purchase, the following shocks (as more fully identified in Seller's catalog) shall be free from defects in workmanship and/or material:  
**9300**  
**9100**  
**7100**  
**6100**  
**5165**  
**5160**  
**5150**  
**5125**  
 (collectively, the "Off-Road Shocks" and, together with the Gas Pressure Shocks and the Air Suspension Shocks, collectively the "Warrantied Goods" and each a "Warrantied Good").

- 5. **WARRANTY RESTRICTIONS.**  
 THE LIMITED WARRANTIES SET FORTH IN SECTION 4 ABOVE DO NOT COVER NORMAL WEAR AND TEAR AND ARE NON-TRANSFERABLE (PROVIDED, HOWEVER, THAT IF BUYER IS A WHOLESALER, PURCHASING THE GOODS FOR RESALE, THE APPLICABLE LIMITED WARRANTY MAY BE TRANSFERRED TO THE ORIGINAL RETAIL

PURCHASER). FINISH, BOOT OR MOUNTING HARDWARE SUCH AS, BUT NOT LIMITED TO, RUBBER BUSHINGS, AS WELL AS LABOR CHARGES ARE NOT COVERED BY ANY OF THE FOREGOING LIMITED WARRANTIES. IN ADDITION, THE LIMITED WARRANTIES SET FORTH IN SECTION 4 DO NOT APPLY TO ANY WARRANTIED GOOD WHICH HAS BEEN SUBJECTED TO (I) USE ON A COMMERCIAL VEHICLE, (II) IMPROPER INSTALLATION, OR USE, INCLUDING, WITHOUT LIMITATION, USE ON MODIFIED OR OTHER THAN BILSTEIN-RECOMMENDED VEHICLES, (III) ANY UNAUTHORIZED REPAIR, DISASSEMBLY, MODIFICATION OR ALTERATION, INCLUDING, WITHOUT LIMITATION, USE OF UNAUTHORIZED PARTS OR ATTACHMENTS, (IV) MISHANDLING, MISAPPLICATION, NEGLIGENCE AND/OR ACCIDENT, INCLUDING BUT NOT LIMITED TO BENT OR BROKEN RODS SHOWING ABUSE OR ABNORMAL WEAR, OR (V) SOLELY WITH RESPECT TO THE GAS PRESSURE SHOCKS AND THE AIR SUSPENSION SHOCKS, ANY RACING, DRIVING COMPETITION OR OFF-ROAD USE. FURTHERMORE, IF WARRANTIED GOODS WERE PURCHASED AS PART OF THE ORIGINAL EQUIPMENT OF A VEHICLE FROM A VEHICLE MANUFACTURER, ALL WARRANTY CLAIMS MUST BE DIRECTED TO THE VEHICLE MANUFACTURER.

**6. DISCLAIMER OF WARRANTIES.**

THE LIMITED WARRANTIES SET FORTH IN SECTION 4 ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED AND APPLY ONLY TO THE WARRANTIED GOODS. EXCEPT AS OTHERWISE PROVIDED IN SUCH WARRANTIES, THE WARRANTIED GOODS AND ALL

OTHER GOODS MANUFACTURED OR SOLD BY SELLER ARE SOLD “AS IS, WITH ALL FAULTS.” ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION OR QUALITY NOT EXPRESSLY SET FORTH HEREIN, ARE HEREBY EXCLUDED TO THE EXTENT PERMITTED BY LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE MINIMUM PERIOD PERMITTED BY APPLICABLE LAW OR, IF NO SUCH PERIOD IS PROVIDED, TO THE EXPRESS LIMITED WARRANTY PERIOD FOR THE GOOD SET FORTH IN SECTION 4, IF APPLICABLE. NO AFFIRMATION OF SELLER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS WARRANTY CLAUSE, SHALL CONSTITUTE A WARRANTY. SELLER MAKES NO GUARANTEE OF THE RESULTS TO BE OBTAINED FROM THE USE OF THE GOODS. GOODS WHICH MAY BE SOLD BY SELLER BUT WHICH ARE NOT MANUFACTURED BY SELLER ARE NOT WARRANTED BY SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS THEREOF.

**7. FURTHER WARRANTY PROVISIONS AND WARRANTY RETURN PROCEDURES.**

- a. All warranty claims require a copy of the original retail purchaser’s receipt.
- b. Prior to submitting any warranty claim, please inspect the Warrantied Good for possible failure using the directions available on Seller’s website at <http://www.bilsteinus.com/products/search-service/warranty.html>.
- c. If the Warrantied Good (except for Series 9100 and 9300 Off-Road Shocks)

- qualifies as defective or if more sophisticated testing seems necessary, please contact your original place of purchase for warranty evaluation.
- d. If you are unable to contact the original place of business and would like to forward the Warrantied Good in question for evaluation, please complete and include the Warranty Evaluation Instruction Sheet located on Seller's website at [http://www.bilsteinus.com/fileadmin/user\\_upload/user\\_upload\\_us/pdfs/service\\_support/Warranty\\_Eval\\_Sheet.pdf](http://www.bilsteinus.com/fileadmin/user_upload/user_upload_us/pdfs/service_support/Warranty_Eval_Sheet.pdf) with your Warrantied Good. Please include a copy of the original retail purchaser's receipt, the respective contact information and a description of the problem or failure.
  - e. For any warranty claims with respect to a Series 9100 or 9300 Off-Road Shock, please contact Seller's Warranty Department or Off-Road Motorsport Department at 1 (800) 370-9522, or submit a completed Warranty Evaluation Instruction Sheet available at [http://www.bilsteinus.com/fileadmin/user\\_upload/user\\_upload\\_us/pdfs/service\\_support/Warranty\\_Eval\\_Sheet.pdf](http://www.bilsteinus.com/fileadmin/user_upload/user_upload_us/pdfs/service_support/Warranty_Eval_Sheet.pdf) with your Warrantied Good to Seller at the following address: 14102 Stowe Drive, Poway, California 92064. Do not contact or return any Series 9100 or 9300 Off-Road Shocks to the original place of purchase.
  - f. If Seller determines that the defective Goods are not covered under any of Seller's warranties, such Goods will be returned to Buyer or its retail purchaser, as applicable, and no further action will be taken.
  - g. Any warranty claim by Buyer or the original retail purchaser, as applicable, with reference to the Goods shall be deemed waived by such party unless submitted pursuant to the instructions set for herein within the applicable warranty period.
  - h. All claims against Seller for a breach of the applicable limited warranty must be submitted prior to any further processing, assembling or any other work is undertaken.
  - i. No alteration or amendment to the above conditions listed herein shall be binding on Seller except if made in writing duly executed by an authorized officer of Seller.
  - j. Seller shall have no liability for any loss arising out of Goods which conform to written specifications provided or accepted by Buyer and which are agreed upon in writing by Seller; and no liability for any loss, whether the Goods conform or not, to specifications not agreed upon in the above manner.
  - k. Buyer, on behalf of itself and its retail purchasers, agrees to inspect all Goods immediately upon its receipt thereof.
  - l. Buyer agrees to assist with warranty claims from retail purchasers, if applicable.
8. **LIMITATION OF LIABILITY.** SELLER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR THE WARRANTIED GOODS, DURING THE WARRANTY PERIOD, SHALL BE LIMITED TO REPAIRING OR REPLACING SUCH WARRANTIED GOODS FOUND BY SELLER TO BE DEFECTIVE WITH NEW OR RECONDITIONED GOODS AT SELLER'S DISCRETION, OR, IF THE ABOVE-MENTIONED REMEDIES CANNOT BE MET, TO THE ISSUING OF A PRODUCT CREDIT IN THE AMOUNT OF THE PURCHASE PRICE OF SUCH GOODS SHOWN ON THE ORIGINAL RETAIL PURCHASER'S RECEIPT. THE PARTIES HERETO EXPRESSLY AGREE THAT BUYER'S AND THE ORIGINAL

RETAIL PURCHASER'S, AS APPLICABLE, SOLE AND EXCLUSIVE REMEDY AGAINST THE SELLER SHALL BE FOR THE REPAIR OR REPLACEMENT OF THE WARRANTIED GOODS FOUND BY SELLER TO BE DEFECTIVE WITH NEW OR RECONDITIONED GOODS AT SELLER'S DISCRETION, OR, IF THE ABOVE-MENTIONED REMEDIES CANNOT BE MET, THE ISSUANCE OF A PRODUCT CREDIT IN THE AMOUNT OF THE PURCHASE PRICE OF SUCH GOODS SHOWN ON THE ORIGINAL RETAIL PURCHASER'S RECEIPT. BUYER, ON BEHALF OF ITSELF AND ITS RETAIL PURCHASERS, HEREBY AGREES THAT THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS THE SELLER IS WILLING AND ABLE TO REPAIR OR REPLACE THE DEFECTIVE WARRANTIED GOODS IN THE PRESCRIBED MANNER OR ISSUE A PRODUCT CREDIT IN THE AMOUNT SET FORTH ABOVE. ADDITIONAL CHARGES OR FEES INCLUDING, BUT NOT LIMITED TO, LABOR CHARGES, SHIPPING FEES, INTERNATIONAL DUTIES AND TAXES, ARE NOT COVERED BY THE WARRANTIES.

9. **DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES.** IN NO CASE WILL SELLER BE LIABLE FOR REMOVAL OR INSTALLATION COSTS, DOWNTIME, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, DAMAGE TO OTHER PROPERTY, LOSS OF BUSINESS OR PROFITS, LOSS OF PRODUCTION, LOSS OF USE OR ANY OTHER SIMILAR OR DISSIMILAR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHICH BUYER OR ANY RETAIL

PURCHASER, OR ANY OTHER PERSON, CORPORATION, COMPANY OR OTHER ENTITY MAY SUFFER OR CLAIM TO SUFFER OR INCUR OR CLAIM TO INCUR AS A RESULT OF ANY DEFECT IN THE WARRANTIED GOODS OR ANY OTHER GOODS MANUFACTURED OR SOLD BY SELLER, OR IN ANY CORRECTION OR ALTERATION THEREOF MADE OR FURNISHED BY SELLER OR OTHERS. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED BY THE USE OF THE WARRANTIED GOODS OR ANY OTHER GOODS MANUFACTURED OR SOLD BY SELLER). BUYER, ON BEHALF OF ITSELF AND ITS RETAIL PURCHASERS, SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST AND EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

10. **ACCEPTANCE OF GOODS, DELIVERY AND TRANSPORTATION.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim or shortages of or defects in the Goods, including without limitation any claim relating to quantity, weight, condition, loss or damage thereto, within [**seven (7) days**] after receipt of shipment, such Goods shall be deemed finally inspected, checked and accepted by Buyer. Unless otherwise agreed in writing, all shipments are made F.O.B. Shipping Point. Seller will determine the point of origin of shipment. Orders valued at \$5,000 and above will qualify for prepaid shipping to one location in the continental United States or

Canada. With respect to orders with a value of less than \$5,000 and orders that fall below such value due to backorder cancellations, Buyer bears the cost of shipping. For all prepaid shipments and for all non-prepaid shipments without specific shipping and packing instructions from Buyer, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's sole expense. Seller will allow drop shipments within the United States as circumstances, in Seller's discretion, may warrant. However, Seller will charge Buyer with an additional \$20 drop ship fee for each drop ship order. Any delivery date quoted to Buyer is only an estimate based on present scheduling requirements. Seller shall have the right to make partial deliveries and to be paid, pro rata, for the goods so delivered notwithstanding the existence of a specific delivery schedule which is stated to be of the essence, nor of the fact that any partial delivery is made in advance of such schedule. Seller reserves the right, with respect to each delivery, to make deliveries in installments. All such installments may be separately invoiced and paid for when due, without regard to subsequent deliveries.

**11. TITLE AND RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to carrier, and any claims for losses or damage shall be made by Buyer directly to carrier.

**12. CREDIT TERMS.** All orders and shipments shall at all times be subject to the approval of Seller's credit department. If, subsequent to the confirmation of order, circumstances arise with respect to the financial condition of Buyer which in the opinion of Seller threaten Buyer's ability to make payments when due hereunder, or should Buyer fail to make payments when due or otherwise fail to perform its outstanding obligations, then Seller may refuse to perform further hereunder unless Buyer makes payment

in full or provides sufficient security in a form acceptable to Seller within a period of ten (10) business days from receipt of notice therefor by Seller. Should Buyer fail to comply with Seller's request contained in such notice within the aforementioned period, then Seller may terminate the contract, defer or cancel the order and/or recover damages based on Buyer's breach and, in such event, Seller shall not be liable for breach or nonperformance of this contract in whole or in part. Seller's failure to exercise any right accruing from any default of Buyer shall not constitute a waiver of Seller's rights and shall not impair Seller's rights with respect to a particular default or in case of any subsequent default of Buyer.

**13. SECURITY INTEREST.** To secure prompt payment of the purchase price for the Goods, Buyer hereby grants to Seller and its affiliates, successors and assigns a purchase money security interest and/or general security interest in the Goods and all proceeds thereof (together, the "Collateral"). Upon any default by Buyer, Seller and its affiliates, successors and assigns shall have all rights, remedies and privileges in and to the Collateral as provided by the applicable sections of the Uniform Commercial Code as presently in effect and as amended from time to time. Seller and its affiliates, successors and assigns are hereby given a power of attorney to sign and file all necessary financing statements on behalf of Buyer with respect to the Collateral. Seller and its affiliates, successors and assigns may authorize any third party to do such acts on their behalf as they are authorized to do under this provision.

**14. COSTS OF COLLECTION.** If, at any time, Seller or its affiliates, successors or assigns incur any legal expenses or other costs or expenses in connection with (i) any litigation, contest, suit, dispute, proceeding or action in any way relating to the Collateral, (ii) any attempt to enforce any of their rights against Buyer or any other person which may be obligated to them hereunder, or (iii) any

attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the Collateral, then, in any such event, the expenses and costs (including attorney's fees) relating to any of the foregoing events or actions shall be payable by Buyer on demand and shall be considered additional obligations hereunder secured by the Collateral. Seller reserves the right to revoke any credit extended to Buyer at any time because of Buyer's failure to pay for any goods when due or for any reason deemed good and sufficient by Seller.

15. **NO INSURANCE.** Unless otherwise expressly set forth in the Instrument of Sale, Seller is neither providing, nor offering to provide, directly or indirectly, any first or third party insurance coverage in connection with the sale of the Goods to Buyer.
16. **TAXES.** Any sales, use or similar taxes, export or custom charges, tariffs, fees or other levies, taxes, duties, governmental charges or surcharges now or hereafter imposed under any present or future law in connection with the production, sale, delivery, use or proceeds of the Goods, including without limitation any equipment, accessories, and attachments (including replacements thereof or spare or replacement parts thereof), any installation, repair, maintenance and instructional services, and any processes or know-how (whether patentable or otherwise) and software, shall be payable by Buyer, and if such taxes or fees are paid or are required to be paid by Seller, the amount thereof shall be added to and become part of the price payable by Buyer hereunder, unless Buyer provides Seller with a valid tax exemption certificate.
17. **PACKAGING.** Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging the Goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carriers. Special Buyer packaging will be furnished only when

specified, and the cost thereof shall be borne by Buyer.

18. **DELAYS.** Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. When an order exceeds quantity of Goods in stock, backorders are created automatically. All backorders are left open until fulfillment is possible, unless expressly cancelled by Buyer in writing prior to shipping. Buyers who in general do not accept backorders must inform Seller in writing so that Buyer accounts can be set up properly. Seller will be not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of these Terms and Conditions caused by or imposed by (a) strikes, fires, disasters, riots, terrorist act or acts of God, (b) acts of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation or manufacturing facilities, (d) governmental action, (e) subcontractor or supplier delay including, but not limited to, failure by subcontractor or supplier to make timely delivery, or (f) any other cause or condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option and without liability, cancel all or any portion of the contract and/or extend any date upon which any performance hereunder is due.
19. **TERMINATION, CANCELLATION AND CHANGES.** Except as otherwise provided herein or in the Instrument of Sale, orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to reasonable charges for expenses incurred and work executed by Seller or its suppliers. Buyer shall be obligated to accept any portion of the

Goods shipped or delivered by Seller pending Seller's written approval of cancellation. Orders for custom made material may not be canceled after Seller has been in production, unless Seller agrees in writing.

20. **NON-WARRANTY RELATED**

**RETURNS.** Delivered Goods returned to Seller must be pre-authorized by Seller and require a RGA number. Handling, inspection, restocking and invoicing charges will be assessed, if applicable, plus any outgoing packing and freight expenditures paid by Seller. All returns allowed must be shipped to Seller prepaid and fully insured and must be in excellent resale condition (including packaging and parts). Parts that are not in a resalable condition may be subject to a 15% restocking fee or a rejection of credit. Discontinued Goods and Goods processed to Buyer's specifications are not returnable.

21. **STOCK ADJUSTMENTS.** Buyer is allowed one stock adjustment per year with a 3:1 dollar value offsetting order. Stock adjustments are subject to the same terms and conditions as returns as set forth in section 19 above.

22. **CONFIDENTIALITY.** All files records, documents, drawings, specifications, data, equipment, intellectual property, and other similar items relating to the business of Seller, including, but not limited to employee training information, customer lists and contacts, marketing methods, identity of vendors and suppliers, cost of materials, manufacturing processes and techniques, computer data, scientific studies, analysis, and conclusions, performance and other technical data, and sales and pricing information, (collectively "Confidential Information"), is, and shall remain, the sole and exclusive property of Seller. Buyer shall not misappropriate, disclose, divulge, communicate, or otherwise misuse, directly or indirectly, any Confidential Information in any fashion, form or manner to any person,

firm, partnership, corporation, or other entity, unless expressly authorized by Seller in writing.

23. **INDEMNIFICATION.** Buyer shall hold harmless, defend, save, and indemnify Seller, its parent, subsidiary, and affiliated companies, and its and their agents, employees, officers, directors, and its and their respective heirs, assigns, successors and executors from and against any and all liability, claims, demands, whether groundless, false or fraudulent, costs (including expert and attorney's fees), damages, losses, judgments or awards, arising out of or in any way connected with any act or omission of Buyer. The duty to defend as provided herein is separate and distinct from the duty to indemnify, and shall arise immediately upon the tender of any third party claim or demand, and shall continue until it is conclusively proven that there is no possibility for indemnity.

24. **EXPORT LAWS.** The Instrument of Sale and these Terms and Conditions relate to products and technical data (together, the "Products and Technical Data") that may be subject to export controls under the laws and regulations of the United States. Products and Technical Data that are commercial or have dual-uses (and are not subject to ITAR (defined below)) may be controlled under the United States Export Administration Regulations ("EAR"), available at <http://www.access.gpo.gov/bis/index.html>, while Products and Technical Data that are inherently military in nature, or designed or modified for military purposes, may be controlled under the International Traffic in Arms Regulations ("ITAR"), available at [http://pmdtc.state.gov/regulations\\_laws/itar\\_official.html](http://pmdtc.state.gov/regulations_laws/itar_official.html). Buyer shall at all times comply with the EAR and the ITAR, as well as the Arms Export Control Act, the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Foreign Assets Control Regulations and any



other applicable law or regulation governing the export, transfer, use or re-export of the Products and Technical Data. In connection therewith, Buyer agrees that it will not export, directly or indirectly, Products and Technical Data to any country or foreign national for which the United States Department of Commerce, Department of State or Department of Defense, or any other agency of the United States, at the time of export requires an export license, permit, authorization or other governmental approval, without first obtaining such license, permit, authorization or other governmental approval from the applicable agency. Buyer also agrees that it will not conduct business activities without the authorization of the United States government with those countries and political regimes restricted pursuant to the Office of Foreign Assets Control Country Sanctions Programs, available at <http://www.ustreas.gov/offices/enforcement/ofac/programs>; and those individuals and entities set forth on the Entity List, the Denied Persons List, the Unverified Persons List, the Specially Designated Nationals List, the Debarred List and the Nonproliferation Sanctions list available at <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>. Buyer hereby acknowledges that Buyer is familiar with the export laws and regulations referenced in this paragraph and understands their provisions. Buyer's failure to comply in all respects with the requirements of this paragraph and the export laws and regulations referenced herein shall constitute a material breach of the Instrument of Sale and these Terms and Conditions entitling Seller, in addition to any other remedies Buyer may have at law or in equity, to immediately suspend or terminate same.

**25. COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT.** Buyer agrees to comply in all respects with the U.S.

Foreign Corrupt Practices Act of 1977 ("FCPA"), as amended, which makes it unlawful for any U.S. company or any officer, director, employee, agent or stockholder thereof acting on behalf of such U.S. company to directly or indirectly offer to pay any bribe, gift or thing of value to any foreign official, candidate for foreign office, foreign political party or party official to influence any act or decision of such persons or entities in their official capacity. Additional information concerning the FCPA can be found at the following web address: <http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html>. Buyer hereby acknowledges that Buyer is familiar with the FCPA and understands its provisions. If requested by Seller, Buyer will from time to time execute Certificates of Compliance with the FCPA. If requested by Seller, Buyer shall have its subcontractors, consultants, agents and representatives, as applicable, execute an FCPA compliance statement containing substantially the same provisions as set forth in this Section, and shall promptly provide written evidence thereof to Seller. Buyer's failure to comply in all respects with the requirements of this Section and the provisions of the FCPA shall constitute a material breach of the Instrument of Sale and these Terms and Conditions entitling Seller to immediately suspend or terminate same.; provided, however, that for purposes of the foregoing, Seller's "good faith" belief that Buyer has failed to comply in all respects with the requirements of this Section and the provisions of the FCPA shall be sufficient cause for Seller to suspend or terminate the Instrument of Sale and these Terms and Conditions.

**26. INTELLECTUAL PROPERTY.** Any trademarks, drawings, designs and all other intellectual property rights of Seller embodied in, displayed on, or otherwise provided in connection with, the Goods or the Instrument of Sale, shall remain the sole

property of Seller. Without Seller's express prior written permission, no reproduction, use or communication to third parties of any such intellectual property are permitted.

27. **NO WAIVER.** Forbearance or failure of Seller to enforce any of the terms and conditions stated herein, or to exercise any right accruing from default of Buyer, shall not affect or impair Seller's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of Seller's rights in case of any subsequent default of Buyer.
28. **SEVERABILITY.** If any provision of these Terms and Conditions is unenforceable or invalid, these Terms and Conditions shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.
29. **ASSIGNMENT.** These Terms and Conditions shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer and Seller provided, however, that Buyer may not assign or transfer the order/contract, in whole or in part, except upon the prior written consent of Seller.
30. **GOVERNING LAW; VENUE; RESALE.** Unless otherwise specified in the Instrument of Sale, the Instrument of Sale and these Terms and Conditions shall be construed in accordance with and governed by the laws of the State of California, without regard to its conflicts-of-laws rules or principles. All actions or proceedings arising directly or indirectly herefrom or related hereto shall be litigated only in the courts of the County of San Diego, State of California or the United States District Court for the Southern District of California. The parties hereby consent to the jurisdiction and venue of such courts.
31. **ENTIRE CONTRACT.** BUYER AND SELLER HEREBY AGREE THAT THESE TERMS AND CONDITIONS ALONG WITH THE INSTRUMENT OF SALE SHALL CONSTITUTE THE ENTIRE

AGREEMENT BETWEEN BUYER AND SELLER AND NO PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN STATEMENT, CORRESPONDENCE, SAMPLE OR OTHER TERMS, QUOTATIONS OR UNDERSTANDINGS SHALL MODIFY, ALTER OR IN ANY WAY AFFECT THE TERMS THEREOF.