



**STANDARD TERMS AND CONDITIONS OF SALE**  
(For use with a Quotation, an Order Acknowledgment, or an Invoice)

**1. AGREEMENT OF SALE.**

- (a) The terms and conditions set forth in this document are intended to establish standard terms and conditions of sale for all sales made by Saint-Gobain Solar Gard LLC (“Seller”) to the purchaser (“Buyer”).
- (b) All sales by Seller to Buyer are expressly conditioned upon these terms and conditions; provided, however, that in the event that Seller and Buyer are parties to an executed written agreement covering the sale and purchase of the product(s) sold hereunder (the “Products”) including, without limitation, written dealer or distribution agreements (including, but not limited to, the Panorama Window Film Dealer Agreement(s)) (“Current Contract”), that Current Contract shall control and govern the sale and purchase of the Products unless Seller and Buyer expressly agree in writing otherwise.
- (c) Except as provided in Section 1(b), this Standard Terms and Conditions of Sale, together with the quotations, order acknowledgments, invoices, specifications, and all supplements and attachments thereto issued by Seller from time to time, shall constitute the entire agreement (these “Terms”) between Buyer and Seller for each such sale. In the event of any inconsistency between these Terms and the express provisions contained on the applicable quotation, order acknowledgment, invoice, specification, or any supplements or attachments thereto issued by Seller from time to time, the express provisions contained on the quotation, order acknowledgment, invoice, specification, or any supplements or attachments thereto issued by Seller shall control over these Terms.
- (d) Any conduct by Buyer which recognizes the existence of a contract pertaining to the subject matter hereof, including, but not limited to, the acceptance of the Product, payment thereof or resale of the Product, shall constitute acceptance by Buyer of these Terms. Any terms provided in Buyer’s purchase order or any other documents provided by Buyer to Seller are hereby objected to and expressly rejected.
- (e) These Terms may be modified from time to time by Seller, by notice to Buyer. Each such modification shall be binding upon Buyer with respect to all purchases occurring after the date of such modification. No modification or termination hereof or waiver of any of the obligations hereunder by Buyer shall be effective unless in writing and signed by Seller. The failure by the Seller to enforce at any time any of the provisions herein, shall not constitute a waiver and shall in no way be construed as a waiver of such provisions or options, nor in any way be construed to affect the validity of these Terms or any part thereof, or the right of the Seller thereafter to enforce each and every such provision. BUYER IS URGED TO REVIEW THE CURRENT TERMS AND CONDITIONS LOCATED ON THE “DEALER’S CORNER” OF SELLER’S WEBSITE AT [WWW.SOLARGARD.COM/US](http://WWW.SOLARGARD.COM/US) OR [WWW.PANORAMAFILM.COM](http://WWW.PANORAMAFILM.COM) OR AT [WWW.SOLARGARD.COM/ABOUT/TERMS](http://WWW.SOLARGARD.COM/ABOUT/TERMS) AS THE CASE MAY BE, OR AVAILABLE UPON REQUEST FROM SELLER BY CALLING CUSTOMER SERVICE AT (877) 345-9478 OR BY WRITTEN REQUEST SENT TO SAINT-GOBAIN SOLAR GARD LLC, AT 4540 VIEWRIDGE AVENUE, SAN DIEGO, CA 92123; ATTENTION: CUSTOMER SERVICE, OR EMAIL AT [SOLARGARDINFO@SAINT-GOBAIN.COM](mailto:SOLARGARDINFO@SAINT-GOBAIN.COM).

**2. WARRANTY; DISCLAIMERS; AND LIMITATIONS.**

- (a) **Pre-Installed Dealer/Distributor Product Warranty (Out of the Box Warranty):** Subject to the terms of a Current Contract, and provided that the Products have not been installed, in the case of Buyer being a dealer or distributor of the Products, Seller warrants to the dealer or distributor, as follows:
  - (i) Except as expressly provided herein and as limited by Sections 2 and 3 hereof, Seller warrants the Products against failure due to manufacturer’s defect at the time of delivery to dealer or distributor and prior to installation of the Products. The foregoing warranty applies only to Product that has not yet been installed and is still in its original protective packaging as provided by Seller. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT MAY ARISE FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE. SELLER DOES NOT EXTEND THE FOREGOING WARRANTY, AND BUYER MAY NOT TRANSFER IT, TO BUYER’S CUSTOMERS OR OTHER THIRD PARTIES.
  - (ii) THE FOREGOING WARRANTY IS VOID AGAINST, AND SELLER DOES NOT WARRANT THE PRODUCTS AGAINST, ANY DAMAGES, LOSSES, COSTS, CLAIMS AND LIABILITIES INCURRED IN CONNECTION WITH THE TRANSPORTATION, STORAGE, IMPROPER FILM HANDLING, SHIPPING, SALE OR SERVICE OF THE PRODUCTS BY OR ON BEHALF OF BUYER, OR ANY OTHER ACTS OF BUYER RESULTING IN THE DAMAGES, LOSSES, COSTS, CLAIMS AND LIABILITIES INCURRED BY THE PRODUCTS.
  - (iii) IN NO EVENT SHALL SELLER BE LIABLE FOR CLAIMS (BASED UPON BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED WARRANTY, NEGLIGENCE, OR OTHERWISE) FOR ANY OTHER DAMAGES, WHETHER DIRECT, IMMEDIATE, FORESEEABLE, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL, OR FOR ANY EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING, OR USE OF THE PRODUCTS SOLD HEREUNDER, INCLUDING WITHOUT LIMITATION ANY DAMAGES RESULTING FROM COST OF SUBSTITUTE PROCUREMENT, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION, SAVINGS, GOODWILL AND/OR REVENUES, LOSS OF BUSINESS, FAILURE OR DELAY IN PERFORMANCE, TRANSPORTATION, HANDLING OR INSTALLATION, OR FABRICATION CHARGES OR EXPENSES, EVEN IF SELLER HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.
  - (iv) DEALER’S OR DISTRIBUTOR’S REMEDIES WITH RESPECT TO ANY PRODUCT FURNISHED BY SELLER AND SUBJECT TO THIS SECTION 2(a) THAT IS FOUND NOT TO BE IN CONFORMITY WITH THESE TERMS BECAUSE OF BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, SHALL BE LIMITED EXCLUSIVELY TO THE RIGHT OF REPAIR OR REPLACEMENT OF SUCH DEFECTIVE PRODUCT OR REFUND OF THE SALE PRICE OF THE PRODUCT, AT THE SOLE DISCRETION OF SELLER. NO ALLOWANCE SHALL BE MADE FOR ANY LABOR, CHARGES OF DEALER OR DISTRIBUTOR FOR REPLACEMENT OF PARTS, ADJUSTMENTS OR REPAIRS, SHIPPING, IN-OUT COST OR ANY OTHER COST OR EXPENSE, UNLESS SUCH CHARGES ARE AUTHORIZED IN WRITING IN ADVANCE BY SELLER. DEALER’S OR DISTRIBUTOR’S OBLIGATION TO MAKE PAYMENT ON TIME FOR THE BALANCE OF PRODUCTS DELIVERED UNDER THESE TERMS IS NOT AFFECTED BY ANY CLAIM OF DEALER OR DISTRIBUTOR HEREUNDER. **SELLER’S TOTAL LIABILITY, WHETHER FOR BREACH OF CONTRACT, WARRANTY OR OTHERWISE, IS LIMITED TO THE PURCHASE PRICE OF THE PARTICULAR PRODUCT SOLD UNDER THESE TERMS.**

- (v) Oral or written statements by Seller's employees or agents, including via email, do not constitute warranties, shall not be relied upon by a dealer or distributor, and are not part of this agreement of sale. Dealer or distributor, as the case may be, hereby acknowledges that it has not entered into this order in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein or made in writing and executed by a duly appointed officer of Seller.
- (vi) No claim arising under this Section 2(a) may be asserted more than seventy-five (75) days after the date of delivery of such Product(s).
- (b) **Installed Dealer/Distributor and End Consumer Product Warranty (Installed Warranty):** Subject to the terms of a Current Contract, and provided that the Products are installed in accordance with Seller's installation instructions, Seller warrants to the dealer or distributor of the Products and the end consumer of the Products, as follows:
- (i) Seller has and will continue to furnish written warranties to each dealer or distributor, as the case may be, for each Product of Seller, and will provide such written warranties to the applicable dealer or distributor upon request, free of charge. Each dealer of the Products hereby agrees to, and acknowledges that it is solely responsible for stocking the applicable written warranty and for providing the end consumer of the Products with the applicable Seller warranty. Dealer/distributor shall not make any other warranties regarding the Products, other than the Seller warranty as described in Sections 2(b)(ii)(A) and 2(b)(ii)(B) below.
- (ii) The **sole warranty on each of the Products** is as set forth in the applicable Product warranty made by Seller, and may be obtained as follows:
- (A) **Panorama® Window Film:** The warranties for all Panorama® window film can be found at [www.panoramafilm.com](http://www.panoramafilm.com) or by contacting Seller's service center by e-mail at [solargardinfo@saint-gobain.com](mailto:solargardinfo@saint-gobain.com) or by telephone at 877-345-9478. Each applicable warranty is shown in "Sample" form on the afore-listed website location under the "Warranty" tab. For each applicable Panorama® warranty there is included, the name of the film series, description of the film, a listing of the application, the term of the warranty, an electronic copy of the warranty and an SKU for each warranty. Each dealer/distributor is responsible for locating the applicable warranty for the Products sold hereunder, and ordering from Seller the appropriate warranty by using the applicable SKU, and an end consumer may also obtain a copy of the warranty by visiting the website or emailing or calling customer service as described above. **THE PRODUCT WARRANTIES ARE HEREBY INCORPORATED HEREIN AS IF FULLY REWRITTEN, AND EACH DEALER/DISTRIBUTOR AND END CONSUMER SHALL RECEIVE THE BENEFIT OF AND IS SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE PANORAMA® WARRANTY INCLUDING, WITHOUT LIMITATION, THE WARRANTY DISCLAIMERS (INCLUDING, WITHOUT LIMITATION, SELLER'S DISCLAIMERS OF IMPLIED WARRANTIES FOR FITNESS, MERCHANTABILITY AND NON-INFRINGEMENT), SCOPE OF WARRANTY, WAIVER OF DAMAGES AND LIMITATIONS ON DAMAGES SET FORTH IN THE APPLICABLE SELLER PRODUCT WARRANTY.**
- (B) **Solar Gard® Window Film:** The warranties for all Solar Gard® window film can be found at [www.solargard.com/us](http://www.solargard.com/us) or by contacting Seller's service center by e-mail at [solargardinfo@saint-gobain.com](mailto:solargardinfo@saint-gobain.com) or by telephone at 877-345-9478. Each applicable warranty is shown in "Sample" form on the afore-listed website location under the "Warranty" tab. For each applicable Solar Gard® warranty there is included, the name of the film series, description of the film, a listing of the application, the term of the warranty, an electronic copy of the warranty and an SKU for each warranty. Each dealer/distributor is responsible for locating the applicable warranty for the Products sold hereunder, and ordering from Seller the appropriate warranty by using the applicable SKU, and an end consumer may also obtain a copy of the warranty by visiting the website or emailing or calling customer service as described above. **THE PRODUCT WARRANTIES ARE HEREBY INCORPORATED HEREIN AS IF FULLY REWRITTEN, AND EACH DEALER/DISTRIBUTOR AND END CONSUMER SHALL RECEIVE THE BENEFIT OF AND IS SUBJECT TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE SOLAR GARD® WARRANTY INCLUDING, WITHOUT LIMITATION, THE WARRANTY DISCLAIMERS (INCLUDING, WITHOUT LIMITATION, SELLER'S DISCLAIMERS OF IMPLIED WARRANTIES FOR FITNESS, MERCHANTABILITY AND NON-INFRINGEMENT), SCOPE OF WARRANTY, WAIVER OF DAMAGES AND LIMITATIONS ON DAMAGES SET FORTH IN THE APPLICABLE SELLER PRODUCT WARRANTY.**
- (iii) BUYER'S AND THE END CONSUMER'S SOLE REMEDIES WITH RESPECT TO ANY PRODUCT FURNISHED BY SELLER HEREUNDER AFTER INSTALLATION ARE AS SET FORTH IN THE APPLICABLE SELLER PRODUCT WARRANTY (AS DESCRIBED IN SECTION 2(b)(ii) ABOVE), AND ARE EXCLUSIVELY LIMITED TO THE REMEDIES CONTAINED THEREIN AND INCORPORATED IN THESE TERMS.
- (iv) Oral or written statements by Seller's employees or agents, including via email, do not constitute warranties, shall not be relied upon by Buyer, and are not part of this agreement of sale. Buyer hereby acknowledges that it has not entered into these Terms in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically referenced herein or made in writing and executed by a duly appointed officer of Seller.
- (c) **Other Non-Film Products Warranty.** The warranties for tools, equipment, and computer hardware and software (including, without limitation, Specularis™ and Computer Cut®) supplied by Seller hereunder shall be as follows:
- (i) **Tools.** Except as noted, all tool Products (non-film) are warranted by Seller against failure due to manufacturer's defect for a period of thirty (30) days from the date of delivery. Any defective merchandise must be reported to Seller within forty-five (45) days of the date of delivery for replacement at no charge. ALL RETURNS MUST HAVE A RETURNED GOODS AUTHORIZATION (RGA) CODE ON THE PACKING SLIP OR WRITTEN ON THE BOX. This code will be issued after calling Seller. Any returns that are not defect related will be subject to a restocking fee equal to 15% of the value of the merchandise. Manufacturing dyes and methods do not always offer consistent color consistency, creating varying color ranges for Seller's squeegees, spray bottles and possibly other products.
- (ii) **Electrical Equipment/Tools/Devices.** Except as noted below, all electrical equipment/tools/devices Products are warranted by Seller against failure due to manufacturer's defect for a period of thirty (30) days from the date of delivery. Any defective merchandise must be reported to Seller within forty-five (45) days of the date of delivery for replacement at no charge. **NOTE:** The electrical equipment/tools/devices Products have been designed and manufactured solely pursuant to the standards and certifications applicable to such products in the United States of America, and have not been provided, manufactured, designed or sold pursuant to the legal standards, certifications, regulations, laws or other legal requirements of any other country or jurisdiction. BUYER ASSUMES RESPONSIBILITY AND LIABILITY FOR ENSURING THAT THE PRODUCT AND THE USE AND OPERATION OF THE PRODUCT COMPLY WITH THE STANDARDS, CERTIFICATIONS, REGULATIONS LAWS AND OTHER LEGAL REQUIREMENTS OF ITS LOCATION.
- (iii) **Computer Cut® Equipment/Hardware and Other Non-Seller Manufactured Equipment.** The warranty for any Computer Cut® equipment/hardware and other non-Seller manufactured equipment shall be limited to the applicable manufacturer's pass-through warranty, if any, to the extent provided by the original manufacturer.\*
- (iv) **Seller Internet Based Software.** The warranty for any Internet based software provided by Seller through its web-site shall be as provided in the applicable software license agreement for such software.\*

\* A copy of the warranty/agreement referred to in Sections 2(c)(iii) and (iv) may be obtained from Seller, if available, upon request by calling customer service at (877) 345-9478, by email at [solargardinfo@saint-gobain.com](mailto:solargardinfo@saint-gobain.com), or by written request sent to Saint-Gobain Solar Gard LLC, at 4540 Viewridge Avenue, San Diego, CA 92123; attention: Customer Service.

- (v) EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 2(c), TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT MAY ARISE FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN THE TRADE. SELLER DOES NOT EXTEND THE FOREGOING WARRANTY, AND BUYER MAY NOT TRANSFER IT, TO BUYER'S CUSTOMERS OR OTHER THIRD PARTIES.
- (vi) IN NO EVENT SHALL SELLER BE LIABLE FOR CLAIMS (BASED UPON BREACH OF CONTRACT, BREACH OF EXPRESS OR IMPLIED WARRANTY, NEGLIGENCE, OR OTHERWISE) FOR ANY OTHER DAMAGES, WHETHER DIRECT, IMMEDIATE, FORESEEABLE, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL, OR FOR ANY EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING, OR USE OF THE PRODUCTS SOLD HEREUNDER AND LISTED IN CLAUSES (i) THROUGH (iv) ABOVE, INCLUDING WITHOUT LIMITATION ANY DAMAGES RESULTING FROM COST OF SUBSTITUTE PROCUREMENT, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS BY REASON OF PLANT SHUTDOWN, NON-OPERATION, SAVINGS, GOODWILL AND/OR REVENUES, LOSS OF BUSINESS, FAILURE OR DELAY IN PERFORMANCE, TRANSPORTATION, HANDLING OR INSTALLATION, OR FABRICATION CHARGES OR EXPENSES, EVEN IF SELLER HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.
- (vii) DEALER'S OR DISTRIBUTOR'S REMEDIES WITH RESPECT TO ANY PRODUCT FURNISHED BY SELLER AND SUBJECT TO THIS SECTION 2(c) THAT IS FOUND NOT TO BE IN CONFORMITY WITH THESE TERMS BECAUSE OF BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR STRICT LIABILITY, SHALL BE LIMITED EXCLUSIVELY TO THE RIGHT OF REPAIR OR REPLACEMENT OF SUCH DEFECTIVE PRODUCT OR REFUND OF THE SALE PRICE OF THE PRODUCT, AT THE SOLE DISCRETION OF SELLER. NO ALLOWANCE SHALL BE MADE FOR ANY LABOR, CHARGES OF DEALER OR DISTRIBUTOR FOR REPLACEMENT OF PARTS, ADJUSTMENTS OR REPAIRS, SHIPPING, IN-OUT COST OR ANY OTHER COST OR EXPENSE, UNLESS SUCH CHARGES ARE AUTHORIZED IN WRITING IN ADVANCE BY SELLER. DEALER'S OR DISTRIBUTOR'S OBLIGATION TO MAKE PAYMENT ON TIME FOR THE BALANCE OF PRODUCTS DELIVERED UNDER THESE TERMS IS NOT AFFECTED BY ANY CLAIM OF DEALER OR DISTRIBUTOR HEREUNDER. **SELLER'S TOTAL LIABILITY, WHETHER FOR BREACH OF CONTRACT, WARRANTY OR OTHERWISE, IS LIMITED TO THE PURCHASE PRICE OF THE PARTICULAR PRODUCT SOLD UNDER THESE TERMS.**
- (viii) Oral or written statements by Seller's employees or agents, including via email, do not constitute warranties, shall not be relied upon by a dealer or distributor, and are not part of this agreement of sale. Dealer or distributor, as the case may be, hereby acknowledges that it has not entered into this order in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth herein or made in writing and executed by a duly appointed officer of Seller.
- (d) **Limitations:** Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This warranty gives you specific legal rights, and you may also have other rights which vary from State to State.
- (e) **Product Warranty Work:** Each dealer/distributor hereby agrees to honor the Seller warranties of the Products as described in Section 2(b) above, and as set forth in the written warranties described in Section 2, with the end consumer of such Products in accordance with the terms of such warranty and the claims procedure of Seller as set forth in Section 3 below.
3. **CLAIMS.** The claims procedure for the Products shall be as set forth in the applicable warranty for such Product or in the Warranty Claims Procedure furnished by Seller, and must be followed in accordance with its terms in order for Buyer to make a claim with regard to the Products. For more information, please contact the Warranty Claims Administrator.
4. **QUANTITY.** Unless otherwise specified, Seller shall have the right to make partial shipments. Each partial shipment shall be deemed a separate sale, and payment shall become due therefore in accordance with the terms of payment contained in the invoice including, but not limited to, the import duties, taxes and other charges as set forth in Section 6 below.
5. **PRICES; PAYMENT.** Unless otherwise specified, domestic orders shall be priced and shipped F.O.B. Seller's warehouse, and international orders shall be priced and shipped Ex Works Seller's warehouse. All shipping terms shall have the meaning set forth in the Uniform Commercial Code (the "UCC") for domestic sales or in INCOTERMS™ 2010, as published by the International Chamber of Commerce, for international sales. Unless otherwise required by Seller, prices are payable in U.S. Dollars within thirty (30) days from the date of such invoice. Partial shipments shall be billed as shipped. If payment hereunder is not made on time, Seller, in addition to all other legal, equitable and contract rights available to it, shall be entitled to interest on such overdue payment at the rate of one and one-half percent (1.5%) per month. Notwithstanding the foregoing, interest shall not be charged on any overdue payment at a rate in excess of the maximum rate permitted by law. In addition, all collection charges including reasonable attorneys' fees incurred to collect said payment shall be payable by Buyer.
6. **IMPORT DUTIES, TAXES AND OTHER CHARGES.** Except to the extent otherwise provided in these Terms, Buyer shall pay and be responsible for all taxes (excluding federal, state or local income or franchise taxes of Seller) and all import duties, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon, whether payable by Seller or Buyer, imposed or levied on or with respect to the sale of Products, the amounts payable hereunder, the Product or the possession, sale, use, furnishing or ownership of the Product, and all broker and similar fees, shipping and handling fees, and other assessments incurred by Seller. If Buyer shall fail to pay and discharge such taxes, duties and other sums when due, Seller may at its option, pay the same, in which event Buyer shall promptly reimburse Seller for such sums paid. The price will be increased by the increased amount Seller is liable to pay in respect of any value added tax chargeable on the supply to Seller of materials to be incorporated in the Products or on services which are required for the performance of Seller's obligations under these Terms.
7. **RISK OF LOSS; COST OF INSURANCE AND TRANSPORTATION.**
- (a) Notwithstanding any shipping term set forth herein, title to any Products sold and risk of loss of such Products passes to Buyer upon delivery by Seller to the carrier, and Products shall be deemed "delivered" at such time.
- (b) If the order acceptance or confirmation provides that Seller shall pay insurance and/or transportation costs, they shall be at the applicable rates available to Seller in effect at the date of such acceptance or confirmation; if for any reason the cost of insurance and/or transportation increases prior to shipment date, such increase shall be for the account of, charged to and paid by Buyer.
8. **DELAY IN DELIVERY; FORCE MAJEURE.** The date of delivery stated in the order acceptance or confirmation is an estimated date. Seller shall not be responsible for any liability due to any delay in the performance of any order accepted by it due to unforeseen circumstances or to causes beyond its reasonable

control, including, without limitation, acts of God, strikes, war, riots, acts of terrorism, fires, floods, accidents, differences with workers, lockouts, or other industrial disturbances, freight embargoes, lock-out of suppliers necessary to the execution of the order, loss or unavailability of usual sources of transportation, fuel, labor, supply, raw materials, or power priorities, failure, breakdown or shortage of components necessary to the completion of the order, equipment breakdown, embargoes, subcontractor caused delays, the compliance with any law, rule, regulation or order, whether valid or invalid, of any government body or any instrumentality thereof, or acts of civil or military authorities, whether now existing or hereafter created. Performance of an order shall be deemed suspended so long as any such circumstances or causes delay its execution and Buyer shall extend any letter of credit issued in payment for the Product, if applicable, through any such delay. Whenever such circumstances or causes have been remedied, Buyer shall accept performance under said order.

9. **DEVIATION.** Notwithstanding anything to the contrary contained in Section 8 hereof, if after the Product has been shipped to Buyer by Seller, or has been shipped to Seller, or direct to Buyer by any affiliate, direct or indirect, of Seller supplying the Product to Seller, its arrival at port of destination is delayed or prevented because, without the fault of Seller or such affiliate, (i) the vessel is delayed in arriving, berthing or unloading, or unloads at a different port, or (ii) the Product has been transhipped, then, in any such event, (x) Seller (and any such affiliate of Seller) shall not be liable therefore, (y) the time for delivery to Buyer shall be extended until the Product is unloaded and (z) the port of destination within the terms on the order acceptance or confirmation shall be deemed to be the place at which the Product is unloaded by the vessel if at a different port than scheduled. Seller shall advise Buyer of any such delay or deviation within a reasonable time after Seller is notified thereof and Seller shall cooperate with Buyer, at Buyer's expense, to ship the Product to the point of destination requested by Buyer.
10. **SECURITY INTEREST.** Seller reserves and Buyer grants to Seller a purchase money security interest in all Products sold and all cash receivables or cash from resale thereof to secure the full payment and performance by Buyer of its liabilities and obligations to Seller. Buyer acknowledges that this document may be filed with the appropriate authorities as a financing statement and Buyer agrees to execute and deliver such documents as Seller may request in order to perfect its security interest.
11. **SELLER'S REMEDIES.** In the event that Buyer fails to perform all or any part of its obligations hereunder, Seller, at its option and in addition to any and all other remedies, whether at law or in equity, which Seller may have, may cancel the order and recover from Buyer its damages, or Seller may dispose of the Product, whether shipped, manufactured or otherwise identified to this order, publicly or privately, in bulk units, for Buyer's account and apply the net proceeds after deducting expenses or disposition, against the purchase price. In case of any deficiency, Buyer shall remain liable therefore; Seller's expenses in either case shall include reasonable attorneys' fees and other costs of enforcing its rights.
12. **SUSPENSION OF FUTURE SHIPMENTS; CHANGE OF CREDIT TERMS.**
- (a) Buyer hereby represents that it is solvent and Buyer's signing of any delivery receipt (however denominated) furnished by Buyer to the delivering carrier shall constitute a further representation of solvency at the time of signing such receipt. Should Buyer fail to make payment when due under any contract between Buyer and Seller, Seller shall have the right to withhold shipment of any portion of the Product covered by the order or by any other existing contract between Seller and Buyer. Said action on the part of Seller shall not release Buyer from its obligation to accept and pay for such remaining portion of Product if and when shipped by Seller or otherwise release Buyer of any of its obligations under these Terms or any such other contract.
- (b) If at any time there is a change in the financial condition or structure of Buyer, arising from a change in business or market conditions or otherwise, or arising from a merger, reorganization or other change in business form or if Buyer becomes insolvent, makes an assignment for the benefit of its creditors or ceases to be a going concern, or if a petition in bankruptcy with respect to Buyer is filed, or if any lien arising from judicial process or otherwise is placed upon or any receiver or trustee is appointed with respect to any material asset of Buyer, then Seller, in addition to any and all other rights and remedies, shall have the right to cancel this order without liability on its part or to change the credit terms of these Terms, including, but not limited to, requiring the payment of cash in advance of delivery.
- (c) In the event Seller shall have reasonable grounds to doubt, at any time, Buyer's financial responsibility to perform, Seller shall demand, in writing, adequate assurances of performance from Buyer and may, until such assurances are received from Buyer, suspend its performance under these Terms. Upon receipt of a justified demand, as provided hereunder, Buyer's failure to provide adequate assurances of performance, acceptable to Seller, within thirty (30) days of the receipt of such notice, shall be considered a repudiation of these Terms (and the order) and shall entitle Seller to terminate these Terms (and the order) immediately.
13. **INDEMNIFICATION.** Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders, members, managers and employees (collectively, the "Seller Indemnified Parties") from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, penalties, costs and expenses (including, without limitation, costs of defense or investigation, reasonable attorneys' fees and court costs) (collectively, "Losses") to the extent arising from, related to or in connection with: (a) the negligence or misconduct of Buyer, its agents, employees, representatives or contractors; (b) Buyer's breach of any of its obligations under these Terms (and the order); (c) use of a Product in combination with other products, equipment or software not supplied by Seller; (d) infringement of any United States patent by any Product supplied by Seller hereunder and made in accordance with the design and/or specification furnished by Buyer to Seller; (e) use of a Product in an application or environment for which it was not designed; (f) modifications of a Product by anyone other than Seller without Seller's prior written approval; or (g) the transportation, storage, sale, or service of the Products by Buyer, or other acts of Buyer giving rise to third party claims against Seller.
14. **PATENTS.** In the event of a patent infringement suit brought against Buyer, its successors or assigns arising out of a patent infringement by Seller relating to the Products and if, as a result of such suit, a judgment is made final in a court of last resort against Buyer, its successors or assigns, Seller agrees to pay that portion of the judgment Losses only to the extent of the purchase price which shall have been paid by the Buyer, its successors and assigns to Seller for the infringing Products delivered by Seller during the last six (6) months prior to the commencement of said suit. The foregoing is conditional upon prompt notification to Seller of the commencement of such suit and Seller's having the opportunity to participate in the defense thereof on behalf of Buyer. **THE FOREGOING STATES THE ENTIRE OBLIGATION AND THE EXCLUSIVE REMEDY OF BUYER WITH RESPECT TO ANY ALLEGED PATENT, COPYRIGHT, MASK WORK, TRADEMARK, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT BY ANY PRODUCT OR PART FURNISHED HEREIN AND THIS LIMITED INDEMNITY IS IN LIEU OF ANY OTHER STATUTORY OR IMPLIED WARRANTY AGAINST INFRINGEMENT.**
- Seller shall not be liable for any Losses and Buyer will indemnify, defend with competent and experienced counsel and hold harmless the Seller Indemnified Parties from any Losses resulting from any suit or proceeding based upon a claim arising from: (a) compliance with Buyer's designs, specifications or instructions; (b) modification of the Product by a party other than Seller after delivery by Seller; (c) the use of any Product or any part thereof furnished herein in combination with any other product, or (d) the direct or contributory infringement of any process patent using any Product furnished herein. Sale of any Product or any part thereof by Seller does not confer upon the Buyer any license under any patent rights or copyrights.
15. **TRADEMARK AND INTELLECTUAL PROPERTY USE; LOCATOR/LISTING.** Seller owns or licenses all the trademarks and copyrights related to the Products. Under no circumstances shall Buyer use any of Seller's intellectual property, without the prior written consent of Seller through an executed license agreement for Buyers after October 1, 2010 (in the form provided by Seller) or in accordance with the Intellectual Property Usage Policy for Buyers before October 1, 2010. In addition to the terms set forth in the license agreement and Intellectual Property Usage Policy, Buyer is prohibited from the following: (a) use of Seller's trademarks by a dealer outside of in-store advertising, without prior written permission of Seller; (b) adopting any domain name or URL identical, similar, or confusingly similar to any of Seller's trademarks; (c) selling any Products on any auction websites; (d) use of Seller's trademarks as metatags; (e) bid on key word advertising using Seller's trademarks; or (f) use of Seller's trademarks in any manner that is disparaging or that otherwise portrays Seller in a negative light.

ANY BUYER FAILING TO ABIDE BY THESE TERMS AND CONDITIONS, SELLER'S BRANDING POLICIES, AND/OR THE LICENSE AGREEMENT/INTELLECTUAL PROPERTY USAGE POLICY MAY HAVE THEIR RIGHTS TO SELL PRODUCTS TERMINATED. IN THE CASE OF DOUBT OF A POTENTIAL INTELLECTUAL PROPERTY USAGE, BUYER SHALL CONTACT SELLER FOR CLARIFICATION. In the event Buyer's rights are terminated, all Products shall be returned to Seller immediately and all references to Seller and Seller's trademarks shall be removed from any printed or electronic media.

Each dealer acknowledges that Seller may not include dealer on Seller's website or dealer locator listing, and inclusion on Seller's website or listings is at the sole and absolute discretion of Seller. Dealer further acknowledges that Seller may at any time remove a dealer from such listing or website with no notice to dealer, with or without cause, at its sole discretion.

16. **UNITED STATES EXPORT LAWS.** Seller's obligations are subject to the export administration and control laws and regulations of the United States. Buyer shall comply fully with such laws and regulations in the export, resale or disposition of Products. Buyer agrees and shall cause each of its customers to agree, that it shall commit no acts which directly or indirectly violate any United States export control law, regulation, treaty or other international agreement to which the United States adheres or complies or any applicable export, import or other laws of any other jurisdiction and agrees to indemnify and to hold Seller harmless from any and all Losses incurred by Seller or its affiliates for any reason arising from or connected with any such violation, incurred intentionally or unintentionally. Quotations or proposals made, and any orders accepted by Seller from a Buyer outside the United States are with the understanding that the ultimate destination of the Products is the country indicated therein. Diversion of the Products to any other destination contrary to United States law is prohibited. Accordingly, if the foregoing understanding is incorrect, or if Buyer intends to divert the Products to any other destination, Buyer shall immediately inform Seller of the correct ultimate destination.

17. **SPECIFICATIONS.** All specifications referring to published standards such as ASTM, ASCE shall be deemed to refer only to the physical properties set forth therein unless otherwise specified.

18. **CHOICE OF LAW; VENUE.**

(a) Except as otherwise agreed to in writing by Buyer and Seller and regardless of the location of Buyer and place of shipment of the Products, these Terms (and the order) shall be governed by and construed in accordance with the substantive law of the State of California, USA, without giving effect to its conflict of law provisions. The parties hereby expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods, if the same would otherwise apply here.

(b) The parties agree that any suit or action brought by any party shall be brought and resolved exclusively by the State and Federal courts located in San Diego, California, USA, and the courts to which an appeal therefrom may be taken; provided that any party shall have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order. Each of the parties hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue. The parties agree that either or both of them may file a copy of this Section 18(b) with any court as written evidence of the knowing, voluntary and bargained agreement between the parties to irrevocably submit to the jurisdiction of the State and Federal Courts located in San Diego, California, USA, and to waive any objections to venue or to convenience of forum. Legal process in any proceeding may be served on any party anywhere in the world.

19. **SEVERABILITY.** In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.

20. **BINDING EFFECT; ASSIGNMENT.** These Terms shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Buyer may not assign any rights or claims, or delegate any duties hereunder, in whole or in part, without the prior written consent of Seller, which may be withheld at Seller's sole discretion.

21. **BUYER'S UNDERSTANDING.** Buyer represents and warrants: (a) that it has read and understood these terms and conditions; (b) that these terms and conditions are fair and reasonable to Buyer; (c) that the party or individual placing this order on behalf of Buyer has the full power, authority and capacity to do so, and to perform the obligations contained hereunder in accordance with its terms; (d) no representations have been made or relied upon except as specifically stated in these Terms; and (e) that it shall not make any representations or warranties with regard to the Products or the Product's characteristics, quality and/or specifications except as provided by Seller, and Buyer shall not modify or deviate, either in written form or verbally, from such representations or warranties given by Seller with regard to the Products.

22. **TERM; SURVIVAL.** These Terms shall remain in effect unless expressly terminated in writing by Seller and Buyer. The rights and obligations of the parties under these Terms which by their nature would continue beyond the termination, cancellation or expiration of the agreement or order including, without limitation, warranty, indemnification, intellectual property rights, shall survive such termination, cancellation or expiration and shall thereafter bind the parties and their successors and assigns.

23. **LANGUAGE.** The parties to these Terms declare that they have requested that these Terms and all ancillary documents be prepared in the English language. Les Parties déclarent qu'elles ont demandé que cette entente et tout document s'y rapportant soient préparés en anglais.