



The Buyer's attention is drawn in particular to the provisions of Section 11.

1. **Applicability.**

- 1.1 These terms and conditions of sale (these "**Terms**") are the only terms that govern the sale of the goods ("**Goods**") by Greene, Tweed & Co., Japan ("**Seller**") to the buyer named on the Order Confirmation (as defined below) ("**Buyer**"). Collectively Buyer and Seller are referred to as the "**Parties**" and individually as "**Party**."
- 1.2 The accompanying order confirmation (the "**Order Confirmation**") and these Terms (collectively, this "**Agreement**") comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement supersedes any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Seller expressly rejects Buyer's general terms and conditions of purchase, and fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions or serve to modify or amend these Terms. Acceptance of the Order Confirmation by Buyer (which shall be deemed accepted should Buyer not object in writing within five (5) business days of receipt of the Order Confirmation) is a prerequisite to the purchase of the Goods and shall operate as an acceptance of these Terms which are expressly incorporated into the Order Confirmation. Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of the Goods ("**Master Agreement**"), then the Master Agreement shall prevail to the extent of any inconsistency with these Terms. Except as set forth in Section 2.1, Buyer may not request any change to or cancellation of any order of Goods within thirty (30) days of the delivery date set forth in the Order Confirmation. Furthermore, Buyer may not cancel, in whole or in part, any purchase order for made-to-order Goods once such purchase order has entered the applicable production lead time for the ordered Goods.

2. **Price; Terms of Payment.**

- 2.1 Seller's quotes price for the Goods (the "**Purchase Price**") shall be exclusive of any and all taxes; custom duties and charges of all kinds imposed by any government authority; shipping; handling; insurance; packaging; boxing; charges for returnable or reusable containers and damaged and missing tooling; and penalties (collectively, referred to as "**Additional Charges**"). The Goods shall not be subject to discount unless Seller expressly and clearly provides to Buyer such discount in writing. The Purchase Price will apply to Goods scheduled by Seller for shipment within sixty (60) calendar days of the date of the Order Confirmation. Goods which are scheduled by Seller for shipment later than sixty (60) calendar days after the date of the Order Confirmation will be invoiced at Seller's price therefore at the time of shipment, which may be higher because of increased material, labor and/or other costs. If such price adjustment exceeds 15% of the previous price, Seller will notify Buyer at least thirty (30) calendar days prior to the scheduled date of shipment, and Buyer may, within five (5) calendar days after such notification, cancel any portion of Buyer's order to which such price adjustment applies, but Buyer shall remain liable for that portion which it does not so cancel.
- 2.2 Except as provided under these Terms, Buyer shall pay the full Purchase Price and Additional Charges within thirty (30) calendar days after the date of Seller's invoice. All payments hereunder shall be in US dollars and made by ACH transfer. Seller reserves the right to require pre-payment in its sole discretion.
- 2.3 Without prejudice to any other remedy, if the outstanding amount of the Purchase Price and Additional Charges are not paid in full when due, Buyer shall in addition pay, from the due date until payment in full, (i) interest at the monthly rate of one and one half percent (1.5%) of the sum of the unpaid Purchase Price (plus any increase in Additional Charges) and/or Additional Charges. Interest shall be compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments or interest due thereon, including without limitation, legal fees. In addition to all other remedies available to Seller under this Agreement or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) business days following written notice thereof. If, in Seller's sole discretion, the financial condition of Buyer does not justify continuation of production or shipment of Goods on the terms set forth in this Agreement, Seller, at its sole option, may cancel any completely or partially unfilled orders from Buyer or any part thereof, and/or may demand immediate payment for all Goods delivered and/or full or partial payment in advance for all Goods not delivered. Buyer shall not withhold



payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy, or otherwise.

2.4 Notwithstanding anything in these Terms to the contrary, Seller reserves the right in its sole discretion to modify the dates on which it sends invoices, shipping dates, payment due dates and notification date.

2.5 Currency Conversion. All purchase prices are expressed in United States Dollars ("USD Purchase Price"). The Buyer may pay all amounts due under this Agreement in either (i) USD; or (ii) the Buyer's local currency ("Local Currency"). If the Buyer makes payment of any amount in Local Currency, it shall pay, upon Seller's demand, any shortfall ("Shortfall") of the USD equivalent of the amount paid in Local Currency ("USD Equivalent") compared to the USD Purchase Price of any amounts owed under this Agreement expressed in US Dollars ("USD Amount Owed"), as the case may be; provided, however, that Buyer shall have no obligation to pay any Shortfall that is less than 5% percent of the corresponding USD Amount Owed. Seller shall calculate the USD Equivalent by applying the spot exchange rate quoted in Xe.Com exchange rate on the day it first receives payment of the amount paid in Local Currency. Seller's determination of the USD Equivalent and any Shortfall controls, absent manifest error.

2.6 Notwithstanding acceptance of a purchase order, Seller reserves the right to cancel any accepted order upon providing Buyer with prompt written notice if: (a) after acceptance, the cost of raw materials necessary to fulfill the order increases by more than 15% compared to the cost at the time of order acceptance, and such increase would render performance commercially impracticable under the circumstances; or (b) the goods ordered become commercially impracticable to manufacture or obtain due to unforeseen disruption of supply, destruction of production facilities, other circumstances beyond Seller's reasonable control. Upon valid cancellation under this provision, Seller shall refund any amounts paid by Buyer for the cancelled order within 5 business days, and neither party shall have further obligations under the cancelled order except as expressly provided in the Terms and Conditions or as required by applicable law.

3. Delivery.

3.1 The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of the Goods. Delivery dates given by Seller are estimates only, are not guaranteed, are subject to shipping variations and requirements, any may be extended by Seller for a reasonable period of time if conditions, in Seller's sole discretion, warrant. Time of delivery is not of the essence.

3.2 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.3 Unless otherwise expressly agreed in writing by Seller in the Order Confirmation, all Goods are shipped in one of the following manners, as specified in the Order Confirmation: (i) Goods sold domestically may be shipped EXW Seller's plant; (ii) FCA, Seller's plant, or (iii) in the case of drop shipment, DAP, Buyer's premise or port named in Buyer's purchase order. The location set forth in (i), (ii) or (iii) is referred to herein as the "**Delivery Point**". Good shall be shipped using Seller's standard methods for packaging and shipping such Goods, and Buyer shall pay the cost of any and all carriers and freight. Buyer shall take delivery of the Goods within five (5) business days of Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and providing equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. Buyer is responsible for fees associated with not taking timely delivery of the Goods, such as storage fees.

3.4 Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

3.5 All transportation insurance (if requested by Buyer) and other delivery charges from the Delivery Point to Buyer stated in the Order Confirmation or otherwise communicated by Seller to Buyer represent estimated charges. If actual charges at the time or times of shipment are greater or lesser than any of the aforesaid charges, Buyer shall pay any increase and shall receive the benefit of any decrease. To the fullest extent legally permitted, Buyer shall pay all local and international taxes (sales, excise or otherwise) which Seller may be required to pay or collect upon or with reference to the sale, purchase transportation, delivery, storage, use or consumption of the Goods now in effect or imposed at or prior to the time the Goods are delivered, and such taxes will be added to the Purchase Price.



- 3.6 To the fullest extent legally permissible, in addition to the Purchase Price and Additional Charges, Buyer shall pay or reimburse Seller for all applicable local and international taxes and customs duties, which Seller may be required to pay or collect and now in effect or imposed at or prior to the time the Goods are delivered.
4. **Quantity.** If Seller delivers to Buyer a quantity of Goods of up to and including five percent (5%) more or less than the quantity set forth in the Order Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods at the price set forth in the Order Confirmation adjusted pro rata.
5. **Title and Risk of Loss; Security Interest.**
- 5.1 Title and risk of loss pass to Buyer upon delivery of the Goods at the Delivery Point. Upon delivery of the Goods by Seller to the carrier for shipment at the Delivery Point, all risk of loss, damages and other incidents of ownership shall immediately pass to Buyer, subject to Seller's rights until paid in full as set forth in Section 5.2 below. If shipments of any Goods are delayed by Buyer, all Goods held by Seller shall be at the sole risk and expense of Buyer.
- 5.2 Until Buyer makes payment of the Purchase Price of the Goods and Additional Charges to Seller, Buyer shall (i) store the Goods separately from all other goods held by Buyer so that they remain readily identifiable as Seller's property; (ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; (iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and (iv) give Seller such information as Seller may reasonably require from time to time relating to the Goods and the ongoing financial position of Buyer.
6. **Inspection.**
- 6.1 Buyer shall inspect the Goods within five (5) business days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "**Nonconforming Goods**" means only that the product shipped is different than identified in the Order Confirmation; provided, however that Seller may substitute for any Goods specified in Buyer's order goods of like or greater quality which are functional equivalents and such substituted goods shall not be "Nonconforming Goods".
- 6.2 If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Purchase Price for such Nonconforming Goods, together with any reasonable third-party shipping and handling expenses actually incurred and paid by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to the Delivery Point. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
- 6.3 Buyer acknowledges and agrees that the remedies set forth in Section 6.2 are Buyer's exclusive remedy for Nonconforming Goods. Except as provided under Section 6.2, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.
7. **Force Majeure.** Seller in Seller's sole discretion may terminate, delay or suspend performance under this Agreement in whole or in part and shall not be deemed to have defaulted under or breached this Agreement, and shall not be liable for any direct, indirect, special, incidental or consequential liability, delay, damage or loss, when and to the extent such termination, delay, suspension, or any failure to perform under this Agreement is caused by or results from circumstances beyond Seller's control (each, a "**Force Majeure Event**"). Force Majeure Events shall include but not be limited to acts of God; fires; explosions; severe weather; flood; labour disputes, strikes, lockouts, boycotts, picketing, labor stoppages or slowdowns, or other industrial disturbances; riots; epidemics, pandemics, or quarantine restrictions; war, invasion, hostilities (whether war is declared or not), terrorist threats or acts of riot or other civil unrest; delays of carriers; embargoes or blockades; national or regional emergency; action by any governmental authority or requirement of law (whether voluntary or mandatory, legislative, executive or administrative); telecommunications breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services; and any other events beyond Seller's control. Buyer shall accept as full and complete performance of this Agreement such portion of the Goods as Seller determines it is able, under the circumstances, to deliver in accordance with these Terms, and Buyer shall be liable for such delivered portion.



8. Limited Warranty.

8.1 Seller warrants to Buyer that (a) for a period of one hundred and eighty (180) calendar days after the date of delivery of the Goods (the "**Warranty Period**"), the Goods will materially conform to Seller's published specifications in effect as of the date of shipment under the corresponding Order Confirmation, and (b) Buyer will receive good and valid title to the Goods, free and clear of all encumbrances and liens, except as expressly provided by these Terms.

8.2 The warranties under this section do not apply where the Goods have been: (i) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental conditions, use contrary to any instructions issued by Seller, or improper testing, installation, storage, handling, repair, or maintenance; (ii) reconstructed, repaired, or altered by anyone other than Seller or its authorized representative; or (iii) used with any third-party product, hardware, or product that has not been previously approved by Seller.

8.3 The warranties under this section extend only to (a) Seller's expressly authorized distributors ("**Distributors**") and (b) the original end user of the Goods (i) who acquires such Goods directly from Seller or directly from a Distributor and (ii) who acquires the Goods not for resale of the Goods themselves but for such end user's own use or for such end user's incorporation into a product which that end user manufactures (the "**End User**"). ANY GOODS ACQUIRED BY ANY PERSON OR ENTITY OTHER THAN A DISTRIBUTOR OR END USER ARE ACQUIRED ON AN "AS-IS" BASIS "WITH ALL FAULTS" AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OF SELLER.

8.4 Buyer shall communicate the terms of this limited warranty to all End Users and to all others to whom Buyer delivers any products or otherwise transfers any Goods. Buyer acknowledges and agrees that this limited warranty shall be null and void as to any Goods which Buyer sells or otherwise transfers to any person or entity other than as set forth in this Section 8.

8.5 No action pursuant to this warranty may be brought after the Warranty Period.

9. **Buyer's Exclusive Remedy for Breach of Warranty.** During the Warranty Period (a) Buyer shall notify Seller, in writing, of any alleged warranty claim promptly after Buyer discovers, or upon reasonable inspection should have discovered, such alleged claim (but in any event before the expiration of the applicable Warranty Period); (b) Buyer shall ship the relevant Goods within three (3) days of the date of its notice to Seller, at its expense and risk of loss, to the Delivery Point for inspection and testing by Seller; (c) If Seller's inspection and testing reveals, to Seller's reasonable satisfaction, that such Goods do not conform with the limited warranty set forth herein, Seller shall in its sole discretion, and at its expense (subject to Buyer's compliance with this Section 9), either (i) repair or replace such Goods, or (ii) credit or refund the Purchase Price of such Goods less any applicable discounts, rebates, or credits; and (d) If Seller exercises its option to repair or replace, Seller shall, after receiving Buyer's shipment of such Goods, ship to Buyer, at Buyer's expense and risk of loss, the repaired or replacement Goods F.O.B. the Delivery Point. Buyer has no right to return for repair, replacement, credit, or refund any Goods except as set forth in this Section 9. THIS SECTION 9 SETS FORTH BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 8.

10. **Warranties Disclaimer.** Except as provided in Section 8, Seller has no liability to Buyer in respect of the Goods' failure to comply with the warranty set out in Section 8.1. Buyer acknowledges that it has not relied upon any representation or warranty made by Seller, or any other individual or entity on Seller's behalf, except as specifically provided in Section 8 of these Terms.

11. **Limitation of Liability.**

11.1 IN NO EVENT SHALL SELLER OR ANY OF ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER SELLER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

11.2 SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL PURCHASE PRICE PAID TO SELLER FOR THE SPECIFIC GOODS GIVING RISE TO THE CLAIM OR \$1,000,000, WHICHEVER IS LESS.

11.3 THE LIMITATIONS IN SECTIONS 9, 11.1 AND 11.2 APPLY EVEN IF ANY AGREED REMEDY OR OTHER REMEDY OF THE BUYER FAILS OF ITS ESSENTIAL PURPOSE.

- 11.4 Neither Party limits its liability under this Agreement for: (i) death or personal injury caused by its negligence, or that of its employees, agents or subcontractors; (ii) fraud or fraudulent misrepresentation; (iii) wilful misconduct; (iv) gross negligence; or (v) any other act or omission, liability for which cannot be limited by law.
12. **Buyer Default.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, (A) if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) refuses to accept any Goods ordered; (iii) has not otherwise performed or complied with any of these Terms, in whole or in part; (iv) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; (v) ceases operations; or (vi) infringes on any intellectual property rights as a result of Buyer's use, possession, ownership or modification of the Goods; or (B) if Seller reasonably believes that any of the foregoing is have occurred, are occurring or will occur (any event in clauses (A) or (B), a "**Buyer Default**"). Further, in addition to any other remedies that may be provided under these Terms, upon the occurrence of any Buyer Default, Seller may, in its sole discretion, at no cost or liability to Seller, refuse to ship all or any part of Goods previously ordered by Buyer.
13. **Indemnification.** In addition to the other remedies that may be provided to Seller under these Terms, Buyer (as "**Indemnifying Party**") shall indemnify, defend and hold harmless Seller and its officers, directors, managers, employees, agents, affiliates, successors and permitted assigns (collectively, "**Indemnified Parties**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including legal fees, fees, and the costs of enforcing any right to indemnification under this Agreement and the cost of pursuing any insurance providers, incurred by Indemnified Party, and the Indemnified Parties' reasonable lost profits resulting directly or indirectly from any Buyer (collectively, "**Losses**"), relating to, arising out of or resulting from any claim, cause of action, demand, lawsuit, arbitration, inquiry, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature (collectively, "**Claim**") of a third party or Indemnified Party alleging (a) breach or non-fulfillment of any representation, warranty, or covenant under this Agreement by Indemnifying Party (including without limitation any Buyer Default), (b) any grossly negligent or more culpable act or omission of Indemnifying Party (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement or in Buyer's use of the Goods; (c) any bodily injury or death of any individual or damage to real or tangible personal property caused by the negligent acts or omissions of Indemnifying Party; or (d) any failure by Indemnifying Party to materially comply with any applicable laws. The obligations pursuant to this Section shall survive termination of this Agreement.
14. **Compliance with Law.** Buyer shall at all times comply with all laws applicable to the operation of its business, this Agreement, Buyer's performance of its obligations hereunder, and Buyer's use of the Goods. Without limiting the generality of the foregoing, Buyer shall (a) at its own expense, maintain all certifications, credentials, licenses, and permits necessary to conduct its business relating to the purchase or use of the Goods and (b) not engage in any activity or transaction involving the Goods, by way of shipment, use, or otherwise, that violates any law.
15. **Quality, Processes, Tooling, Equipment, and Design.** All equipment, dies, patterns, molds, gauges, taps, jigs, fixtures and other tools, and all designs, drawings, specifications, technical documents and other such materials which are required, produced or furnished by Seller to produce Goods ordered by Buyer from Seller (collectively referred to as "**Tooling**"), as well as any patents, copyrights, trademarks and other intellectual property rights in or to any Tooling, shall remain the sole property of Seller regardless of whether any charges are made for Tooling. Buyer may not sell, assign or transfer in any manner at any time any right, title or interest in or to any Tooling. In any event, and regardless of ownership, Seller shall not be responsible (i) for obtaining on its own, or repairing or replacing any Tooling or (ii) to maintain any Tooling for more than three (3) years after the Buyer's most recent order of Goods. Seller shall supply Goods in accordance with Seller product specifications as identified in the Order Confirmation. Seller retains the right to make necessary changes to the Goods including changes to the design, manufacture, processes, manufacturing location, and/or raw materials without any advanced notification to Buyer, so long as the Goods remain in compliance with the product specification upon implementation of such change.
16. **Confidentiality.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party. The fact that Seller has furnished or has contracted to furnish to Buyer the Goods covered hereby is "confidential" information subject to the restrictions set forth in this paragraph.



From time to time Seller may provide Buyer with “**Know-How**” (defined below) which, in Seller’s sole opinion, is relevant to Buyer, including but not limited to all relevant engineering changes and current developments affecting the application of the Goods. “Know-How” means identification of customers, uses, marketing data and sales techniques relating to the sale of Goods, including but not limited to invoices, quotations, proposals and recommendations. In addition, if Seller provides Buyer with any technical consultation on customer problems, including material selection, design, and participation in joint sales calls, the contents of any such consultation is “Know-How”.

17. **Distributor Provisions.** If Buyer is acting as Seller’s Distributor, then except as Seller expressly agrees in writing otherwise, and notwithstanding anything above to the contrary, the provisions of this Section 17 shall apply in addition to the other provisions of this Agreement:

- 17.1 Buyer shall not be an exclusive distributor for any Goods.
- 17.2 Buyer’s territory for sales (“**Territory**”) shall be designated by Seller in Seller’s sole discretion
- 17.3 Buyer shall not receive any discount,
- 17.4 Buyer shall submit in writing to Seller net sales figures for the preceding month for Goods purchased from Seller and sold by Buyer (a “**Sales Report**”), which figures must be received by Seller by the fifteenth (15th) of the month or on the first (1st) business day thereafter. The Sales Report shall include number of items, the US dollar value of those items and the customers and locations to which those sales were made. Buyer shall also submit to Seller a copy of the invoice of sales for Goods sold in the preceding calendar month verifying the Sales Report, which copy must be received by Seller within thirty (30) days after the end of the month.
- 17.5 Seller reserves the right to sell directly to customers located within the Territory when the customer orders the Goods to be delivered to their branches or subsidiaries located in the Japan. With respect to these types of sales, billed for by the Seller and paid for by customers, Buyer shall not be entitled to a sales commission.
- 17.6 In addition to its other rights, Seller reserves the right, in its sole discretion and for any reason and at any time and from time to time to (i) establish or change any prices, warranty terms, sales or shipment terms and conditions, or sales or other policies or practices either before or after shipment; (ii) refuse to accept from Buyer any order or orders with respect to all or any Goods or refuse to fill any order or orders previously accepted from Buyer; and (iii) discontinue or suspend manufacture of any Goods.
- 17.7 Seller shall make a reasonable effort to give Buyer timely notice of any change in prices, sales, warranty or shipment terms, sales policies or practices, cancellations or changes in orders, and substitutions with respect to the Goods. In turn, Buyer shall promptly advise any of its affected customers in Buyer’s Territory of such matters and shall promptly advise Seller as to whether the change is acceptable to its affected customers.
- 17.8 Buyer will use its best efforts to sell, market and promote the sale of the Goods in the Territory, obtain new customers therefore, and maintain existing customer relationships.
- 17.9 Buyer shall not collect or receive any monies on behalf of Seller unless specifically authorized by Seller in writing.
- 17.10 Seller shall have no obligation to repurchase or otherwise compensate Buyer with respect to any unsold or discontinued Goods.
- 17.11 Buyer further agrees to (i) do all things necessary to diligently and faithfully procure orders for, and sales of Goods within the Territory; (ii) comply with all sales and other policies and practices of Seller; (iii) comply with Seller’s written instructions and policies concerning use and display of Seller’s corporate name and all trademarks or trade names associated with Seller or the Goods; (iv) maintain complete and accurate written records describing all sales and promotional activities engaged in by Buyer with respect to customers and prospective customers for the Goods or for any other products manufactured by Seller, including without limitation sales call reports, contact reports, customer inquiries, customer complaints and claims, prospect listings, prospect profiles, market reports, market updates, sales forecasts, copies of invoices, quotations, inquiries, sample requests and other data, information and Know-How which is pertinent to the sale and application of Seller’s Goods in the Territory, and furnish to Seller, upon request by Seller or in accordance with reporting schedules established from time to time by Seller, copies of all such records and materials; (v) be responsible for and pay all costs of conducting Buyer’s business activities; (vi) maintain (a) automobile insurance policies which, in the aggregate, provide liability coverage of not less than one million US dollars(\$1,000,000)per occurrence or incident for damage to any person or property arising out of the operation of a motor vehicle by Buyer or any of its employees and (b) comprehensive products liability insurance policies which, in the aggregate, provide coverage with respect to the Goods of not less than one million US dollars(\$1,000,000)for damages to

any person or property, and file with Seller, upon request by Seller, actual or memorandum copies of all such insurance policies or other documents satisfactory to Seller evidencing the existence of such insurance coverages; and (vii) indemnify Seller and hold Seller harmless from and against any loss, damage or liability including without limitation legal fees which Seller suffers or incurs as a result of any actual or claimed negligence of Buyer or its employees or agents in connection with the performance of its or their duties hereunder, or any breach or default by Buyer of its duties or obligations hereunder. The indemnities outlined in this Section 17.11 shall survive termination of this Agreement.

17.12 Buyer's distributorship (the "**Distributorship**") shall continue until terminated in a manner provided herein. The Distributorship may be terminated at any time by Seller, without cause, upon not less than sixty (60) days prior written notice to Buyer. Furthermore, either Party may terminate the Distributorship for cause, immediately upon written notice to the other Party in the event (i) such other Party ceases all or substantially all of its business operations; (ii) such other Party is in material breach or material default of any of its obligations under this agreement and does not fully cure or correct such breach or default within ten (10) days after receiving written notice of such breach or default; (iii) such other Party takes willful action which is, or is intended to be injurious or detrimental to the terminating Party; (iv) such other Party engages in any improper act or omission resulting or intending to result in material gain, personal enrichment, or other personal benefit to such Party at the expense or to the detriment of the terminating Party; (v) such other Party files a petition in bankruptcy or is adjudicated as a bankrupt; or (vi) such other Party institutes or has instituted against him or it any procedure in bankruptcy court or elsewhere for reorganization or rearrangement of his or its financial affairs, or has a receiver of his or its assets or property appointed because of insolvency, or makes a general assignment for the benefit of creditors. If Buyer is an individual, the Distributorship shall terminate immediately upon the death of Buyer. Upon termination of the Distributorship by either Party and for any reason, Seller may, but shall not be obligated to, repurchase from Buyer any Goods shipped to Buyer on or before the effective termination date, and may, but shall have no obligation to, ship any Goods to Buyer or to Buyer's customers on or after the date upon which notice of termination is given.

18. International Trade.

18.1 Without limiting the generality of the foregoing, Buyer acknowledges that the Goods may be subject to applicable export control and sanctions laws and regulations, including without limitation the sanctions regulations administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the Export Administration Regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS"), the International Traffic in Arms Regulations administered by the U.S. Department of State's Directorate of Defense Trade Controls, the UK's Export Control Act 2002 and Export Control Order 2008, the sanctions regulations issued by the European Commission, the EU Dual-Use Regulation and Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) of Japan and its related regulations (together, "**Export Control and Sanctions Laws**"). Buyer shall comply with Export Control and Sanctions Laws and agrees that it alone is responsible for ensuring its compliance with such laws, including by obtaining any governmental authorizations required under such laws in order to carry on Buyer's business.

18.2 Buyer will not, and to the extent that Buyer acts as Seller's Distributor, will procure that none of its customers will, export, re-export, transfer, use, sell, resell, or otherwise deal in the Goods, directly or indirectly, to, for the benefit of, or involving any country or territory subject to comprehensive, government-wide, or broad sectoral sanctions (currently consisting of Belarus, Cuba, Iran, North Korea, Russia, Syria, Venezuela, and the Crimea, Donetsk People's Republic, Luhansk People's Republic, Kherson, and Zaporizhzhia regions of Ukraine) or to any individual or entity designated on the OFAC List of Specially Designated Nationals and Blocked Persons, the BIS Denied Persons List or Entity List, the U.K. Sanctions List, the Consolidated List of Financial Sanctions Targets in the U.K., the EU Consolidated Sanctions List, the Consolidated United Nations Security Council Sanctions List, or any entity 50% or greater owned or otherwise controlled by the foregoing.

18.3 Buyer shall not do anything which would cause Seller to be in breach of Export Control and Sanctions Laws and shall protect, indemnify and hold harmless Seller from any fines, losses and liabilities incurred by Seller as a result of the failure of Buyer to comply with this Section 18.

18.4 Buyer shall promptly notify Seller of any failure by Buyer to comply with any part of this Section 18. Any such failure shall constitute a material breach of this Agreement. Seller reserves the right to refuse to enter into or to perform any order, and to cancel any order at its sole discretion, if Seller believes Buyer has failed to comply with any part of this Section 18 or that such entry into or performance of such order would result in a violation of Export Control and Sanctions Laws.

19. **Miscellaneous.**

- 19.1 No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement by Seller operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by Seller precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege by Seller.
- 19.2 Buyer's rights, interests, or obligations hereunder may not be assigned, transferred, or delegated by Buyer without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.
- 19.3 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 19.4 This Agreement benefits solely the Parties to this Agreement.
- 19.5 The Parties shall comply with any data protection laws and regulations that apply in the context of the performance of this Agreement, including but not limited to: (i) EU Regulation 2016/679 as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the "UK GDPR"); (ii) the Data Protection Act 2018; (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and (iv) Act on the Protection of Personal Information (Act No. 57 of 2003) of Japan and its related regulations.
- 19.6 Whether directly or through third parties, the Buyer shall not offer or promise any gift or advantage to a person, for himself or for others, with the purpose that this person abuses or because this person would have made illegitimate use of its real or supposed influence in order to obtain distinctions, jobs, contracts or any other favourable decision. The Buyer shall not solicit or accept for itself any offer, promise, gift or advantage of any kind, to make illegitimate use of its influence for the purpose of making or obtaining any favourable decision. Without limiting the foregoing, the Buyer warrants that in entering this Agreement it has not committed any Prohibited Act. "**Prohibited Act**" means an act described under section 1, 2, 6 or 7 of the Bribery Act 2010, which constitutes or potentially constitutes an offence under one or more of those sections or any act that would constitute an offence under applicable anti-bribery laws, including, without limitation, the Criminal Code (Act No. 45 of 1907) of Japan and the Unfair Competition Prevention Act (Act No. 47 of 1993) of Japan.
- 19.7 If the Buyer or any subcontractor (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, then Seller may terminate this Agreement immediately without incurring any liability to the Buyer.
- 19.8 This Agreement is governed by, and construed in accordance with the laws of Japan without giving effect to any conflict of laws provisions thereof that would result in the application of the laws of a different jurisdiction.
- 19.9 Prior to undertaking any legal action to enforce any provision herein, the parties shall attempt to settle any and all claims or disputes arising in connection herewith by good faith negotiations by senior management of each party. Any claim or dispute in connection with the Agreement, except for a breach of the Confidential Information provisions in Section 16, shall be referred to and finally resolved by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce then in effect, by one (1) independent and impartial arbitrator. The place of arbitration shall be London, United Kingdom, and the arbitration shall be conducted in the English language. The fees, costs and expenses of the arbitrators under this provision shall be borne equally by the parties, provided that each party shall bear its own cost of representation.
- 19.10 All notices shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Confirmation or to such other address for either party as that party may designate by written notice. All notices must be delivered by nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested).
- 19.11 If any term or provision of this Agreement is determined to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 19.12 Subject to the limitations and other provisions of this Agreement, (a) the representations and warranties of



the Parties contained herein shall survive the expiration or earlier termination of this Agreement; and (b) Section 8, Section 9, Section 10, Section 11, Section 13, Section 16, and Section 19, of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or termination of this Agreement.