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- 7. Title and Risk of Loss.** Title and risk of loss to the Products shall pass to Buyer upon delivery by Seller to the carrier.
- 8. Cancellations. Returns.** Orders may not be cancelled or modified once accepted by Seller unless agreed upon in writing by Seller. Any cancellation or return of Products shall be subject to Seller's return policies, and may be subject to Seller's cancellation or restocking fee. Seller's restocking policy is available upon request. Non-stock or special order items are non-cancellable and non-returnable. No returns shall be permitted without a Return Material Authorization (RMA).
- 9. Packaging. Allocation.** All Products are packaged in accordance with Seller's standard packaging, unless otherwise agreed upon by the parties. Additional or modified packaging requirements may result in an increase in price. In the event of inability for any reason to supply the total demand for the materials or Products specified, Seller may allocate its available supply among any or all purchasers, at its discretion and without liability for failure of performance that may result therefrom.
- 10. Tooling.** Any tooling required for an initial order will be billed to Buyer. Any Non-Recurring Engineering (NRE) charges invoiced by Seller shall not be deemed to grant any right, title or interest in any tools, dies, jigs, fixtures and items of like nature, or in any design, engineering, trade secret, patent or other proprietary rights embodied in the tooling, upon Buyer's payment of such charges and such items shall at all times be, and remain, the property of Seller.
- 11. Warranty. Services.** Seller warrants that any services provided hereunder shall be performed in accordance with the standard of care with which such services are normally provided in the industry. If the services fail to meet the applicable industry standards, Seller will re-perform the services, provided that any and all issues are identified prior to Seller demobilizing from the work site. Products. Seller warrants that the Products will perform substantially in accordance with Seller's published specifications (or other applicable specifications as agreed upon in writing by Seller) and will be free from defects in material and workmanship, when subject to normal, proper and intended usage by properly trained personnel. Remedies. Seller agrees to repair or replace Products in order to ensure that the Products perform in accordance with the applicable specifications provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with a RMA. Buyer may return the defective Products to Seller with all costs prepaid by Buyer. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions herein. Any consumables, including but not limited to, bulbs and batteries, are excluded from warranty. Seller will have no obligation to re-perform services, and/or make repairs, replacements or corrections which are defective as a result of: (i) normal wear and tear, (ii) Buyer's misuse, fault or negligence, (iii) use of the Products in a manner for which they were not designed, or (iv) improper storage, maintenance and handling of the Products. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates. **INSTALLATION, MAINTENANCE, REPAIR, SERVICE, OR ALTERATION OF THE PRODUCTS PERFORMED BY ANYONE OTHER THAN A SELLER AUTHORIZED PARTY, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS. THE OBLIGATIONS CREATED BY THIS WARRANTY TO REPAIR OR REPLACE A DEFECTIVE PRODUCT AND/OR RE-PERFORM SERVICES SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT OR SERVICE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.** In no event will Seller's aggregate liability under warranty exceed the price paid by Buyer for the defective Product or Service. Products supplied by Seller that are obtained by Seller from a third party supplier are not warranted by Seller. At its discretion and to the extent Seller is permitted, Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the third party supplier.
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15. Limitation of Liability. Notwithstanding anything to the contrary contained herein, Seller's aggregate liability for any claim of any kind shall not exceed the price paid by Buyer for the products giving rise to such claim. **IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, LIQUIDATED, OR CONSEQUENTIAL DAMAGES HOWSOEVER ARISING OUT OF SELLER'S PERFORMANCE (OR NON- PERFORMANCE) OF THE CONTRACT AND NOTWITHSTANDING WHETHER BUYER MAY HAVE BEEN ADVISED OR IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

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17. Miscellaneous. (a) Any legal claim shall be controlled under the laws of the state of the Seller's primary place of business. Seller and Buyer agree to accept and be bound by the exclusive jurisdiction of the federal and state courts thereof. The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (b) In the event that any one or more provisions contained in these terms shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect. (c) Seller's failure to enforce or waiver of a breach of any provision contained herein shall not constitute a waiver of any other breach or of such provision. (d) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other. (e) Buyer may not assign or delegate any rights or obligations without Seller's prior written consent. (f) Seller reserves the right to place a Lien and notifications of liens should Seller not be paid for equipment and or services provided hereunder. (g) Buyer agrees that all pricing, discounts, data, design and technical information, operations/maintenance manuals, testing procedures, drawings, schematics and any other information regarding the Products or Seller's processes provided by Seller to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (a) keep such information confidential and not disclose such information to any third party, and (b) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public.