

## GLOBAL TERMS AND CONDITIONS OF SALE

**1. Applicability.** These Global Terms and Conditions of Sale (these “**Terms**”) are the only terms that govern the sale of goods (“**Goods**”) and the licensing of Software (defined below) by the seller (“**Seller**”) to the buyer (“**Buyer**”), each of which is identified in the accompanying quotation, credit application, proposal, order acknowledgement, or invoice (the “**Sales Confirmation**”). The Goods and the Software are referred to herein collectively as the “**Products**”. These Terms and the Sales Confirmation comprise the entire agreement between the parties (collectively, this “**Agreement**”) and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s general terms and conditions of purchase, regardless whether or when Buyer submitted its purchase order or such terms. Seller’s fulfillment of Buyer’s order does not constitute, and shall not be deemed to constitute, acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms.

**2. Cancellation.** Cancellation or modifications of orders are subject to Seller’s prior written consent in each instance.

**3. Price.** Unless otherwise set forth in the Sales Confirmation, the price of the Products is based on the prices quoted in Seller’s product catalog, which are subject to change without notice. Prices in any Sales Confirmation are subject to change upon notice to Buyer at any time before the quotation or proposal has been accepted. At any time prior to shipment, prices for Products may be adjusted by Seller, upon notice to Buyer, to reflect any increase in Seller’s cost of raw materials (e.g., steel, aluminum), inability to secure Products, changes in law, labor, taxes, duties, tariffs or quotas, acts of Government, any similar charges, or to cover any extra, unforeseen and unusual cost elements, incurred by Seller, regardless of the acceptance or issuance of a Sales Confirmation. All stated prices are exclusive of any taxes, fees, duties, tariffs and levies or other similar charges imposed and/or enacted by a government, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement (collectively, “**Taxes/Excluded Items**”). Any Taxes/Excluded Items related to the Products

purchased pursuant to this Agreement are the responsibility of Buyer (excluding taxes based on Seller’s net income), unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. If possible, Seller will bill Taxes/Excluded Items as a separate item on the invoice presented to Buyer. If any exemption certificate presented by Buyer is held to be invalid, then Buyer shall pay Seller the amount of the Tax and any penalties and interest related thereto. At any time prior to shipment, Seller shall be entitled to an increase in time and money for any costs that it incurs directly or indirectly that arise out of or relate to changes in Taxes/Excluded Items.

**4. Payment; Taxes.** Unless otherwise set forth in the Sales Confirmation, Buyer shall pay all invoiced amounts within thirty (30) days following the date of Seller’s invoice. Invoices shall be paid via electronic delivery via EFT/ACH in accordance with written instructions separately provided by Seller (as may be updated by Seller in writing from time to time), unless an alternative payment method is agreed to by Seller in writing. Buyer shall confirm Seller’s payment instructions with their Seller account representative prior to making payment, and Buyer shall bear the risk of loss for payments made using unauthorized instructions. Invoice disputes must be identified in writing within twenty-one (21) days of the date of invoice. Payments of any disputed amounts are due and payable upon resolution. All other amounts remain due within thirty (30) days. Failure to make payments when due hereunder will give Seller, without prejudice to any other right or remedy, the right to: (i) stop performing any services provided hereunder, withhold deliveries of any Products and other materials provided hereunder, terminate or suspend any Software licenses provided hereunder, and/or terminate this Agreement; (ii) charge Buyer interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Seller’s reasonable costs of collection (including legal fees and expenses); and (iii) require that all future Products orders are paid for on a cash-in-advance basis only. In the event Buyer’s failure to make payments when due hereunder, all outstanding balances of Buyer will be immediately due and payable. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller’s breach, bankruptcy, or otherwise. Buyer’s

entitlement to receive any rebate or other incentive that Seller may offer from time to time shall be conditioned on Buyer timely paying all invoices and other amounts owed by Buyer to Seller during the period to which the rebate or other incentive relates. In the event that Buyer provides a payment without designating the invoice(s) to which such payment is to be applied, Seller may apply such payment to such invoice(s) or other amounts owing by Buyer to Seller as Seller may determine in its sole discretion. **In the event that Buyer does not use any portion of a credit (including any rebate credit) within (90) days of its issue date, then Seller shall be entitled to apply such credit against any invoice(s) or other amounts owing by Buyer to Seller. All credits (including rebate credits) shall expire if not used within one hundred eighty (180) days of its issue date.**

## 5. Delivery; Shipping.

(a) Seller will deliver the Products within a reasonable time after receiving Buyer's purchase order, subject to their availability. Seller shall not be liable for any delays, loss, or damage in transit. Unless otherwise set forth in the Sales Confirmation, Seller shall deliver the Products, EX WORKS (Incoterms® 2020) at the location specified in the Sales Confirmation (the "**Delivery Location**"), using Seller's standard methods for packaging and shipping same. Buyer shall take delivery of the Products within three (3) days of Seller's notice that the Products have been delivered to the Delivery Location. If Buyer fails to take delivery of the Products within this three (3) day period Buyer shall pay Seller for the Products and all storage expenses incurred by Seller. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products 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.

(b) The quantity of any installment of the Products, as recorded by Seller on the dispatch from Seller's place of business, is conclusive evidence of the quantity received by Buyer upon delivery, unless Buyer provides conclusive evidence to the contrary. Seller shall not be liable for any non-delivery of the Products to the Delivery Location, unless Buyer gives written notice to Seller of such non-delivery within five (5) days following the date that Buyer would, in the ordinary course of business, have received the Products. Seller's liability for any non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the

actual quantity delivered.

## 6. Title; Risk Of Loss.

(a) Title passes to Buyer upon delivery of the Products at the Delivery Location. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on, and security interest in, and to all of the right, title, and interest of Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Uniform Commercial Code as adopted in the State of Wisconsin. Seller may, in its reasonable discretion, register such security interest in the applicable official registers of any national or local jurisdiction where the Products are delivered or physically located, and Buyer shall execute all documents and take all actions as Seller reasonably requests to enable Seller to exercise its security rights under this section.

(b) Risk of loss or damage to the Products passes to Buyer in accordance with the applicable Incoterm. If Buyer fails to accept delivery of any of the Products on the date set forth in Seller's notice that Seller has delivered the Products to the Delivery Location, or if Seller is unable to deliver the Products to the Delivery Location on such date because Buyer has failed to provide appropriate instructions, documents, licenses, or authorizations, then: (i) risk of loss to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered to Buyer; and (iii) Seller, at its option, may store the Products until Buyer takes possession of them, at which time Buyer shall be liable for all costs and expenses resulting from such failure (including but not limited to the cost of storage and insurance).

## 7. Inspection; Rejection of Products.

(a) As used in this Section 7, "**Nonconforming Products**" means only the following: (i) the items shipped are different from those identified in Buyer's purchase order; or (ii) the labels or packaging of the items incorrectly identifies them. Buyer shall inspect the Products within five (5) days following receipt thereof (the "**Inspection Period**"). If, prior to the end of the Inspection Period, Buyer fails to notify Seller in writing of any Nonconforming Products and to furnish Seller such written evidence or other documentation as reasonably required by

Seller, then Buyer will be deemed to have accepted the Products.

(b) If Buyer timely and properly notifies Seller of any Nonconforming Products, then Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products or (ii) credit or refund the purchase price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at Seller's expense and risk of loss, the Nonconforming Products to the Delivery Location. If Seller exercises its option to replace Nonconforming Products, then after receiving Buyer's shipment of Nonconforming Products pursuant to Seller's instructions, Seller shall, at Seller's expense and risk of loss, deliver the replaced Products to the Delivery Location.

(c) Buyer acknowledges and agrees that the remedies set forth in this Section 7 are Buyer's exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this Section 7, Buyer has no right to return the Products to Seller without Seller's written authorization

## **8. Limited Warranty.**

(a) The limited warranty (the "Limited Warranty") for the Goods is provided in a Limited Warranty statement included with the Goods; if no Limited Warranty statement is included with the Goods, the Limited Warranty statement for the Goods is available at [www.johnsoncontrols.com/buildingswarranty](http://www.johnsoncontrols.com/buildingswarranty). Goods not manufactured by Seller or bearing its nameplate are not covered by the Limited Warranty. Instead, such third party Goods made available with Seller Goods shall be covered by their own manufacturer's warranty.

(b) The limited remedies described in the Limited Warranty are the sole and exclusive remedy and Seller's sole responsibility under such limited warranty. Except as specified in the Limited Warranty, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER MAKES NO (AND SPECIFICALLY DISCLAIMS ALL) REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, ANY WARRANTY ARISING OUT

OF ANY COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AND THAT ANY PORTION OF ANY SOFTWARE (INCLUDING WITHOUT LIMITATION FIRMWARE) WILL OPERATE UNINTERRUPTED, BE FREE OF ALL ERRORS AND MALICIOUS CODE, BE SECURE FROM MALICIOUS ACTIVITY, OR THAT DEFECTS IN ANY SUCH SOFTWARE WILL BE CORRECTED. SELLER SHALL NOT BE RESPONSIBLE FOR PROBLEMS CAUSED BY CHANGES IN THE OPERATING CHARACTERISTICS OF THE DEVICE(S) UPON WHICH ANY SOFTWARE (INCLUDING WITHOUT LIMITATION FIRMWARE) IS OPERATING, OR FOR PROBLEMS IN THE INTERACTION OF ANY SUCH SOFTWARE WITH NON-SELLER SOFTWARE OR HARDWARE PRODUCTS. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING EXCLUSIONS AND LIMITATIONS. IN SUCH AN EVENT, SUCH EXCLUSION AND LIMITATION WILL NOT APPLY SOLELY TO THE EXTENT PROHIBITED BY APPLICABLE LAW AND THE DURATION OF ANY IMPLIED WARRANTIES WILL BE LIMITED TO THE DURATION OF THE LIMITED WARRANTY. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL SELLER, ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUPPLIERS, AND LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL, OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, INTERRUPTION, LOSS OF DATA, OR ANY OTHER PECUNIARY LOSS), ARISING OUT OF, BASED ON, OR RESULTING FROM THE LIMITED WARRANTY, OR THE USE OF, MISUSE OF, OR INABILITY TO USE THE GOODS, EVEN IF SELLER (AND ITS AFFILIATES AND ITS AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUPPLIERS, AND LICENSORS) HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING DAMAGES INCURRED BY THIRD PARTIES), AND SELLER'S (AND ITS AFFILIATES' AND ITS AND THEIR OFFICERS', DIRECTORS', EMPLOYEES', AGENTS', CONTRACTORS', SUPPLIERS', AND LICENSORS') TOTAL CUMULATIVE LIABILITY ARISING OUT OF, BASED ON, OR RESULTING FROM THE LIMITED WARRANTY OR THE GOODS IS LIMITED TO THE AMOUNT ACTUALLY PAID FOR THE APPLICABLE GOODS BY THE BUYER.

(c) Buyer is solely responsible for the establishment, operation, maintenance, access, security and other aspects of Buyer's or its customer's computer network, as well as network performance and compatibility issues.

(d) In the event that Buyer fails to timely pay for any Goods provided by Seller, then notwithstanding to the contrary herein or in any Limited Warranty statement for the Goods, the Limited Warranty for JOHNSON CONTROLS, INC. such Goods shall expire thirty (30) days from the date of first purchase by the Buyer.

**9. Indemnification.** Buyer shall defend, indemnify, and hold harmless Seller and its parent company, their respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) arising out of or occurring in connection with any breach of these Terms or the negligence or willful misconduct of Buyer or its employees or agents, including but not limited to: (i) any misuse or modification of the Products by Buyer or its employees or agents, (ii) any act (or failure to act) by Buyer or its employees or agents in contravention of any safety procedures or instructions that Seller provides to Buyer or its employees or agents, or (iii) the failure to store, install, operate, or maintain the Products in accordance with the Instructions.

#### **10. Infringement.**

(a) Seller will defend, at its own expense, any action against Buyer brought by a third party to the extent that the action is based upon a claim that the Products infringe any U.S. patents or copyrights, or misappropriate any trade secrets, of a third party. Seller will pay those costs and damages finally awarded against Buyer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action.

(b) The foregoing obligations are conditioned on Buyer (i) notifying Seller promptly in writing of such action, (ii) making no admission of liability and giving Seller sole control of the defense thereof and any related settlement negotiations, and (iii) cooperating and, at Seller's request and expense, assisting in

such defense.

(c) If the Products become, or in Seller's opinion are likely to become, the subject of an infringement claim, Seller may, at its option and expense, either (i) procure for Buyer the right to continue using such Products, (ii) replace or modify such Products so that they become non-infringing, or (iii) accept return of such Products and refund Buyer the amounts actually paid by Buyer to Seller for such Products.

(d) Notwithstanding the foregoing, Seller will have no obligation under this Section 10 or otherwise with respect to any infringement claim based upon any: (i) misuse or modification of the Products by Buyer or its employees or agents, (ii) use of the Products in combination with other materials, Products, products, or services for which the Product were not intended to be used, (iii) failure of Buyer to implement any update provided by Seller that would have prevented the claim, (iv) Products that Seller made to Buyer's specifications or designs.

**(e) THIS SECTION 10 STATES SELLER'S ENTIRE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.**

#### **11. Limitation of Liability.**

**(a) IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA AND OTHER LOSSES ARISING FROM VIRUSES, RANSOMWARE, CYBER ATTACKS OR FAILURES OR INTERRUPTIONS TO NETWORK SYSTEMS, AND COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE PRODUCTS SHALL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE PRODUCTS GIVING RISE TO THE CLAIM.**

(b) The limitation of liability set forth in this Section 11 shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

**12. Design Changes.** Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Buyer.

**13. No License; Software Terms**

(a) The sale of the Products shall not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all such rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Seller.

(b) Software provided hereunder is licensed not sold. Seller retains all right, title and interest in and to the Documentation and the Software, except to the extent of the limited license set forth in this Agreement. Subject to all the terms and conditions of this Agreement, Seller hereby grants to Buyer, a nonexclusive, nontransferable license during the Term:

- i. to distribute the Software and the Documentation solely to End Users in the Territory that have executed a EULA;
- ii. to reproduce and use the Software on Buyer controlled computer systems solely for sales and marketing purposes and to the extent necessary to provide technical support to End Users; and
- iii. to use and copy the Documentation in support of Buyer's licensed use of the Software.

In the event that Buyer fails to timely pay any license or other fees in respect of Software when due, then the foregoing licenses shall automatically expire without notice and be of no further force or effect.

(c) If permitted by applicable law, an End User may execute the required EULA electronically upon installation or initial operation of the applicable Product. If Buyer installs Software or a Product containing Software on behalf of an End User, Buyer shall ensure that such End User reviews and accepts the applicable EULA. Buyer shall, upon request by Seller, provide commercially reasonable assistance to enable Seller to verify that End Users are complying with the applicable EULA. Any use, modification, or distribution of the Software or Documentation by Buyer outside the scope of the licenses granted herein is expressly prohibited.

Buyer shall ensure that each copy it makes of the Software or Documentation contains the same proprietary notices that appear on or in the same as provided by Seller to Buyer and as otherwise reasonably required by Seller. Other than in accordance with this Agreement, Buyer will not, and will not knowingly permit others to [i] lease, license, sublicense, transfer, or assign any of its rights under this Agreement, [ii] sell, rent, or distribute the Software, including providing access to the Software or using the Software to operate a service bureau or on a timesharing basis, or [iii] use, copy, duplicate, or otherwise reproduce all or any part of the Software or Documentation.

(d) Software Definitions. "End User" means a Buyer customer or Subdistributor customer that has been granted a license to use the Software for its own use and not for transfer or resale. "EULA" means Seller's then current end-user software license agreement setting forth the terms and conditions of an End User's permitted use of the applicable Software. A copy of the current EULA is available at [www.johnsoncontrols.com/buildings/legal/digital](http://www.johnsoncontrols.com/buildings/legal/digital).

"Documentation" means all user documentation pertaining to the use of the Software and provided by Seller hereunder. "Software" means software provided hereunder either as a Product on a stand-alone basis or as object code and/or firmware contained in a Good.

**14. Termination.** In addition to any other remedies that Seller may have, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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.

**15. 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, that Seller discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, solely for the use of performing the 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 15, without having to post bond or establish the insufficiency of a remedy at law. This Section 15 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 Seller on a non-confidential basis from a third party.

**16. Excusable Delay/Force Majeure.** Seller shall not be liable nor in breach or default of its obligations under the Contract to the extent its performance of such obligations is delayed, hindered, or prevented, in whole or in part, directly or indirectly, due to causes beyond its reasonable control, whether foreseeable or unforeseeable, including, but not limited to, acts of God, fires, floods, or other natural disasters (declared or undeclared), terrorism, war (declared or undeclared), armed conflict (or the serious threat of same), plagues, epidemics, pandemics, quarantines, or other public health risks and/or responses thereto, insurrection, civil disturbances, insurrection, riots, mob violence, acts or omissions of Buyer or Buyer's suppliers or agents, any act (or omission) by any governmental authority (including any change of law or regulation), strikes, lock-outs, differences with workers, accidents, labor disputes, transportation shortages, the unavailability or shortage(s) of labor, energy, materials, production facilities, transportation, or shipping, cyber-attacks, viruses, ransomware, failures or interruptions to network systems, data breaches, vendor non-performance, or any other cause, casualty, or excusable delay beyond Seller's reasonable control, whether similar or dissimilar to any of the foregoing.

Upon the occurrence of a force majeure or other excusable delay, Seller's performance or delivery date shall be extended for a period equal to the duration of the force majeure event or time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If the delay is due to any acts or omissions of Buyer, or Buyer's agents, contractors or suppliers, Seller shall be entitled to both an equitable performance and price adjustment. If Seller incurs increased cost by reason of delay not attributable to any act or omission of Buyer (including but not limited to extended warehouses and storage fees, labor wages, etc.), the increased cost shall be distributed equitably between Seller and Buyer, or the Contract shall be cancellable at Seller's election.

**17. Compliance.** Each party shall comply with all

applicable laws, regulations, and ordinances. Without limiting the foregoing, in no event shall Buyer take any action(s) contrary to the export and import laws and regulations in effect as of the date of shipment of the Products of any country involved in the transactions contemplated by the Agreement.

## **18. Governing Law and Jurisdiction.**

**(a)** If both parties are US residents, all matters arising out of or relating to these Terms are governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Wisconsin. Any legal suit, action or proceeding arising out of or relating to these Terms will be instituted in the federal or State courts located in the City of Milwaukee, Wisconsin. Each party irrevocably submits to the exclusive jurisdiction of the courts in any suit, action or proceeding. In the event the matter is submitted to a court, Seller and Buyer hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury in any litigation. **THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DOES NOT APPLY TO THESE TERMS OR THE DOCUMENTS RELATED HERETO AND IS HEREBY EXPRESSLY DISCLAIMED BY SELLER AND BUYER.**

**(b)** If neither party is a Chinese entity and Seller is not a U.S. entity, then any controversy or claim arising out of or relating to this Agreement including, but not limited to, its breach, existence, validity, legality, enforceability, interpretation, performance, nullity, termination or expiration, (a "**Controversy**") will be settled by binding arbitration; and notwithstanding its place of execution or performance, this Agreement will be governed by, and construed under and in accordance with, the Laws of the State of New York, USA, irrespective of any laws regarding choice or conflict of laws that direct the application of the laws of another jurisdiction. The place of arbitration will be New York, New York, under the rules prescribed by the International Centre for Dispute Resolution ("**ICDR**") in accordance with its ICDR Rules. Unless the parties agree to a single arbitrator, the arbitration will be heard and determined by three arbitrators, who will be appointed pursuant to the ICDR Rules. The arbitration proceedings will be conducted in the English language. The award will be rendered in writing with the reasons detailed. The award may be

in the nature of money damages, injunctive relief, or specific performance as decided by the arbitrator. Either party may initiate arbitration by notifying the other in writing. The arbitrator's ruling and award from such arbitration is final; the parties consent to judgment upon the award; and the award may be entered in any court of competent jurisdiction.

**(c)** If either party is a Chinese entity, the laws of China govern this Agreement, irrespective of any laws regarding choice or conflict of laws that direct the application of the laws of another jurisdiction. The Controversy will be submitted to the China International Economic and Trade Arbitration Commission in Shanghai ("**CIETAC**") for final resolution by arbitration in accordance with the rules and procedures of CIETAC. The CIETAC tribunal will consist of three (3) arbitrators. The parties will at all times comply with, and observe all requirements and rulings of, CIETAC made in relation to any Controversy submitted to CIETAC for resolution. Submission of evidentiary documents may be in copies without the need of notarization unless specifically ordered by the CIETAC tribunal. Any interim decisions or orders by the CIETAC tribunal will be binding, and sanctions may be given on failures of any party in implementing such interim decision or order. Any award or determination by the CIETAC tribunal is final and binding on both parties. The arbitration proceedings will be conducted in the English language. The United Nations Convention on Contracts for the International Sale of Products does not apply to the Agreement or the documents related thereto.

**19. Choice of Language.** It is by the express intention of the parties hereto that the present Agreement and all its related documents be drafted in English. *Il est de l'intention expresse des parties à la présente Convention (connaissance, bon de commande, bon de conditionnement ou facture) et tout document s'y rattachant soient écrit en langue anglaise.*

**20. Survival.** In addition to any other term whose context may so require, the terms contained in Sections 1, 4, 6, 7, 8, 9, 10, 11, 15, 18, 19, 20, and 21 will survive any cancellation of the Sales Confirmation.

**21. Miscellaneous. A)** Buyer acknowledges that is has not been induced to purchase any the Products from Seller by any representation or warranty not

expressly set forth in this Agreement. These Terms and the Sales Confirmation constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter. None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references these Terms and states that it modifies them. If there is a conflict between the provisions of the Sales Confirmation and these Terms, then the terms of the Sales Confirmation shall govern. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Section headings contained in these Terms are intended for convenience of reference only and shall not affect the interpretation of any provision. If any provision of this Agreement is held to be prohibited or unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Buyer may not assign this Agreement or any quotation or order for the Products, in whole or in part, without Seller's prior written consent.

**B)** Seller expressly disclaims any requirement, understanding or agreement, whether express or implied, contained in any Buyer purchase order, shipping release form, policy, code of conduct or elsewhere, that any of Seller's personnel be vaccinated against Covid-19 under any federal, state or local law, regulation or order applicable to government contracts or subcontracts, including, without limitation, Presidential Executive Order 14042 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors") and Federal Acquisition Regulation (FAR) 52.223-99 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors"), unless and solely to the extent that such requirement is expressly set forth in a written agreement manually signed by an authorized officer of Seller.