

Speedgoat Inc. – Terms and Conditions of Sale

1. TERMS OF SALE

As used herein, the term “Seller” shall mean Speedgoat Inc., and the term “Buyer” shall mean any person, firm or corporation executing a purchase order for goods, sold by Seller (hereinafter “Products”). The term “Quotation” shall mean any price quotation provided in writing by Seller.

The following terms, together with (i) such terms set forth on the face of Seller’s offer and/or order acknowledgment, or order confirmation; (ii) such plans, specifications, or other documents incorporated by reference in the Seller’s offer, and/or order acknowledgment, or order confirmation; and (iii) such additional terms approved in a signed writing by an authorized representative of Seller, shall constitute the entire contract with respect to any transaction between Seller and Buyer. THE CONDITIONS SET FORTH HEREIN SHALL TAKE PRECEDENCE OVER ANY OTHER CONDITIONS AND NO CONTRARY, ADDITIONAL OR DIFFERENT PROVISIONS OR CONDITIONS SHALL BE BINDING ON SELLER UNLESS EXPRESSLY ACCEPTED BY SELLER IN WRITING. Mere issuance of a form by or on behalf of Buyer containing different or additional provisions shall not constitute a specific objection. An order shall not be effective until such date when Seller shall have accepted it in writing (the “Effective Date”). Seller’s acceptance of Buyer’s order shall not constitute an acceptance of printed provisions on any form supplied by Buyer which are different from or additional to any term hereof, unless specifically accepted in writing by an authorized representative of Seller, and such different or additional provisions are hereby expressly rejected.

2. ORDER PROCESS

Any inquiry by Buyer regarding the sale of Products by Seller to Buyer, whether styled as an order or presented in any other format, shall be deemed to be a request for a Quotation (“RFQ”). Seller shall not be obliged to issue any Quotation in response to any RFQ but will generally respond to RFQs within reasonable time. Any Quotation made by Seller either directly or by an authorized sales representative of Seller shall expire thirty (30) days after issuance, and may be withdrawn by written notice at any time during this period, unless the relevant offer shall have been accepted in writing by Buyer. Seller’s Quotation does not include any field support services unless specifically set forth in the Quotation.

Orders are placed directly with Seller via email, letter, or facsimile. Orders shall reference the Quotation and include shipping and billing addresses, purchase order number, and name, telephone number, facsimile number, or email address of a contact person.

Seller’s obligations shall not commence until the Effective Date.

If a new development is included in an order or the execution of any order depends upon successful completion of new development, Seller reserves the right

to reject such an order if, in Seller’s opinion, the development cannot be completed successfully, without incurring any obligation to Buyer. If the order is for the development of a single or customized unit (“Prototype”), Seller reserves the right to reject or cancel that part of the order that covers the Prototype. Seller will identify any such Prototype in its Quotation to the best of its ability.

3. DELIVERY

Unless a specific carrier and/or a method of shipment and/or routing are agreed upon, Seller will select a common carrier, such as Federal Express, UPS or DHL and/or the routing, as the case may be, to deliver the Products. Products may be shipped from Seller’s location or other locations where Seller maintains a warehouse or from Seller’s manufacturing site (collectively, “Seller’s Location”). If Seller is delivering the goods from a location outside the United States, Seller will be the Importer of Record and Buyer the Ultimate Consignee.

The delivery time is calculated from the Effective Date. Delivery dates are approximate and given as best estimates but are not guaranteed. If Seller fails to comply with designated, binding or other delivery dates, makes partial shipments, or fails to perform its obligations in accordance with any time limits, Seller shall not incur any liability whatsoever for any direct, indirect, consequential, incidental, special, exemplary or punitive damages (including claims for loss of profits, revenue, time, ingredients or products) which may be incurred by Buyer or any other person or entity.

The time of delivery shall depend on the agreed delivery terms, such as DAP, DDP, or FCA, and is deemed to occur in accordance with those terms. Unless explicitly agreed otherwise, the carrier shall not be considered an agent of Seller, and Seller assumes no liability for shipment, including risk of loss or damage to the goods in transit. Title and risk of loss or damage to the Products shall transfer from Seller to Buyer as specified by the agreed delivery terms. Seller will insure the Products against loss or damage in transit only if explicitly agreed upon in writing. For any insurance not covered by Seller or not specifically agreed upon, the Buyer shall be responsible for arranging insurance.

Partial shipments shall be allowed. However, Buyer acknowledges and agrees that the price is based on Seller shipping all Products upon completion. If multiple or partial shipments are required by Buyer, Buyer must notify Seller in advance. If multiple or partial shipments are requested after the Effective Date, Seller reserves the right to adjust the price to reflect any additional costs that Seller may incur as a result of such shipments.

Should Buyer fail to accept Products upon arrival at Buyer’s location, Seller shall be entitled to make arrangements for the storage of the Products and be entitled to charge Buyer for all storage, insurance and other costs and expenses incurred by Seller.

4. ACCEPTANCE

All Products undergo rigid quality control procedures to ensure compliance with Seller's published specifications. Buyer acknowledges that unless Seller included a specific item in its Quotation for the purposes of acceptance of the Product, Buyer may witness the standard inspection procedures at the production site, which are routinely performed prior to shipment. Buyer shall be responsible for travel and related expenses associated with attending such inspections. Seller may request that Buyer enter into a separate confidentiality agreement before visiting manufacturing sites. Factory inspections requiring special tests, documentation, or procedures not part of standard procedures, are subject to additional charges.

Buyer must inspect the Products immediately upon arrival and notify the Seller in writing of any visible defects without undue delay. Hidden defects must be reported promptly upon discovery. All Products sold by Seller hereunder shall be deemed acceptable by Buyer unless within thirty days from arrival of the Products at Buyer's location, Buyer has notified Seller in writing that such Products are damaged, defective or cannot be made operational. In such cases, acceptance shall be deemed the successful operation of Seller's Products using standard testing procedures. Any claims for shortages must be made to Seller in writing within ten (10) days from the arrival of the Products at Buyer's location.

5. SECURITY INTEREST

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 rights, title and interest of Buyer in, to and under the Products shipped, 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 and authorizes Seller or its designee to file a financing statement with the competent agency or agencies in all jurisdictions deemed relevant by Seller.

6. PRICES

All prices listed and quoted by Seller are net without any deduction whatsoever. Any additional costs, including but not limited to federal, state or local property, sales, use, excise, gross receipts or other like taxes which Seller may be required to collect or pay upon sale or delivery of its Products to Buyer shall be borne by Buyer. If charges for packing, freight, carriage, insurance, customs duties, or other additional costs are separately stated on the face of Seller's offer and/or order acknowledgment or order confirmation and included in the price stated thereon, Seller reserves the right to adjust its price should the costs on which such additional charges are based be modified. In addition, an appropriate price adjustment shall apply in case the delivery time has been subsequently extended due to any reasons stated in Section 3.

Errors are subject to correction by Seller and corrected prices shall be binding upon Buyer. Published prices and specifications are subject to change without notice, provided such changes comply with applicable law and do not affect agreed-upon contracts.

7. PAYMENT TERMS

Payment terms are specified in the Quotation; if not, the default terms below shall apply:

- (i) All payment terms are subject to Seller's credit approval at the time of acknowledgment.
- (ii) Buyer bears any shipper cancellation fees due to delivery delays, unless explicitly agreed otherwise.
- (iii) An order covering several independent Products may be delivered and invoiced in part as per functional unit and payment thereof shall be due for such unit upon presentation of invoice.
- (iv) Time is of the essence with respect to all payments. In the event of late payment, default interest of five percent (5%) per annum shall apply from the day following the payment due date until full settlement, including any accrued interest. The Seller reserves the right to suspend or terminate, at any time and for any reason, any credit terms previously extended to the Buyer. Where applicable, early payment may qualify for a discount or reduction in price, as agreed in writing between the Seller and the Buyer. The Seller's Late Payment Policy shall apply and may include administrative handling fees for payment reminders ranging from 25 to 50 in the invoiced currency, starting from the second notice.

In the event Buyer does not pay within the terms of this Contract, all collection costs incurred by Seller, including attorneys' fees will be paid by Buyer.

Unless otherwise set forth in the Quotation, the terms of payment shall be full payment by thirty (30) days after delivery and invoice date. Payments shall be via wire-transfer according to the banking information in the Invoice. Seller reserves the right to include in any Quotation a requirement for payment surety in the form of Bank Guarantee or Letter of Credit in the specific form and format acceptable to Seller.

8. CHANGES IN ORDERS

Buyer changes in orders, delivery dates, specifications, cancellations, or other alternations which affect Seller's production, engineering, or scheduling are subject to additional charges as determined by Seller.

Both parties agree and acknowledge that unless a Change Order is agreed upon in writing by both parties, the Contract shall not be modified in any manner.

9. DEFAULT AND CANCELLATION

In the event of Buyer's default in payment for the Products purchased hereunder, upon the terms and conditions agreed upon with Seller, Buyer shall be responsible for all reasonable costs and expenses incurred by Seller in collection of any sums owing by Buyer, and Seller shall not be obligated to make any further deliveries to Buyer. Such reasonable costs and expenses of Seller shall include, but not be limited to reasonable attorney's fees. Should Buyer elect to cancel its order, in whole or in part, Buyer shall be liable to Seller for reasonable cancellation charges which shall include, but not be limited to, all costs and expenses incurred by Seller in connection with procuring and filling Buyer's purchase order.

10. CONFIDENTIALITY; NO REVERSE ENGINEERING

Buyer agrees that all specifications, data, and other technical, financial, or other non-public information furnished by Seller to Buyer constitute the sole and exclusive property of Seller, are furnished solely for the purpose of Seller's performance hereunder, shall be held in strict confidence by Buyer and may not be copied, made

accessible to third parties or used without Seller's prior written consent. Buyer shall promptly return all such information and all copies thereof (in whatever format, including electronic, digital, hard copy or other medium) to Seller upon Seller's request or, if such return is impossible, destroy such information and certify such destruction to Seller in writing. Such requests may be made at any time prior to or after delivery of any Products. The obligations of Buyer hereinabove set forth shall survive cancellation or completion of any order.

Technical documents, furnished by Seller to Buyer, such as drawings, descriptions, illustrations, designs and the like, shall be deemed provided to Buyer on a confidential basis, shall remain Seller's exclusive property and shall be neither copied nor reproduced nor communicated to a third party in any way whatever nor used by Buyer for any purpose other than operation and maintenance. Technical documents submitted in connection with an offer and/or order acknowledgement or order confirmation which does not result in an order shall be returned to Seller and/or destroyed upon Seller's request. Information in technical documents shall serve as an approximate indicator only unless otherwise agreed in writing. Seller shall retain the sole and exclusive right, title and interest, copyright and any other intellectual property right in and to all documentation and information delivered to or shared with Buyer, including but not limited to all illustrations, designs and the like, which are to be promptly returned to Seller upon request and all copies which cannot be returned shall be destroyed and, upon request, Buyer shall certify such destruction. Seller shall also have all rights relating to forms, prototypes and technical solutions relating to the Products. All trademarks, copyrights, patents or other rights in or relating to any Products (including derivative works, or patent improvements relating thereto) by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either of the parties. Buyer shall not be entitled to make or have made Products by reverse engineering or otherwise using Seller's Products, or parts thereof, as a prototype or model. This prohibition includes the manufacture of such reverse engineered Products, whether independently or with or through an agent or a third party, as well as the direct or indirect participation in the distribution of such reverse engineered Products. ANY VIOLATION OF THIS SECTION SHALL BE A WILLFUL VIOLATION OF COPYRIGHT AND OTHER APPLICABLE LAWS which the Buyer acknowledges and agrees shall entitle Seller to collect statutory and other damages as well expenses, including attorneys' fees, from Buyer.

11. FORCE MAJEURE

Seller shall not be liable for any damages or penalty for delay in delivery or for failure to give notice of delay when such delay is due to the elements, acts of God, acts of the Buyer, acts of Civil or military authority priorities, acts of terrorism, fires or floods, or epidemics, quarantine, restrictions, war, riots, strikes, differences with workmen, accidents to machinery, car shortages, delays in transportation, delays in delivery by Seller's vendors, or any other causes beyond the reasonable control of the Seller. The delivery date shall be deemed extended for a period of time equal to the time lost due to any delay excusable under this clause.

12. NOTICES

Any notices given hereunder shall be in writing and shall be deemed given: (i) upon delivery, if by hand; or (ii) two (2) business days, if sent by tracked air courier (e.g., UPS,

DHL, or FedEx). All notices to Seller hereunder shall be given to Speedgoat Inc., 209 West Central Street, Suite 215, Natick, MA 01760, USA, and all notices to Buyer shall be given to such address as indicated in the relevant offer and/or order acknowledgment or order confirmation, or at such other address (or to such other person's attention), as shall be specified by like notice by the relevant party.

13. EXPORT CONTROL

Buyer acknowledges that the supplies may be subject to U.S. export control laws and regulations, as well as applicable Swiss, EU and other applicable export control laws and regulations. These laws may restrict the sale, lease, transfer, or use of the supplies for purposes other than those agreed upon without an export or re-export permit from the relevant authorities. Buyer undertakes to comply with such laws and regulations, including obtaining any required licenses or approvals at their own name and expense. Buyer also acknowledges that these laws and regulations may change over time, and agrees to comply with the most current version applicable to the purchase. Buyer is also responsible for the accuracy and completeness of any information or certification provided by Seller for purposes of export control compliance. Should any of the information related to the use of the Products change, Buyer shall promptly provide a supplemental statement disclosing any changes or new information.

14. LIMITED WARRANTY ON HARDWARE

Seller warrants that the Products delivered hereunder shall be free from defects in workmanship and material under normal use and wear in accordance with Seller's instructions and specifications for a period of twenty-four (24) months from date of delivery to the Buyer. THE WARRANTY SET FORTH IN THIS SECTION 14 SHALL BE IN LIEU OF ALL OTHER WARRANTIES ON HARDWARE, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND FITNESS FOR ORDINARY PURPOSE USED OR PURPOSE INTENDED, ARE EXCLUDED. IN NO EVENT SHALL SELLER, ITS EMPLOYEES OR SUPPLIERS BE LIABLE, EITHER DIRECTLY OR BY WAY OF INDEMNIFICATION, TO BUYER OR ANY THIRD PARTY FOR (A) AN AMOUNT EXCEEDING THE PURCHASE PRICE OF THE PRODUCT IN QUESTION AND (B) ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT OR CONSEQUENTIAL LOSSES, DAMAGES OR INJURIES regardless of whether such claim is based upon delays in delivery or payment, breach of warranty, breach of contract, strict liability, negligence, or any theory now known or hereinafter adopted by legislation or by any court. Neither Seller nor its affiliates shall be liable for any damage or loss to exposure of Products and/or their packaging to the elements (including but not limited to rain, snow, sleet, sun, wind, floods, etc.); chemicals, corrosive solvents or soils; unauthorized or improper use, maintenance, storage or repair; due to any failure to follow Seller's manuals, warnings, notices or instructions; or due to any malfeasance, recklessness or negligence by Buyer, any employee or costumer of Buyer or any other third party.

EXCLUSIVE REMEDY: In any event, the Buyer's exclusive remedy hereunder is limited to the furnishing of replacement parts on an exchange basis, or, at the option of Seller, to the repair or replacement of defective

Products or replacement parts at one of Seller's locations, but in either case only if the defective Product or part has been submitted to Seller during the period of warranty. The Buyer accepts and acknowledges that the foregoing allocation of risk is reflected in the purchase price.

The parties further agree that if any portion of the foregoing exclusion of damages is held to be voidable or void by reason of public policy or unenforceable for any other reason whatsoever, all remaining portions of the foregoing exclusion shall continue in effect.

THE WARRANTY SET FORTH ABOVE DOES NOT EXTEND TO: Any systems which have been damaged or rendered defective as a result of accident, misuse, or abuse; by the use of parts not manufactured, authorized or sold by Seller; by modification or as a result of service by anyone other than Seller; systems not containing original components or original replacement of components; damage during shipment, unless due to incorrect packaging by Seller; systems which fail or are damaged after delivery due to shipment, handling, storage, operation, use or maintenance in manner or environment not conforming to any published instructions or specifications issued by Seller.

In-warranty repaired, or replacement parts or Products are covered by warranty only for the remaining unexpired portion of the original warranty period applicable to the repaired or replaced parts or Products. In other words, repair or replacement of Products or parts under warranty does not extend the original warranty period.

Products that are no longer part of the regular sales offering are classified as EOL (end-of-life) and are repaired on a best-effort basis.

15. LIMITED WARRANTY ON SOFTWARE

Delivery by default includes a twelve (12) months limited warranty on Seller's software ("Speedgoat Software") from the date of delivery, unless applicable law defines a specific warranty period that supersedes this term. During this period, Seller warrants that each software copy will, in all material respects, meet the functionality described in the software documentation and as reasonably expected based on the feature descriptions provided in the hardware reference manuals. Additionally, during the same period, Seller warrants compatibility with the then-current version of Simulink Real-Time™ in all material respects, provided the software is used in conjunction with Speedgoat hardware as specified in the Speedgoat End-User License Agreement (EULA).

If the software does not operate as warranted or is missing features that could reasonably be expected based on the software documentation or hardware reference manuals, Buyer's exclusive remedy and Seller's sole liability under this warranty shall be: (i) The correction or workaround of the defect, or (ii) The implementation of the missing features, as technically feasible, within a reasonable timeframe determined by Seller.

If such correction, workaround, or implementation is deemed impractical, Seller may, at its sole discretion, terminate the relevant contract and refund the initial fee paid by the Buyer.

EXCLUSIONS: This warranty does not cover defects or performance issues caused by:

- (i) Use of software with third-party hardware or systems not supplied by Seller,

- (ii) Modification, misuse, or unauthorized use of the software, or
- (iii) Failure to comply with the Speedgoat EULA or software documentation.

Seller does not warrant that the software will operate uninterrupted or error-free. All implied warranties, including but not limited to warranties of merchantability and fitness for a particular purpose, are expressly disclaimed, as detailed in the Speedgoat EULA.

16. SYSTEMS SOFTWARE MAINTENANCE AND SUPPORT SERVICES

Delivery of Seller systems and hardware/software components by default include twelve (12) months of Systems Software Maintenance and Support Services. Subscription to Systems Software Maintenance and Support Services includes access to Seller tools and driver software compatible with future releases of MathWorks software and professional technical support by phone and e-mail.

Subscription to Systems Software Maintenance and Support Services does not include free updates of existing custom implementations (FPGA bitstreams).

Software Maintenance and Support Renewal

For uninterrupted Systems Software Maintenance and Support Services in subsequent years, Buyer may opt to renew its subscription annually to maintain its investment. Reinstatement after a lapsed subscription is available upon request, but incurs back maintenance charges of up to six (6) months. Staying subscribed is the most cost-effective way to access latest software advances and technical support.

17. USE OF SPEEDGOAT SOFTWARE

LEGAL INFORMATION ABOUT THE USE OF SPEEDGOAT SOFTWARE: Speedgoat Software is optimized for use with hardware purchased from Seller and may be used only in conjunction with the hardware (identified by serial number) for which the Software is purchased. Access to the Speedgoat Software is limited to hardware with an active subscription to Systems Software Maintenance and Support Services.

Terms and Conditions for Software Components: The use of all Seller's software components, including tools and drivers, is subject to the Speedgoat EULA. Non-compliance with the EULA, including restrictions on sublicensing, reverse engineering, or unauthorized modifications, may void the Buyer's warranty and software access rights.

18. RETURN

Buyer shall not return any Product without Seller's prior written consent. An R.M.A. (Return Material Authorization) number issued by Seller must accompany all returned material. An RMA number can be obtained by contacting Seller's support department via following link: www.speedgoat.com/company/contact-us-support

Within Warranty, Products returned and needing corrective repair are serviced at no-charge in accordance with the terms of Seller's Warranty policy.

Repairs on out-of-Warranty Products are performed at Buyer's expense.

Please pack the returned Products in their original shipping cartons, or in equivalent strong protective shipping cartons. Shipping costs, excluding import duty fees, from Buyer to Seller associated with warranty repairs or replacements shall be borne by the Buyer. Shipping costs, excluding import duty fees, for the return of repaired goods from Seller to Buyer shall be borne by Seller.

19. SUBSTITUTIONS AND MODIFICATIONS

The Seller reserves the right to substitute or modify specifications of equipment to incorporate improvements, address End-of-Life (EOL) components, or ensure supply chain continuity, provided such changes do not materially or adversely affect the performance or functionality of the equipment.

20. INDEMNITY

Buyer shall indemnify, defend, reimburse and hold Seller and its sales representatives harmless from and against all costs, losses, liabilities, damages and expenses (including attorneys' fees and expenses), arising out of or resulting from (i) any breach by Buyer of any of its obligations hereunder or (ii) any actual or threatened claim, demand, action or proceeding initiated by any third party arising out of or resulting from any act or omission of Buyer.

21. COPYRIGHT AND TRADEMARKS

Seller and its affiliates shall retain all rights and exclusive ownership of its Products, including but not limited to intellectual property rights, copyrights, trademarks, patents and trade secrets, schematics, logic diagrams, and manufacturing processes and know-how, and to all changes and modifications, funded by Seller or funded by Buyer's purchase order. Seller expressly retains ownership and does not convey, nor does Buyer's or Buyer's final customer obtain any right, title, or interest in, software or firmware, specifications or data furnished or developed by Seller, whether before, during, or after performance of this or any related contract.

Buyer shall not be entitled to make or have made Products by reverse engineering or otherwise using Seller's Products, or parts thereof, as a prototype or model. This prohibition includes the manufacture of such reverse engineered Products, whether independently or with or through an agent or a third party, as well as the direct or indirect participation in the distribution of such reverse engineered Products. ANY VIOLATION OF ANY PART OF THIS SECTION SHALL BE A WILLFUL VIOLATION OF COPYRIGHT AND OTHER LAWS, Buyer acknowledges and agrees that such violations shall entitle Seller to collect statutory and other damages as well expenses, including attorneys' fees, from Buyer.

22. GOVERNING LAW; DISPUTE RESOLUTION - BINDING ARBITRATION

The law governing these Terms and Conditions of Sale, any related agreement, and the relationship between Seller and Buyer shall be the laws of the Commonwealth of Massachusetts excluding any conflict of laws rules. The

United Nations Convention on Contracts for the International Sale of Goods (CISG; the Vienna Convention) is hereby excluded from application to the Contract.

All claims, disputes or controversies (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present, or future) arising out of or relating to:

- (i) these Terms and Conditions of Sale;
- (ii) any advertisement, promotion, or proposal relating to these Terms and Conditions of Sale, or
- (iii) the relationship which results from these Terms and Conditions of Sale (including relationships with third parties who are not party to these Terms and Conditions of Sale) (collectively "Claims")

will be resolved, first, by a formal mediation conducted by an experienced mediator mutually agreed upon by Buyer and Seller, and, if mediation should fail to resolve the claim or dispute, secondly, by reference to and determination by binding arbitration governed by Federal Arbitration Act and administered by the American Arbitration Association under its rules for the resolution of disputes, or under other mutually agreed procedures. Any such proceedings under mediation or arbitration shall be conducted in Boston, Massachusetts in the United States of America, and the proceedings shall be conducted and all submissions of the parties and rulings of the arbitrator(s) shall be in the English language. Notwithstanding the rules of the arbitral body, the parties agree that (a) any arbitration proceeding shall be presided over by a neutral arbitrator selected by the parties who shall be admitted to the practice of law and be in good standing or in retirement status in the jurisdiction where the proceeding is held, (b) guidelines for "discovery" of facts through document production and deposition of witnesses by the parties shall be delineated by the arbitrator in writing, conducted in an orderly manner, conducted over a fixed period not to exceed 90 days - and failures to reasonably comply shall be subject to summary process in a court of law in the jurisdiction where the arbitration is being conducted, (c) the decision of the arbitrator shall be based on the relevant and credible facts as presented into evidence and (d) the arbitrator shall prepare a written memorandum of decision setting forth the findings of fact and conclusion of law.

Because this method of dispute resolution is personal, individual and provides the exclusive method for resolving such disputes, Buyer further agrees, to the extent permitted by applicable laws, to waive any right to commence or participate in any class action or class-wide litigation or arbitration against Seller related to any Claim. BOTH PARTIES WAIVE THE RIGHT TO A JURY TRIAL.

Buyer agrees that in the event of any breach of the Contract by Buyer that may cause irreparable harm to Seller for which an award of money damages is insufficient relief, Seller may, in addition to any remedies which Seller may have available to it, pursue injunctive or other equitable relief in a court of competent jurisdiction to prevent or curtail any breach by Buyer of its obligations to be performed under the Contract. All remedies provided to Seller under the Contract are cumulative, and may be exercised by Seller singularly or in conjunction with other available remedies, from time to time and at any time.

This provision shall survive the termination of the Contract governed by the Terms and Conditions of Sale.

23. MISCELLANEOUS

The invalidity or unenforceability of any one or more of the terms and conditions of this form shall not affect the validity or enforceability of the remaining provisions hereof. In such cases, the invalid or unenforceable provision shall be replaced by a valid provision that most closely reflects the intended purpose of the original provision, to the extent permitted by applicable law. The failure or omission of seller to insist upon strict performance of any term or condition hereof or to exercise any right hereunder shall not be deemed to be a modification of any term or condition hereof or a waiver or relinquishment of the future performance of any such term or condition, nor shall such failure or omission constitute a waiver of the right of such party to insist upon future performance by the other party of any such term or condition. This document may be amended from time to time by Seller upon written notice to Buyer, and any such amended version shall supersede any and all prior versions thereof. Captions and heading in this Contract are strictly for the purpose of convenience and general reference only and shall not affect the meaning or interpretation of any of the provisions of this Contract.

Buyer acknowledges and agrees that (i) it shall be a "merchant" within the meaning of the Uniform Commercial Code, as in effect from time to time in the Commonwealth of Massachusetts (the "UCC") and (ii) any transaction between Seller and Buyer shall be deemed to be "between merchants" within the meaning of the UCC. Buyer further acknowledges and agrees that it has the skill and knowledge of a merchant in the Products, particularly in that it has a legal and/or purchasing department, business personnel or other agents who are familiar with the business practices involved in that transaction contemplated hereby or otherwise equipped to handle such a transaction.

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