

Speedgoat Inc – Terms and Conditions of Sale

1. SALE

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

The following terms, together with (i) such terms as are set forth on the face of Seller’s offer and/or order acknowledgment or order confirmation, (ii) such plans, specifications or other documents as are incorporated by reference on the face of Seller’s offer and/or order acknowledgment or order confirmation and (iii) such additional terms as are 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 CONTAINED 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, including if styled as an order or 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directly or by an authorized sales representative of Seller shall expire thirty (30) days after issuance, and may be withdrawn by written notice at any time during this period, unless the relevant offer shall have been accepted in writing by Buyer.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 include the Quotation by reference, shipping and billing addresses, purchase order number, and name, telephone, and facsimile numbers or email address of contact person.

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

In a case where 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 order if such development cannot be completed successfully in Seller’s opinion 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 in its Quotation to the best of its ability any such Prototype.

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 computed 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 is when the equipment is available for pick up at by the carrier at Seller’s Location. Such carrier will not be the agent of Seller, nor will Seller assume any liability regarding the shipment, including risk of loss or damage to the goods in transit. Title and risk of loss of or damage to the Products shall pass from Seller to Buyer upon delivery of the Products to the carrier at Seller’s Location, regardless of whether transport is arranged or supervised by Seller. Seller will insure the Products against loss or damage in transit; otherwise insurance is Buyer’s responsibility.

Partial shipments shall be allowed. However, Buyer understands and agrees that the price is based upon Seller shipping all Products when completed by Seller. If multiple or partial shipments are required by Buyer, Buyer must notify Seller in advance of such requirement. 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 multiple or partial 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 our published specifications. Buyer understands 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 will be responsible for travel and related expenses in attending the inspection procedure. Seller may request that Buyer enter into a separate confidentiality agreement before visiting manufacturing sites. Factory inspections requiring special tests, documentation, or procedures not normally part of standard procedures, are subject to additional charges.

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 event, 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 right, 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. The security interest granted under this provision constitutes a purchase money security interest under the Massachusetts Uniform Commercial Code.

6. PRICES

All prices listed and quoted by Seller are net without any deduction whatsoever. All 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.

7. PAYMENT TERMS

The payment terms for the Product are set forth in the Quotation. Unless otherwise set forth in the Quotation, the following payment terms shall apply:

- (i) All payment terms are subject to Seller's credit approval at the time of acknowledgment.
- (ii) Cancellation fees, if any, associated with the shipper as a result of the delayed delivery date will be borne by Buyer.
- (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. Payments that are outstanding more than ten (10) days from their respective due date shall bear an interest rate of one and one-half percent (1 ½%) per month (eighteen percent (18%) annually) until fully paid, including any interest payments thereon. If the rate of interest stated in the preceding sentence exceeds the maximum rate of interest that the applicable law allows, then the rate of interest that will be assessed is the maximum permissible. Seller reserves the right to suspend or terminate at any time and for any reason whatsoever any credit terms previously extended to Buyer.

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 Quotation. 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 added 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 delivery is impossible, destroy such information and certify such destruction to Seller in writing. Such request 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 any rights in any trademarks, 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 ANY PART OF THIS SECTION SHALL BE A WILLFUL VIOLATION OF COPYRIGHT AND OTHER LAWS which the Buyer acknowledge 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, 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. LIMITED WARRANTY

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, including component parts of Products sold as spare, replacement, maintenance or storage parts, which are also warranted for twenty-four (24) months from date of delivery, provided, however, in either case, that notice of any such defect is provided to Seller within thirty (30) days of its discovery by the Buyer. THE WARRANTY SET FORTH IN THIS SECTION 12 SHALL BE IN LIEU OF ALL OTHER WARRANTIES, 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 considered EOL (end-of-life) and are repaired on a best-effort basis.

EXTENDED HARDWARE WARRANTY SERVICE

Extended Hardware Warranty Service is available as an option and must be purchased at the time the Products are purchased for which the warranty shall be extended.

- (i) The Level One Hardware Warranty Service extends the standard 24 months warranty period by 12 months resulting in a 36-months warranty period.
- (ii) The Level Two Hardware Warranty Service extends the standard 24 months warranty period by 36 months resulting in a 60-months warranty period.
- (iii) Hardware warranty terms exceeding the 60-months range are available on request.

13. NOTICES

Any notices given hereunder shall be in writing and shall be deemed given: (i) upon delivery, if by hand; or (ii) after one (1) business day, if sent between destinations within the continental United States of America, or two (2) business days, if sent between the continental United States of America and any other jurisdiction, 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, 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.

14. EXPORT

If Customer exports (or re-exports), directly or indirectly, any Products or technical data supplied hereunder or any portion thereof, it is Customer's responsibility to assure compliance with U.S. and other applicable export control laws and to obtain any required licenses or approvals in its own name. Customer is also responsible for the accuracy and completeness of any information or certification provided by Customer for purposes of export control compliance.

15. SYSTEMS SOFTWARE MAINTENANCE AND SUPPORT SERVICES

Delivery of Seller systems and hardware/software components by default include 12 months (1 year) 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 if elapsed is possible on request, but incurs back maintenance charges of up to 6 months. Staying subscribed is the most cost-effective way to access latest advances and technical support.

16. USE OF SPEEDGOAT SOFTWARE INCLUDING TOOLS AND DRIVERS

LEGAL INFORMATION ABOUT THE USE OF SPEEDGOAT TOOLS AND DRIVERS: Speedgoat tools and drivers are optimized for hardware purchased from Seller and may be used only in conjunction with the hardware (serial no.) for which the tools and drivers were purchased for. Access to the Speedgoat tools and drivers is only available if the target machine component has active subscription to Systems Software Maintenance and Support Services.

Terms and Conditions for software components are defined in the Speedgoat End-User License Agreement (EULA).

17. 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 the Seller's support department (support@speedgoat.com).

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 from Buyer to Seller associated with warranty repairs or replacements shall be borne by the Buyer. Shipping costs for the return of repaired goods from Seller to Buyer shall be borne by Seller.

18. SUBSTITUTIONS AND MODIFICATIONS

Seller reserves the right to make substitutions and modifications in the specifications of equipment that do not materially or adversely affect the performance of the equipment.

19. 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.

20. COPYRIGHT AND TRADEMARKS

Seller and its affiliates shall retain all rights and total exclusivity regarding its Products, intellectual property rights, copyrights, trademarks, patents and trade secrets, schematics, logic diagrams, and manufacturing processes and knowhow, 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, 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 which the Buyer acknowledge and agrees shall entitle Seller to collect statutory and other damages as well expenses, including attorneys' fees, from Buyer.

21. GOVERNING LAW; DISPUTE RESOLUTION - BINDING ARBITRATION

The law governing these Terms and Conditions of Sale and 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:

- (a) these Terms and Conditions of Sale;
- (b) any advertisement, promotion, or proposal relating to these Terms and Conditions of Sale, or
- (c) 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 the 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.

22. 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. 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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