

## **SureFire Burner Management Systems Standard Terms and Conditions of Sale**

The following terms and conditions (these “**Terms and Conditions**”) are applicable to the sale of burner management systems (“**BMS Series**”) and ignition units (“**FT series**”), and support services, where relevant, (together or individually “**Products**”) by SureFire Burner Management Systems LLC (“**Seller**”), or its agents, as set forth in Seller’s quotation to any purchaser thereof (“**You**” or “**Buyer**”). “**Acknowledgement**” means the sales order confirmation or order acknowledgment issued by Seller to Buyer which confirms the receipt of Buyer’s purchase order issued in response to Seller’s quotation. Seller and Buyer may be referred to as “**Party**” or “**Parties**” under this Agreement (as defined below).

**1. FIELD OF USE.** Buyer represents and warrants that it intends to use the Products in the Field of Use in which the Products are intended to be used as set out in the Seller’s quotation and is not purchasing the Products with the intent to resell or distribute the Products, unless authorized by Seller.

### **2. CONTROLLING TERMS.**

**A.** Except as provided in this Section 2, these Terms and Conditions together with the Seller’s quotation, and Buyer’s acceptance of Seller’s quotation using Buyer’s purchase order, to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing including without limitation Buyer’s purchase orders or Buyer’s other terms and conditions, constitutes the entire and exclusive agreement between Seller and Buyer (collectively, this “**Agreement**”).

**B.** In the event of a conflict between these Terms and Conditions and any new terms in Seller’s quotation, Seller’s quotation terms (“**Special Terms and Conditions**”) shall take precedence. Seller’s quotation constitutes an offer by Seller to sell the Products in accordance with these Terms and Conditions and Buyer’s issuance of a Purchase Order to Seller in response to Seller’s quotation constitutes an acceptance of Seller’s offer and formation of a valid and enforceable contract between Seller and Buyer. Any samples, drawings, advertising contained in Seller’s catalogs, website, brochures or manuals are produced for the sole purpose of giving an approximate idea of the Products referred to in the Agreement. They shall not form part of the contract or have any contractual force.

**C.** The sale of Products is expressly conditioned upon Buyer’s acceptance of this Agreement.

### **3. PURCHASE PRICE, TAXES, PAYMENT AND CREDIT.**

**A.** The purchase price shall be the price of the Products set forth in Seller’s quotation and shall include the costs of standard packaging of the Products. Prices are stated in United States of America (“**U.S.**”) dollars. All federal, state, municipal or other governmental taxes applicable to the sale of Products shall be in addition to the purchase price and be paid by Buyer unless otherwise agreed to or required by law. Buyer may not resell Products above Seller’s

manufactured suggested retail price (MSRP). Buyer is responsible for assuring that all subsequent Product resales made by Buyer do not exceed MSRP.

**B.** Seller shall invoice the Products as stated in Seller's quotation. Seller's invoice may include additional amounts related to costs and charges of transportation, insurance, customs, duties, levies or any other costs or fees applicable to the sale and delivery of the Products. Buyer shall also pay these additional amounts which may also include amounts charged by the Governmental Authorities in the country of Buyer's destination on payments to be made to Seller under this Agreement.

**C.** Buyer acknowledges and agrees that the full purchase price for the Products shall be due and payable thirty (30) days after receipt of Seller's invoice unless otherwise stated in the quotation by Seller. If Buyer fails to make payment due to Seller by the due date of payment, all past due payments bear interest at the rate of one and one half percent (1.5%) per month, on the unpaid balance, accrued on a daily basis, from the due date until actual payment of the overdue amount, whether before or after any judgment. If Buyer fails to timely pay the purchase price for any Products, or fails to perform any other of Buyer's obligations hereunder, Seller may, at its option, defer further shipments, revise its terms of payment, cancel the unshipped balance of the Agreement, and/or pursue any other remedy set forth in this Agreement or provided under law.

#### **4. DELIVERY.**

**A.** Except as otherwise stated in Seller's quotation, all Products are shipped FOB Origin from Seller's plant in Farmington, New Mexico. Buyer shall take delivery of the Products at Seller's plant within 7 (seven) business days of the Seller notifying the Buyer that Products are ready for collection. Delivery is completed when the Buyer or its agent takes physical possession of the Products at Seller's plant ("**Delivery Site**"). Any agent appointed by Buyer to take delivery of the Products shall have adequate insurance coverage. All Delivery dates contained in Seller's Acknowledgement are approximates only and Buyer agrees that the time of delivery is not of essence. Seller shall not be liable for any delay in delivery of the Products that is caused by a **Force Majeure Event** or the Buyer's failure to provide the Seller with delivery instructions or any other instructions that are relevant to the supply of the Products. A Force Majeure Event is an act, event, omission, accident or circumstance beyond a Party's reasonable control, including fire, flood, earthquake or other natural disaster, war or terrorist attack.

**B.** If the Buyer fails to take delivery of the Products within seven Business Days of the Seller notifying the Buyer that the Products are ready for collection at the Delivery Site, then, except where such failure or delay is caused by a Force Majeure Event, or the Seller's failure to comply with its obligations under the Agreement:

(a) delivery of the Products shall be deemed to have been completed at 9.00 am on the seventh Business Day after the day on which the Seller notified the Buyer that the Products were ready for collection; and

(b) the Seller shall store the Products until delivery takes place, and the Buyer shall pay to the Seller all related costs and expenses (including insurance).

C. If the Buyer has not taken delivery of the Products at ten Business Days after the day on which the Seller notified the Buyer that the Products were ready for delivery or collection, the Seller may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Products or charge the Buyer for any shortfall below the price of the Products.

D. If installments are provided for in the quotation, the Seller may deliver the Products by installments, which shall be separately invoiced and paid for by the Buyer. Any delay in delivery or defect in an installment shall not entitle the Buyer to cancel any other installment. Terms related to delivery in installments shall be set forth in the Special Terms and Conditions in Seller's quotation.

## **5. LIMITED WARRANTY, EXCLUSIONS AND DISCLAIMERS.**

**A. Limited Warranty.** SELLER WARRANTS THAT FROM THE DATE OF DELIVERY AND FOR A PERIOD OF TWO YEARS ("WARRANTY PERIOD"), SELLER'S PRODUCTS AS SOLD UNDER THIS AGREEMENT, WILL CONFORM IN ALL MATERIAL RESPECTS TO ITS SPECIFICATIONS AT THE TIME OF SALE AND BE FREE FROM MATERIAL DEFECTS SUBJECT TO PROPER USE AND SERVICE BY BUYER IN ACCORDANCE WITH THE SPECIFICATIONS. THIS LIMITED WARRANTY APPLIES ONLY TO THE UNMODIFIED PORTION OF THE PRODUCTS. THIS LIMITED WARRANTY DOES NOT APPLY TO THIRD PARTY COMPONENTS AND ACCESSORIES, THAT INCLUDE, BUT ARE NOT LIMITED TO, SOLENIOD VALVES AND THERMOCOUPLES, WHICH ARE INCORPORATED INTO SELLER'S PRODUCTS. "SPECIFICATIONS" MEANS THE SPECIFICATIONS DELIVERED TO BUYER WITH OR IN THE PRODUCT AND/OR PUBLISHED ON SELLER'S WEBSITE FOR THE APPLICABLE VERSION OF THE PRODUCT. BUYER AGREES THAT SPECIFICATIONS MAY BE SUPPLIED ONLY IN THE ENGLISH LANGUAGE, UNLESS OTHERWISE REQUIRED BY LOCAL LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER OR LIMITATION. THIS LIMITED WARRANTY EXTENDS ONLY TO BUYER AND IS NOT TRANSFERABLE TO ANY OTHER PARTY AND ANY TRANSFER MADE IN VIOLATION OF THIS PROVISION SHALL BE VOID. BUYER'S SOLE REMEDY, AND SELLER'S SOLE LIABILITY, FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE TO REPLACE OR REPAIR ANY PART OR PARTS (OR REDELIVER SERVICES) WHICH WERE DELIVERED IN BREACH OF THE FOREGOING WARRANTY. SELLER RESERVES THE RIGHT TO AMEND THE SPECIFICATIONS WHERE SUCH AMENDMENTS ARE AS A RESULT OF THE EVOLUTION OF AND IMPROVEMENTS TO THE SELLER'S TECHNOLOGY AND PRODUCTS, OR IF REQUIRED BY ANY APPLICABLE STATUTORY OR REGULATORY REQUIREMENTS.

**B. Warranty Exclusions and Disclaimers.** SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF BUYER HAS NOTIFIED SELLER OF ITS INTENDED USE FOR THE PRODUCTS) OR NON-INFRINGEMENT. SELLER FURTHER EXPRESSLY DISCLAIMS ANY WARRANTY OF THE PRODUCTS WHERE THE ALLEGED NONCONFORMITY IS DUE TO NORMAL

WEAR AND TEAR, ALTERATION, MODIFICATION, REPAIR, ATTEMPTED REPAIR, IMPROPER USE OR STORAGE, IMPROPER MAINTENANCE, NEGLIGENCE, ABUSE, FAILURE TO FOLLOW ANY PRODUCT INSTRUCTIONS, DAMAGE (WHETHER CAUSED BY ACCIDENT OR OTHERWISE), VARIABLES OUTSIDE THE CONTROL OF SELLER OR ANY OTHER IMPROPER CARE OR HANDING OF THE PRODUCTS CAUSED BY ANYONE OTHER THAN SELLER. “**VARIABLES**” INCLUDE OPERATOR SKILLS, USE OF EQUIPMENT USED WITH THE PRODUCTS OTHER THAN THAT AUTHORIZED BY SELLER, AND ENVIRONMENTAL AND CLIMATIC CONDITIONS.

**6. PRODUCT RETURNS.** Products shall not be returned to Seller without Seller’s written consent. Return instructions will be supplied upon notice given by Buyer to Seller. Buyer will pay the cost of returning Products to Seller in connection with warranty claims, and Seller shall pay the cost of returning to Buyer Products that are repaired or replaced under warranty.

## **7. QUALITY**

**A.** Subject to clause 5(A), if

(a) Buyer gives notice in writing to the Seller during the Warranty Period within a reasonable time of discovery that some or all of the Products do not comply with the Specifications as set out in clause 5(A); and

(b) the Seller is given a reasonable opportunity of examining such Products; and

(c) the Buyer (if asked to do so by the Seller) returns such Products to the Seller's place of business at the Buyer's cost,

then the Seller shall, in its sole discretion, repair or replace the defective Products.

**B.** These Terms and Conditions shall apply to any repaired or replacement Products supplied by the Seller.

## **8. TITLE AND RISK**

**A.** Risk in the Products shall pass to the Buyer when the Buyer is notified by the Seller that the Products are ready for collection from the Seller’s premises (Delivery Site) by the Buyer.

**B.** Title to the Products shall not pass to the Buyer until the Seller receives payment of the total price in full for the Products.

**C.** Until title to the Products has passed to the Buyer, Buyer shall:

(a) store the Products separately from all other Products held by the Buyer so that they remain readily identifiable as the Seller's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

(c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Seller immediately if it becomes subject to any of the events listed in clause 12(C)(c)-(e); and

(e) give the Seller such information relating to the Products as the Seller may require from time to time.

**D.** Subject to clause 8(G), the Buyer may use the Products in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Products.

**E.** The Buyer acknowledges that the Products are designed for use in the Field of Use in accordance with the quotation and that any other use by the Buyers shall, be entirely at the Buyers own risk.

**F.** Test information obtained by the Parties in respect of the Products (“**Test Information**”) will be shared between the Parties. The Parties shall treat the Test Information as Confidential Information.

**G.** If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in clause 12(C)(c)-(e), then, without limiting any other right or remedy the Seller may have, the Seller may at any time:

(i) require the Buyer to deliver up all Products in its possession; and

(ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Products are stored in order to recover them.

## **9. INTELLECTUAL PROPERTY.**

**A. “Intellectual Property”** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, moral rights, Rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. “**Confidential Information**” is as defined in Clause 10 of this Agreement.

**B.** Seller owns all Intellectual Property Rights in and to the Products, and its Confidential Information.

C. Buyer shall not open, disassemble, reverse engineer or otherwise tamper with the Products, nor decompile, disassemble, reverse engineer, alter or amend any part of the Products in any way without the prior written consent of the Seller. Buyer will not deconstruct, synthesize, or extract any element of and/or otherwise discover any source code, algorithms, circuits, hardware, structures, architectures, processes, methods or techniques embodied in, or otherwise translate, or reverse assemble the Products in whole or in part, except as expressly permitted by law without the possibility of contractual waiver and

D. This Agreement does not convey to the Buyer any right, title or interest in or to any of the Seller's Intellectual Property Rights by implication, estoppel or otherwise.

E. Buyer shall procure that its customers abide by terms equivalent to the terms set out in this clause 9.

F. Buyer acknowledges that Seller shall own all updates or enhancements to Products and/or Seller's Intellectual Property, whether developed by Buyer or Seller;

G. Buyer will not:

(a) except as permitted in this Agreement under Clause (1), develop any products incorporating any of Seller's Intellectual Property;

(b) file any patent applications related to the Seller's Intellectual Property including patent applications related to improvements of Seller's Products. Buyer shall not apply for the registration of Seller's Intellectual Property in any country nor otherwise take any action inconsistent with Seller's rights in the Intellectual Property;

(c) use in any way (including in Buyer's letterhead or presentation cards) Seller's trade or business names or trademarks;

(e) do, or cause to be done, any act that contests or in any way impairs any portion of Seller and its licensors, right, title and interest in and to the Intellectual Property Rights;

(f) obscure or remove any proprietary rights notices of Seller or its licensors contained in Products, including any trademarks, and copyright notices.

## **10. CONFIDENTIAL INFORMATION.**

**A. Definition.** “**Confidential Information**” of Seller means any and all confidential information, including third party confidential information, disclosed by Seller or its agents (“**Disclosing Party**”) to the Buyer (“**Recipient**”) in connection with this Agreement, which,

(a) if provided in tangible format, may or may not be labelled at the time of such disclosure as “confidential” or bearing a similar legend;

(b) if provided in oral or intangible format, is identified as confidential at the time of disclosure;

c) the Recipient should reasonably understand to be confidential based on the nature or circumstances of the disclosure, including Product pricing, Product design drawings, non-public technical information and Products (and related information) identified as pre-release or not generally publicly available and without prejudice to any of the foregoing: all information in respect of the business of either Party disclosed or obtained in connection with this Agreement including, any business methods; finance; technology; business, technological, financial or manpower plans; client or customer lists and details; and information concerning either Party's relationships with actual or potential clients or customers and specifically shall include the following information of the Seller: the Products and any documentation associated therewith and Test Information, as referred to in Clause 8(F), this Agreement between the Seller and the Buyer for the sale and purchase of the Products in accordance with the Seller's quotation and these Conditions.

**B. Confidentiality.**

(a) Each Party undertakes that it shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person any Confidential Information concerning the business, affairs, buyers, clients or sellers of the other Party, except as permitted by Clause 10(B)(b);

(b) Each Party may disclose the other Party's Confidential Information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Clause 10(B)(b); and,

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority;

(c) No Party shall use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement;

(d) In certain circumstances and territories, Seller may engage a representative who may have introduced the Buyer to Seller as a result of which this Agreement was concluded (the "Representative"). By entering into this Agreement, Buyer acknowledges that, in such circumstances, Seller may be required to provide copies of invoices sent to the Buyer to such Representative and such disclosure shall not contravene the provisions of this clause B(b) of the Agreement;

(e) protect such Confidential Information with at least the same degree of care that Recipient uses to protect its own Confidential Information of a similar nature, but in no case, less than reasonable care; and

(f) notify Disclosing Party promptly upon discovery of any loss or unauthorized disclosure of Disclosing Party's Confidential Information.

**11. COMPLIANCE WITH LAWS.** Buyer agrees to comply with all laws, regulations and executive orders of the U.S. and all other countries applicable to the sale, resale, delivery, or re-delivery of the Products and information hereunder. (collectively, "**Laws**"). Seller shall have no obligation to deliver any Products to Buyer under this Agreement, except as permitted under Laws, and may cancel any related Delivery or order if it is unable to deliver in accordance with applicable Laws. Buyer shall comply with the Laws as well as all laws and regulations in Buyer's jurisdiction and any other jurisdiction related to the import, export, re-export, transfer, shipping, sale, re-sale and/or use of the Products.

**12. TERMINATION.**

**A.** Seller reserves the right, in its sole discretion, to decline any purchase order if appropriate authorization is not obtained from any governments exercising export authority, or as otherwise provided in Section 11, and Seller shall have no liability to Buyer in any way for any such termination.

**B.** Orders cancelled/terminated by Buyer in addition to any other payments due to Seller under this Agreement, may be subject to a restocking fee up to 90% of the price shown in Buyer's purchase order and any applicable material, labor, service, or other costs and fees, at Seller's sole discretion.

**C.** Without limiting its other rights or remedies, the Seller may terminate this Agreement with immediate effect by giving written notice to the Buyer if:

(a) the Buyer commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 14 days of that Party being notified in writing to do so;

(b) the Buyer repeatedly breaches any terms of the Agreement;

(c) the Buyer takes any step or action in connection with its entering administration or bankruptcy proceedings, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

(d) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

(e) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Agreement, has been placed in jeopardy.



**D.** Without limiting its other rights or remedies, the Seller may suspend provision of the Products under the Agreement if the Buyer becomes subject to any of the events listed in clauses 10(C), or the Seller reasonably believes that the Buyer is about to become subject to any of them.

**E.** Without limiting its other rights or remedies, the Seller may terminate the Agreement with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

**F.** On termination of the Agreement for any reason, the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.

**G.** Termination of the Agreement shall not affect any of the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement that existed at or before the date of termination.

**H.** Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

**I.** Clauses 3, 9, 10, 13, 17, and 18, and 20 shall survive the termination of this Agreement.

### **13. LIMITATION OF LIABILITY.**

Regardless of the basis on which Buyer is entitled to claim damages from Seller in respect of any losses to Buyer that arise under or in connection with this Agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, Seller's entire liability for all claims in the aggregate arising from or related to each Product purchased by Buyer, or otherwise arising, under this Agreement will not exceed the amount of the price of Products in respect of which payment has been received by Seller and paid by Buyer to Seller. This limit also applies to Seller, and all of Seller's suppliers and is the maximum for which Seller, and its suppliers are collectively responsible. UNDER NO CIRCUMSTANCES SHALL SELLER, OR ITS SUPPLIERS BE LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY: DAMAGES CLAIMS BY BUYER AND ANY THIRD PARTY, WHETHER OR NOT THE CLAIMS ARE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE FOR LOST PROFITS, GOODWILL, REVENUE OR ANTICIPATED SAVINGS; OR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY LOSS ARISING UNDER OR IN CONNECTION WITH THE AGREEMENT; OR LOSS OF, OR DAMAGE TO, DATA.

**14. PRODUCT SUPPORT SERVICES (“Services”)** If Buyer has opted to purchase the services outlined in the quotation, the Seller shall provide the services to the Buyer in accordance therewith.

**A.** In providing the services, the Seller shall:

(a) Perform the services with reasonable care and skill; and

(b) use its reasonable endeavors to perform the services in accordance with the service description set out in the quotation.

(c) Where the services are to be provided in person, observe all reasonable health and safety rules and regulations and security requirements that apply to any of the Buyer's premises that have been communicated to the Seller, provided that the Seller shall not be liable under the Agreement as a result of such observation.

**B.** The Buyer shall ensure that it:

(a) co-operates with the Seller in all matters relating to the services;

(b) provide, for the Seller, its agents, subcontractors, consultants and employees in a timely manner and at no charge, access to the Buyer's premises, data and other facilities as reasonably required by the Seller for the provision of the services; and

(c) provide in a timely manner, such information as the Seller may reasonably require in order to provide the Services and ensure that such information is accurate and complete in all material respects,

**C.** If the Seller's performance of its service obligations under the Contract is prevented or delayed by any act or omission of the Buyer, its agents, sub-contractors, consultants or employees, the Seller shall:

(a) not be liable for any costs, charges or losses sustained or incurred by the Buyer that arise directly or indirectly from such prevention or delay;

(b) be entitled to payment despite any such prevention or delay; and

(c) be entitled to recover any additional costs, charges or losses the Seller sustains or incurs that arise directly or indirectly from such prevention or delay.

**15. CONTACT INFORMATION.** Buyer authorizes Seller (and their successors and assigns, contractors and business partners) to store and use Buyer's contact information in connection with Seller's sale, support and servicing of the Products, and for other lawful purposes.

**16. NOTICES.** Any notice, demand or communication in connection with this Agreement must be in writing and must be delivered by hand, courier service, or email addressed to the Business Contact set out in Seller's quotation and Buyer's purchase order (or such other address as a Party may have notified the other of in writing). The notice, demand or communication will be considered to have been served:

(a) if delivered by hand, at the time of delivery;

(b) if delivered by courier services, the third (3<sup>rd</sup>) working day following but excluding the day of mailing, or in the case of regular mail the seventh (7th) Business Day following but excluding the day of mailing;

(c) in the case of email, the working day following the day on which the email is sent provided that no delivery failure message is received and the notice is confirmed in writing by post within five (5) Business Days;

(d) any notice to the Seller must also be copied to the Seller's Business Contact email \_\_\_\_\_; and

(e) the provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**17. THIRD PARTY RIGHTS.** No one other than a Party to the Agreement and its permitted assignees shall have any right to enforce any of the terms of this Agreement.

**18. GOVERNING LAW AND VENUE.** This Agreement and any action arising out of or in connection with it or its subject matter or its formation will be adjudicated solely and exclusively in the courts of the State of New Mexico, USA. This Agreement and any action arising out of or in connection with it or its subject matter or its formation, will be governed, controlled, interpreted, and defined solely by and under the laws of the State of New Mexico, USA, exclusive of conflicts of laws.

**19. SEVERABILITY.** If any provision of this Agreement is, for any reason, held to be invalid, illegal or unenforceable, the other provisions of this Agreement will be unimpaired, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

**20. ASSIGNMENT and Other Dealings.** Buyer will not assign or transfer this Agreement without the prior written consent of Seller and any attempted assignment or transfer in violation of the foregoing will be null and void. Notwithstanding the foregoing, Buyer may sell or transfer any Product to any third party (a "Transferee") as authorized by Seller in the quotation, provided such transfer or assignment otherwise complies with the requirements of this Agreement, including the requirements of Clauses 9, 10 and 11, and the Transferee agrees to be bound by the restrictions contained in this Agreement. The Transferee shall not have any rights under this Agreement and shall not be a third-party beneficiary for any purpose.

**21. WAIVER.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy nor prevent or restrict the further exercise of that or any other right or remedy.

**22. ENTIRE AGREEMENT.** This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such matters. No modification of or amendment

to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by the Seller. In case of any conflict between translations, the English language version of this document shall control.

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