

## TERMS AND CONDITIONS GOVERNING SALES

**1. GOVERNING PROVISIONS.** ELLSWORTH DISPENSING SOLUTIONS, LLC, doing business as Fluid Research Corporation or its affiliates(s) ("Ellsworth") as identified on the Quotation, Acknowledgment, Invoice, online order form or other commercial document provided by Ellsworth ("Commercial Document") offers to provide the goods and/or services described in such Commercial Document (the "Products") to the buyer to which this offer is addressed ("Buyer"), subject to the terms and conditions set forth herein and in such Commercial Document (together, the "Agreement"). Buyer may not modify, change, renounce or waive any term or condition hereof without EDS's express written consent. Ellsworth's agreement to provide to Buyer the Products, and Buyer's purchase of the Products, is expressly limited to the terms of this Agreement. Buyer may not amend, modify or replace the terms of this Agreement with any conflicting, different or additional terms previously or hereafter received by Ellsworth, even if such terms recite that any action or inaction by Ellsworth constitutes agreement or consent by Ellsworth to such amendment, modification or replacement. If this document is deemed an acceptance of a prior offer by Buyer, such acceptance is limited to the express terms contained herein including, without limitation, all additional terms contained herein. Ellsworth objects to and rejects any additional, different or varying terms proposed by Buyer, unless an authorized officer of Ellsworth expressly accepts such terms in a signed writing. Any proposal of additional, different or varying terms by Buyer shall not operate as a rejection of Ellsworth's offer, and Ellsworth's offer shall be deemed accepted without such additional, different or varying terms.

**2. ACCEPTANCE.** Buyer shall be deemed to have made an unqualified acceptance of this Agreement, and the terms and conditions herein, on the earliest to occur of the following (a) Ellsworth's receipt of a copy of this Agreement, or any Commercial Document or agreement incorporating this Agreement, signed by Buyer (with scanned or facsimile signatures treated as original signatures); (b) Buyer's order of Products after receiving notice of this Agreement; (c) Buyer's payment of any amounts due under this Agreement; (d) Buyer's delivery to Ellsworth of any material, parts, specifications of designs to be furnished by Buyer; (e) Buyer's acceptance of Ellsworth's delivery of the Products; (f) Buyer's failure to notify Ellsworth to the contrary within ten days of receipt of this Agreement; or (g) any other event constituting acceptance under applicable law. Written quotations are void unless accepted within 45 days from date of issue. Other Ellsworth publications are maintained as sources of general information and are not quotations or offers to sell.

**3. ORDERS; CANCELLATION OR MODIFICATION; RETURNS.**

**(a) Orders.** Buyer shall ensure that its orders are received by Ellsworth within the quoted lead times. Ellsworth shall have the right to accept or reject purchase orders in its sole discretion. Buyer's orders or mutually agreed change orders shall be subject to all provisions of this Agreement, whether or not the order or change order so states. Minimum order quantity is \$100 per order or blanket release (\$50 for purchases made by Buyer on Ellsworth's website). Ellsworth shall use commercially reasonable efforts to provide Buyer with reasonable notice if a Product for which Ellsworth has accepted an order has or becomes obsolete, discontinued or otherwise unavailable or, in Ellsworth's reasonable determination, materially modified (whether by Ellsworth or its vendor). Buyer agrees that Ellsworth is not obligated to provide any specific amount of notice and Ellsworth shall have no liability for such obsolescence, discontinuation, unavailability, modification or resulting order cancellation by Ellsworth, other than to refund to Buyer any amounts received by Ellsworth from Buyer with respect to such Products that are not delivered to Buyer.

**(b) Cancellation or Modification.** Buyer may not cancel or modify its order except upon terms accepted by Ellsworth in writing, as cancellation and modification requests are subject to Ellsworth receiving vendor approval. In the event of any cancellation or modification, Buyer shall compensate Ellsworth for all costs and damages resulting there from, including, but not limited to, out-of-pocket expenses and lost profits and the fees and charges imposed by Ellsworth's suppliers.

**(c) Returns.** No Products may be returned to Ellsworth without its prior, written authorization and Products may be returned only on the terms or conditions specified in such authorization. Returned Products must be of current manufacture, unused, in resalable condition, and securely packed to reach Ellsworth without damage. Any cost incurred by Ellsworth to put Products in first class condition will be charged to Buyer. All Product returned to Ellsworth shall be subject to a 25% or greater restocking charge (depending on vendor restock policies) with a minimum restocking charge of \$40.00, plus the costs of freight, packaging, insurance and any import or export costs.

**4. DELIVERY.**

**(a) Generally.** Unless otherwise provided in Ellsworth Commercial Document, for shipments within the United States, Ellsworth shall deliver the Products F.O.B. Ellsworth's facility in Sparks, Nevada or other works, factory or warehouse designated by Ellsworth (the "Facility"). "F.O.B." shall be interpreted in accordance with the Uniform Commercial Code as adopted in the State of Nevada. For international shipments, unless otherwise provided in Ellsworth's Commercial Document, Ellsworth shall deliver the Products EXW the Facility in accordance with INCOTERMS 2020 of the International Chamber of Commerce, as amended from time to time.

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Buyer shall pay for all costs of shipping. All risk of loss, damage or delay, and title to Products, shall pass from Ellsworth to Buyer upon delivery at the Facility. Partial shipments shall be permitted and Buyer shall pay for them pro rata. Buyer shall fully insure all Products from time of Ellsworth's delivery hereunder until Ellsworth is paid in full therefor. Any changes to the requirements of this section 4 must be agreed by Ellsworth in writing to prior to Ellsworth acceptance of the order and will be subject to additional charges.

**(b) Delivery Dates.** All delivery dates are approximate. Delivery dates given by Ellsworth are based on prompt receipt of all necessary information regarding the order. Ellsworth will use reasonable efforts to meet such delivery dates but does not guarantee to meet such dates. Failure by Ellsworth to meet any delivery date does not constitute a cause for cancellation and/or for damages or penalties of any kind. Time for delivery shall not be of the essence.

**(c) Delivery Delays.** Any delay in delivery due to causes beyond Ellsworth's reasonable control, or due to any priorities or allocations necessitated by governmental orders or regulations, or due to any causes specified in the following sentence, shall extend the term of delivery by a period equal to the length of such delay. In the event of delay in delivery requested by Buyer or caused by Buyer's (a) failure to supply adequate instructions; (b) failure to arrange for pickup; (c) failure to supply or approve necessary data in a timely manner; (d) requested changes; or (e) failure to provide documents required for Ellsworth to effect delivery, Ellsworth will store all Products at Buyer's risk and expense. Buyer shall pay all storage costs and expenses upon Ellsworth's demand.

**(d) Claims.** Claims for shortages or other errors must be made in writing to Ellsworth within ten days after Ellsworth's delivery. Failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Buyer shall, promptly upon delivery, open, inspect and test all Products and report any discrepancy in writing to Ellsworth.

**5. PRICES; TAXES.** Unless prices are stated in Ellsworth's Commercial Document, prices shall be the higher of Ellsworth's most recent quote to Buyer, prevailing market price, Ellsworth's list price, or the last price charged by Ellsworth to Buyer for the Products. Ellsworth may from time to time increase prices for the Products, effective on notice to Buyer, in response to increases in the prices of raw or other supplied products or materials. Without limiting the foregoing, for a purchase order which contemplates delivery of Products (either in whole or in part) more than 30 days after the date of such purchase order, Ellsworth reserves the right to increase prices for Products delivered more than 30 days after the date of the purchase order. Ellsworth shall give Buyer verbal or written notice of any price increase at the time that Ellsworth is made aware of such increase and its effective date. Unless otherwise stated in Ellsworth's Commercial Document, prices are in U.S. Dollars, as delivered at the Facility. Buyer shall pay or reimburse Ellsworth for any tax (including sales tax but not including taxes on Ellsworth's income), duty, inspection or testing fee or any other fee or charge imposed on, in connection with or measured by the transaction between Ellsworth and Buyer in addition to the prices quoted or invoiced.

**\*\*FOR ALABAMA SALES ONLY\*\*:** Ellsworth has collected the simplified sellers use tax on taxable transactions delivered into Alabama and the tax will be remitted on the Buyer's behalf to the Alabama Department of Revenue. Ellsworth's program account number is SSU-R010890396.

**6. TERMS OF PAYMENT.** Unless otherwise stated in Ellsworth's Commercial Document, payment terms are as follows. For Custom Systems: If Buyer resides in the United States, payment terms are 50% down, 40% at shipment, and 10% remaining net 30 days from Ellsworth's shipment. For Standard Systems: If Buyer resides in the United States, payment terms are 50% down, 50% net 30 days from Ellsworth's shipment. If Buyer resides outside the United States, Buyer shall pay Ellsworth by irrevocable Letter of Credit, including such provisions as are determined by Ellsworth at time of quote. All banking and other charges for any Letter of Credit are the responsibility of Buyer. Credit terms are subject to the approval Ellsworth's credit department and may be changed at any time and from time to time by Ellsworth in its sole discretion. Payments may be made in U.S. dollars with by ACH, wire, and checks. Payment can also be made via credit cards (VISA, MasterCard, American Express and Discover) subject to surcharge fee. Payment does not constitute Ellsworth's acceptance of the order. Ellsworth's declination of an order shall be deemed remedied by a refund of payment to Buyer within 30 days.

### 7. SECURITY.

**(a) Generally.** If, during performance of this Agreement, Ellsworth determines in its discretion that Buyer's financial condition does not justify the terms of payment specified, Ellsworth may (a) demand, before proceeding with delivery of Products, full or partial payment in advance, satisfactory security or guaranties that invoices will be promptly paid when due or (b) at its option and without prejudice to other remedies, defer delivery of the Products or cancel this Agreement. Buyer agrees to reimburse Ellsworth for all costs and fees including, (but not limited to) attorneys' fees and repossession fees, incurred by Ellsworth in collecting any sums owed by Buyer to Ellsworth. Buyer agrees to pay a late payment charge of 1-1/2% per month (or, if less, the maximum amount allowable by law) on all

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amounts not paid in full when due, payable on Ellsworth's demand. Buyer shall not set off amounts due to Ellsworth against claims or other amounts.

**(b) Security Interest.** In partial consideration for Ellsworth's sale of Products to Buyer, Buyer hereby grants to Ellsworth and Ellsworth hereby retains a security interest in all Products sold to Buyer and documents relating to such Products now or hereafter in the possession of or under the control of Buyer, title to which might at any time be determined to have passed to Buyer, including, without limitation, all inventories of the Products (or any other product bearing any trademark or trade name of Ellsworth or its affiliates or suppliers), returns or repossessions and the proceeds, including insurance proceeds and proceeds from products in which the Products were an input, of all of the foregoing, together with the additions and accessions thereof, to secure all of Buyer's obligations to Ellsworth under this Agreement and all other obligations of Buyer to Ellsworth. Buyer agrees to execute financing statements, continuation statements and other documents evidencing the security interest in the Products, and to take such actions as may be required by Ellsworth to evidence or perfect the security interest granted herein. With respect to such statements and documents, Ellsworth is authorized in Buyer's name or otherwise to take such actions as are permitted under this Agreement or applicable law, including, without limitation, signing Buyer's name, and Buyer hereby appoints Ellsworth as its attorney-in-fact for such purpose.

### 8. LIMITED WARRANTIES AND REMEDY; DISCLAIMER OF OTHER WARRANTIES AND LIMITATION OF DAMAGES; BUYER'S OBLIGATIONS.

**(a) Products in Original Packaging and not Manufactured by Ellsworth.** IF BUYER IS PURCHASING PRODUCTS IN THEIR ORIGINAL PACKAGING AND NOT MANUFACTURED BY ELLSWORTH, THE ONLY WARRANTY AVAILABLE TO BUYER AS TO THE PRODUCTS SHALL BE ANY MANUFACTURER'S WARRANTY WHICH MAY APPLY AND ELLSWORTH MAKES NO INDEPENDENT WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE). Ellsworth does not adopt, guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer. Buyer assumes all liability with respect to the Product, its transport, use, misuse, storage and disposal.

**(b) Repackaged Products and Ellsworth's Products.**

(i) **Repackaged Products.** If Buyer is purchasing Products not manufactured by Ellsworth, but repackaged by Ellsworth, causing the original manufacturer's seal to be broken, Ellsworth warrants to original user only that the Products will be free from material defects in materials and workmanship attributable to the repackaging process under normal use and service for the shelf life of the Product as described in the technical data sheet, but no event longer than one year from the date of Ellsworth's delivery of such Product hereunder. Ellsworth is not the manufacturer and Buyer assumes all liability with respect to the Product, its transport, use, misuse, storage and disposal.

(ii) **Ellsworth's Products.** If Buyer is purchasing Products manufactured by Ellsworth, Ellsworth warrants to original user only that the Products will be free from material defects in materials and workmanship under normal use and service for one year from the date of Ellsworth's delivery of such Product hereunder.

(iii) **Limitations and Remedies.** There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, normal wear and tear, damage due to environmental or natural elements, failure to follow Ellsworth's instructions or improper installation, storage or maintenance. Ellsworth makes **NO WARRANTY** regarding Product compliance with Buyer's or its representative's needs, specifications, instructions or requirements. Buyer must make claims for defects in writing within 10 days after discovery of such defects. Buyer's failure to make such claim within the warranty period and within 10 days after discovering a defect shall constitute Buyer's irrevocable acceptance of the Products and Buyer's acknowledgement that the Products fully comply with the terms and conditions of this Agreement. Ellsworth may require Buyer to return to Ellsworth all Products subject to the claim. Ellsworth shall repair or replace, at its expense, any covered Products proved to Ellsworth's reasonable satisfaction to be defective within the warranty period. Such warranty satisfaction shall be available only if: (i) Ellsworth is notified in writing within 10 days after discovery of an alleged defect and within the relevant warranty period; (ii) the defect has not been caused by Buyer's misuse, neglect or alteration or by physical environment; and (iii) the manufacturer's shelf life of the Product (as indicated on the Product packaging) has not expired when the alleged defect is discovered. ELLSWORTH'S SOLE OBLIGATION AND BUYER'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO REFUND OF THE PURCHASE PRICE RECEIVED BY ELLSWORTH OR REPAIR OR REPLACEMENT OF DEFECTIVE PRODUCTS DETERMINED BY ELLSWORTH IN ITS REASONABLE DISCRETION TO BE COVERED BY THIS LIMITED WARRANTY. Notice of any warranty claim or request for warranty service should be sent to Ellsworth at the following address: Ellsworth Dispensing Solutions, 95 Distribution Drive, Sparks, Nevada 89441, Attention: Customer Service. Any assistance Ellsworth provides to or procures for Buyer outside the terms, limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this limited warranty, nor will such assistance extend or revive the warranty. Ellsworth will

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not reimburse Buyer for any expenses incurred by Buyer in repairing, correcting or replacing any defective Products, except for those incurred with Ellsworth's prior written permission.

**(c) NO LIABILITY FOR OTHER OBLIGATIONS OR INCIDENTAL OR CONSEQUENTIAL DAMAGES.** ELLSWORTH SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORT OR STATUTE OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCTS OR THEIR USE (WHETHER THE PRODUCTS ARE IN ORIGINAL PACKAGING OR HAVE BEEN REPACKAGED OR MANUFACTURED BY ELLSWORTH) OR ELLSWORTH'S UNDERTAKINGS, ACTS OR OMISSIONS. ELLSWORTH WILL NOT, TO ITS KNOWLEDGE, SELL PRODUCTS OR PARTS TO BUYER THAT ARE COUNTERFEIT, BUT ELLSWORTH IS NOT OBLIGATED TO TAKE SPECIFIC STEPS TO ASCERTAIN THE AUTHENTICITY OF PRODUCTS OR PARTS IT PROCURES FROM VENDORS. IN NO EVENT SHALL ELLSWORTH BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR LOST PROFITS (WHETHER DIRECTLY OR INDIRECTLY INCURRED) EVEN IF ELLSWORTH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF THE LIMITED REMEDY OR ANY OTHER REMEDY IN THIS AGREEMENT. ELLSWORTH'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THIS AGREEMENT SHALL BE LIMITED TO THE MONIES PAID TO ELLSWORTH FOR THE RELEVANT PRODUCT(S), EXCEPT WITH RESPECT TO (i) LIABILITY RESULTING FROM ELLSWORTH'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (ii) DEATH OR BODILY INJURY RESULTING FROM ELLSWORTH'S ACTS OR OMISSIONS IN BREACH OF THIS AGREEMENT OR IN VIOLATION OF APPLICABLE LAW. Buyer agrees that Ellsworth has no post—sale duty to warn Buyer or any other party about any matter or, if such duty exists, Ellsworth satisfies that duty by providing any required warnings only to Buyer. Buyer assumes all post—sale duty to warn its customers and indemnifies Ellsworth against any Damages (as defined in section 11) in connection with such duty or failure to warn.

Some states do not allow the exclusion or limitation of incidental and consequential damages, so the above limitation or exclusion may not apply to Buyer.

**(d) Retains.** Ellsworth has no obligation to retain Product samples and Buyer accepts all responsibility for obtaining and retaining any required or desired retains or samples. If Buyer requests in writing that Ellsworth obtain and maintain a sample, and if Ellsworth agrees to do so, Buyer will pay Ellsworth's associated costs.

**(e) Unsolicited Parts or Materials.** Ellsworth will not be responsible for any parts or materials sent to Ellsworth that are not accompanied by Buyer's documentation clearly stating the proposed project specifications, and an appropriate method to return the parts to the Buyer's designated location at Buyer's cost. If Ellsworth is not able to return such parts or materials to Buyer at Buyer's cost within a period deemed reasonable by Ellsworth, Ellsworth will dispose of such parts or materials as Ellsworth deems appropriate, in its sole judgement, without notice or compensation to Buyer, and without incurred liability.

**(f) Buyer's Obligations.** Prior to using or permitting use of the Products, Buyer shall determine the suitability of the Products for the intended use and under Buyer's operating conditions, and Buyer shall assume all risk and liability whatsoever in connection therewith. Buyer agrees to test and evaluate samples to ensure compliance with all specifications, quality requirements and other requirements of Buyer's application. Ellsworth does not guaranty the accuracy of information given and recommendations made as to suitability of Products for Buyer's application or operating conditions. Nothing shall be construed to imply the nonexistence of any relevant patents or to constitute a permission, inducement or recommendation to practice any invention covered by any patent without authority from the patent owner. Buyer agrees to familiarize itself with and comply with all laws and regulations now or hereafter in effect and applicable to the purchase, transport, use, supply, storage, sale, offer for sale, lease and/or disposal of the Products ("Laws") including, without limitation, to the extent applicable, the U.S. Foreign Corrupt Practices Act and all other antibribery laws, all U.S. antiboycott laws, the U.S. Export Administration Act and all regulations thereunder and all laws relating to exports or re-exports of Products. If Buyer or its affiliates, agents or representatives engages a freight forwarder or similar service provider, Buyer shall provide Ellsworth with copies of freight forwarder (or similar) records regarding Product exports promptly upon request. Buyer shall promptly notify Ellsworth in writing if Buyer receives notice of or otherwise has reason to believe that a violation of U.S. export law has occurred or is likely to occur. Buyer assumes all risk with respect to Product compliance with applicable Laws (including without limitation all Environmental Laws in any jurisdiction). Buyer acknowledges that certain Products have restrictions on who can purchase, transport, use, supply, store, sell, offer for sale, lease and/or dispose of (the "Actions") the Product and on how and where such Actions may take place. Buyer agrees to be responsible for determining who may take such Actions and how and where such Actions may take place after Ellsworth's delivery hereunder, and further agrees to ensure that its customers comply with such requirements. Buyer shall maintain records pertaining to the Product's sale and use and Buyer's and its customers' compliance with applicable Environmental Laws, and Buyer shall make such records available to Ellsworth on demand. "Environmental Laws" means all applicable federal, state and local laws including rules of common law, statutes, rules, regulations, codes, ordinances, binding determinations, orders, permits, licenses, injunctions, writs, decrees or rulings of any governmental authority, and

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other governmental restrictions and requirements relative to or that govern or purport to govern air quality, soil quality, water quality, sub-slab vapor and indoor air quality, wetlands, natural resources, solid waste, hazardous waste, hazardous or toxic substances, pollution or the protection of employee health and safety, public health, human health or the environment, including, but not limited to, the Comprehensive Environmental Response Compensation and Liability Act, the Hazardous Materials Transportation Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Emergency Planning and Community Right-to-Know Act, and the Toxic Substances Control Act, as each of these laws have been amended from time to time, and any analogous or related statutes and regulations, regulations of the U.S. Environmental Protection Agency, and regulations of any state department of natural resources, state environmental protection agency, and air quality management district or consortium now or at any time hereafter in effect.

**(g) Patent Infringement and Defects in Buyer's Specifications.** Orders manufactured to specifications, drawings, designs or descriptions provided by or for Buyer are executed only with the understanding that Buyer hereby agrees to indemnify and hold harmless Ellsworth from any and all Damages (as defined in section 11) sustained by Ellsworth, resulting from any action or threatened action against Ellsworth for (a) infringement of the patents or proprietary right of any other person, or (b) injury to person or property, including death, relating to defects in specifications, drawings, designs or descriptions provided by or for Buyer.

**9. DISCLAIMER OR LIMITATION OF OTHER WARRANTIES.** ELLSWORTH AND BUYER AGREE THAT THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS WARRANTIES. ELLSWORTH HEREBY DISCLAIMS ALL OTHER EXPRESS WARRANTIES. FOR COMMERCIAL PRODUCTS, ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. FOR CONSUMER PRODUCTS, ALL WARRANTIES IMPLIED BY LAW, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY LIMITED TO THE PERIOD OF THE WARRANTY STATED ABOVE FOR THE RELEVANT PRODUCT. Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as an express warranty.

### **10. CONFIDENTIAL INFORMATION; TRADEMARKS.**

**(a) Confidential Information.** Buyer acknowledges that all trade secrets and Confidential Information (as defined below) which may be disclosed to it by Ellsworth or its affiliates shall at all times, both during and after expiration or termination of this Agreement for any reason, remain the exclusive property of Ellsworth or its affiliates or Suppliers and that Buyer shall not acquire any proprietary interest whatsoever therein. "Confidential Information" means all knowledge and information disclosed by Ellsworth or its affiliates to Buyer orally or in writing, or acquired by Buyer through observation, regarding Ellsworth's or its affiliates' or suppliers' products, technology, inventions, formulas, know-how, services, forecasts, sales methods, customer lists, customer usages and requirements, financial information, business plans, strategies and future business relationships, engineering data, design information and engineering and shop drawings, that provides Ellsworth or its affiliates with a competitive advantage or belongs to Ellsworth suppliers, with the exception of such information which Buyer can demonstrate by competent written evidence: (i) was already part of the public domain at the time of the disclosure by Ellsworth or its affiliates; (ii) becomes part of the public domain through no fault of Buyer (but only after and only to the extent that it is published or otherwise becomes part of the public domain); or (iii) is received (after the disclosure by Ellsworth or its affiliates) by Buyer from a third party who did not require Buyer to hold it in confidence and did not acquire it directly or indirectly from Ellsworth or its affiliates under a continuing obligation of confidence. Except as necessary to perform its duties under this Agreement, Buyer shall not use or disclose any of such Confidential Information or Ellsworth's or its affiliates' trade secrets, but shall care for such confidential information and trade secrets using at least the same degree of care given its own confidential information and trade secrets, respectively (but in no event less than a reasonable degree of care). Upon expiration or termination of this Agreement for any reason, Buyer shall, within 15 days, surrender to Ellsworth all plans, drawings, specifications, sketches, pictures, films, tapes, computer disks, literature, samples, documents, other tangible and intangible objects and all copies thereof relating to trade secrets and other Confidential Information and all of Ellsworth's or its affiliates' or suppliers' property. Buyer shall be permitted to destroy rather than return all analyses, extracts, and summaries prepared by Buyer which contain Confidential Information, and such destruction shall be certified in writing to Ellsworth by an authorized officer of Buyer who has supervised such destruction. Buyer's obligations of non-use and non-disclosure of Ellsworth's and its affiliates' trade secrets will survive for so long as such trade secret constitutes a trade secret or for five years, whichever is longer. Nothing in this Agreement shall be construed to limit or negate the common or statutory law of torts or trade secrets where it provides Ellsworth with broader protection than that provided herein.

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**(b) Engineering Data.** All engineering data, design information and engineering and shop drawings used in the completion of this order are and shall remain Ellsworth property. Buyer shall not copy, reproduce, distribute, publish, or communicate to any third party such data without prior, written permission of a properly authorized representative of Ellsworth, Ellsworth hereby gives its permission to the Buyer to distribute nonconfidential product data or operation and maintenance information to the end user.

**(c) Trademarks.** Any use of Ellsworth's or its affiliates' or suppliers' trademarks or other intellectual property shall be subject to Ellsworth's prior written approval in each instance and such restrictions as Ellsworth may, in its sole discretion, impose from time to time. Buyer agrees that neither it nor its affiliates will seek to register any trademark, service mark, or trade dress owned by Ellsworth or its affiliates or suppliers, and if Buyer or any of its affiliates does obtain such a registration, Buyer or its affiliate shall immediately assign and do hereby assign the same to Ellsworth or its designee. Buyer acknowledges and agrees that Ellsworth or its affiliates or suppliers own all right, title, and interest in and to its trademarks. Except as otherwise agreed by Ellsworth, Products sold by Buyer shall bear Ellsworth's or its affiliate's or supplier's trademark, and Buyer shall not remove or efface such trademark. Buyer shall not sell Products unless Ellsworth has granted Buyer the right to do so. Buyer will not repackage the Products or resell Products without Ellsworth's prior written consent, which consent may be withheld by Ellsworth in its sole discretion. Any use of Ellsworth's or its affiliates' or suppliers' trademarks in advertisements or promotion must be preapproved in writing by Ellsworth. Buyer and its affiliates agree to take all steps which Ellsworth may from time to time consider to be necessary to perfect or protect Ellsworth's or its affiliates' or suppliers' rights in its trademarks including, without limitation, executing all necessary assignments, declarations, and other documents requested by Ellsworth from time to time. Upon expiration or termination of this Agreement for any reason, Buyer and its affiliates shall take such steps and execute such documents as Ellsworth requests to cause Ellsworth or its affiliates or suppliers to own all rights in its trademarks and to terminate any rights Buyer may have to use such trademarks. Buyer shall inform Ellsworth promptly of any potential or actual infringement of any of Ellsworth's or its affiliates' or suppliers' trademarks and shall provide all assistance and information required by Ellsworth, at Ellsworth's expense, in connection with any such infringement.

**(d) Intellectual Property Ownership.** Buyer acknowledges and agrees that all Intellectual Property developed exclusively by Ellsworth or in conjunction with Buyer, whether or not the Intellectual Property incorporates Intellectual Property provided by Buyer or the development of the Intellectual Property was paid for by Buyer (referred to as "EDS Intellectual Property") shall be exclusively owned by EDS. To the extent that Buyer or any of Buyer's employees are inventors or co-authors of any EDS Intellectual Property, Buyer and its affiliates agree to assign and hereby assign all right, title, and interest in EDS Intellectual Property to EDS. Buyer agrees that neither it nor its affiliates will seek to register any EDS Intellectual Property, and if Buyer or any of its affiliates does obtain such registration, Buyer or its affiliates shall immediately assign and do hereby assign the same to EDS. Buyer and its affiliates agree to assist EDS, at EDS's expenses, to execute all documents necessary to apply for and obtain registration of any EDS Intellectual Property. To the extent that the transfer of rights in this document is not effective, Buyer and its affiliates agree, at EDS's expense, to execute or assist in obtaining execution of all documents necessary to transfer title of any EDS Intellectual Property to EDS. Buyer agrees that EDS shall have the exclusive right and option to pursue protection of any EDS Intellectual Property. Buyer agrees that EDS shall have the exclusive right and option to enforce the rights afforded by any EDS Intellectual Property against any third party. Buyer agrees not to pursue any action to invalidate any EDS Intellectual Property. Buyer shall inform EDS promptly of any potential or actual infringement of any of EDS Intellectual Property and shall provide assistance and information required by EDS, at EDS's expense, in connection with any such infringement. Nothing in this subsection (d) shall eliminate any rights afforded by EDS in sections 10(a)-(c).

**(e) Definition of Intellectual Property.** For purpose hereof, "Intellectual Property" shall mean, throughout the world, (i) inventions (whether patentable or un-patentable and whether or not reduced to practice), patents, patent applications (including provisional patents), and patent disclosures, together with all reissuances, Provisionals, continuations, continuations-in-part, revisions, extensions, registrations and examinations thereof. (ii) trademarks, service marks, trade dress, logos, slogans, trade names, and corporate names, together with goodwill associated therewith, and applications, registrations, and renewals in connection therewith, (iii) Internet domain name registrations, (iv) copyrightable works, copyrights, and applications, registrations, and renewals in connection therewith, (v) all mask works and all applications, registrations, and renewals in connections therewith, (vi) all trade secrets and confidential information, (vii) all ideas research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, pricing and cost information, and business and marketing plans and proposals (whether or not they qualify as trade secrets or confidential business information), and (viii) all computer software (including source code, executable code, data and related documentation).

**11. INDEMNIFICATION.** Buyer hereby releases and agrees to indemnify, defend and hold harmless Ellsworth, its shareholders, officers, agents, employees, affiliates, successors, assigns and third-party suppliers ("Ellsworth's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, loss, suits, demands, fines, penalties, judgments, omissions, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs of proceedings

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("Damages") incurred by or against Ellsworth or any of Ellsworth's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to (i) misrepresentations, breach of the warranties, representations, covenants or agreement contained in this Agreement or any law by Buyer or any of Buyer's shareholders, directors, officers, employees, affiliates, representatives, agents, successors or assigns ("Buyer's Parties"), or (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties, or (iii) losses, damages or injuries caused by Buyer's products, Buyer's specifications, designs, approvals or instructions provided to Ellsworth, or due to improper application or use of the Products or otherwise. Prior to settling any claim, Buyer will give Ellsworth an opportunity to participate in the defense and/or settlement of such claim. Buyer shall not settle any claim without Ellsworth's written consent. In the event of any form of recall affecting or relating to the Products, Ellsworth shall have the right to control the recall process and Buyer shall fully cooperate with Ellsworth in connection with the recall.

### 12. ADDITIONAL PROVISIONS.

**(a) General Provisions.** Ellsworth reserves the right to correct clerical or similar errors relating to price or any other term shown in this Agreement. The failure of Ellsworth to insist, in any one or more instances, upon performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition. The invalidity of any provision or clause of this Agreement shall not affect the validity of any other provision or clause hereof. Buyer is an independent contractor and neither Buyer nor any of its employees or agents shall be considered an employee or agent of Ellsworth. Neither Buyer nor any of its employees or agents is authorized to incur any obligations or make any promises or representations on Ellsworth's behalf. The provisions found in sections 3(c), 4(d), 6, 7, 8(e), 8(f), 10, 11 and 12 and the warranty and damage limitations in sections 8 and 9, and any other provision the performance or effectiveness of which naturally survives, shall survive expiration or termination of the parties' agreement for any reason. All of Ellsworth's remedies herein are cumulative and not exclusive of any other remedies available to Ellsworth at law, by contract or in equity.

**(b) Entire Agreement.** THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF. ANY NEGOTIATIONS OR UNDERSTANDINGS BETWEEN ELLSWORTH AND BUYER WHICH ARE NOT CONTAINED IN THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, PURCHASE ORDERS, CORRESPONDENCE OR STATEMENTS THAT CONFLICT WITH, DIFFER FROM OR MODIFY THIS AGREEMENT) SHALL HAVE NO FORCE OF EFFECT, UNLESS IN WRITING AND SIGNED BY AUTHORIZED OFFICERS OF ELLSWORTH AND BUYER. Ellsworth's sales representatives are without authority to change the terms of this Agreement.

**(c) Assignment.** Neither party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party; provided, however, Ellsworth may assign, without Buyer's consent, this Agreement or its interest herein to any affiliate or to any assignee or successor of Ellsworth's business. Ellsworth reserves the right to use subcontractors. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Ellsworth and Buyer and their successors and assigns.

**(d) Governing Law; Dispute Resolution.** The internal laws of the State of Nevada, without regard to conflict of law provisions, shall govern the rights and obligations of Ellsworth and Buyer under this Agreement and any disputes hereunder. Neither this Agreement nor sales hereunder shall be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods. Any cause of action, claim, suit or demand by Buyer allegedly arising from or related to the terms of this Agreement or the relationship of the parties shall be brought in a Court situated in the State of Nevada. Both parties hereby irrevocably admit themselves to and consent to the jurisdiction of said Court. Upon expiration or termination of this Agreement for any reason, Ellsworth shall have all of the rights and remedies provided by law, including, without limitation, the rights of a secured party under Chapter 104, Nevada Statutes or any successor statute or similar statute in the jurisdiction where Buyer is located or stores the Products. Ellsworth shall be entitled to temporary and/or permanent injunctive relief and/or other equitable remedies to protect its (or its affiliates' or suppliers') Confidential Information or intellectual property.

**(e) Force Majeure.** Ellsworth shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding Ellsworth's available supply or any other cause beyond Ellsworth's control. In the event of any delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, Ellsworth may, at its option and without incurring liability, prorate its deliveries, cancel all or any portion of the Agreement and/or extend any date upon which performance is due hereunder.

**(f) Termination.** In addition to any remedies that may be provided herein, Ellsworth may terminate this Agreement with immediate effect upon written notice to Buyer if Buyer (i) fails to pay any amount when due hereunder, (ii) has not otherwise

## TERMS AND CONDITIONS GOVERNING SALES

performed or complied with this Agreement in whole or in part, or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

(g) **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except as may be set forth in section 11 with respect to Ellsworth's Indemnified Parties.