

Sales Terms and Conditions

1. Acceptance. Seller's acceptance of Buyer's order for the purchase of goods hereunder (the "Goods") including any software as embed in the Goods, and enhancements, updates, and modifications thereto (the "**Software**") is expressly made conditional on Buyer's agreement to these terms and conditions (these "Terms"), and shall constitute an agreement between Buyer and Seller ("Agreement"). Buyer shall be deemed to have agreed to the provisions hereof in all respects by its acceptance of any Goods shipped. Seller's commencement, performance and/or delivery shall be for Buyer's convenience only and shall not be construed as acceptance of Buyer's terms and conditions of purchase, regardless of how and when such Buyer terms and conditions are conveyed. NO ORAL AGREEMENT, COURSE OF PERFORMANCE OR OTHER MEANS OTHER THAN A WRITTEN AGREEMENT SIGNED BY BOTH PARTIES EXPRESSLY PROVIDING FOR SUCH WAIVER SHALL BE DEEMED TO WAIVE OR AMEND ANY THESE TERMS. The Goods are offered for sale only on the terms and conditions contained herein. Prior dealings between the parties, Buyer's purchase orders or other documents shall not affect said Terms.

2. Delivery. (a) Seller will use reasonable efforts to deliver the Goods in accordance with a mutually agreed-upon delivery schedule. Seller shall not be liable for any delays, loss or damage in transit or expedited delivery costs unless the delay is due solely to Seller's gross negligence. Further, any specified delivery dates in a sales order confirmation or otherwise are estimates only and do not represent a confirmation on the delivery date for delivery for any Good or order. Should Buyer reschedule deliveries or modify quantities during an established firm order period, Buyer shall compensate Seller for all costs associated with the change in schedule or modification, including, but not limited to overtime and expedited freight costs.

(b) Unless otherwise agreed in writing by the parties, Seller shall make the Goods available at Seller's location (the "Delivery Point") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods upon Seller's written notice that the Goods have been made available at the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. All deliveries made to public carriers are made subject to the terms of such carrier's bill of lading and tariffs, and the carrier shall be deemed the Buyer's agent irrespective of the terms of sale. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.

(c) Risk of loss for the Goods shall pass to Buyer at the Delivery Point. Ownership shall be transferred upon full payment of the Goods. If for any reason Buyer fails to accept

delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). Each of Seller's Goods or part thereof or equipment shipped hereunder shall be deemed accepted by Buyer unless written notice specifying all claimed defects, damages, shortages, or nonconformities is received by Seller within three (3) days of delivery of said Goods.

3. Prices and Payment. (a) All prices are subject to adjustment, at any time, by Seller for changes in volume forecasts, economics (including labor, inflation, tariff and energy costs), changes in sub-supplier conditions, raw material or component shortages, or exchange rates as applicable. Such adjustment shall be effective as of the date the adjustment is communicated to the Buyer. Such adjustment shall be retroactive if Buyer's actual purchases fall short of the volume forecasts the prices were based on. In addition, pricing for service parts may also be adjusted for changes in volume, packaging, equipment maintenance and repair, and capacity reservation.

(b) All sums shall be payable in currency specified in Seller's invoices. Payment shall be due no later than 30 days after delivery unless otherwise agreed in writing by Seller. Any overdue payments shall bear interest at the rate of 1.5% per month or the maximum rate under the usury laws, whichever is less. All prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets. Buyer shall not withhold payment of any amounts due and payable for any reason including any set-off of any claim or dispute with Seller. Buyer shall reimburse Seller for all taxes, excises or charges which Seller may be required to pay to any government or governmental authority which are hereafter levied directly upon the Good or upon the sale, transportation or use of any Good.

4. Suspension of Delivery. In addition to all other remedies available under these Terms, at law, or equity (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder or otherwise breaches these Terms.

5. Changes. Any engineering or technical changes requested by Buyer in connection with the Goods are subject to

approval by Seller taking into account the feasibility and practicality of the requested change. If Seller agrees to implement such requested change, then Buyer shall be liable to Seller for any cost increase incurred as a result of such change.

6. Warranty. (a) Seller warrants that its Goods shall be free of defects in material and workmanship and conform to the specifications for the Goods established by Seller and Buyer in writing or Seller's published specifications applicable to the Goods, whichever is applicable, for the following periods (starting in each case from the date of Seller's invoice to the Buyer): (i) for Goods for applications in the agricultural, materials handling, construction and mining markets and for industrial applications, for a period of one (1) year, for non-Spicer® branded Goods, or one (1) year or 2,000 operating hours (whichever occurs earlier) for Spicer® branded Goods; or (ii) for all other Goods, for a period of one (1) year, unless a longer period is published by Seller or otherwise mutually agreed upon by the parties in writing (the "Warranty Period"). EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 6(A) AND 15(A), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING STATEMENT, SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(b) Goods manufactured using components that Seller has been directed, or otherwise required, to use by Buyer that are manufactured by a directed third party ("Third Party Directed Good") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Directed Third Party Goods are not covered by the warranty in Section 6(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY DIRECTED THIRD PARTY GOOD, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Seller shall not be liable for a breach of the warranty set forth in Section 6(a) unless: (i) Buyer gives written notice of the nonconformance, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or should have discovered the nonconformance; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and, if requested to do so by Seller, Buyer returns such Goods to Seller's place of business at Seller's cost for examination; and (iii) Seller reasonably verifies Buyer's claim that the Goods do not conform to the specifications or are defective in material or workmanship.

(d) Seller shall not be liable for a breach of the warranty set forth in Section 6(a) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the nonconformance arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(e) Subject to Section 6(c) and Section 6(d) above, with respect to any Goods which Seller determines do not conform to the warranty set forth in section 6(a), Seller shall, in its sole discretion, either: (i) repair or replace such nonconforming parts or (ii) credit or refund the price of such nonconforming parts at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Buyer's expense, return such Goods to Seller. THE REMEDIES SET FORTH IN SECTION 6(e) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 6(a).

7. Recall. If Buyer believes a recall is required by law and, in whole or in part, is caused by the Goods, Buyer shall give prompt written notice to Seller, keep Seller at all times fully informed and consult with Seller on the actions to be taken. Such prompt written notice is also required in the event of any Good-related incident such as fire, accident, malfunction causing injury, or loss of control of vehicle, and shall be accompanied by all information available to Buyer. Buyer shall not respond to inquiries of any Federal or State agency relating to the Goods without prior consultation with Seller. Prior to any recall involving the Goods, Seller shall have the right to perform a full investigation including but not limited to inspection and testing (including destructive testing) of the Goods involved, vehicle history, scene investigation, and copies of all witness statements, reports, analysis, and tests performed by or on behalf of or in the possession of Buyer. Buyer shall give Seller full support for such investigation. In the event that a recall is determined to be legally required, both parties agree to negotiate a fair and equitable reimbursement of a share of Buyer's direct expenses incurred for such recall. Such allocation shall take into consideration the portion of each party's responsibility, the cost of the Goods involved, the other cause(s) of the recall and the strength and the nature of the evidence concerning the defect and its cause(s). Seller shall not be liable for mark-ups or profit margins normally accruing to Buyer or its customers in the provision of replacement parts, nor for costs of handling, administration, customer inducement or incentives, nor for incidental, consequential or punitive damages (including but not limited to damages caused by standstill, loss of goodwill, lost profits), whether incurred by Buyer or any of its customers.

8. Limitation of Liability. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF OR

RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE ASSOCIATED WITH THE GOODS OR PERFORMANCE HEREUNDER, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL ANY DAMAGES OWED BY SELLER TO BUYER BE GREATER THAN THE AMOUNT BUYER PAID TO SELLER UNDER THE APPLICABLE AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATION OF DAMAGES PROVISIONS SET FORTH IN THIS SECTION SURVIVE IF THE EXCLUSIVE REMEDY SET FORTH IN SECTION 6 IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE OR OTHERWISE BE DEEMED UNENFORCEABLE.

9. Force Majeure. Seller shall not be liable or responsible to Buyer, and shall have no obligation to incur costs for expedited freight or other expenses, as a result of, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances reasonably unforeseeable by Seller or beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor shortages or disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, including without limitation raw materials on terms acceptable to Seller, shortage of materials or equipment, or telecommunication breakdown or power outage. If any such contingencies occur, Seller may, without liability to Buyer of any kind, keep its available supply of any Goods for its own uses or distribute it among its customers upon such basis and in such manner as Seller deems fair and practicable. At the option of either party the total quantity to be delivered shall be reduced by the quantity not delivered on account of such cause or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, including without limitation raw materials on terms acceptable to Seller, shortage of materials or equipment, or telecommunication.

10. Confidentiality. All non-public, confidential or proprietary information of Seller, including but not limited to Software, Documentation, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be

disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

11. Tooling. Special tooling which is separately negotiated for and fully paid for by Buyer as a separate item on an order shall become the property of Buyer. During its use at Seller's facility, Seller may use such special tooling for the supply of Goods to the aftermarket organizations of Seller, and its affiliates and shall maintain such special tooling in accordance with Seller's usual practice. Buyer shall bear the risk of ordinary wear and tear, or loss or damage other than such indisputably caused by Seller. At the request of Buyer and to the extent practicable, special tooling shall be identified by appropriate markings. Prices for special tooling do not include transportation costs, storage beyond completion of the purchase order, or costs of marking or packaging. Unless Seller elects to continue to use special tooling for the aftermarket as described above, Seller will not be responsible for special tooling after completion of the purchase order and Buyer shall remove all special tooling within 30 days after such completion. If Buyer fails to do so Seller may, at Buyer's expense and without any liability towards Buyer, dispose of such in a manner it deems fit. Seller shall have a lien on the special tooling to secure all outstanding obligations of Buyer.

12. Notices. Any notice will be sufficiently given when duly mailed through regular or electronic means, addressed to Seller or to Buyer at their respective addresses appearing herein, or to such other address for either party as that party may designate by written notice.

13. Successors and Assigns. This Agreement shall bind the respective successors and assigns of the parties hereto, but none of Buyer's rights or obligations hereunder shall be assigned without Seller's prior written consent. A corporate reorganization, which does not result in a change of control or beneficial owner, shall not be deemed an assignment.

14. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. Intellectual Property. (a) Seller warrants, to the best of its knowledge, that the Goods are free of rightful claims for infringement of any United States patent or trademark, provided, however, that this warranty shall not apply to claims for patent infringement to the extent that any Goods are: (i) manufactured to Buyer's specifications, (ii) used in

combination with Goods not purchased from Seller in a manner which infringes a patent covering the combination, or (iii) used in a manner not approved or reasonably anticipated by Seller.

(b) Subject to the limitations set forth in Section 8, Seller shall indemnify Buyer against any violation of Seller's warranty in Section 15(a). Seller's obligation hereunder is conditioned upon Buyer: (i) giving Seller prompt written notice of any infringement claim; (ii) cooperating fully with respect to the defense of such claim; and (iii) upon Seller's request, providing Seller full control of the defense including settlement and/or litigation of such claim.

(c) Seller shall be entitled, at its option, to obtain a license on Buyer's behalf for the Goods which (allegedly) infringes an intellectual property right or to modify the Goods in such a way that it does not infringe the intellectual property right, or replace the Goods by similar Goods which do not infringe the intellectual property right.

(d) All data transmitted by Seller to Buyer or developed by Seller in connection with the supply of the Goods, including any data that may be embedded in any Goods, is and will continue to be the property of and under the control of the Seller.

(e) Buyer warrants that all designs, drawings, and specifications supplied by Buyer do not infringe any patent, trademark, copyright or other intellectual property of any third party.

16. Software License. (a) Seller grants Buyer a non-exclusive, non-transferable license to use the Software for the Goods in accordance with the Documentation. The Software may only be used as embedded in the Goods. IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SOFTWARE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

(b) Buyer may only use the Software as described in this Agreement and in the then current documentation made generally available by Seller to Buyer regarding the Software (the "**Documentation**"). Except as expressly authorized by this Agreement, Buyer will not, and will not allow any of its personnel or other third party to, (i) permit any third party to access or use the Software; (ii) attempt to extract the Software from the Goods; (iii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets embodied in the Software, except to the extent expressly permitted by applicable law; (iv) use the Software or any Seller confidential information to develop a competing product or service; (v) use any Software, or allow the transfer, transmission, export, or re-export of any Software or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (vi) remove any copyright, trademark, proprietary rights, disclaimer, or

warning notice included on or embedded in any part of the Documentation and Software, including any screen displays, etc., or any other products or materials provided by Seller hereunder. Under no circumstances will Seller be liable or responsible for any use, or any results obtained by the use, of the Software in conjunction with any services, software, or hardware that are not provided by Seller, including the operation of Goods on which the Software is installed. All such use will be at Buyer's sole risk and liability.

17. Legal Compliance and Sustainability. Buyer shall comply with all applicable federal, state and local laws, rules and regulations relating to its business and/or the use of the Goods. In addition, Buyer agrees to utilize the Goods in a manner that will contribute to a sustainable utilization of natural resources and promote the welfare of all persons throughout the Goods' value chain.

18. Buyer's Indemnification. Buyer shall indemnify, defend, and hold harmless Seller and Seller's owners, officers, directors, employees, agents, subsidiaries, affiliates, and contractors (collectively, the "Seller Indemnitees") from and against any and all liabilities, claims, costs, fees, damages, losses, and expenses (including without limitation reasonable attorneys' fees and court costs) (collectively, "Losses") which a Seller Indemnitees may incur or suffer as the result of: (i) Buyer's failure or omission to comply with the terms of this Agreement, including any actual or alleged infringement of any patents, copyrights or trademarks arising from the manufacture or sale of Goods or the Software in accordance with patterns, designs, specifications, drawings, directions, technical information, or data furnished to Seller by Buyer or (ii) any warranty, recall, products liability or wrongful death claim or action caused, in part or in full, by Buyer's actions or inactions.

19. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

20. Choice of Law and Venue. (a) All matters arising out of or relating to supply of Goods from or to the United States are governed by and construed in accordance with the internal laws of the State of Indiana, USA, without giving effect to any choice or conflict of law provision or rule (whether of the State of Indiana or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Indiana, and the Convention on Contracts for the International Sale of Goods (CISG) will not apply and is expressly disclaimed. All matters arising out of or related to supply of Goods that are not from or to the United States shall be governed by the law of the jurisdiction of the Seller's supplying location.

(b) Any disputes arising in connection with the supply of Good from or to the United States shall be resolved in the federal or state courts situated in Indiana, USA. Prior to commencing any litigation, the Parties shall endeavor to

resolve any disputes through amicable commercial negotiations although neither party shall be precluded from seeking injunctive relief if circumstances warrant. Any disputes arising in connection with the supply of Goods that are not to be resolved in the United States shall be resolved by the courts having jurisdiction over the Seller's supplying location.

21. Termination. (a) Either party may terminate this Agreement: (i) upon breach of any material term of this Agreement by the other party which is not remedied within 30 days after notice of such breach; or (ii) if a party becomes insolvent or makes an assignment for the benefit of creditors, or such party institutes any voluntary proceeding under bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law of any jurisdiction. In the event of a termination for any reason, Buyer shall compensate Seller for all costs of raw materials, work-in-process or finished goods that have been acquired or manufactured on Buyer's behalf prior to the date of the termination.

(b) In the event that Buyer cancels a business award or program for the supply of Goods after business award but before the agreed upon end of the program duration, Buyer shall reimburse appropriate cancellation charges for unrecoverable investment including but not limited to capital equipment, Seller paid tooling, engineering design and test costs, and material obsolescence.