



SP INDUSTRIES, INC. CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION. In addition to other terms defined in these Conditions of Sale and any other applicable software license terms (collectively, these “Conditions”), unless the context otherwise requires, the following capitalized terms have the following meanings:

“**Affiliate**” means any corporation or entity of a party that: (a) is controlled, either directly or indirectly, by such party; (b) is under common control, either directly or indirectly, with such party; or (c) controls such party. For purposes of this definition, “control” means the ability to vote greater than fifty percent (50%) of the outstanding voting securities in or otherwise direct the management of a corporation or entity.

“**Customer**” means the entity from which Seller accepts the Purchase Order.

“**Customer Designs**” means designs, drawings and instructions provided by Customer, and/or information acquired from Seller’s authorized access to facilities that house equipment which manufactures Customer’s products.

“**Deliverables**” means the Product, Spare Parts, Services, Documentation and/or other items that are to be provided by Seller to Customer pursuant to the terms of the Quote.

“**Documentation**” means the specific documentation identified in the Quote provided by Seller to Customer, forming part of the Deliverables, and expressly excludes any Seller Proprietary Technology.

“**Product**” means any equipment (excluding Spare Parts) to be provided by Seller to Customer pursuant to the terms of the Quote.

“**Quote**” means the quote or quotation, including any attachments, issued by Seller with respect to the sale of the Deliverables, including, without limitation, these Conditions.

“**Seller**” means SP Industries, Inc. or the Affiliate of SP Industries, Inc. which accepts in writing Customer’s Purchase Order.

“**Services**” refers to the services that are to be performed by Seller and/or its subcontractors as set out in the Quote.

“**Software**” means Seller Software.

“**Supplement Conditions**” means the Supplement Conditions of Sale attached hereto, which shall apply to all Quotes with a total value of \$500,000 or more.

“**Spare Parts**” means contingency parts identified by Seller that are materially equivalent in form, fit and function to parts used in the Product or Services.

“**Specifications**” means the design, functional, performance, and other technical specifications relating to the Deliverables as set out in the Quote, and/or otherwise mutually agreed upon between the parties in a written document signed by both parties. In the event that the design, functional, performance, and/or other technical specifications are provided by or on behalf of the Customer (“**Customer’s Specifications**”), then to the extent of any exceptions taken, or clarifications, assumptions or conditions made in the Quote in relation to the Customer’s Specifications, the Quote shall take priority. In such case, the Customer’s Specifications as modified by the Quote are hereinafter referred to as the “**Specifications**”.

References such as “**the Agreement**”, “**hereof**”, “**herein**”, “**hereto**” and like references refer to the Agreement as defined in Section 2 and not to any particular section, subsection, paragraph or other subdivision of the Agreement. A “**Section**” means a Section of these Conditions unless otherwise stated. The division of these Conditions and/or the Agreement into sections, subsections and paragraphs and any insertion of headings are for convenience of reference only and shall not affect the construction or interpretation thereof. Where the context so requires, words used herein importing the singular shall include the plural and vice versa and words used herein importing gender shall include all genders (including the neuter).

2. CONTRACT FORMATION AND ENTIRE AGREEMENT. These Conditions form a part of and are incorporated into the Quote to which they are attached, incorporated by reference, or to which they otherwise relate. If the total value of the Quote exceeds \$500,000 the Supplement Conditions of Sale shall apply to the Quote and supersede these Conditions to the extent there is a conflict. Such Quote (including all attachments) constitutes an offer to sell by Seller to Customer that is expressly limited to these Conditions. Upon Customer’s issuance of a purchase order corresponding to the Quote and/or the Deliverables (the “**Purchase Order**”), the Customer shall be deemed to have expressly and unconditionally accepted the Quote including these Conditions and the Agreement shall be deemed to have been formed on that basis, to the exclusion of: (A) any Customer terms and conditions which may be included, incorporated or referenced in, or otherwise printed on, attached to or accompany the Purchase Order; and (B) any other additional or different terms and conditions inconsistent with the Quote. Seller’s notice to Buyer of such exclusions is hereby given. The Quote supersedes all prior correspondence, requests for quotations, quotations, understandings, and other communications between the parties or submitted by Seller, whether oral, written, expressed, or

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implied. Any such additional or other Customer terms and conditions are void and of no force and effect notwithstanding any delivery or other performance under such Purchase Order, request, confirmation, acceptance or similar document, are expressly rejected by Seller. These Conditions may only be changed in a written document executed by authorized representatives of Customer and Seller. These Conditions (including documents incorporated herein by reference), change orders, Seller's written acknowledgement of the Purchase Order, the Quote, the Purchase Order, and the Specifications constitute the contract documents forming the agreement between Customer and Seller (collectively, the "**Agreement**"). In the event of a conflict in the provisions of the aforesaid contract documents comprising the Agreement, priority shall be given to the contract documents from highest to lowest in the order they appear in the preceding sentence. Any change or amendment to the Agreement, any of the aforesaid contract documents, or the Deliverables, including, without limitation, the addition of any Deliverables not set out in, or contemplated by the original Quote, shall be governed by the provisions of the Agreement, including these Conditions.

3. PRICE, PAYMENT AND TAXES. Customer shall pay Seller the price as set out in the Quote for the Deliverables. All payments for Deliverables shall be made in accordance with the payment schedule set out in the Quote, without any set-off, deduction or withholding whatsoever. In the event terms of payment are not provided in the Quote, all amounts due Seller shall be payable within thirty (30) days after presentation, shipment, or after notification of availability for shipment. The prices quoted by Seller are exclusive of all applicable federal, state/provincial, or local taxes, unless otherwise expressly stated in the Quote. Interest will be charged on all overdue payments at the lesser of: (a) a rate of one and one-half of one percent (1.5%) per month (eighteen (18%) per annum); or (b) the highest rate that may be charged by applicable law, until payment is received, and Customer agrees to pay all such interest, both before and after default, demand and judgment.

4. ACCEPTANCE TESTING AND INSTALLATION. Unless as otherwise set out in the Quote or as otherwise mutually agreed by the parties:

(a) where factory acceptance testing ("**FAT**") is not applicable, the Product shall be tested at Seller's facility and the Product shall be deemed accepted by Customer upon delivery of the Product from Seller's facility. Upon request, Customer shall be permitted to witness testing at Seller's facility.

(b) if FAT is ordered, the parties shall agree to follow the SP standard acceptance test plan setting out the criteria and testing process to be employed during FAT, unless an alternative FAT is quoted ("**Test Plan**"). FAT shall be deemed successful when the results of the testing are in material compliance with the Test Plan's criteria. Seller shall carry out such remedial work as is necessary to achieve, as applicable, a successful FAT, at no additional charge to Customer. Once remedial work is complete, the Products will be re-tested and this process shall continue until, as applicable, a successful FAT, is achieved. In the event that Seller determines that remedial work will not achieve, as applicable, a successful FAT, the parties shall work together in good faith to revise the Specifications and Test Plan

Installation is not included in the purchase price, unless otherwise stated in the Agreement. If any installation is performed by Seller, Customer is responsible to complete any final electrical or utility hook-ups to Customer's power supply or other utility sources. Customer is responsible for arranging inspections, approvals or supervision of such hook-ups at the installation site and for obtaining all required permits related to the installation site. If start-up service is included in the purchase price and unless otherwise agreed by the parties, Customer is responsible to ensure any Products at the Customer's installation site will be set in place, leveled and properly aligned with any other interconnection equipment.

5. DELIVERY, TITLE, AND RISK OF LOSS. Seller shall use commercially reasonable efforts to provide the Deliverables in accordance with any schedule(s) set out in the Quote or as otherwise agreed upon in writing between the parties. All scheduled completion dates are estimates. Seller reserves the right to charge storage and handling fees due to Customer requests or delays. Unless expressly otherwise provided in the Quote or otherwise agreed in the Agreement: (i) delivery will be made to Customer when Seller makes the Deliverables available for uploading by the Customer's carrier at Seller's facility (or other point of shipment as designated by Seller in the Quote) in accordance with EXW (Incoterms 2010); (ii) risk of loss of, loss of use of, or damage to, the Deliverables will pass to Customer upon delivery in accordance with subsection (i) above, provided, however, that title to the Deliverables will not pass to Customer until full payment has been received by Seller; and (iii) all freight, customer packaging requirements, customer specific crating requirement costs, customers, excise, import duty, brokerage and/or similar charges shall be the sole responsibility of Customer.

6. CHANGE ORDERS. In order to be binding on the Seller, a change order must be agreed to in writing by Seller in advance. Customer is responsible for and shall pay Seller all price increases corresponding to a change order. The impacts of any change in the Applicable Laws which occurs after the date of the Quote shall be treated by the parties as a change order. The project schedule shall be adjusted as estimated or quoted by Seller or equal to the time lost or gained or expected to be lost or gained by reason of the change order, unless otherwise agreed in writing by the parties. Seller shall have the right to decline any change order proposed by Customer, if Seller has concerns regarding safety, reliability, performance, or warranty.

7. EQUIPMENT SAFETY. Seller shall build the Product to comply with Seller's interpretation of the applicable occupational health and safety legislation, rules, and regulations and/or the safety standards applicable to the Product (collectively, "**Applicable Laws**") as at the date of the Quote. If Customer requests deviation from Seller's interpretation of the Applicable Laws, this shall be considered a change order. To the extent that the Product is manufactured to Customer Designs, Customer shall ensure such designs meet the Applicable Laws in all jurisdictions applicable to the Product.

8. FORCE MAJEURE EVENTS AND EXCUSABLE DELAYS. Neither party shall be liable for delays or non-performance resulting from causes outside of their reasonable control, including, without limitation: flood; fire; earthquake; unavailability or delay in receipt of third party materials, components or other required supplies; labor shortages and/or stoppages; war; terrorist threats or acts; riot or other civil unrest; government order or law; embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; or any effects or conditions resulting from such events, or other reasonable measures taken by a party, to address such events (collectively, "**Force Majeure Events**"). Either party suffering a Force Majeure Event shall promptly give written notice of the Force Majeure Event to the other party (provided that failure to provide prompt notice shall not disentitle the party claiming relief to such relief, except to the extent that such failure prejudices the other party), stating the starting date and period of time the occurrence is expected to continue and both parties shall use diligent efforts to minimize the effects of such Force Majeure Event. In the event of a Force Majeure Event, the project schedule shall be extended for a period of time at least equal to the time lost by reason of delay.



Seller shall not be liable for delays arising from delays in transporting of the Products from Seller's facility and/or delays at customs (unless caused solely and directly by the negligence of Seller), and/or acts or omissions of Customer, its Affiliates, or any of their respective employees, agents, subcontractors, consultants, contract manufacturers, or other suppliers, including Customer directed suppliers (collectively, "Excusable Delays"). In the event an Excusable Delay extends for an unreasonable period of time as determined by Seller, such Excusable Delay shall constitute a material breach of the Agreement by Customer. In the event of an Excusable Delay, the project schedule shall be extended for a period of time at least equal to the time lost by reason of delay and/or Customer shall pay Seller any corresponding price increases (including mark-up) in connection with the Excusable Delay.

The parties agree that, notwithstanding anything to the contrary, neither party shall be liable for delays or non-performance as a result of causes related to the COVID-19 virus and efforts being made to avoid or limit the spread of the virus and related diseases or health issues, including but not limited to, governmental directions, orders, guidelines or recommendations; unavailability or delay in receipt of third party materials or services, components or other required supplies; labor shortages and/or stoppages, or any effects or conditions resulting from such events or other reasonable measures taken by a party, to address such events ("COVID-19 Event"). The party suffering a COVID-19 Event shall promptly give written notice of such to the other party, (provided that failure to provide prompt notice shall not disentitle the party claiming relief to such relief, except to the extent that such failure prejudices the other party) stating the period of time the occurrence is expected to continue (if reasonably known), and shall use commercially reasonable efforts to end the failure or delay and minimize its effects. COVID-19 Events shall be an Excusable Delay and any price consequences and/or impacts to schedule shall be reasonably determined by Seller.

9. LIMITED WARRANTIES.

A. Warranties.

(a) **Product.** Seller warrants that the Product: (i) will be free from defects in workmanship and material for a period of twelve (12) months from the date of the Product is delivered to Customer from Seller's facility, unless expressly set out otherwise in the Quote.

(b) **Spare Parts.** With respect to Spare Parts supplied by a third-party supplier, warranties for such Spare Parts are limited to the warranty extended to Seller by the third-party supplier. Seller hereby assigns to the Customer all warranties received from its third-party suppliers to the extent Seller is able. With respect to Spare Parts manufactured by SP, such Spare Parts will be free from defects in material and workmanship for a period of twelve (12) months from the date the Spare Part is delivered to Customer from Seller's facility.

(c) **Services.** Seller warrants that Services shall be performed in a workmanlike manner respecting industry standards and practices for similar services. This warranty in respect of any Services shall expire ninety (90) days after the rendering of such Services.

(d) **Software.** Seller warrants that Software shall materially conform to the Specifications for a period of ninety (90) days from the date of delivery of the Software to the Customer.

B: Remedies and Obligations.

(a) **Products and Spare Parts.** Upon Customer's prompt: (a) notification to Seller of any failure of the Product or Spare Part manufactured by Seller to conform to these warranties during the applicable warranty period; and (b) undertaking and cooperation to affect the repair or replacement, Seller will repair or replace the defective component of the Product or Spare Part manufactured by Seller, at Seller's option. Unless otherwise mutually agreed in writing, Customer agrees to return a defective component to Seller at Customer's expense. Unless otherwise mutually agreed in writing, Seller will return the repaired or replacement component to Customer by delivering same EXW Seller's dock (Incoterms 2010). Customer shall be responsible for, and assume all costs associated with, the removal and reinstallation of such defective component.

(b) **Services and Software.** Upon Customer's prompt notification to Seller of any failure of the Services performed or Software provided by Seller to conform to these warranties during the applicable warranty period and to the extent of a breach of the applicable warranty, Seller's sole obligation shall be limited to: (i) in the case of Services, re-performance of the non-compliant Service; and (ii) in the case of Software, use reasonable commercial efforts to correct any substantial reproducible errors in the Software so that the Software materially conforms to the Specifications.

C: **Limitations of Warranties.** Seller shall have no responsibility for, and does not warrant against any problems that occur as a result of: (i) Customer's failure to properly install, maintain, or operate the Deliverables, including in accordance with Seller's manuals, directions, training, and recommendations; (ii) alteration of the Deliverables by any party other than Seller or those authorized by Seller; or (iii) misuse, improper installation, abuse, improper packaging upon shipment or improper energy supply. Customer shall maintain accurate and complete records regarding equipment operation, maintenance, and service performed on the Deliverables. Seller's warranties exclude consumable items and wear parts which by their nature require periodic replacement. Damage caused by disasters such as fire, flood, lightning or improper electrical current or power surges is not covered by warranty. Seller provides no warranty that Seller's Software is invulnerable to virus attacks, malicious viruses, worms, Trojan horses, and similar devices that have been created by third parties for the purposes of destroying or corrupting data, disabling systems, denying services or taking control of a system.

With respect to equipment, materials, parts, Spare Parts, components, services and/or software supplied by a third party and integrated into the Deliverables, warranties for such items are limited to the warranty extended to Seller by the third-party supplier, and Seller will not be responsible for any liability or expense in this regard greater than the amount recovered from the third party supplier. Seller hereby assigns to the Customer all warranties received from its suppliers to the extent Seller is able and agrees to assist the Customer in making any claim pursuant to the said third party supplier warranties.

Notwithstanding anything to the contrary in this Agreement: (a) to the extent that the Product is manufactured to Customer Designs: (i) Seller provides no warranty or guarantee as to the performance or outcomes achieved by the Product; and (ii) Seller shall have no responsibility for, and does not warrant against, any problems that occur as a result of faulty, incomplete, or ambiguous Customer Designs; and (b) Seller provides no warranty whatsoever on any prototype and/or proof of principle comprising the Deliverables or part thereof.



CUSTOMER ACKNOWLEDGES THAT THIS SECTION SETS FORTH CUSTOMER'S EXCLUSIVE REMEDIES AND SELLER'S EXCLUSIVE OBLIGATIONS AND LIABILITIES, FOR ANY BREACH OF THESE WARRANTIES AND ANY OTHER CLAIM DURING OR FOLLOWING THE APPLICABLE WARRANTY PERIOD AND WHETHER THE CLAIM, HOWSOEVER INSTITUTED, IS BASED ON CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED CONDITIONS. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

10. INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE LICENSES. Notwithstanding any provision, express or implied, to the contrary, the parties confirm that Seller shall retain ownership of all proprietary rights in and to any Seller Proprietary Technology, including, without limitation, that which forms part of the Deliverables provided under the Agreement. "Seller Proprietary Technology" means any and all technology, know-how, trade secrets, inventions, designs, copyrights, and software and other intellectual property whatsoever that: (a) is or was developed, conceived, or acquired by Seller prior to or outside the scope of its obligations under the Agreement; (b) is developed or conceived jointly or solely by Seller in connection with this Agreement; (c) is an improvement and/or modification to (a) or (b) developed or conceived jointly or solely by Seller in connection with this Agreement and relates to automation including, but not limited to, mechanical and electronic devices used to mark, convey, grip, locate, orient, manipulate, alter, inspect, test, attach, sort, or sense materials, objects or products; or (d) is or was developed, conceived, or acquired by Seller during the scope of its obligations under the Agreement.

The Deliverables may include computer software that is or has been developed by Seller for: (a) general use in the products Seller manufactures and/or sells or otherwise supplies ("Seller Software"). Seller Software is proprietary to Seller and is included in Seller Proprietary Technology. For certainty, software developed by Seller and included in the Deliverables shall be Seller Software.

Upon Seller's receipt of payment in full for the Deliverables, Seller grants to Customer an irrevocable, non-transferable, non-exclusive, royalty-free, perpetual right and license (with no right to sub-license) to use such Seller Proprietary Technology as has been incorporated into the Deliverables solely to operate and maintain the Deliverables provided under this Agreement where the Deliverables are delivered. Customer shall not alter, modify, adapt, create derivative works, translate, decompile, disassemble, convert into human readable form, or reverse engineer all or any part of the Seller Software.

The Deliverables may incorporate proprietary technology (including software) or other intellectual property rights owned by third party suppliers ("Third Party Rights"). To the extent possible, Seller will assign, sublicense or otherwise transfer to Customer all Third-Party Rights related to the Deliverables. Customer shall assume all obligations in relation to any such Third-Party Rights.

11. CONFIDENTIALITY. To the extent that Buyer and Seller have previously or concurrently entered into a mutual non-disclosure agreement ("NDA"), the terms and conditions of the NDA are hereby incorporated by reference into this Agreement and shall continue to be incorporated by reference into this Agreement notwithstanding any expiration or termination of the NDA in the future. Unless otherwise agreed in the NDA, each party to the Agreement (each a "Recipient") agrees to keep and maintain the confidentiality of the confidential and/or proprietary information ("Confidential Information") of the other party hereto (each an "Owner"). For clarity, the Owner's Confidential Information includes but is not limited to the confidential and/or proprietary information of the Owner and third parties for which Owner has obligations of confidentiality, and confidential and/or proprietary information obtained by Recipient by way of observation or study at the facilities of Owner. The parties agree that the Quote and Seller Proprietary Technology are the Confidential Information of Seller. Recipient agrees to protect the Confidential Information in strictest confidence by using the same degree of care to prevent the unauthorized use or disclosure of the Confidential Information as Recipient uses to protect its own confidential information. Recipient may disclose Confidential Information only: (a) to those of Recipient's employees, advisors, consultants, Affiliates, subcontractors and suppliers who have a specific need to know such Confidential Information in furtherance of the purpose of this Agreement (collectively, "Representatives") provided that: (i) Recipient has obligated such Representatives under terms of confidentiality that afford no less protection to the Confidential Information than the terms of this Agreement; and (ii) Recipient shall be liable for the failure of any of its Representatives to whom Confidential Information is disclosed to comply with Recipient's obligations hereunder; and (b) to a competent court, tribunal, government or regulatory body, or as otherwise required by applicable law, provided that, to the extent not prohibited by law, Recipient gives Owner sufficient notice to enable Owner to seek an order limiting or precluding such disclosure, and Recipient shall limit such disclosure to the extent sufficient for compliance. Recipient shall not use the Confidential Information for any purpose other than as necessary to carry out the purposes of the Agreement. This Agreement imposes no obligation on the Recipient where Recipient can establish by written records that such information: (A) was known to the Recipient prior to receipt of the Owner's information; (B) is a matter of public knowledge or publicly available through no fault of the Recipient; (C) was rightfully received by Recipient on a non-confidential basis from a third party (other than an affiliate of the Owner) without restriction on disclosure and without breach of an obligation of confidentiality owing directly or indirectly to the Owner; (D) was independently developed by Recipient without use of or reference to the Confidential Information; or (E) was publicly disclosed by Recipient with Owner's prior written approval. Notwithstanding expiration or termination of this Agreement, the obligations and restrictions on Recipient shall survive until such time as the Confidential Information otherwise falls into one of the exclusions as set out in the preceding sentence.

12. LIMITATIONS OF LIABILITY, REMEDIES, AND INDEMNITY. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND GROSS NEGLIGENCE), DUTY OF GOOD FAITH AND/OR HONEST PERFORMANCE, STRICT LIABILITY, OR OTHERWISE, SHALL:

- A. SELLER, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS (COLLECTIVELY, THE "RELEASEES") BE LIABLE FOR: ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, SPECULATIVE, REMOTE, OR PUNITIVE DAMAGES OR LIABILITIES OR LOSS OF PROFIT OR REVENUES, WHETHER OR NOT THE RELEASEES ARE ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.
- B. SELLER'S LIABILITY TO THE CUSTOMER FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE AGREEMENT, SELLER'S PERFORMANCE, NON-PERFORMANCE OR BREACH OF THE AGREEMENT, OR THE DELIVERABLES COVERED BY OR FURNISHED UNDER THE AGREEMENT, EXCEED THE AMOUNT ACTUALLY RECEIVED BY SELLER FOR THE SPECIFIC DELIVERABLE WHICH GIVES RISE TO THE CLAIM.



THE REMEDIES PROVIDED TO CUSTOMER IN THE AGREEMENT ARE CUSTOMER'S ONLY REMEDIES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THE AGREEMENT.

CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS THE RELEASEES FROM AND AGAINST ALL LOSSES, DAMAGES, DEMANDS, COSTS, PENALTIES, EXPENSES, LEGAL AND/OR PROFESSIONAL FEES (ON A FULL INDEMNIFICATION BASIS) IN CONNECTION WITH AND/OR IN RELATION TO: (I) THIRD PARTY CLAIMS REGARDING INJURY, DEATH OR OTHER LOSSES TO PERSONS OR PROPERTY RESULTING FROM OR IN CONNECTION WITH THE USE OF THE DELIVERABLES FURNISHED BY THE RELEASEES; AND (II) THIRD PARTY CLAIMS REGARDING ANY ALLEGATION OR CLAIM THAT CUSTOMER CONFIDENTIAL INFORMATION DIRECTLY OR INDIRECTLY CONSTITUTES AN INFRINGEMENT UPON, OR A MISAPPROPRIATION OF, ANY INTELLECTUAL PROPERTY RIGHTS OF ANOTHER PARTY.

13. TERMINATION BY SELLER. Seller may terminate this Agreement: (a) effective immediately if Customer becomes insolvent or bankrupt; or (b) effective fifteen (15) calendar days after written notice is given by Seller to Customer if Customer materially breaches the Agreement and does not remedy such breach within such fifteen (15) calendar day notice period. In the event of such termination: (i) Seller will have the right to take possession of all Deliverables and related materials and components, in whatever stage of design, manufacture, production or installation they are in at such time, except such Deliverables, materials, and components which have already been delivered to and paid for in full by Customer; (ii) Seller will be under no obligation to finish the Deliverables or provide any warranty or any further work, support or information to customer; and (iii) Customer shall pay Seller: (A) an amount to compensate Seller for all Services and other work performed prior to the termination based on a pro rata ratio of the purchase price to the percentage of the work completed by Seller as at the effective date of termination; (B) an amount to compensate Seller for all costs and expenses incurred in connection with the termination; (C) an amount to compensate Seller for all liability incurred by Seller in connection with commitments made to third parties prior to termination for equipment and other goods, services, and labor (including, without limitation, as the case may be, the actual amount of any such commitment, any cancellation or termination fees, any lost deposits and any restocking charges); and (D) a reasonable amount for overhead and profit on the costs itemized in (B) and (C).

14. TERMINATION BY CUSTOMER. Customer may terminate the Agreement: (a) effective immediately if Seller becomes bankrupt or insolvent; or (b) effective fifteen (15) calendar days after such notice was given if Seller materially breaches the Agreement and does not commence to remedy such breach within fifteen (15) calendar days of being given written notice by Customer. In the event of such termination, Customer shall be entitled to take possession of the Deliverables (in whatever state of design or manufacture they are in at such time) immediately and will have the right to receive a refund of all amounts paid to Seller by Customer hereunder, less an amount representing payment for all Services and other work performed and Deliverables provided by Seller. Seller will not be entitled to anticipated profit or anticipated overhead charges. **THE REMEDY PROVIDED TO CUSTOMER IN THIS SECTION IS THE CUSTOMER'S ONLY REMEDY IN RESPECT OF ANY BANKRUPTCY OR INSOLVENCY OF SELLER, IN RESPECT OF ANY BREACH OF THE AGREEMENT AND/OR SELLER'S NEGLIGENCE (INCLUDING GROSS NEGLIGENCE), OR OTHER TORT, IN THE PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT.**

15. NON-CANCELLATION. Buyer is not entitled to cancel or terminate for convenience, or direct suspension of manufacture, except with Seller's written consent and then only upon terms that will compensate Seller for its engineering, fabrication and purchasing charges and any other costs or damages relating to such cancellation, termination or suspension, plus a reasonable amount for profit.

16. INSURANCE. Each of the parties shall procure and maintain, at its sole expense, (a) general liability covering property damage including products liability, bodily injury, and personal injury of \$1,000,000 per occurrence with a \$2,000,000 annual aggregate (b) Personal Injury of \$1,000,000 per incident / \$500,000 per person, (c) Property Damage of \$1,000,000, (d) Product Liability of \$1,000,000, and (e) Workers Compensation in accordance with applicable legislation and/or Employer Liability of \$1,000,000. The minimum policy limits shall not be construed as a limitation of liability under this Agreement. Each party shall promptly notify the other party of any change, cancellation, or non-renewal of the insurance. Upon request, a party shall furnish a certificate of insurance to the other evidencing that such insurance coverage is in effect and shall add the other party as an additional insured.

17. PURCHASE MONEY SECURITY INTEREST. As collateral security for the payment of the purchase price for the Products purchased under the Agreement, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the equipment or other goods purchased under the Agreement, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the relevant Uniform Commercial Code. Buyer agrees to all acts necessary to protect and maintain such security interest of Seller and to protect the interest of Seller by adequately insuring the Products against loss or damage from any external cause with Seller named as insured or co-insured.

18. ASSIGNMENT. Neither party shall assign the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld; provided that Seller shall be entitled, without Customer's consent to: (a) assign or subcontract all or a portion of the Agreement to a Seller Affiliate; or (b) assign the Agreement to a third party as part of a sale to such third party or an Affiliate thereof of all or a portion of the assets of Seller. This Agreement shall be binding on and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

19. SEVERABILITY. If one or more of the provisions contained herein shall be invalid, illegal, or unenforceable in any respect, such provision or provisions shall be severed from the Agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.

20. AGENCY. Seller and the Customer are independent contractors. No agency relationship or partnership exists between them, and neither of them has the right to enter into a contract on behalf of or as an agent or representative of the other. Customer expressly acknowledges and agrees that in no event shall Customer communicate directly with Seller's subcontractors and suppliers without the prior written authorization of Seller.

21. NOTICES. All notices required or permitted hereunder shall be in writing and shall be deemed given: (i) if and when personally delivered; or (ii) if delivered by electronic mail transmission (email) to the other party (and in the case of notice to Seller, with a second copy sent to legal@atsautomation.com); or (iii) on the next business day after being deposited with a recognized and reputable overnight carrier. In the case of (ii) or (iii), the notice shall be delivered



to the address or electronic address set forth for such party on the Quote or such other address or electronic address as hereafter provided by written notice by one party to the other.

22. SURVIVAL BEYOND COMPLETION. Except as otherwise stated in these Conditions, the terms, conditions, provisions, indemnities, limitations of liability, disclaimers, representations and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party or both parties hereunder shall so survive the completion of performance, final acceptance of the Deliverables, and/or expiration or termination of the Agreement.

23. NO WAIVER OR RELEASE. Any delay, act, or omission by Seller in exercising any right under this Agreement shall not operate as: (i) a waiver of that or any other right of Seller; or (ii) a release of any claim against Customer. A waiver of a right or a release of a claim by Seller must be made in a written document executed by an authorized representative of Customer and Seller.

24. TRADE COMPLIANCE. The parties agree to comply with all export laws and to commit no act that, directly or indirectly, would violate any law, or any other international treaty or agreement, relating to the export, re-export, or release of any materials, products, or their related technical data to which the United States or Canada adheres or with which the United States or Canada complies. Notwithstanding anything to the contrary in this Agreement, neither party shall be required to meet its obligations under this Agreement in any way that is inconsistent with laws applicable to it or its Affiliates.

Buyer confirms that it is the end user of the Products and is not entitled to sell, resell, export, or otherwise transfer the Products in the original form or packaging, unless Buyer complies with U.S. export compliance requirements. For the purpose of compliance with U.S. export regulations, Buyer shall provide to Seller with each order the following information for each customer of Buyer and end-user (if different) of the Products ordered: (a) complete legal name and address; (b) the business scope of such end-user or customer; (c) the intended use of the Products ordered; (d) the intended final location of the Products; and (e) any other information requested by Seller. Buyer agrees to provide, at Seller's request, reasonable evidentiary documentation supporting such information. All such orders shall be subject to compliance approval, including receipt of any required export approvals. Export and re-export of the Products is subject to the Export Administration Regulations of the United States and the laws and regulations administered by the Department of Treasury's Office of Foreign Assets Control ("**OFAC**"). The Products may not be diverted, transhipped, resold, or re-exported except in accordance with such regulations. Buyer warrants that it is not on, or associated with any organization, entity or individual on the Specially Designated Nationals or Blocked Persons ("**SDN**") list or any other list maintained by OFAC, the U.S. Department of Commerce and the U.S. Department of State.

25. GOVERNING LAW. The validity, interpretation and performance of the Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania. Customer and Seller hereby submit to the exclusive jurisdiction of the state and federal courts in Pennsylvania for resolution of disputes arising in connection with this Agreement. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement or the rights and obligations of the Customer and Seller under the Agreement. Customer and Seller each irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim arising out of or relating to this Agreement.

26. CONTRACT LANGUAGE. The parties have requested that the Agreement and all communications and documents relating hereto be expressed in the English language.

SP INDUSTRIES SUPPLEMENTAL CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION. In addition to other terms defined in these Conditions of Sale and any other applicable software license terms (collectively, these "**Conditions**"), unless the context otherwise requires, the following capitalized terms have the following meanings:

"**Affiliate**" means any corporation or entity of a party that: (a) is controlled, either directly or indirectly, by such party; (b) is under common control, either directly or indirectly, with such party; or (c) controls such party. For the purposes of this definition, "control" means the ability to vote greater than fifty percent (50%) of the outstanding voting securities in or otherwise direct the management of a corporation or entity.

"**Customer**" means the entity from which Seller accepts the Purchase Order.

"**Customer Designs**" means designs, drawings and instructions provided by Customer, and/or information acquired from Seller's authorized access to facilities that house equipment which manufactures Customer's products.

"**Customer Directed Supplier**" means a third-party supplier of equipment, materials, parts, components, services and/or software from whom Customer has directed Seller to purchase to incorporate into or otherwise in relation to the Deliverables.

"**Deliverables**" means the Product, Retrofits, Spare Parts, Services, Documentation and/or other items that are to be provided by Seller to Customer pursuant to the terms of the Proposal.

"**Documentation**" means the specific documentation identified in the Proposal to be provided by Seller to Customer, forming part of the Deliverables, and expressly excludes any Seller Proprietary Technology.

"**Installation Site**" means the site(s) identified in the Proposal as the location where the Services will be provided and/or where the Product will be installed for intended operation by, or on behalf of, Customer.

"**Product**" means any equipment (excluding Spare Parts) to be provided by Seller to Customer pursuant to the terms of the Proposal.



"Proposal" means the proposal issued by Seller with respect to the sale of the Deliverables, including, without limitation, these Conditions, and all attachments to such proposal.

"Retrofit(s)" means one or more restorations, incremental increases in, or modifications to, functionality of Customer's existing equipment, pursuant to the terms of the Proposal.

"Sample Part(s)" means production quality components of the Customer's end product that are within the tolerances and technical specifications upon which the Proposal was prepared.

"Seller" means SP Industries, Inc. or the Affiliate of SP Industries, Inc. which accepts in writing Customer's Purchase Order.

"Services" refers to the services that are to be performed by Seller and/or its subcontractors as set out in the Proposal, and may include, without limitation, training, consulting, systems integration, Product installation, equipment relocation, inventory management, maintenance, and on-site or remote support or monitoring services.

"Software" means Seller Software and Application Software.

"Spare Parts" means contingency parts identified by Seller that are materially equivalent in form, fit and function to parts used in the Product, Services, or Retrofit.

"Specifications" means the design, functional, performance, and other technical specifications relating to the Deliverables as set out in the Proposal, and/or otherwise mutually agreed upon between the parties in a written document signed by both parties. In the event that the design, functional, performance, and/or other technical specifications are provided by or on behalf of the Customer ("**Customer's Specifications**"), then to the extent of any exceptions taken, or clarifications, assumptions or conditions made in the Proposal in relation to the Customer's Specifications, the Proposal shall take priority. In such case, the Customer's Specifications as modified by the Proposal are hereinafter referred to in these Conditions as the "**Specifications**".

References such as "**the Agreement**", "**hereof**", "**herein**", "**hereto**" and like references refer to the Agreement as defined in Section 2 (Contract Formation and Entire Agreement), and not to any particular section, subsection, paragraph or other subdivision of the Agreement. A "**Section**" means a Section of these Conditions unless otherwise stated. The division of these Conditions and/or the Agreement into sections, subsections and paragraphs and any insertion of headings are for convenience of reference only and shall not affect the construction or interpretation thereof. Where the context so requires, words used herein (including defined terms) importing the singular shall include the plural and vice versa and words used herein (including defined terms) importing gender shall include all genders (including the neuter).

2. CONTRACT FORMATION AND ENTIRE AGREEMENT. These Conditions form a part of and are incorporated into the Proposal to which they are attached, in which they are incorporated by reference, or to which they otherwise relate. Such Proposal (including all attachments to the Proposal) constitutes an offer to sell by Seller to Customer that is expressly limited to these Conditions. Upon Customer's issuance of a purchase order corresponding to the Proposal and/or the Deliverables (the "**Purchase Order**"), the Customer shall be deemed to have expressly and unconditionally accepted the Proposal including these Conditions and the Agreement shall be deemed to have been formed on that basis, to the exclusion of: (A) any Customer terms and conditions which may be included, incorporated or referenced in, or otherwise printed on, attached to or accompany the Purchase Order; and (B) any other additional or different terms and conditions inconsistent with the Proposal. Seller's notice to Buyer of such exclusions is hereby given. The Proposal supersedes all prior correspondence, requests for quotations, quotations, understandings, and other communications between the parties or submitted by Seller, whether oral, written, expressed, or implied. Any such additional or other Customer terms and conditions are void and of no force and effect notwithstanding any delivery or other performance under such purchase order, request, confirmation, acceptance or similar document, are expressly rejected by Seller. The failure of Seller to object to any provision in conflict with these Conditions or the Proposal, whether such provision is contained in or communicated as part of the Purchase Order, or otherwise communicated to Seller, shall not be construed as a waiver by Seller of the provisions of these Conditions or the Proposal, nor of the acceptance of such conflicting provision by Seller. **All Deliverables set forth in the Proposal without specific customer requirements shall be deemed to be the manufacturer's standard Specifications for such Deliverables. Customer may request modification to the Specifications after initial acceptance of the Proposal and any such changes that necessitate equipment Specifications changes will require a written change order.** These Conditions may only be changed in a written document executed by authorized representatives of Customer and Seller. These Conditions (including documents incorporated herein by reference), Change Orders, Seller's written acknowledgement of the Purchase Order, the Proposal, the Purchase Order, and the Specifications constitute the contract documents forming the agreement between Customer and Seller (collectively, the "**Agreement**"). In the event of a conflict in the provisions of the aforesaid contract documents comprising the Agreement, priority shall be given to the contract documents from highest to lowest in the order they appear in the preceding sentence. Any change or amendment to the Agreement, any of the aforesaid contract documents, the Product design, or the Deliverables, including, without limitation, the addition of any Deliverables not set out in, or contemplated by the original Proposal, shall be governed by the provisions of the Agreement, including these Conditions.

3. PRICE, PAYMENT AND TAXES. Customer shall pay Seller the price as set out in the Proposal for the Deliverables. All payments for Deliverables shall be made in accordance with the payment schedule set out in the Proposal or otherwise agreed by the parties in writing, without any set-off, deduction or withholding whatsoever. Payment milestones (if any) are agreed upon for the purpose of the timing of payments to be made and are not intended as a measure of the percentage of completion of or performance under the project. Unless otherwise expressly provided in the Proposal, all payments for Deliverables are due within thirty (30) days of the date of the invoice issued by Seller therefor. Interest will be charged on all overdue payments at the lesser of: (a) a rate of one and one-half of one percent (1.5%) per month (eighteen (18%) per annum); or (b) the highest rate that may be charged by applicable law, until payment is received, and Customer agrees to pay all such interest, both before and after default, demand, and judgment. If the financial condition of the Customer at any time does not, in the judgment of Seller, justify continued performance on the terms of payment previously agreed upon, Seller may require additional payment (up to full payment of the purchase price for the Deliverables) in advance, or other financial accommodations, and the failure of Customer to provide such payment or accommodations within a reasonable period of time after request therefor shall constitute a material breach of the Agreement by



Customer. Without limiting the remedies available to Seller as set out herein, Customer acknowledges that Seller may, at its sole option, suspend work under the Agreement without liability during the pendency of delays in any payment by Customer.

The prices quoted by Seller are exclusive of all applicable federal, state/provincial, or local taxes, unless otherwise expressly stated in the Proposal. Customer shall pay the gross amount of any and all present or future sales, use, excise, value added, and other similar tax applicable to the price, sale, supply and/or delivery of any Deliverable or other work furnished hereunder. If Customer claims an exemption from any such taxes, Customer shall furnish Seller with evidence of exemption from payment of any such taxes in a form and of content acceptable to the taxing authorities. Customer shall assess and remit any applicable tax to taxing authorities not otherwise invoiced by Seller. If any tax in the nature of withholding tax is payable on any sums invoiced under the Agreement, Customer shall pay Seller such amount as is necessary to ensure that the net amount received by Seller after such withholding shall be equal to the amount invoiced or otherwise required to be paid herein. Likewise, if any payment made in relation to the Agreement is deemed by an applicable tax authority to be inclusive of a tax, Customer shall pay Seller such amount as is necessary to ensure that the net amount received by Seller after such deemed inclusion shall be equal to the amount invoiced or otherwise required to be paid to Seller herein. If any prices are stated in the Proposal to be inclusive of some or all taxes, any: (i) new taxes that become effective following the date of the Proposal; (ii) increases in the rate of tax that become effective following the date of the Proposal; and (iii) taxes that become payable due to a change in the Installation Site following the date of the Proposal, shall be for the account of and paid in full by Customer.

4. CUSTOMER DEPENDENCIES. Unless otherwise stated in the Agreement, Customer shall, in a timely manner and at no cost to Seller, fulfill the following dependencies (collectively, “Customer Dependencies”):

- (a) provide Seller with:
 - (i) all Customer Dependencies identified in the Proposal.
 - (ii) all necessary information.
 - (iii) access to Customer personnel and appropriate subject matter experts.
 - (iv) all required Sample Parts or other specified items required by Seller to design, manufacture, debug, test or re-test, perform, complete, deliver, install and commission the Deliverables.
 - (v) clear and unobstructed access to those portions of the Installation Site required by Seller for performance, installation, debug, commissioning, and testing of the Deliverables in a condition ready to receive the Deliverables.
 - (vi) for remote support or remote monitoring Services, an isolated, reliable, and secure connection to the Internet that is provided via technology as described in the Proposal or as may otherwise be satisfactory to Seller in Seller’s discretion.
 - (vii) where applicable, access to data or third-party software licenses related to inventory management Services.
 - (viii) in the case of Retrofits and equipment relocation, either: A. the subject equipment in a decommissioned and dismantled state prepared for shipment to Seller’s facility or the relocation site; or B. clear and unobstructed access to those portions of the Installation Site required by Seller to perform the Retrofit or equipment relocation, as set out in the Proposal and as the case may be.
 - (ix) access to Customer site to evaluate installation and access, plus site shall be ready to receive delivery at the specified times. Should the Customer site not be ready for installation at the specified time, Customer shall provide alternative storage location at Customers cost, plus bear all shipping and storage costs until site is ready; and
- (b) review for accuracy, completeness, and conformance to the Agreement, any and all drawings, designs, Change Orders or other documents submitted by Seller to Customer for comment or approval, and advise Seller in writing of any material issues associated with such documents within five (5) business days of submission or resubmission. Failure of Customer to advise Seller in writing of material issues within this timeline will be considered deemed approval of such documents.

If any Customer Dependencies are not met in a timely manner, Seller will not be responsible for, and Buyer shall indemnify Seller for any impacts to the scope, project schedule, liabilities, price, budget, or any other agreed terms and conditions set forth in the Agreement, and such failure to meet the above Customer Dependencies shall constitute an Excusable Delay.

Customer expressly acknowledges and agrees that:

- (A) Seller’s suppliers and/or subcontractors may be given possession of Customer’s pallets and/or Sample Parts for the purposes of this Agreement.
- (B) the pallets and Sample Parts provided by Customer to Seller may deteriorate or be damaged, destroyed or consumed during design, manufacture, debugging, testing, re-testing, performance, completion, delivery, installation and/or commissioning of the Deliverables, rendering the pallets and/or Sample Parts unusable and/or unreturnable; and
- (C) Seller shall not be responsible for any wear, tear, damage, deterioration, breakage, consumption, destruction, loss, or loss of use of any pallets or Sample Parts provided by Customer to Seller under this Agreement.

After shipment of the Deliverable to Customer, all remaining Customer pallets and/or Sample Parts provided by Customer as a Customer Dependency shall be discarded by Seller, unless Customer requests return of such pallets and/or Sample Parts in writing, in which case such pallets and/or Sample Parts will be returned to the Customer, FCA (Incoterms 2010) Seller’s dock.

5. ACCEPTANCE TESTING. The following provisions apply with respect to the acceptance of any Products and Retrofits, but do not apply to Products constituting prototypes or proof of principle equipment, in respect of which no acceptance test will be required, except as otherwise set out in the Proposal:

- (a) Within thirty (30) days following completion of design review for the Products or Retrofits, Seller and Customer shall agree in writing upon an acceptance test plan (“Test Plan”). The Test Plan shall set out the criteria to be met and the testing process timelines to be employed both during the FAT and, if applicable, the SAT. The acceptance criteria in the Test Plan for Retrofits shall be limited to the testing of the incremental increase in, or the modification to, the functionality of Customer’s existing equipment. Unless otherwise set out in the Proposal or agreed between the parties in writing, the Test Plan will not include SAT to the extent that the Product is manufactured to Customer Designs. Unless otherwise set out in the Proposal or agreed between the parties in writing, the Test Plan will be conducted by Seller and over a time period reasonable in the



circumstances, in no event to exceed a maximum of three (3) eight-hour production days. **Additional testing or validation time can be purchased as agreed upon.**

- (b) A factory acceptance test (“**FAT**”) for Products shall be performed at Seller’s facility, or such facilities of Seller’s subcontractors as may be agreed upon in writing by the parties. The FAT for Retrofits shall be performed at the location(s) identified in the Proposal. The FAT shall commence promptly but no more than three (3) business days following notice from Seller to Customer confirming completion of the Products or Retrofits or at such other time as may be agreed upon in writing by the parties. Such testing shall be carried out in accordance with the Test Plan. The FAT shall be deemed successful when the results of the testing are in material compliance with the Test Plan’s criteria, at which point the Products or where applicable, the Retrofits, are authorized for shipment to the Installation Site. Products or where applicable, the Retrofits, will not be shipped to the Installation Site until after the successful completion of FAT. Notwithstanding the foregoing, if Seller agrees to ship prior to the completion of FAT, Customer shall enter into a Change Order pursuant to which Seller’s compensation for completion of FAT, SAT, and related work at the Installation Site shall become payable on a time and materials basis (plus reimbursable expenses) billable monthly.
- (c) If agreed to by the parties in the Test Plan, a site acceptance test (“**SAT**”) shall be performed at the Installation Site. The SAT shall commence promptly but no more than three (3) business days after the completion of installation of the Products or Retrofits at the Installation Site. Such testing shall be carried out in accordance with the Test Plan. The SAT shall be deemed successful when the results of the testing are in material compliance with the Test Plan’s criteria, at which point the Products or Retrofits have achieved final acceptance by the Customer. Or other agreed upon schedule and terms.
- (d) Seller shall carry out such remedial work as is necessary to achieve a successful FAT and, where applicable SAT, at no additional charge to Customer, provided that any changes requested by Customer beyond those set forth in the Specifications may require additional charges which shall be determined by mutual agreement by both parties and reflected in a Change Order. Once remedial work is complete, the Products or Retrofits, as applicable, will be re-tested and this process shall continue until a successful FAT and, where applicable, SAT, is achieved. In the event that Seller determines that remedial work will not achieve a successful FAT and/or, where applicable, SAT, the parties shall work together in good faith to revise the Specifications and Test Plan. Should the parties be unable to agree on the revised Specifications or Test Plan, either party may terminate this Agreement by giving the other party ten (10) days written notice. Significant manufacturer’s time lost due to customer-controlled issues can result in overages and additional charges.
- (e) In the event Seller and Customer are unable to agree upon a Test Plan within the time period provided for in sub-section (a) above, the parties shall immediately escalate the issue within their organizations. In the event that, despite the escalation of the issue to the parties’ respective senior management, the parties remain unable to agree upon a Test Plan following good faith attempts at resolution involving their respective senior management, either party shall have the right to terminate the Agreement upon twenty (20) days’ written notice to the other party.
- (f) In the event of termination of this Agreement pursuant to the provisions of subsections (d) or (e), Customer shall compensate Seller pursuant to the provisions of Section 17(iii).
- (g) Notwithstanding anything to the contrary, the FAT and/or, where applicable, SAT, will be deemed successfully completed in the event that FAT and/or SAT are unreasonably delayed as a result of the failure of or delay in performing and/or achieving any Customer Dependencies.

6. DELIVERY, TITLE, AND RISK OF LOSS. Seller shall use commercially reasonable efforts to provide the Deliverables in accordance with any schedule(s) set out in the Proposal or as otherwise agreed upon in writing between the parties. All scheduled completion dates are estimates based on: (a) current projections; and (b) Customer meeting its obligations, including Customer Dependencies. Seller shall not be liable for delays, including, without limitation, delays in completion or delivery, caused by any Excusable Delay. Unless expressly otherwise provided in the Proposal or otherwise agreed in the Agreement: (i) delivery will be made to Customer when Seller makes the Deliverables available for uploading by the Customer’s carrier at Seller’s facility (or other point of shipment as designated by Seller in the Proposal) in accordance with FCA (Incoterms 2010); (ii) risk of loss of, loss of use of, or damage to, the Deliverables will pass to Customer upon delivery in accordance with subsection (i) above, provided, however, that title to the Deliverables will not pass to Customer until payment has been received by Seller in full therefor; and (iii) Seller shall not be responsible for freight, transportation (including, without limitation, export or other special packing/crating or transportation charges), insurance, shipping, storage, customs, excise, import duty, brokerage, handling, demurrage, or similar charges, all of which shall be for the account of and paid by Customer. Without limiting and in addition to the aforementioned retention of title to the Deliverables, Seller shall have, and Customer hereby grants to Seller, a first-priority purchase-money security interest in all goods, general intangibles and other personal property sold or otherwise supplied by Seller to Customer hereunder or in connection herewith, including, without limitation, the Deliverables, together with all accessions thereto, all replacements thereof and all proceeds therefrom, to secure payment of all amounts owing by Customer to Seller under this Agreement, including, without limitation, the unpaid portion of the purchase price of the goods, general intangibles and other personal property sold or otherwise supplied by Seller to Customer from time to time, and the payment and performance of other obligations of Customer hereunder. Seller shall have authority to make all filings, registrations, and notifications necessary or desirable to protect, preserve and perfect its security interest and the intended priority thereof. Customer agrees that in the event of default by it, Seller will have all remedies available to it contemplated at law, including, without limitation, those contained in applicable personal property security legislation. This security is granted in addition to and not in substitution for any other rights and remedies Seller may have hereunder or otherwise.

7. CHANGE ORDERS. Customer agrees to follow Seller’s procedures regarding the processing of changes in the design, process, materials and/or Specifications of or relating to the Deliverables (collectively, a “**Change Order**”), and Customer shall ensure that all Change Orders are properly approved by Customer’s authorized personnel without delay. In order to be binding on the Seller, a Change Order must be agreed to in writing by the Seller in advance. The Customer is responsible for and shall pay Seller all price increases corresponding to a Change Order. Any request by Customer to adjust the project schedule shall be treated by the parties as a Change Order. The Customer is responsible for and shall pay Seller all costs for any design study required to estimate the cost of, or otherwise related to, a proposed Change Order. If impacted by a design study, the project schedule shall be extended by a period of time equal to the hold time, if any, associated with such study, whether or not the Customer authorizes or approves the proposed Change Order. In respect of any Change Order, the Agreement price shall be adjusted by the amount estimated or quoted by Seller for the proposed Change Order, unless otherwise agreed in writing between Customer and Seller, and the project schedule shall be adjusted as estimated or quoted by Seller, based on the amount of time



stated in Seller's design study, or equal to the time lost or gained or expected to be lost or gained by reason of the Change Order, unless otherwise agreed in writing by the parties. Seller shall have the right to decline any Change Order proposed by Customer, if Seller has concerns regarding safety, reliability, performance or warranty service.

8. EQUIPMENT SAFETY. Seller shall build the Product to comply with Seller's interpretation of the applicable occupational health and safety legislation and associated rules and regulations, and/or the safety standards applicable to the Product (collectively, "Applicable Laws") as at the date of the Proposal. The impacts of any change in the Applicable Laws which occurs after the date of the Proposal shall be treated by the parties as a Change Order. Customer shall advise Seller of any required equipment safety or guarding changes no later than five (5) days following the date of such design review meeting. Unless provided for in the Specifications, if Customer requests deviation from Seller's interpretation of the Applicable Laws, this shall be considered a Change Order. To the extent that the Product is manufactured to Customer Designs, Customer shall ensure that the Customer Designs meet the Applicable Laws in all applicable jurisdictions applicable to the Product.

9. FORCE MAJEURE EVENTS, EXCUSABLE DELAYS AND SUPPLY CHAIN DISRUPTIONS.

FORCE MAJEURE EVENTS

Neither party shall be liable for delays or non-performance resulting from causes outside of their reasonable control, including, without limitation: flood; fire; earthquake; unavailability or delay in receipt of materials, services, components or other required supplies; disruptions, delays or unavailability in transportation; labor shortages and/or stoppages; war; invasion; terrorist threats or acts; epidemic or pandemic (whether foreseeable or not, including COVID-19); riot or other civil unrest; government order or law; embargoes or blockades in effect on or after the date of this Agreement; national or regional emergency; or any effects or conditions resulting from such events, or any governmental or any government or authority orders, requirements or guidelines, or other reasonable measures taken by a party, to address such events (collectively, "Force Majeure Events"). Either party suffering a Force Majeure Event shall promptly give written notice of the Force Majeure Event to the other party, (provided that failure to provide prompt notice shall not disentitle the party claiming relief to such relief, except to the extent that such failure prejudices the other party), stating the starting date and period of time the occurrence is expected to continue and both parties shall use diligent efforts to minimize the effects of such Force Majeure Event. In the event of a Force Majeure Event, the project schedule (including any agreed upon dates for delivery or performance) shall be extended for a period of time at least equal to the time lost by reason of delay.

COVID-19 EVENTS

The parties expressly agree that, unless otherwise specified, neither party shall be liable for delays or non-performance as a result of causes related to the COVID-19 virus and efforts being made to avoid or limit the spread of the virus and related diseases or health issues, including but not limited to, governmental directions, orders, guidelines or recommendations; unavailability or delay in receipt of materials or services, components or other required supplies; disruptions, delays or unavailability in transportation; labor shortages and/or stoppages, or any effects or conditions resulting from such events or other reasonable measures taken by a party, to address such events ("COVID-19 Event"). The party suffering a COVID-19 Event shall promptly give written notice of such to the other party, (provided that failure to provide prompt notice shall not disentitle the party claiming relief to such relief, except to the extent that such failure prejudices the other party) stating the starting date and period of time the occurrence is expected to continue (if reasonably known), and shall use commercially reasonable efforts to end the failure or delay and minimize its effects. Any price consequences and/or impacts to schedule flowing from any COVID-19 Events shall be reasonably determined by SP Industries.

EXCUSABLE DELAYS

Seller shall not be liable to Customer, and Customer shall reimburse Seller for its expenses (including mark-up) arising from, delays or failure in design, manufacture, assembly, completion, delivery, installation, commissioning, debug, testing or performance, due to unavailability or delay in receipt of materials or services, components or other required supplies; disruptions, delays or unavailability in transportation and/or delays at customs (unless caused solely and directly by the negligence of Seller), and/or acts or omissions of Customer, its Affiliates, or any of their respective employees, agents, subcontractors, consultants, contract manufacturers, or other suppliers, including Customer Directed Suppliers (collectively, "Excusable Delays"), which includes but is not limited to: (a) failure of Customer to timely perform or supply any Customer Dependencies; (b) failure of Customer to timely supply Seller with all necessary information, approvals, Sample Parts, or other specified items required by Seller for the design, manufacture, performance, completion, delivery, debugging, testing, installation, and/or commissioning of the Deliverable(s); (c) failure or delay by any Customer Directed Supplier to timely supply Seller with specified items or services in conformance with the applicable Specifications which are required by Seller for the design, manufacture, performance, completion, delivery, debugging, testing, installation, and/or commissioning of the Deliverables; (d) failure or delay by Customer to timely approve or reject proposed Change Orders; (e) Change Orders proposed by Customer which result in additional time being required to design, manufacture, perform, complete, deliver, debug, test, install and/or commission the Deliverable(s); (f) failure or delay by Customer to timely provide the necessary release to Seller for delivery of the Deliverable(s); (g) failure or delay by Customer to timely install the Product; (h) failure or delay by Customer or its contract manufacturer (if any) to release to Seller access to the Deliverables and/or those portions of the Installation Site required by Seller for installation, performance, debug, testing or commissioning of the Deliverables; or (i) interference by Customer or Customer's contract manufacturer, suppliers and/or trades during installation, performance, debug, testing or commissioning. In the event an Excusable Delay extends for an unreasonable period of time as determined by Seller, such Excusable Delay shall constitute a material breach of the Agreement by Customer.

In the event of an Excusable Delay, the project schedule (including any agreed upon dates for delivery or performance) shall be extended for a period of time at least equal to the time lost by reason of delay.

SUPPLY CHAIN DISRUPTION

Seller, on or before the date of the Proposal, will use commercially reasonable efforts to conduct ordinary course pricing analyses on items or inputs relevant for the project, in accordance with Seller's general business practices. Customer agrees that, notwithstanding the foregoing, Seller will be unable to have full



visibility to all of the impacts that may arise due to ongoing and unusual supply chain volatility and disruptions. Accordingly, Customer will compensate Seller for any increase in price (including mark-up) for any supplies, materials, services, or transportation costs associated with the Agreement, between the date of Proposal and, in the case of a given item or input, the date Seller receives final pricing confirmation from the applicable third party.

10. INSTALLATION AND RELOCATION. Installation is not included in the purchase price, unless otherwise stated in the Agreement. If any installation or equipment relocation (comprising Services) is performed by Seller, Customer is responsible to complete any final electrical or utility hook-ups to Customer's power supply or other utility sources, by electricians or other suitably qualified technicians. Customer is responsible for arranging inspections, approvals, or supervision of such hook-ups at the Installation Site as set out in any by-laws, ordinances, regulations, or statutes imposed by a government body. Customer shall be responsible for obtaining all required permits related to the Installation Site. Customer shall be responsible and reimburse Seller for any costs associated with work permits, immigration documents or other permits or licenses required to allow Seller, its employees, agents, or subcontractors to perform Services at any location other than a Seller location. In no event shall Seller be liable for any delays caused by an inability to obtain, or any delay in obtaining, any such documents, permits or licenses.

11. LIMITED WARRANTIES.

A. Warranties.

(a) Product. Seller warrants that the Product: (i) will be free from defects in workmanship and material for a period of twelve (12) months from the date of successful completion of SAT, or fifteen (15) months from successful completion of FAT, whichever occurs first (or twelve (12) months from FAT in circumstances where there is no SAT); and (ii) shall materially conform to the Specifications at SAT (or at FAT in circumstances where there is no SAT); provided however that to the extent that the Product is manufactured to Customer Designs, Seller warrants material conformance to such Customer Designs, rather than to the Specifications. The Product warranty does not apply to consumable items ("Consumables") which shall be identified in the Proposal. Consumables shall be warranted solely as outlined in the Proposal.

(b) Retrofit. Seller warrants that: (i) the Retrofits shall materially conform to the Specifications at SAT (or at FAT in circumstances where there is no SAT); and (ii) Retrofits to the extent comprised of new components and/or material will be free from defects in material and workmanship for a period of twelve (12) months from the date of successful completion of SAT, or fifteen (15) months from the date of successful completion of FAT, whichever occurs first (or twelve (12) months from FAT in circumstances where there is no SAT). Seller's warranty applies solely to the Retrofits and Seller expressly disclaims any warranty with respect to the existing or underlying equipment into which the Retrofits are incorporated.

(c) Spare Parts. (i) Seller warrants that Spare Parts manufactured by Seller shall be free from defects in material and workmanship for a period of twelve (12) months from the date such Spare Parts are delivered to Customer; and (ii) With respect to Spare Parts supplied by a third party supplier, warranties for such Spare Parts are limited to the warranty extended to Seller by the third party supplier, and Seller will not be responsible for any liability or expense in this regard greater than the amount recovered from the third party supplier. Seller hereby assigns to the Customer all warranties received from its third-party suppliers to the extent Seller is able, and Seller agrees to assist the Customer in making any claim pursuant to the said third party supplier warranties.

(d) Services. Seller warrants that Services shall be performed in a workmanlike manner respecting industry standards and practices for similar services. This warranty in respect of any Services shall expire ninety (90) days after the rendering of such Services.

(e) Software. Seller warrants that Software shall materially conform to the Specifications for a period of ninety (90) days from the date of successful completion of SAT, or one-hundred and twenty (120) days from successful completion of FAT, whichever occurs first.

B: Remedies and Obligations.

(a) Products, Retrofits and Spare Parts. Upon Customer's prompt: (a) notification to Seller of any failure of the Product, Retrofit or Spare Part manufactured by Seller to conform to these warranties during the applicable warranty period; and (b) undertaking and cooperation to affect the repair or replacement, Seller will repair, adjust, or replace the defective component of the Product, Retrofit, or Spare Part manufactured by Seller, at Seller's option. Where required by Seller, Customer agrees to return a defective component to Seller at Customer's expense. Seller will return the repaired or replacement component to Customer by delivering same EXW Seller's dock (Incoterms 2010). Customer shall be responsible for, and assume all costs associated with, the removal and reinstallation of such defective component.

(b) Services and Software. Upon Customer's prompt notification to Seller of any failure of the Services performed or Software provided by Seller to conform to these warranties during the applicable warranty period and to the extent of a breach of the applicable warranty, Seller's sole obligation shall be limited to: (i) in the case of Services, re-performance of the non-compliant Service; and (ii) in the case of Software, use reasonable commercial efforts to correct any substantial reproducible errors in the Software so that the Software materially conforms to the Specifications.

C: Limitations of Warranties. In the event: (i) the Deliverable is relocated from the Installation Site to another location by any party other than Seller or those authorized by Seller; or (ii) if Customer transfers its interest in or title to or leases any the Deliverables to another party without obtaining such party's agreement to be bound to this Agreement as set out in Section 15, then the warranties provided by Seller herein shall terminate and Seller shall have no further warranty obligations to Customer. Seller shall have no responsibility for and does not warrant against any problems that occur as a result of: (i) failure to properly install, maintain, or operate the Product or Retrofit, including in accordance with Seller's manuals, directions, training, and recommendations; or (ii) alteration of the Deliverables by any party other than Seller or those authorized by Seller. Customer shall maintain accurate and complete records regarding equipment operation, maintenance, and service performed on the Deliverables. Seller's warranties exclude consumable items and wear parts which by their nature require periodic replacement. Damage caused by disasters such as fire, flood, lightning or improper electrical current or power surges is not covered by this warranty.



Seller provides no warranty that the Software is invulnerable to virus attacks, malicious viruses, worms, Trojan horses, and similar devices that have been created by third parties for the purposes of destroying or corrupting data, disabling systems, denying services or taking control of a system. Seller provides no warrant that Software will perform to specifications if any changes or updates are made to the Software, or the operating environment of the Software including but not limited to the operating system, by Customer without Seller's written approval.

With respect to equipment, materials, parts, Spare Parts, components, services and/or software supplied by a third party and integrated into the Deliverables, warranties for such items are limited to the warranty extended to Seller by the third-party supplier, and Seller will not be responsible for any liability or expense in this regard greater than the amount recovered from the third-party supplier. Seller hereby assigns to the Customer all warranties received from its suppliers to the extent Seller is able, and Seller agrees to assist the Customer in making any claim pursuant to the said third party supplier warranties. Notwithstanding the foregoing, Seller provides no warranty in relation to equipment, materials, parts, components, services and/or software purchased from a Customer Directed Supplier and incorporated into or otherwise relating to the Deliverables.

Notwithstanding anything to the contrary in this Agreement, to the extent that the Product is manufactured to Customer Designs: (i) Seller provides no warranty or guarantee as to the performance or outcomes achieved by the Product; and (ii) Seller shall have no responsibility for, and does not warrant against, any problems that occur as a result of faulty, incomplete, or ambiguous Customer Designs.

Notwithstanding any other provision of the Agreement, Seller provides no warranty whatsoever on any prototype and/or proof of principle comprising the Deliverables or part thereof. In addition, Customer and Seller agree that Seller may in its sole discretion terminate the Agreement if Seller has material concerns regarding the safety, reliability, performance or warranty of the Deliverables following Seller's assessment of any such prototype and/or proof of principle performed during the course of the project.

CUSTOMER ACKNOWLEDGES THAT THIS SECTION SETS FORTH CUSTOMER'S EXCLUSIVE REMEDIES AND SELLER'S EXCLUSIVE OBLIGATIONS AND LIABILITIES, FOR ANY BREACH OF THESE WARRANTIES AND ANY OTHER CLAIM DURING OR FOLLOWING THE APPLICABLE WARRANTY PERIOD BASED ON OR RELATED TO THE QUALITY OR FAILURE OF, OR DEFECT IN, THE DELIVERABLES PROVIDED HEREUNDER, WHETHER THE APPLICABLE QUALITY ISSUE, FAILURE OR DEFECT ARISES BEFORE, DURING OR AFTER THE APPLICABLE WARRANTY PERIOD, AND WHETHER THE CLAIM, HOWSOEVER INSTITUTED, IS BASED ON CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED CONDITIONS. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

12. INTELLECTUAL PROPERTY RIGHTS AND SOFTWARE LICENSES. Except for Seller Proprietary Technology, Third Party Rights, and as otherwise set out below, Seller shall and does irrevocably grant and assign to Customer the proprietary rights in and to the Deliverables related to Customer's products and which are first developed or conceived during performance of Seller's obligations under the Agreement.

Notwithstanding any provision, express or implied, to the contrary, the parties confirm that Seller shall retain ownership of all proprietary rights in and to any Seller Proprietary Technology, including, without limitation, that which forms part of the Deliverables provided under the Agreement. "Seller Proprietary Technology" means any and all technology, know-how, trade secrets, inventions, designs, copyrights, and software and other intellectual property whatsoever that: (a) is or was developed, conceived, or acquired by Seller prior to or outside the scope of its obligations under the Agreement; (b) is developed or conceived jointly or solely by Seller in connection with this Agreement and relates to automation including, but not limited to, mechanical and electronic devices used to mark, convey, grip, locate, orient, manipulate, alter, inspect, test, attach, sort, or sense materials, objects or products; or (c) is an improvement and/or modification to (a) or (b) developed or conceived jointly or solely by Seller in connection with this Agreement.

The Deliverables may include computer software that is or has been developed by Seller for: (a) general use in the products Seller manufactures and/or sells or otherwise supplies ("Seller Software"); and (b) specific use in Customer's application of the Deliverable ("Application Software"). Seller Software is proprietary to Seller and is included in Seller Proprietary Technology. Upon Seller's receipt of payment in full for the Deliverables, Application Software shall be owned by Customer. For certainty, unless the Proposal specifically contemplates and identifies software as Application Software, software developed by Seller and included in the Deliverables shall be Seller Software. Seller Software may be subject to additional terms and conditions included in a software license agreement; in which case such software license agreement is incorporated herein by reference.

Upon Seller's receipt of payment in full for the Deliverables, Seller grants to Customer an irrevocable, non-transferable, non-exclusive, royalty-free, perpetual right and license (with no right to sub-license) to use such Seller Proprietary Technology as has been incorporated into the Deliverables solely to operate and maintain the Deliverables provided under this Agreement in the country of the Installation Site. Customer shall not alter, modify, adapt, create derivative works, translate, deface, decompile, disassemble, convert into human readable form, or reverse engineer all or any part of the Seller Software. Notwithstanding the foregoing, the license to Seller Software granted to Customer may be time limited and subject to periodic license fees payable by Customer to Seller, as specified in the Proposal.

The Deliverables may incorporate proprietary technology (including software) or other intellectual property rights owned by third party suppliers ("Third Party Rights"). To the extent possible, Seller will assign, sublicense or otherwise transfer to Customer all Third-Party Rights related to the Deliverables. Customer shall assume all obligations in relation to any such Third-Party Rights.

Seller reserves all rights to Seller's own tradenames, logos, trademarks, or other markings. Customer shall not acquire any right, title or interest in or to any such tradename, logo, trademark, or other markings of the Seller, and shall not alter, obscure, remove, cancel or otherwise interfere with any such markings associated with the Deliverables.

13. INTELLECTUAL PROPERTY REMEDIES AND OBLIGATIONS. Seller agrees that it will, at its own expense, defend any suit instituted against Customer and will pay any award of damages and reasonable costs made against Customer in a final judgment by a court of competent jurisdiction, or any amount in



settlement or compromise thereof, provided that: (a) the same is based upon a claim that the Seller Proprietary Technology as incorporated by Seller into the Deliverable infringes a valid patent under the laws of the United States or Canada; (b) Customer gives Seller prompt, detailed notice in writing of any such claims asserted; (c) Customer permits Seller sole authority through its counsel to defend and/or settle the matter; and (d) Customer cooperates and assists with such defense and/or settlement.

In case the Deliverable is, or may become, the subject of any such proceeding, Seller may (and in the event the Seller Proprietary Technology incorporated into the Deliverable is held in such suit to constitute an infringement and the use of the Deliverable is enjoined, Seller shall) at its expense and option, either: (i) procure for Customer the right to continue to use the Deliverable; or (ii) replace same with a non-infringing product or part; or (iii) modify same so it becomes non-infringing; or (iv) remove the infringing part of the Deliverable and refund the purchase price of the infringing part of the Deliverable (less depreciation for its use on a straight line basis over a period of five (5) years from the date of the applicable Purchase Order) and any transportation costs shall be separately paid by Customer.

Notwithstanding the foregoing, in no event shall Seller be liable or otherwise responsible for any claim for infringement of intellectual property rights that relates to: (A) any Deliverable, or subset thereof, or other item which is manufactured to Customer Designs; (B) any Deliverable or subset, or other item which is modified by a party other than Seller; (C) any product of a third party that Customer specifies or requests to be incorporated in the Deliverable; (D) the use or inclusion of any Deliverable or subset furnished by Seller in combination with other products not furnished by Seller; or (E) Customer's use of any Deliverable or subset thereof furnished by Seller including any infringement relating to Customer's manufacturing or other processes. As to any such excluded Deliverable, or subset thereof, other item, or process, Seller assumes no liability whatsoever for intellectual property right infringement arising therefrom.

THESE EXPRESS OBLIGATIONS SHALL BE SELLER'S SOLE OBLIGATION AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO ANY CLAIMS FOR BREACH OR INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS RELATING IN ANY WAY TO THE DELIVERABLES.

In addition to the foregoing, the parties acknowledge and agree that Customer may disclose Customer Designs to Seller for the purpose of facilitating and/or directing Seller's performance under this Agreement. Customer represents and warrants that Customer has full ownership rights, license and/or authority to the Customer Designs. Seller shall have and Customer hereby grants to Seller, an irrevocable, transferable (including the right to sub-license), non-exclusive, royalty-free, perpetual right and license to use Customer Designs solely to perform its obligations under this Agreement. Customer agrees that it will, at its own expense, defend any suit instituted against Seller and will pay any award of damages and reasonable costs made against Seller in a final judgment by a court of competent jurisdiction, or any amount in settlement or compromise thereof, provided that: (a) the same is based upon a claim that the Customer Designs infringe a valid patent, copyright, trade secret or other intellectual property right under the laws of the United States, Canada, or the laws of the jurisdiction identified in the SOW as either: (i) the country of Seller's facility where the Product will be manufactured; or (ii) the Installation Site; (b) Seller gives Customer prompt, detailed notice in writing of any such claims asserted; (c) Seller permits Customer sole authority through its counsel to defend and/or settle the matter; and (d) Seller cooperates and assists with such defense and/or settlement.

14. CONFIDENTIALITY. To the extent that Buyer and Seller have previously or concurrently entered into a mutual non-disclosure agreement ("NDA"), the terms and conditions of the NDA are hereby incorporated by reference into this Agreement, and shall continue to be incorporated by reference into this Agreement notwithstanding any expiration or termination of the NDA in the future. Unless otherwise agreed in the NDA, each party to the Agreement (each a "**Recipient**") agrees to keep and maintain the confidentiality of the confidential and/or proprietary information ("Confidential Information") of the other party hereto (each an "**Owner**"). For clarity, the Owner's Confidential Information includes but is not limited to the confidential and/or proprietary information of the Owner and third parties for which Owner has obligations of confidentiality, and confidential and/or proprietary information obtained by Recipient by way of observation or study at the facilities of Owner. The parties agree that the Proposal and Seller Proprietary Technology are the Confidential Information of Seller. Recipient agrees to protect the Confidential Information in strictest confidence by using the same degree of care to prevent the unauthorized use, dissemination or publication of the Confidential Information as Recipient uses to protect its own confidential information, provided that in no case shall such standard of care be less than a reasonable degree of care. Recipient may disclose Confidential Information only: (a) to those of Recipient's employees, advisors, consultants, Affiliates, subcontractors and suppliers who have a specific need to know such Confidential Information in furtherance of the purpose of this Agreement (collectively, "**Representatives**") provided that: (i) the Recipient has obligated such Representatives under terms of confidentiality that afford no less protection to the Confidential Information than the terms of this Agreement; and (ii) Recipient shall be liable for the failure of any of its Representatives to whom Confidential Information is disclosed to comply with Recipient's obligations hereunder; and (b) to a competent court, tribunal, government or regulatory body, or as otherwise required by applicable law, provided that, to the extent not prohibited by law, Recipient gives Owner sufficient notice to enable Owner to seek an order limiting or precluding such disclosure, and Recipient shall limit such disclosure to the extent sufficient for compliance. Recipient shall not use the Confidential Information for any purpose other than as necessary to carry out the purposes of the Agreement. This Agreement imposes no obligation on the Recipient where Recipient can establish by written records that such information: (A) was known to the Recipient prior to receipt of the Owner's information; (B) is a matter of public knowledge or publicly available through no fault of the Recipient; (C) was rightfully received by Recipient on a non-confidential basis from a third party (other than an affiliate of the Owner) without restriction on disclosure and without breach of an obligation of confidentiality owing directly or indirectly to the Owner; (D) was independently developed by Recipient without use of or reference to the Confidential Information; or (E) was publicly disclosed by Recipient with Owner's prior written approval. Notwithstanding the expiration or termination of this Agreement, the obligations and restrictions on Recipient in relation to Confidential Information shall survive until such time as the Confidential Information otherwise falls into one of the exclusions as set out in the preceding sentence.

15. LIMITATIONS OF LIABILITY AND REMEDIES. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND GROSS NEGLIGENCE), DUTY OF GOOD FAITH AND/OR HONEST PERFORMANCE, STRICT LIABILITY, OR OTHERWISE, SHALL:

- C. SELLER, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUPPLIERS OR SUBCONTRACTORS (COLLECTIVELY, THE "RELEASEES") BE LIABLE FOR: ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, SPECULATIVE, REMOTE, OR PUNITIVE DAMAGES OR LIABILITIES; ANY DAMAGES OR LIABILITIES THAT ARE NOT REASONABLY FORESEEABLE IN NATURE; LOSS OF PROFIT OR REVENUES; LOSS OF OPPORTUNITY; LOSS OF PRODUCTIVITY; NON-OPERATION OR INCREASED EXPENSE OF OPERATION; ANTICIPATED SAVINGS; LOSS OF USE OF THE PRODUCT OR ANY OTHER DELIVERABLE OR ANY ASSOCIATED EQUIPMENT; DAMAGE TO ASSOCIATED EQUIPMENT OR AFFECTED PRODUCTS,



COMPONENTS OR MATERIALS; LOSS OF USE OF CAPITAL OR REVENUE; COST OF CAPITAL OR MONEY; COST OF SUBSTITUTE PRODUCTS, FACILITIES, SERVICES OR REPLACEMENT EQUIPMENT; REPLACEMENT COST OF POWER OR UTILITIES; WASTAGE OR DAMAGE TO CUSTOMER'S END PRODUCTS; DOWN TIME COSTS; LOSS OR DAMAGE TO GOODWILL; OR CLAIMS OF CUSTOMER'S CUSTOMERS, CONTRACT MANUFACTURERS, VENDORS OR TRADES FOR SUCH DAMAGES, WHETHER OR NOT THE RELEASEES ARE ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES;

- D. SELLER'S LIABILITY TO THE CUSTOMER FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE AGREEMENT, SELLER'S PERFORMANCE, NON-PERFORMANCE OR BREACH OF THE AGREEMENT, OR THE DELIVERABLES COVERED BY OR FURNISHED UNDER THE AGREEMENT, EXCEED THE AMOUNT ACTUALLY RECEIVED BY SELLER FOR THE SPECIFIC DELIVERABLE WHICH GIVES RISE TO THE CLAIM. EXCEPT AS TO TITLE, ANY SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD SPECIFIED IN THIS AGREEMENT.

THE REMEDIES PROVIDED TO CUSTOMER IN THE AGREEMENT ARE CUSTOMER'S ONLY REMEDIES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THE AGREEMENT. CUSTOMER ACKNOWLEDGES AND AGREES THAT SELLER HAS SET ITS PRICES AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE DISCLAIMERS OF WARRANTY AND THE LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE SAME REFLECT AN ACCEPTABLE ALLOCATION OF RISK BETWEEN THE PARTIES (INCLUDING THE RISK THAT A CONTRACT REMEDY MAY FAIL OF ITS ESSENTIAL PURPOSE AND CAUSE CONSEQUENTIAL LOSS), AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

SELLER ASSUMES AND RELIES UPON THE ACCURACY AND COMPLETENESS OF CUSTOMER DESIGNS, AND ANY AND ALL SPECIFICATIONS AND OTHER INFORMATION PROVIDED BY CUSTOMER AND/OR ITS AGENTS FROM TIME TO TIME AND EXPRESSLY DISCLAIMS ANY RESPONSIBILITY WHATSOEVER FOR ANY INCOMPLETENESS THEREOF, OR INACCURACIES CONTAINED THEREIN.

Customer shall indemnify, defend, and hold harmless the Releasees from and against: (a) third party claims made against any of the Releasees in excess of Seller's limitation of liability as set out in this Section; and (b) claims of Customer's customers, contract manufacturers, vendors or trades to the extent such claims would be excluded by this Section.

Customer agrees that it will, at its own expense, indemnify and hold harmless the Releasees from, and defend any suit instituted against any or all of the Releasees and pay any award of damages, liabilities, and costs (including, without limitation, legal fees and disbursements) made against the Releasees in a final judgment by a court of competent jurisdiction, or any amount in settlement or compromise thereof, arising from, incidental to, or in connection with a claim for personal injury (including death) and/or damage to property arising or allegedly arising directly or indirectly from the design, manufacture, operation and/or use of Customer's end product and/or Customer Designs, whether any such claim is advanced as a product liability claim or otherwise, and regardless of whether any such Customer end product is manufactured, assembled or otherwise developed or handled utilizing the Deliverables hereunder; except in circumstances where the injury or damage arises solely and directly from the negligence of the Releasees.

If the Customer transfers interest in or title to or leases any of the Deliverables to any third party, the Customer shall obtain from such third party an express written agreement whereby the third party agrees to be bound by the terms of this Agreement, including without limitation affording the Releasees the protection of this Section, failing which Customer shall indemnify and hold Releasees harmless from Customer's failure to obtain such agreement.

16. **DISPUTE RESOLUTION.** Customer and Seller agree the parties will attempt in good faith to promptly resolve any dispute arising out of or in connection with the execution, interpretation, performance, or non-performance of this Agreement, through: (a) the parties' respective employees primarily responsible for the project within their organization; and (b) if not resolved, escalation to the parties' respective senior management. Nothing in this Section prevents a party from seeking equitable relief from a court of competent jurisdiction for the protection of its confidentiality or proprietary rights. Customer and Seller each irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim arising out of or relating to this Agreement.

17. **TERMINATION BY SELLER.** Seller may terminate this Agreement: (a) effective immediately if Customer becomes insolvent or bankrupt; or (b) effective fifteen (15) calendar days after written notice is given by Seller to Customer if Customer materially breaches the Agreement and does not remedy such breach within such fifteen (15) calendar day notice period. In the event of such termination: (i) Seller will have the right to take possession of all Deliverables and related materials and components, in whatever stage of design, manufacture, production or installation they are in at such time, except such Deliverables, materials, and components which have already been delivered to and paid for in full by Customer; (ii) Seller will be under no obligation to finish the Deliverables or provide any warranty or any further work, support or information to customer in relation to the Deliverables or otherwise; and (iii) Customer shall pay Seller: (A) an amount to compensate Seller for all Services and other work performed prior to the termination based on a pro rata ratio of the purchase price to the percentage of the work completed by Seller as at the effective date of termination; (B) an amount to compensate Seller for all costs and expenses incurred in connection with the termination; (C) an amount to compensate Seller for all liability incurred by Seller in connection with commitments made to third parties prior to termination for equipment and other goods, services, and labour (including, without limitation, as the case may be, the actual amount of any such commitment, any cancellation or termination fees, any lost deposits and any restocking charges); (D) a reasonable amount for overhead and profit on the costs itemized in (B) and (C); and (E) a cancellation fee calculated as SP Industries' estimated project labour costs (inclusive of overhead and profit) for the three (3) months immediately following the effective date of termination.

18. **TERMINATION BY CUSTOMER.** Customer may terminate the Agreement: (a) effective immediately if Seller becomes bankrupt or insolvent; or (b) effective fifteen (15) calendar days after such notice was given if Seller materially breaches the Agreement and does not commence to remedy such breach within fifteen (15) calendar days of being given written notice by Customer. In the event of such termination, Customer shall be entitled to take possession of the Deliverables (in whatever state of design or manufacture they are in at such time) immediately and will have the right to receive a refund of all amounts paid to Seller by Customer hereunder, less an amount representing payment for all Services and other work performed and Deliverables provided by Seller. Seller will not be entitled to anticipated profit or anticipated overhead charges. Upon such payment, Customer will have the right to the continued use of the Deliverables then delivered subject to the terms of license and confidentiality as contained herein; provided, however, that Seller will be under no obligation to finish the Deliverables or provide any warranty or any further work, support, or information to customer in relation to the Deliverables or otherwise. **THE REMEDY PROVIDED TO CUSTOMER IN THIS SECTION IS THE CUSTOMER'S ONLY REMEDY IN RESPECT OF ANY BANKRUPTCY OR INSOLVENCY OF SELLER, IN**



RESPECT OF ANY BREACH OF THE AGREEMENT AND/OR SELLER'S NEGLIGENCE (INCLUDING GROSS NEGLIGENCE), OR OTHER TORT, IN THE PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT.

19. NON-CANCELLATION. Buyer is not entitled to cancel or terminate for convenience, or direct suspension of manufacture, except with Seller's written consent and then only upon terms that will compensate Seller for its engineering, fabrication and purchasing charges and any other costs or damages relating to such cancellation, termination or suspension, plus a reasonable amount for profit.

20. INSURANCE. Each of the parties shall procure and maintain, at its sole expense, (a) general liability covering property damage including products liability, bodily injury, and personal injury of \$1,000,000 per occurrence with a \$2,000,000 annual aggregate (b) Personal Injury of \$1,000,000 per incident / \$500,000 per person, (c) Property Damage of \$1,000,000, (d) Product Liability of \$1,000,000, and (e) Workers Compensation in accordance with applicable legislation and/or Employer Liability of \$1,000,000. The minimum policy limits shall not be construed as a limitation of liability under this Agreement. Each party shall promptly notify the other party of any change, cancellation, or non-renewal of the insurance. Upon request from the other party, each party shall furnish a certificate of insurance evidencing that such insurance coverage is in effect, and shall add the other party as an additional insured.

21. PROMOTIONAL MATERIAL. Subject to its obligations of confidentiality referenced herein, Seller will have the right to use Customer's name and logo, as well as photographic, videographic and descriptive depictions of the Deliverables for Seller's reasonable promotional and marketing purposes in any media or forum.

22. EMPLOYEES. During the parties' performance under this Agreement and for a period of 12 months thereafter, neither party shall knowingly solicit for employment or carry-on business directly or indirectly with, any of the other party's then-current personnel who have been directly involved in the performance of this Agreement, without the prior written consent of the other party. The foregoing shall not apply to advertisements or general solicitations that do not specifically target the other party's personnel. The parties acknowledge that: (a) each has invested time and money in the recruitment and training of its personnel; (b) the other party hereto has been granted a privilege to have access to the other party's personnel; and (c) the provisions hereof are reasonable in order to protect their respective business and proprietary interests, and that compliance with the provisions hereof will not be an unreasonable hardship on either of the parties.

23. ASSIGNMENT. Neither party shall assign the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld; provided that Seller shall be entitled, without Customer's consent to: (a) assign or subcontract all or a portion of the Agreement to a Seller Affiliate; or (b) assign the Agreement to a third party as part of a sale to such third party or an Affiliate thereof of all or a portion of the assets of Seller. This Agreement shall be binding on and shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

24. SEVERABILITY. If one or more of the provisions contained herein shall be invalid, illegal or unenforceable in any respect, such provision or provisions shall be severed from the Agreement only to the extent necessary, and the validity, legality and enforceability of the remaining provisions hereof, including the provision or provisions remaining after such severance, shall not in any way be affected or impaired thereby.

25. AGENCY. Seller and the Customer are independent contractors. No agency relationship or partnership exists between them, and neither of them has the right to enter into a contract on behalf of or as an agent or representative of the other. Customer expressly acknowledges and agrees that in no event shall Customer communicate directly with Seller's subcontractors and suppliers without the prior written authorization of Seller.

26. NOTICES. All notices required or permitted hereunder shall be in writing and shall be deemed given: (i) if and when personally delivered; or (ii) if delivered by electronic mail transmission (email) to the other party (and in the case of notice to SP Industries, with a second copy sent to legal@atsautomation.com); or (iii) on the next business day after being deposited with a recognized and reputable overnight carrier. In the case of (ii) or (iii), the notice shall be delivered to the address or electronic address set forth for such party on the Proposal or such other address or electronic address as hereafter provided by written notice by one party to the other.

27. SURVIVAL BEYOND COMPLETION. Except as otherwise stated in these Conditions, the terms, conditions, provisions, indemnities, limitations of liability, disclaimers, representations and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by either party or both parties hereunder shall so survive the completion of performance, final acceptance of the Deliverables, and/or expiration or termination of the Agreement.

28. NO WAIVER OR RELEASE. Any delay, act, or omission by Seller in exercising any right under this Agreement shall not operate as: (i) a waiver of that or any other right of Seller; or (ii) a release of any claim against Customer. A waiver of a right or a release of a claim by Seller must be made in a written document executed by an authorized representative of Customer and Seller.

29. TRADE COMPLIANCE. The parties acknowledge that the exportation from the United States or Canada of materials, products and related technical data (and the re-export from elsewhere of items originating in a particular country) may be subject to compliance with relevant export laws, including laws which restrict export, re-export and release of materials, products and their related technical data, and the direct products of such technical data. The parties agree to comply with all export laws and to commit no act that, directly or indirectly, would violate any law, or any other international treaty or agreement, relating to the export, re-export, or release of any materials, products or their related technical data to which the United States or Canada adheres or with which the United States or Canada complies. Notwithstanding anything to the contrary in this Agreement, neither party shall be required to meet its obligations under this Agreement in any way that is inconsistent with laws applicable to it or its Affiliates.

Customer certifies and warrants as follows:

(a) Customer is not a citizen, national, permanent resident of, or incorporated or organized to do business in, and is not under the control of a government which is subject to economic sanctions or embargoes imposed by the United States or Canadian government, or to any other destination to which the United States or Canadian governments may in the future prohibit exports. Customer will not sell, export, re-export or



cause to be exported items or any related technology or software, directly (or indirectly through its agents or employees) to the above-mentioned countries or to citizens, nationals or permanent residents of those countries.

- (b) Customer is eligible to receive exports of the Deliverables. Customer has not been deemed by the United States or Canadian governments to be ineligible to receive exports and, in particular, is not listed on any of OFAC's list of Specially Designated Nationals or on the U.S. Department of Commerce's Table of Denial Orders or Entity List or Unverified List, or any designated persons listed under the various special economic measures regulations published by the government of Canada. Customer will not sell, or otherwise re-export items, directly or indirectly, to any ineligible persons.
- (c) Customer will not use the Deliverables and will not enable the Deliverables to be used for any purposes prohibited by United States or Canadian export laws and regulations, including, without limitation, the development, design, manufacture or production of nuclear, missile, chemical and biological weapons and technology, or other defense articles and/or defense services as defined in the US Munitions List pursuant to the *Arms Export Control Act* [22 U.S.C. 2778 (a)] or the Canadian Export Control List pursuant to the *Defense Production Act*, R.S.C., 1985, c. D-1.
- (d) Customer shall be the importer of record and shall be responsible for obtaining all import licenses and permits as may be required to import the Deliverables into such countries as are subject to this Agreement in accordance with the prevailing laws and regulations of such countries. All such filings and registrations of the Deliverables shall be in Customer's name. Seller shall provide reasonable cooperation to Customer in its efforts to obtain any such approvals.
- (e) Customer agrees to keep records of its import declaration and all related customs documentation for a minimum of five (5) years or such period as required by applicable law, whichever is greater, and shall make those records available to Seller upon request.
- (f) Customer shall indemnify and hold harmless the Releasees for, from and against any claim that may arise as a result of Customer's breach of its obligations under this Section.

30. GOVERNING LAW. The validity, interpretation and performance of the Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Customer and Seller hereby submit to the exclusive jurisdiction of the state and federal Courts of the Commonwealth of Pennsylvania for resolution of disputes arising in connection with this Agreement. The provisions of: (a) the United Nations Convention on Contracts for the International Sale of Goods; (b) the Uniform Commercial Code; (c) the 1974 Convention on the Limitation Period in the International Sale of Goods; (d) the Protocol Amending the 1974 Convention done at Vienna April 11, 1980; and (e) the Sale of Goods Act, Ontario, 1990, (and any equivalent federal, state or provincial legislation), shall not apply to the Agreement or the rights and obligations of the Customer and Seller under the Agreement.

31. CONTRACT LANGUAGE. The parties have requested that the Agreement and all communications and documents relating hereto be expressed in the English language.

