Appendix 3C

DISTRIBUTION AGREEMENT

NOTE: The following agreement is an example of a fully negotiated Distribution Agreement, which is set forth here to provide a view of some of the possible provisions that might be included. It is not likely to serve well as a form agreement absent careful updating and revisions to reflect the needs of the parties, products, and industry, among other things.

DISTRIBUTION AGREEMENT

This Distribution Agreement (this “Agreement”) between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Distributor”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2010 (the “Effective Date”). Company and Distributor are hereinafter also referred to individually as a “Party” and collectively as the “Parties.”

Background

A. Company has rights in and to various inventions, trade secrets, know-how, and other technology that it uses to manufacture [describe technology component product here] (the “Products”).

B. Company has selected Distributor as an OEM distributor for design, development, testing, regulatory compliance, sales, promotion, and distribution of the Products integrated into [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (the “Integrated Products”), which Distributor currently sells, or plans to sell in the future, in designated territories around the world.

Agreement

1. Appointment as OEM Distributor

1.1 Grant. Subject to the terms and conditions of this Agreement, Company hereby appoints Distributor as an OEM distributor of the Products in the Territory (as defined below) to purchase and incorporate the Products as part of Integrated Products sold to third parties. Distributor hereby accepts the appointment and will purchase Products and incorporate them into the Integrated Products in accordance with this Agreement.

1.2 Territory; Exclusivity. The “Territory” will initially be worldwide and will be subject to adjustment in accordance with Section 1.3. The Company’s right to be an OEM distributor under this Agreement will be exclusive except for the following countries: [list countries by name] (each a “Nonexclusive Country”).

1.3 Removal of Nonexclusive Countries from Territory. If Company appoints an exclusive OEM distributor in a Nonexclusive Country, then Company shall provide written notice to Distributor and the applicable Nonexlusive Country will be removed from the Territory. Distributor shall, as promptly as practicable, cease all sales efforts in the applicable Nonexclusive Country for its Integrated Products.

1.4 Launch. The Parties agree to work closely to support one another on all aspects of the Integrated Products readiness for a market launch as early as feasible in [DATE, MONTH/YEAR OR QUARTER/YEAR].

1.5 Reserved Rights. Nothing in this Agreement will be deemed to limit Company’s right to produce or sell, directly or in conjunction with others: (a) Products outside the scope of the OEM exclusivity granted to Distributor in Section 1.2, or (b) other products based on the Company’s technology that do not constitute Products.

2. Technology Transfer

2.1 Materials. Promptly following the execution of this Agreement, Company shall deliver to Distributor all available Product mechanical and dimensional data and information, such as specific drawings and CAD Data (SolidWorks or Pro E models). This initial disclosure will be supplemented by additional disclosures upon the reasonable request of Distributor. The initial disclosure and any additional disclosures will be in sufficient detail to provide Distributor with a full and fundamental understanding of the working principles of the Product technology.

2.2 Training and Support. Company shall provide training to Distributor’s staff in the important characteristics, benefits, markets, competition, and operation of the Products. Distributor shall make available, for a period not to exceed thirty (30) business days, suitably qualified and skilled personnel for the purposes of the transfer of the Product technology.

3. Test and Demonstration Units

3.1 Demonstration Fleet. Company shall provide Distributor up to three (3) development and test (non-salable) [description of product for demonstration] and a maximum of sixty Products for demonstration \_\_\_\_\_\_\_\_\_\_\_\_\_\_ requirements (the “Demonstration Fleet”).

3.2 Managing Demonstration Fleet. Distributor shall manage the Demonstration Fleet on an ongoing basis and reuse the existing demonstration Products for installation in new Integrated Products as needed to maintain the Demonstration Fleet.

4. Distributor Engineering and Compliance Obligations

4.1 Engineering. Distributor shall take commercially reasonable actions to actively promote the development and sales of the Products, including allocation of engineering resources to enable comprehensive research and development and application engineering to facilitate the manufacture and commercialization of the Integrated Products including:

(a) Interfaces. All necessary engineering, development, and regulatory testing of the Product interfaces with the Integrated Products.

(b) Components. Engaging with and managing its suppliers for the development and commercial supply of unique Product-related components [describe such product-related components here] not supplied by Company under this Agreement (the “Ancillary Components”).

(c) Aftermarket Applications. Identifying (together with Company) the top [two to three] candidates for aftermarket sales among Distributor [product type] models in use. Distributor will then develop, engineer, and test the interfaces and develop installation instructions for retrofitting the Product to these models.

4.2 Regulatory Testing and Compliance. Distributor shall perform all Product testing required for commercial distribution of the Integrated Products and aftermarket Product packages. [Distributor shall submit an FDA 510K application for approval of the Integrated Products as Class II Medical Devices.] Company shall provide Distributor with all information in its possession relevant to these efforts.

5. Sales Efforts

5.1 General Distributor Obligations. Distributor shall use commercially reasonable sales efforts and allocate necessary human resources and funds to maximize sales of the Integrated Products including the implementation of a documented sales and marketing strategy. Distributor shall advertise the Integrated Products as an integrated part of its product line and through known and trusted industry sources such as industry periodicals, print ads, trade shows, Internet, and Distributor’s website[, to reach (describe any applicable target markets)].

5.2 Other Distributor Obligations. Distributor shall:

(a) Maintain an inventory of Products that is representative of the full line of Products and adequate to provide reasonable service and prompt deliveries to customers.

(b) Maintain a trained staff of employees, including, but not limited to, specifically qualified sales and technical personnel, sufficient to perform the requirements of this Agreement.

(c) Render prompt, competent, and courteous service to customers.

(d) Conduct its business in a manner that will reflect favorably at all times on Company and the Products and their good name, goodwill, and reputation.

(e) Meet with Company, in person or by remote means, not less than annually at a mutually agreeable time and place and/or by mutually agreeable means, to review performance and to formulate marketing programs designed to achieve these forecasts.

(f) Supply to Company any information about competitors of Company and goods and services in the Territory that are competitive with the Products that comes to the attention of Distributor and with respect to which Distributor is not under an obligation of confidentiality that prohibits disclosure to Company.

(g) Examine, or cause to be examined, all Products shipped by Company promptly upon receipt of the Products, and immediately make any claim with the carrier for any damage to, of shortage of, Products and notify Company within thirty (30) days after receipt of the Products of any claim.

5.3 Company Cooperation. Company shall assist and support promotion of the Integrated Products through the Company website and periodic joint representation with Distributor at key trade shows if so requested by Distributor.

5.4 Open Approach. The Parties shall openly share their respective marketing strategies, budgets, and key sales initiatives to promote awareness of the benefits of the Products and facilitate commercial success.

6. Production

6.1 Distributor Forecasting. Each calendar quarter, Distributor shall provide Company a rolling annual volume forecast and delivery dates to ensure Distributor has ample inventory of Products on hand at all times for production orders received, and to ensure Distributor will meet all promised shipment dates to its customers. The first six months of each forecast will be firm.

6.2 Order Method. Distributor may place orders to Company via fax or email correspondence.

6.3 Company Obligations. Company shall take all necessary and commercially reasonable actions to assure a steady supply of Products are made available to Distributor. Company shall notify Distributor of any potential or unforeseen delays in production flow of Products.

6.4 Changes to Products. Company may, at any time and without notice to Distributor, change one or more of the Products in ways that do not materially and adversely affect the form, fit, or function of the Products, or require any recertification under applicable laws. Company will be under no obligation to make any change to any of the Products in the stock of Distributor; nor will Company be obliged to make any change to any of the Products previously shipped to Distributor, provided, however, Company may repurchase any obsolete Products.

7. Payments and Terms

7.1 Price. Distributor shall pay [dollar amount USD] per Product within thirty (30) calendar days after the date of Company’s invoice therefor.

7.2 Terms. The terms and conditions set forth in Schedules A and B of this Agreement will apply to all sales of Products by Company to Distributor under this Agreement.

7.3 Late Payments. Any amounts not paid by Distributor when due will be subject to interest at a rate equal to one and one-half percent (1.5%) per month, compounded daily, from and including the date payment is due through and including the date upon which Distributor makes a wire transfer of immediately available funds.

7.4 Annual Purchases.

(a) Ramp-up Period. During the period from [DATE] through [DATE], Distributor estimates that its minimum Product sales will be [MINIMUM UNITS] units in calendar year [YEAR1], and [MINIMUM UNITS] units for calendar year [YEAR2]. During this period, the Parties agree that no minimum annual volume requirements will be binding on Distributor.

(b) Minimum Volumes Going Forward. Distributor shall purchase the following number of Products in the following respective calendar years (the “Minimum Volumes”):

(1) [YEAR3]: \_\_\_\_\_\_\_\_ units

(2) [YEAR4]: \_\_\_\_\_\_\_\_ units

(3) [YEAR5]: \_\_\_\_\_\_\_\_ units

(4) [YEAR6]: \_\_\_\_\_\_\_\_ units

(5) [YEAR7] and thereafter: \_\_\_\_\_\_\_\_ units

(c) Supplemental True-up Payments. If actual units purchased by Distributor are less than the Minimum Volumes in a particular year, Company shall give Distributor a sixty (60) day notice and opportunity to cure by paying (i) [dollar amount USD] multiplied by (ii) the difference between the applicable Minimum Volume and the units actually purchased in the applicable period (the “Supplemental True-up Payment”).

(d) Company Exclusive Remedies. If Distributor does not make the Supplemental True-up Payment within the sixty-day notice period, then, upon written notice from Company and as the sole and exclusive remedy for failing to meet the Minimum Volumes, Company may either (1) terminate this Agreement; or (2) make the distribution rights granted to Distributor under this Agreement nonexclusive, and this Agreement will otherwise continue in full force and effect.

8. Service Parts

8.1 General. Distributor shall forward to Company all orders for replacement, service, or warranty parts and assemblies for the Products. Company shall fill and ship the order and generate an invoice to the customer upon shipment of the order. If the service order is for a component that Distributor purchases directly from its suppliers, Distributor shall fulfill, ship, and invoice the customer accordingly.

8.2 Replacement Parts Catalog. Distributor and Company shall develop a replacement parts catalog for field replaceable components or assemblies. The catalog will be distributed to Distributor dealers and customers.

8.3 Warranty Claims. Company shall ship and invoice for warranty parts at service parts prices. Company has the right to review any warranty claims against the Product including recalling the nonconforming component or assembly from the entity (dealer, service center, etc.) performing the field repair. If it is confirmed through a root cause analysis by Company that the component or assembly is defective due to the fault of Company, or its supplier, Company will credit the cost to the entity.

9. Aftermarket Sales and Distribution

9.1 Distributor Marketing Obligations. Distributor shall advertise the aftermarket Product offerings through its website notification system as well as other marketing channels to notify the existing users of the Integrated Product of the aftermarket retrofit Product availability.

9.2 Company Fulfillment. Company shall fulfill aftermarket orders for Products.

9.3 Distributor Sales Commissions. The Parties will set up a system to track aftermarket Product sales referred by Distributor. Company shall pay Distributor a commission of five percent (5%) for each aftermarket Product sale.

9.4 Purchase of Ancillary Components. For all aftermarket Product sales to Distributor customers, Company shall purchase directly and exclusively from Distributor, and Distributor will supply, the Ancillary Components and installation instructions required to make a complete, ready-to-install aftermarket kit. The purchase price will be Distributor’s cost plus ten percent (10%).

10. Product Liability Insurance

During the term of this Agreement and for six (6) years thereafter, each Party shall maintain product liability insurance on an occurrence basis with at least $5 million per occurrence and $10 million annual aggregate. Each Party shall provide the other a certificate of coverage.

11. Trademarks

11.1 Definition. “Mark” means any trademark, service mark, trade name, or trade dress of Company or any of its affiliates, including, but not limited to, the name “\_\_\_\_\_\_\_\_\_\_\_\_” and Company’s logos.

11.2 License Grant. Subject to the terms and conditions of this Agreement, Company hereby grants to Distributor a [nonexclusive, nontransferable, and nonsublicensable] right and license during the Term and in the Territory, to use the Marks as are already affixed to the Products solely for the purpose of identifying Distributor as a distributor of the Products and to deliver Products bearing the Marks.

11.3 Quality Control. Company reserves the right to audit the quality of Products that ultimately bear any Mark and to prohibit the use of Marks on any Products that do not meet the quality standards established by Company. Distributor shall only use the Marks pursuant to this Agreement and the style as Company expressly approves in writing prior to Distributor’s use.

11.4 Sole Owner. Distributor acknowledges Company is the sole owner of the Marks and that Distributor will receive no right in any Mark that is not expressly granted in this Agreement.

11.5 No Registration of Similar Marks. Distributor shall not register or use any Mark or any other name, trademark, or trade dress that is confusingly similar to any Mark, except as expressly permitted by this Agreement.

11.6 Notice of Infringement. If Distributor becomes aware that any Mark is being infringed in the Territory, Distributor shall promptly notify Company thereof and, at Company’s expense for out-of-pocket expenditures, cooperate with Company in taking all reasonable action to protect Company’s rights in the Marks.

11.7 Notices. Distributor shall cause all advertising and promotional materials that Distributor uses to bear the appropriate TM, SM, ®, ©, or other appropriate notices of ownership or registration of the Marks as Company requires.

11.8 Company Changes. If it becomes advisable at any time in Company’s sole discretion to modify or discontinue the use of any Mark and/or use one or more additional or substitute names or marks, Distributor must comply with Company’s direction within a reasonable time after Distributor has received notice thereof. Company will not be liable to Distributor for any expenses, losses, or damages that Distributor sustains as the result of any addition, modification, substitution, or discontinuance of a Mark, and Distributor may not commence or join in any litigation or other proceeding against Company for any expenses, losses, or damages.

12. Ownership of Company Technology

12.1 Company Ownership. As between the Parties, and subject to Section 13 (Distributor Improvements), Company is and will remain the sole owner of all patents, copyrights, and mask work rights, including all applications and registrations with respect thereto, and rights in trade secrets, know-how, and all other intellectual property rights (“Intellectual Property Rights”) related to the Products, and Distributor shall take no action or assert any right inconsistent with Company’s sole ownership thereof.

12.2 No Challenges to Validity. To the extent legally enforceable, and so long as this Agreement is in effect, Distributor and its affiliates shall not (a) challenge the validity or enforceability of the Company’s Intellectual Property Rights, whether at court or with any patent or other authority, or (b) assist or otherwise provide direct or indirect support to third parties in any challenge. If any evidentiary material comes to the attention of Distributor that in its judgment bears on the validity, enforceability, or scope of the Company’s Intellectual Property Rights in the Product technology, Distributor shall promptly provide Company with a complete written disclosure of each and every basis then known for the assertion and shall provide Company with copies of any evidentiary material.

12.3 Notice of Infringement. Distributor shall promptly notify Company upon becoming aware of any potential infringement of the Intellectual Property Rights in the Products by a third party.

13. Improvements Made by Distributor

13.1 Ownership of Distributor Improvements. As between the Parties, Distributor will be the sole owner of all inventions, discoveries, know-how, confidential information, and data related to the Products developed solely by Distributor during the Term without the participation of Company (“Distributor Improvements”), and Company shall take no action or assert any right inconsistent with Distributor’s sole ownership thereof.

13.2 Disclosure. Distributor shall promptly disclose to Company all Distributor Improvements made by Distributor during the Term (as defined below), which will be in sufficient detail to provide Company with a fundamental understanding of the working principles of all Distributor Improvements and will be supplemented upon reasonable request by Company.

13.3 Grantback License. Distributor hereby grants to Company a worldwide, royalty-free, perpetual, transferable, nonexclusive license to make, have made, import, sell, and offer to sell products embodying Distributor Improvements, and to use, copy, modify, create derivative works, and develop improvements thereon.

14. Duties of Confidentiality

14.1 Confidential Information. In the course of performing under this Agreement, either Party (a “Disclosing Party”) may provide Confidential Information to the other Party (a “Recipient”). For purposes of this Agreement, “Confidential Information” means (a) technical information relating to the Product, materials, or other products of the Parties; and (b) marketing and other business information of the Parties with potential competitive value (e.g., customer information, promotional plans, market data, etc.), provided the Confidential Information is marked as “Confidential” or otherwise identified as confidential at the time of disclosure or promptly thereafter. The contents of this Agreement and Company’s other agreements with its authorized distributors will be deemed Confidential Information of Company.

14.2 Obligations. The Recipient acknowledges that Confidential Information is entrusted to it in confidence, and the reputation and success of the Disclosing Party depends on maintaining and safeguarding the secrecy of its Confidential Information. The Recipient, during and after the Term: (a) shall use the same level of care to protect the confidentiality of the Confidential Information as it does to protect its own Confidential Information, but not less than a reasonable degree of care; (b) shall not use any Confidential Information except for the purpose of fulfilling its obligations or exercising its rights under this Agreement; (c) shall not, or permit others to, disclose, duplicate, transfer, sell, lease, or otherwise make any Confidential Information available to others without the prior written consent of the Disclosing Party; and (d) shall not remove, or permit to be removed, any notice indicating the confidential nature of the Confidential Information.

14.3 Exceptions. The Recipient is not obligated under Section 14.2 for Confidential Information that (a) is generally known, or readily ascertainable by proper means, by the public other than through a breach of this Agreement by the Recipient; (b) was known by the Recipient on a nonconfidential basis prior to receipt under this Agreement as evidenced by the Recipient’s written records; or (c) is rightly received by the Recipient from a third party not subject to any nondisclosure obligations with respect to the Confidential Information.

14.4 Return of Confidential Information. The Recipient shall return all Confidential Information at the earlier of the termination of this Agreement or upon the request of the Disclosing Party, except that the Recipient may retain a limited number of electronic backup copies of the Confidential Information as are automatically created and retained by its standard backup processes and systems. The Recipient shall comply with its nondisclosure obligations under this Section 14 with regard to these copies and shall destroy them in accordance with its normal destruction processes. Distributor may also retain copies of Company Confidential Information solely to the extent needed for Distributor to meet its contractual technical support, maintenance, warranty, and consulting obligations under this Agreement. Distributor shall comply with its nondisclosure obligations under this Section 14 with regard to the retained copies.

14.5 Compelled Disclosure. If the Recipient receives a request to disclose all or any part of the Confidential Information by a subpoena or order issued by a court or other governmental agency, the Recipient shall: (a) immediately notify the Disclosing Party of the existence, terms and circumstances surrounding the request; (b) consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow the request; and (c) if disclosure is required, upon the Disclosing Party’s request, cooperate with the Disclosing Party at the Disclosing Party’s expense to obtain an order or other reliable assurance that confidential treatment will be accorded to the portion of Confidential Information as the Disclosing Party may designate.

14.6 Remedies. The Parties agree that a breach of the confidentiality or nonuse provisions of this Section 14 will cause irreparable harm warranting issuance of a temporary restraining order and a preliminary injunction or other appropriate immediate equitable relief.

15. Term and Termination

15.1 Term. This Agreement will commence on the Effective Date and continue in force until terminated in accordance with this Section 15.

15.2 Termination by Company.

(a) Failure to Pay Royalties. Company may terminate this Agreement upon thirty (30) days’ written notice to Distributor if Distributor fails to pay any amount due and payable under this Agreement, unless Distributor is disputing its obligation to pay the amount in good faith, and Distributor fails to cure the breach within thirty days after receipt of written notice of breach from Company, provided that the thirty-day notice and cure period will be shortened to five (5) days if Distributor fails to timely pay any amounts to Company for a third time within any five (5) year period, regardless of whether or not Distributor has previously cured the prior occasions of untimely payment and irrespective of Distributor’s payment of any interest associated with the cured payments.

(b) Misuse of Company Intellectual Property. Company may terminate this Agreement immediately upon written notice to Distributor if Distributor breaches any provision of Section 11, 12, or 13.

(c) Other Material Breach. Company may terminate this Agreement by written notice to Distributor if Distributor is in material breach of this Agreement (except for any breach subject to (a) or (b) above) and fails to cure the breach within thirty days after receipt of written notice of breach from Company.

(d) Insolvency. Company may terminate this Agreement immediately upon written notice to Distributor if Distributor (i) becomes insolvent, (ii) becomes unable to pay its debts as the debts become due, (iii) makes a general assignment for the benefit of creditors, or (iv) appoints a trustee, receiver, or the like with respect to its assets.

15.3 Termination by Distributor. Distributor may terminate this Agreement upon sixty (60) days’ written notice to Company if Company is in material breach of this Agreement and fails to cure the breach within the sixty-day period after receipt of the written notice of breach from Distributor.

15.4 Effect of Termination. Upon any termination or expiration of this Agreement, the following will occur:

(a) Outstanding Purchase Orders. Company may refuse to fill Distributor’s purchase orders in excess of the average run rate for the immediately preceding six months, regardless of time of receipt and any acceptance prior to the effective date of any termination. In any case, Company may refuse to fill any purchase order, unless:

(1) Distributor agrees to accept and make payment thereon on C.O.D. terms;

(2) Distributor provides to Company evidence that Distributor is contractually obliged to a third party to provide Products associated with the order; and

(3) Company has Products in stock sufficient in quantity and availability to fill the order.

(b) Cease Use of Confidential Information. Each Party will immediately cease use of the know-how and other Confidential Information of the other Party and promptly return all Confidential Information (including all copies, elaborations, and adaptations that it has made thereof) to that Party pursuant to Section 14, provided, however, that Distributor may retain and use Confidential Information during the period of any final sales under Section 15.4(a).

(c) Survival of Confidentiality Obligations. The duties of confidentiality set forth in Section 14 will continue for a period of five (5) years after the termination or expiration of this Agreement, provided, however, that the obligations and duties will remain in force beyond that period with respect to any information that constitutes a trade secret for as long as the information remains a trade secret.

(d) No Effect on Existing Rights. No termination of this Agreement will affect any right or obligation of a Party that arose before the effective date of termination.

(e) No Liability Arising from Termination. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR DAMAGES OF ANY SORT AS A RESULT OF TERMINATING THIS AGREEMENT IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

(f) Certain Other Distributor Obligations. Distributor shall immediately:

(1) return to Company any demonstration samples, literature, and Product information received from Company;

(2) turn over to Company all purchase order files, unanswered customer requests for quotes, and all other materials associated with the sale of the Products;

(3) discontinue all use, imitation, or duplication of all distinguishing characteristics of the Marks;

(4) cease to identify itself as being, or having been, associated with the Company and cease from holding itself out to the public in any way as a current former distributor for Company.

(g) Acceptance of Further Orders. Company may, but need not, accept from Distributor further orders for Products after the effective date of termination. These transactions will be covered exclusively by Company’s then-current terms and conditions of sale, the most current version of which is attached as Schedule B. No acceptance of any order after the effective date of termination will be deemed a renewal or continuation of this Agreement but, rather, the acceptance will be a separate transaction not under a distributor relationship.

15.5 Survival. Sections 7.2, 7.3, 8, 10, 11.4, 11.5, 11.6, 12, 13, 14, 15, 16, 17, 18, and 19 will survive any termination or expiration of this Agreement.

16. Indemnification

16.1 Distributor shall indemnify, defend, and hold harmless Company and Company’s equityholders, managers, partners, directors, officers, employees, agents, and affiliates from and against all losses, damages, liabilities, fines, penalties, costs, and/or fees (including, but not limited to, reasonable attorney fees) in connection with any claim, suit, action, demand, or proceeding that arises out of, or is related to:

(a) Any representation or warranty by Distributor to any third party with respect to the Products in excess of the representations or warranties as Company expressly and in writing authorized Distributor to make;

(b) Any claim based in any way on Distributor’s breach of its obligations to any third party;

(c) Distributor’s willful, malicious, or grossly negligent acts or omissions; or

(d) Distributor’s conduct of its business outside the scope of this Agreement.

17. Limitation of Liability

UNDER NO CIRCUMSTANCES WILL COMPANY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, PROFITS, OR GOING CONCERN VALUE), OR FOR ANY DAMAGES OF ANY KIND IN EXCESS OF THE AMOUNTS PAID FOR THE PARTICULAR PRODUCTS IN CONNECTION WITH WHICH THE LIABILITY AROSE. THE LIMITATION OF LIABILITY IN THIS SECTION 17 APPLIES REGARDLESS OF WHETHER COMPANY KNEW OF, OR COULD HAVE KNOW OF, THE POSSIBILITY OF THE DAMAGES AND APPLIES REGARDLESS OF WHETHER THE LIMITATION OF LIABILITY CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE.

18. Essential Basis of the Bargain

The Parties acknowledge and agree that the fees charged by Company in this Agreement reflect, among other things, the overall allocation of risk between the Parties, including by means of the provisions for disclaimers of warranty, indemnity, and insurance described in this Agreement. The provisions in this Agreement are an essential basis of the bargain between the Parties and a modification of any provision would affect substantially the fees charged by Company under this Agreement. In consideration of the amount of the fees, Distributor agrees to the allocations of risk, and hereby waives any and all rights, through equitable relief or otherwise, to subsequently seek a modification of any of provisions or allocations in this Agreement.

19. General

19.1 Entire Agreement. This Agreement and its Schedules and Exhibits constitute the complete agreement of the Parties concerning the subject matter hereof and supersedes any other agreements, written or oral (including all correspondence, emails, and term sheets).

19.2 Modification. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each Party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section 19.2.

19.3 Notices. All notices under this Agreement, including notices of address change, will be in writing and will be deemed to have been given when sent by (i) registered mail, return receipt requested, or (ii) a nationally recognized overnight delivery service (such as Federal Express), to the following addresses, or to a Party’s address as changed in accord with this Section 19.3:

|  |  |
| --- | --- |
| TO COMPANY: | TO DISTRIBUTOR: |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| With a copy to: | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |

19.4 Governing Law. The validity, interpretation and performance of this Agreement will be governed by the substantive laws of the State of [STATE] and applicable laws of the United States of America, without the application of any principle that leads to the application of the laws of any other jurisdiction.

19.5 No Agency. No provision of this Agreement will be construed to create in any respect a relationship of agent, partner, or joint venturer between the Parties.

19.6 Multiple Counterparts. This Agreement may be executed in several counterparts, all of which taken together will constitute one single Agreement between the Parties.

19.7 No Waiver. No delay or omission by either Party hereto to exercise any right or power occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Agreement will impair any right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements to be performed by the other will not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement.

19.8 Export. Distributor shall comply fully with all relevant export laws and regulations of the United States of America (“Export Laws”) to ensure that no technology is (a) exported, directly or indirectly, in violation of Export Laws; or (b) intended to be used for any purposes prohibited by the Export Laws, including nuclear, chemical, or biological weapons proliferation.

19.9 Legal Expenses. In the event legal action is taken by either Party to enforce its rights under this Agreement, all costs and expenses incurred by the prevailing Party, including reasonable attorney fees and court costs, will be paid by the other Party.

19.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining portions or provisions will remain in full force and effect.

19.11 Assignment. The rights granted to Distributor hereunder are personal to Distributor and Distributor may not assign, by operation of law or otherwise, this Agreement or any right or duty arising hereunder to a third party without the prior written consent of Company. Any purported assignment in violation of this Section 19.11 will be void. Notwithstanding any provision to the contrary, Company may assign this Agreement and its rights and obligations hereunder in its sole discretion to a successor entity in the event of an acquisition of Company, whether by stock or asset purchase, corporate restructuring, or the like.

19.12 No Third-Party Beneficiaries. This Agreement is an agreement between the Parties, and confers no rights upon any of the Parties’ agents, customers, or affiliates or upon any other person or entity.

19.13 Interpretation.

(a) All references in this Agreement to “Articles,” “Sections,” and “Exhibits” refer to the articles, sections, and exhibits of this Agreement.

(b) The word “including” when used herein is not intended to indicate exclusivity and means “including, but not limited to.” The word “or” when used herein is not intended to indicate exclusivity.

(c) Each of the Parties and their counsel have carefully reviewed this Agreement, and, accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting Party will apply in the interpretation of this Agreement.

|  |  |
| --- | --- |
| [COMPANY] | [DISTRIBUTOR] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Schedule A

Sales Policies

1. Distributor shall submit purchase orders to Company requesting the purchase of Products. If any purchase order is submitted on anything other than a Company form, Company may accept the purchase order, but any acceptance will be solely as an administrative accommodation by Company and Company’s then-current terms and conditions of sale will govern all substantive elements of every sale transaction. No purchase order will be binding upon Company unless and until Company accepts the purchase order in writing at its office in the State of [STATE].

2. Distributor shall submit purchase orders in conformity with Company’s then-current minimum order requirements, which may change from time to time at Company’s sole discretion.

3. Notwithstanding any provision of Schedule B to the contrary, the price payable by Distributor for Products under this Agreement will be as set forth in Section 7.1.

4. Any approved Product returns for credit should be sent by prepaid transportation. Only Product shipped within the last year, in unopened packaging, currently available on Company published price lists and in good condition will be accepted. Company will credit Products returned within a six-month period from the date of purchase at the purchase price, less a 20% restocking charge. Company shall credit any Products returned later than six (6) months from date of purchase, but not more than one (1) year from the date of purchase at the purchase price, less 50% restocking fee. No Product will be eligible for return after one year from purchase date. Discontinued or obsolete products are not eligible for return or credit regardless of interval between purchase and return.

Schedule B

Terms and Conditions of Sale

Sales under these terms and conditions (these “Terms”) are by [Company], a [name of state] [corporation/limited liability company/etc.], or one or more of its affiliates as identified in an Order (“Seller”) to the person named as the buyer or purchaser in the documentation to which these Terms are attached or with which they are associated (“Buyer”) are conditional upon Buyer’s assent to these Terms and only these Terms. If these Terms are first tendered to Buyer before Buyer tenders a purchase order or similar document to Seller, these Terms are in lieu of any terms later submitted by Buyer and Seller rejects all additional or different terms and conditions of Buyer, whether confirmatory or otherwise. If Seller tenders these terms after the tender by Buyer of other terms, whether as part of a purchase order or otherwise, then Seller’s acceptance of any offer by Buyer associated with Buyer’s terms is expressly conditioned upon Buyer’s acceptance of these Terms exclusively and to the exclusion of any proffered Buyer terms or conditions, regardless of whether these Terms contain any terms additional to, or different from, any terms proffered by Buyer. Buyer’s performance, or acceptance of, or payment for, any products from Seller will constitute Buyer’s acceptance of these Terms. These Terms, together with any associated description of the products and quantity and price terms that are the subject of the purchase and sale transaction under these Terms constitute an “Order.” Buyer represents and warrants that any products that it purchases from Seller are for business or commercial use and not for domestic, personal, family, or household use.

1. Description of Products. Seller agrees to sell, and Buyer agrees to purchase, the products described as part of the Order.

2. Prices; Minimum Quantities. The prices of the products and/or services supplied by Seller are as stated in the Order. Prices may be adjusted to the prices in effect at the time of delivery, whether as a result of fluctuations in commodity prices or otherwise. Except as otherwise stated in an Order, all pricing is FOB (as defined in Uniform Commercial Code § 2-319) for shipments originating and ending in the United States and EXW (Incoterms 2000) for international shipments, in either case Seller’s facility or any other location as Seller specifies in an Order. Buyer acknowledges that the prices for certain products offered by Seller are based on Buyer purchasing a stated minimum order quantity and/or minimum shipment quantity of those products. Where Buyer orders a product that is subject to a minimum order quantity and the quantity ordered does not meet that minimum order quantity, Seller reserves the right to adjust the price or ship the minimum order quantity at its discretion.

3. Taxes and Fees. All prices are exclusive of sales, use, excise, customs, export, import, commodity, and/or any other taxes. Buyer shall pay all taxes and any license fees or other charges incidental to the sale of products. Buyer shall, at Seller’s request, provide to Seller reasonable proof of payment by Buyer of any taxes, fees, and assessments. If Seller is required to prepay any taxes on behalf of Buyer, Buyer will reimburse Seller for all taxes paid. If provision of the products and/or services requires any documentary letter of credit or similar document, instrument, or process, Buyer shall pay all fees and costs associated therewith.

4. Payment Terms. Unless provided otherwise in writing in Seller’s quotation, payment will be net thirty days from date of shipment. Unless otherwise expressly stated in an Order, Buyer will pay any invoice issued by Seller in U.S. dollars without discount, setoff, or reduction. Seller may, at its sole discretion, require payment by bank transfer, cash, certified check, C.O.D., or irrevocable letter of credit. All trading accounts are subject to prior approval of Seller’s credit department in accordance with Seller’s credit policies and practices in effect from time to time. The amount of credit or terms of payment may be changed by Seller at any time for any reason. If Buyer fails to make payment when due or defaults in any other way, Seller may, at its option, without limiting any of its other rights or remedies available under these Terms or applicable law, and until Buyer’s account is current: (1) withdraw credit and suspend or cancel performance under any or all Orders; and/or (2) reschedule shipment. Each shipment will be separately invoiced and paid for without regard for other shipments.

5. Shipments. All shipments will be FOB (as defined in Uniform Commercial Code § 2-319) for shipments originating and ending in the United States and EXW (Incoterms 2000) for international shipments, in either case Seller’s facility or any other location as Seller specifies in an Order. Seller shall have the right to select the freight carrier, and Buyer accepts carrier selection by Seller unless Buyer timely specifies an alternative carrier in writing. Delivery of products to the carrier constitutes delivery to Buyer, title to products will pass to Buyer, and Buyer will have all risk of loss or damage at that time. Any claims against Seller for shortages or nonconformance that could, with due diligence, be discovered by inspection upon receipt must be made within thirty days after receipt. Prices include packaging in accordance with Seller’s standard practice. Seller may make deliveries in installments with appropriate partial invoicing issued for each installment. Any shipping date or delivery date stated represents Seller’s estimate of when the products will be shipped or delivered. Seller is not liable for losses or added costs due to delivery delays. Without limiting the foregoing, Seller may, but will not be required to, shorten lead times and deliver products more quickly than originally estimated, in accordance with Buyer requests, but reserves the right to increase pricing accordingly, or impose break-in charges, for directly or indirectly affected products or shipments thereof. Each shipment of products to be delivered is to be considered a separate sale and Buyer will pay the agreed price for each shipment without regard for any failure to deliver any subsequent shipment of products. Seller’s breach or default in the delivery of any particular shipment will not give Buyer the right to refuse to receive any other shipment. Any back-ordered products will be considered a separate shipment. Time is not of the essence, and Buyer is not entitled to reject an otherwise conforming tender made within a reasonable time. Any failure by Buyer to pay for any shipment within the time stated for payment is an anticipatory material breach with regard to other shipments. Once Seller commences production of products and/or provision of services and/or determines a shipping or delivery date with regard to the same, Seller will be entitled to provide, ship, and/or deliver the products and/or services and receive payment therefor and Buyer may not revise the timing for receipt of the products and/or services.

6. Security Interest. Buyer grants to Seller a security interest in the products supplied under these Terms and any proceeds thereof and accessions thereto as security for Buyer’s obligations (payment and otherwise) to Seller. Seller may file any financing statement and/or take any other action permitted by applicable law to perfect and enforce any security interest and, if local law requires that a financing statement or similar document be signed or otherwise acknowledged by a debtor party, Buyer appoints Seller its attorney in fact for the purposes of execution and delivery of any applicable document.

7. Termination; Default.

(a) Termination for Default. Either party may terminate an Order by notice, without prejudice to its other rights or remedies if: (1) the other party files a petition in bankruptcy or assignment generally for the benefit of creditors, becomes insolvent, becomes, or admits that it is, unable to pay its debts generally as they become due, or has a third-party manager or receiver appointed over any of its assets or (2) the other party defaults under these Terms and does not remedy the default within thirty days following written notice requiring the default to be remedied.

(b) Termination for Convenience. Seller may, at Seller’s sole discretion, cancel Orders upon receipt of written request from Buyer requesting cancellation, except that Orders or Order line items for products designated noncancelable or nonreturnable (“NCNR” or other designation to that effect), or for custom products cannot be cancelled under any circumstances. Buyer will accept delivery and pay the purchase price of the Order line item(s).

(c) Adequate Assurance of Performance. In any circumstance where Seller has the right to demand adequate assurance of Buyer’s performance (such as under Uniform Commercial Code § 2-609, where applicable), Buyer shall provide the assurance within five days after demand by Seller.

(d) Other Termination by Seller. If Buyer fails to make payments in accordance with these Terms or any Order or fails to comply with any provision of these Terms or any Order, Seller may terminate any Order as to unshipped portions of the products, terminate any applicable raw materials orders placed with its suppliers, and Buyer will remain liable for shipped products. If Seller elects to continue to make shipments after the Buyer has failed to make payment for the shipment in advance or fails to provide satisfactory security, any action by Seller will not constitute a waiver of any default by the Buyer or in any way affect Seller’s remedies for any default.

8. Product Changes. Seller may, at any time and without notice to the Buyer, change the product(s) in any way that does not adversely affect the form, fit or function of the product(s) in any material respect. If Buyer at any time directs changes or causes Seller to make changes to the product(s), or specifications of the products(s), or otherwise changes the scope of the work covered by an Order, including, but not limited to, work with respect to matters as inspection, testing, or quality control, Seller may terminate the Order with respect to the items affected by the change(s) or equitably change the time for performance and/or the price of product(s) to take into account the changes.

9. Assignment. Buyer may not assign any right or obligation under any Order. Seller may freely assign any right or obligation under any Order.

10. Warranty. Seller warrants solely to Buyer that each product supplied under these Terms will, for ninety (90) days after shipment by Seller to Buyer or a shorter time as the nature of the product reasonably implies (the “Warranty Period”), conform to Seller’s written specifications during normal use and/or operation. Seller’s sole and exclusive obligation, and Buyer’s sole remedy for failure of any product to conform to the above warranty is, at the option of Seller, repair or replacement of the nonconforming product or a refund the monies paid by Buyer for the nonconforming product. Buyer must notify Seller in writing during the Warranty Period of any nonconformity. Transportation charges for any product returned by Buyer to Seller in connection with a valid warranty claim will be at Seller’s expense and for any product returned from Seller to Buyer will be at Buyer’s expense. The warranty will not apply if the product: (1) fails, malfunctions or is damaged as a result of improper handling, improper storage conditions (including, but not limited to, where applicable, temperature and humidity), installation, maintenance, removal, modification, or repair; (2) is accidentally damaged, subjected to abuse or improper use; (3) is altered or damaged so that Seller is unable to verify the defect with its normal test equipment and/or procedures; or (4) is not returned in the same or equivalent container in which it was shipped or is not returned with the appropriate lot numbers, manufacturing dates, and shipper numbers.

11. Product Returns. Buyer may not return any product unless Seller approves in writing the return. Upon Seller’s request, Buyer will provide to Seller samples of products alleged by Buyer to be eligible for return. All return documentation must contain Seller’s Returned Materials Authorization (“RMA”) number. Seller may refuse returned shipments not approved by Seller or not properly identified. The request for return approval must include lot number, and quantity, and full identification of products to be returned. Proper handling procedures must be used in the packing and shipping of all returns. Products must be returned in the same or equivalent container in which they were shipped with the RMA number clearly visible on the package. Buyer retains title and assumes all risk of loss relating to products returned for repair or replacement until Seller completes repair or identifies products as replacements.

12. Disclaimers and Limitation of Liability. EXCEPT AS EXPRESSLY DESCRIBED IN SECTION 10, THE PRODUCTS DELIVERED UNDER THESE TERMS AND/OR ANY ORDER ARE SUPPLIED “AS IS” AND WITH ALL FAULTS. SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING WARRANTIES AS TO THEIR QUALITY, PERFORMANCE, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. NOTWITHSTANDING ANYTHING IN THESE TERMS OR IN ANY ORDER OR OTHERWISE TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE OR PROFITS) ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OR SALE OF ANY PRODUCT BY BUYER OR ANY CUSTOMER OR SUCCESSOR HOLDER OF ANY PRODUCT; BY THE PERFORMANCE OR FAILURE OF SELLER TO PERFORM UNDER THESE TERMS; BY ANY OTHER ACT OR OMISSION OF SELLER; OR BY ANY OTHER CAUSE. IN NO EVENT WILL SELLER’S TOTAL LIABILITY TO BUYER FOR ANY CLAIM EXCEED THE SUM PAID TO SELLER BY BUYER FOR THE PRODUCTS SUPPLIED UNDER THE ORDER IN CONNECTION WITH WHICH THE CLAIM ARISES. NO ACTION MAY BE BROUGHT BY BUYER FOR ANY BREACH OF THESE TERMS MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION.

13. Indemnification. Buyer shall defend, indemnify, and hold harmless Seller and its employees, officers, directors, agents, affiliates, successors, and assigns (each an “Indemnified Party”) from and against any and all claims, suits, actions, demands, damages, losses, liabilities, penalties, fines, costs, and expenses (including, without limitation, attorney fees) whatsoever that are incurred by or made against any Indemnified Party that arise out of or result from (i) the acts, omissions, negligence, or misconduct of Buyer; (ii) any breach of these Terms by Buyer; or (iii) any claim by Buyer, any of its customers or any successor holder of any of the products, or any other person or entity, related to the products sold by Seller, or the purchase, installation, or use of the products, or any undertakings, acts, or omissions relating to the products, to the extent the claim is not based upon a breach of warranty of Seller caused solely by Seller’s negligence.

14. Fail-Safe or Critical Operations. Seller’s products are not designed, intended, authorized, or warranted to be suitable for use or re-sale as control equipment in, or for other applications related to, hazardous or critical environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation, or communications systems, air traffic control, life support, weapons systems, or other application in which the failure of a product could lead to death, personal injury, or severe physical or environmental damage. Buyer will not use or permit to be used the purchased products for fail-safe or critical applications, and further agrees to indemnify Seller and each other Indemnified Party against all actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorney fees, arising out of any breach of Buyer’s obligations in this Section 14.

15. Confidentiality. Buyer will, notwithstanding that any Order may have terminated, keep in confidence and prevent the disclosure to any person all information and data disclosed to it by Seller that is marked confidential or by its nature ought to be considered confidential, including, but not limited to, quotes, business plans, technological techniques, prints, inventions, and research and development. Notwithstanding the foregoing, Buyer will not be liable for disclosure of any confidential information if the same: (i) is or becomes readily ascertainable by the public by proper means without breach by Buyer of any obligation to Seller of confidentiality; (ii) is disclosed with the prior written approval of Seller; or (iii) becomes known to Buyer from a source other than Seller without breach of these Terms by Buyer or breach by the source of any obligation of confidentiality.

16. Seller’s Intellectual Property. Except as expressly and particularly set forth in a separate written agreement signed by both parties, Buyer will obtain no right whatsoever in any copyright, patent, trademark, trade secret, mask work, or other intellectual property right of Seller (“Intellectual Property Rights”), whether in consequence of these Terms, any Order, any transaction or dealing between Seller and Buyer, or otherwise. Seller reserves all Intellectual Property Rights to itself.

17. Export Controls. Unless an appropriate license, exemption, or similar authorization has been duly obtained, Buyer shall not, nor will Buyer authorize or permit its employees, agents, successors, or assigns to, export or re-export any products to any country identified as a prohibited destination by any applicable laws or regulations. Furthermore, Buyer hereby agrees to undertake and perform all “denied party screening” or similar obligations imposed by or arising under applicable laws or regulations. Buyer agrees and acknowledges that, to the extent applicable, the products and/or services will be/were exported from the United States or other country of origin solely in accordance with the U.S. Export Administration Regulations or other export regulations applicable in the jurisdiction of origin. Any diversion contrary to U.S. or other applicable law is prohibited. Buyer agrees to indemnify and hold harmless Seller from and against any and all claims, losses, expenses, suits, damages, costs, penalties, and/or fines, including, but not limited to, attorney fees, known or unknown, arising from Buyer’s acts or omissions under these Terms or any Order, including Buyer’s breach of the terms set forth herein governing export or re-export activities.

18. Governing Law; Jurisdiction; Venue; Severability. These Terms and all Orders will be governed by and construed in accordance with the laws of the State of [name of state, USA] and the federal laws of the United States of America without regard for their conflict of law rules. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms or any Order. Any action or claim arising out of or related to these Terms or any Order may be brought only in the state courts of [name of state sitting in name of county] or in the [U.S. District Court for the name of district of name of state, name of division], and each party irrevocably consents to the jurisdiction of, and venue in, these courts. If any provision of these Terms is illegal or unenforceable the provision will be reformed to, insofar as is possible, permit it to confirm with applicable law and, in any case, the remaining provisions will continue in full force and effect.

19. Use of Products. Buyer shall use, and require its employees, contractors, and agents to use, all available safety precautions, in addition to any specifically set forth in any manuals, material safety data sheets, technical data sheets, instruction sheets, if any, furnished by Seller (or available from raw material suppliers) relating to Seller’s products. If Buyer does not receive material safety data sheets for any product from Seller, Buyer will request them from Seller. If Buyer fails to strictly observe each and every one of the obligations set forth in this Section 19 or if Buyer’s use of any of Seller’s products is in violation of any standard or rule of the American National Standards Institute or Occupational Health and Safety Act, or other workplace law, regulation, or standard, Buyer will indemnify, defend, and hold harmless each Indemnified Party from and against any and all claims, demands, damages, actions, and causes of action, as well as any and all liability, loss, or expense of any kind, including reasonable attorney fees arising from, connected with or in any way pertaining to any failure by Buyer.

20. Notification. Buyer shall notify Seller promptly, and in any event within thirty (30) days, after any accident or failure involving Seller’s products that results in personal injury or damage to property and shall cooperate fully with Seller in investigating and determining causes of the accident or failure.

21. Attorney Fees and Costs. Buyer will pay Seller’s reasonable attorney fees and other costs and expenses for any legal or equitable action undertaken by Seller to enforce these Terms or the provisions of any Order.

22. Errors. Any and all typographical errors or other clerical errors made by Seller in these Terms, in Seller’s quotations or communications, or any Order are subject to correction by Seller.

23. Force Majeure. Seller will not be liable for failure to deliver, or for delay in delivery of, the products to the extent arising out of or related to causes beyond its reasonable control, including, without limitation, acts of God or of the public enemy, acts of any governmental authority, fires, floods, other casualties, severe weather, epidemics, quarantine restrictions, strikes, labor disputes, or shortages of labor (whether involving employees of Seller or employees of others and regardless of responsibility or fault on part of any employer), embargoes, wars, riots, civil commotion, shortage of rail cars or semi-tractors and trailers, delays in transit, or inability to secure necessary parts or materials (whether at all or at commercially reasonable prices). In no event will Seller be liable for any loss or damage, including in particular, direct, incidental, indirect, special, punitive or consequential damages (including loss of profits) due to any failure to deliver or delay in delivery. If Seller is wholly or partially unable to perform because of any cause beyond its reasonable control, Seller may allocate production and deliveries among Seller’s customers or may terminate the Order without any further liability to Buyer.

24. Remedies Cumulative. All rights and remedies of Seller under these Terms and any Order are cumulative. No pursuit or receipt by Seller of any particular remedy will constitute an exclusive election of remedies and Seller will have the benefit of all remedies available at law, in equity, or otherwise.

25. Cross-Default. Any default by Buyer under any other agreement to which Seller or any Seller affiliate is a party will be a default by Buyer under these Terms and of each Order. The other agreements may, where applicable, be (but are not limited to) distributor or similar agreements.

26. Third Parties. Except for the Indemnified Parties other than Seller (who are all express third-party beneficiaries of Buyer’s indemnification obligations), there are no third-party beneficiaries of any right or obligation under these Terms or any Order.

27. Third-Party Terms. Under no circumstances will Seller be obliged or liable to Buyer or to any third party with respect to any representation, warranty, covenant, duty, or liability to any third party, whether as part of a “directed sourcing” arrangement or otherwise. Without limiting the foregoing, Seller expressly disclaims and rejects any obligation of any kind to comply with any terms or conditions of Buyer’s direct or indirect customer(s), regardless of any obligation to the person or entity taken on by, and/or imposed upon, Buyer and regardless of whether Seller is aware of any requirement upon Buyer. Seller will be liable to any third party, if at all, solely according to a separately negotiated, written, and signed agreement, if any, as Seller actually negotiates and executes with a third party.

28. Entire Agreement. These Terms, together with any specific terms contained in any Order, any separate written and signed distributor agreement, and any separate written confidentiality agreement between the parties, embody the entire agreement between the parties with regard to the subject matter hereof and thereof and supersede all other prior agreements between the parties with regard to the subject matter. Neither these Terms nor any Order may be modified, except in writing and signed by the party against whom enforcement is sought.