



- 1. APPLICATION.** These General Terms and Conditions of Sale (“**Terms and Conditions**”) will apply to all quotations and sales for goods, material, equipment and services (other than software related services (e.g. software license, SaaS) which are governed under Seller’s standard Master Software Services Agreement available upon request) by Genesis Robotics and Motion Technologies, LP (“**Seller**”) and are hereby incorporated into the purchase order, quotation, invoice or other document to which they are attached (“**Order**”) and, together with the Terms and Conditions, the “**Contract**”). All purchases by customer, owner or its agent (“**Buyer**”) are expressly limited and conditioned upon acceptance of the Terms and Conditions. Seller objects to and rejects any provision additional to or different from the Terms and Conditions that may appear in Buyer’s purchase order, acknowledgement, confirmation, writing, or in any other prior or later communication from Buyer to Seller, unless such provision is expressly agreed to by Seller in a writing signed by Seller. For the purposes of these Terms and Conditions, the term “**Goods**” shall refer to the goods, material and equipment listed on the Order as well as all equipment or other materials provided in connection with any non-software based services, and the term “**Services**” shall refer to the non-software based services listed on the Order. Any software based services Terms not defined herein shall have the meanings set forth in the Order.
- 2. PRICE AND OTHER CHARGES.** Unless otherwise stated in the Order, the Contract price does not include any packaging, transportation, duties, taxes or other charges (collectively, “**Additional Charges**”). Buyer shall be responsible for all applicable Additional Charges. Price is subject to change and considered Seller confidential information that shall not be disclosed to third-parties.
- 3. PAYMENT TERMS.**

 - (a) Unless otherwise stated in the Order, payment is due thirty (30) days after the invoice date.
 - (b) All payments shall be made in USD unless otherwise specified in the Order.
 - (c) Interest may be charged on all past due amounts owed by Buyer hereunder at an interest rate equal to the prevailing SOFR rate of interest, expressed as an annual percent, plus three percent (3%) from the payment due date until paid in full, or the highest interest rate allowed by applicable law, whichever is less. Payments must be made via a financial institution that is not subject to the sanction laws of the United States, the European Union, or other applicable jurisdictions. Banking instructions will be included in the Order. Seller will not take responsibility if you transfer money to a wrong bank account. If Seller ever has a change in its bank account details Seller MUST contact KES Treasury immediately by phone to validate: KES Treasury, Stuart Reichenberger +1-316-828-5500.
- 4. CREDIT TERMS.** If, in Seller’s judgment, the creditworthiness or future performance of Buyer is or may become impaired or unsatisfactory, Seller may suspend performance hereunder and seek adequate assurances from Buyer. Buyer shall pay (or otherwise reimburse) Seller for any costs associated with such suspension (including charges for reactivation). Without limiting the foregoing, Seller may, for any reason,

 - (a) require prepayment by wire transfer at least two (2) business days prior to a scheduled shipment of Goods or provision of Services, and/or
 - (b) require Buyer to issue letter(s) of credit in a form, and from an issuing bank, acceptable to Seller at least three (3) business days prior to a scheduled shipment of Goods or provision of Services.
- 5. DELIVERY.**

 - (a) Unless otherwise stated in the Order, delivery of the Goods shall be FCA (Incoterms@2020 International Chamber of Commerce (ICC) publication) Seller’s designated manufacturing facility.
 - (b) If Buyer has not issued inspection and shipping instructions by the time the Goods are available to Buyer, Seller may, at its sole discretion store the Goods at Buyer’s risk of loss and cost.
 - (c) Shipments or Goods in storage may be insured at Buyer’s expense.
 - (d) Seller reserves the right to make delivery in installments over 12-months from receipt of the Order. All such installments will be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment will not relieve Buyer of its obligations to accept remaining deliveries. Buyer shall not impose any commercially unreasonable packaging, handling, or shipping terms or conditions.
- 6. TITLE/RISK OF LOSS.** Unless otherwise stated in the Order, title in the Goods shall pass to Buyer upon payment in full. Seller will have the right to maintain a lien on the Goods until payment in full is received by Seller. The risk of loss or damage to the Goods shall pass to Buyer upon delivery in accordance with the Contract or as otherwise provided in the Delivery section.



- 7. INSPECTION/REJECTION OF GOODS.** All Goods shall be received subject to Buyer's reasonable inspection and rejection. Buyer may only reject Goods that do not conform in all material respects to the specifications contained in the Contract. Rejected Goods will be held at Seller's risk for a reasonable time, to be returned or disposed of by Buyer at Seller's written instruction and at Seller's sole cost and expense. A failure by Buyer to reject nonconforming Goods in writing within thirty (30) days after receipt shall constitute an unqualified acceptance of such Goods by Buyer and a waiver by Buyer of all claims with respect thereto. Thereafter, nonconforming Goods shall be subject to the Warranty section.
- 8. CANCELLATION FEE.** Buyer may not cancel any part of the Contract except upon written notice and payment to Seller for
- (a) all Goods or Services completed prior to cancellation,
 - (b) all costs incurred by Seller prior to cancellation,
 - (c) all reasonable costs arising due to the cancellation,
 - (d) unavoidable third party charges, and
 - (e) a cancellation fee in an amount equal to twenty percent (20%) of the total price of the Contract. The parties agree that Seller's damages following a termination of any part of the Contract by Buyer are difficult to determine and that the cancellation fee provided by this provision is a genuine pre-estimate of loss and not a penalty and is reasonable in light of the circumstances. Seller shall be entitled to the payments set forth above if Seller cancels or terminates the Contract pursuant to the Default and Suspension sections. Title to all works in progress and all materials not delivered to Buyer prior to the date of cancellation will remain with Seller.

9. WARRANTY AND REPAIR.

(a) The Seller warrants that:

- (i) the Products shall be of good quality and shall conform to the specifications specifically set forth in the Order and title to the Products shall be free from any security interest, lien or encumbrance upon Seller's receipt of full payment for the Products, and
- (ii) the Seller shall perform the Services in a manner and in accordance with the specifications set forth in the Contract.

WARRANTY PERIOD

(b) For GRMT Products or Services, the foregoing warranties will last for the following periods set forth in subsection (i), (ii) and (iii) below:

- (i) Products, manufactured by Seller under its own brands and supplied by Seller as part of the Order, for eighteen (18) months after the date that the Products are shipped, or one (1) year from the date of first commissioning, whichever occurs first.
- (ii) Services will be performed by qualified personnel with care, skill and diligence, in accordance with applicable generally accepted standards recognized by the industry, for a period of three (3) months after completion of the Services (from the date of invoice).
- (iii) for products sold through distribution, whichever is the shorter of 18 months after shipment from Seller's facility to the distributor or 12 months after the product is sold by the distributor. If during the Warranty Period any Products or Services prove not to meet the warranties set forth above, Seller will repair the Products or supply identical or substantially similar replacement Products FCA (Incoterms 2020) Seller's designated manufacturing facility, at Seller's sole discretion, or re-perform the Services (as applicable).
- (iv) With respect to non GRMT product, which is not manufactured by Seller, or for Services provided by non-Seller providers, the warranty obligations of Seller shall in all respects conform and be limited to the warranty extended to Seller by such non-Seller supplier and in accordance with subsections (v) and (v) below.
- (v) Products not manufactured by Seller are subject only to warranties of Seller's vendors and Seller hereby assigns to Buyer all rights in such vendors' warranties, however, Seller shall furnish to Buyer reasonable assistance in enforcing such rights.
- (vi) Inexpensive items requiring repair or replacement and routine maintenance-related or consumable items shall be outside the scope of these limited warranties.

(c) Any replacement Products or re-performed Services will be warranted for the unexpired portion of the Warranty Period applicable to the particular Products or Services; however, the warranty on repeated replacement Products or Services shall not exceed the Warranty Period associated with the first Product or Service provided.



EXCLUSIONS AND LIMITATIONS

(d) the Seller warranties will be voided if;

(i) the Products or the subject of the Services have not been stored, installed, maintained or operated in accordance with accepted industrial practice or any specific instructions provided by Seller;

(ii) the Products or the subject of the Services have been subjected to any accident, misapplication, environmental contaminant, corrosion, damage, debris, improper passivation, abuse or misuse;

(iii) Buyer has modified the Products or the subject of the Services without Seller's prior written consent; (iv) Buyer has used or repaired the Products or the subject of the Services after discovery of the defect without Seller's prior written consent;

(v) Buyer or any third-party refuses to permit Seller to examine the Products or the subject of the Services and operating data to determine the nature of the defect claimed; or

(vi) Buyer fails to meet its financial obligations under the Contract.

(d) Seller's performance guarantees, if any, shall be deemed to be met by a satisfactory demonstration of the guaranteed performance parameters during a performance test, which shall be the responsibility of Buyer and is to be based on test procedures as specified in the Order or, if not specified in the Order, to be based upon Seller's standard test procedures, which may be subject to change at Seller's sole discretion. In the absence of a performance test within thirty (30) days of delivery, unless otherwise specified in the Order, Seller's performance guarantees are deemed to have been met. All warranty claims must be made in writing to be effective.

RETURN OF PRODUCTS No products may be returned to Seller without first obtaining Seller's written permission and a returned material identification tag. Returned products must be of current manufacture, in original packaging, and undamaged. Returned Products must be securely packed to reach Seller without damage and labeled with the return authorization number.

(g) for any returns, Seller will only be responsible for transportation costs required to repair or replace any defective Products or to re-perform Services; Seller will not be responsible for the costs of removal, installation, re-installation or making of access of any Products or other items, where such transportation, removal, installation, re-installation or making of access is required to repair or replace any defective Products or to re-perform Services..

(h) Unless otherwise agreed, any repair of the Products shall be conducted at the place where the Products are located unless the Seller deems it more appropriate that the Products be sent elsewhere. The Buyer shall at its own cost and expense provide access to the Products and arrange for any intervention in equipment other than the Products, to the extent that it is necessary to remedy the defect. Unless otherwise agreed, the Buyer shall be responsible for any additional costs that Seller incurs for remedying the defects caused by the Products being located in a place other than the delivery destination stated in the Order, or if no destination is given, the place of delivery.

(i) ALL WARRANTIES OR REPRESENTATIONS NOT SPECIFICALLY INCLUDED IN THESE TERMS AND CONDITIONS, INCLUDING THOSE WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WHETHER EXPRESSED, IMPLIED, STATUTORY OR ARISING FROM A COURSE OF DEALING, USAGE OF THE TRADE OR OTHERWISE WITH RESPECT TO ANY PRODUCTS OR SERVICES, ARE EXPRESSLY EXCLUDED. NO EXPRESS OR IMPLIED WARRANTY IS GIVEN AS TO THE CAPACITY, EFFICIENCY OR PERFORMANCE OF ANY PRODUCTS, EXCEPT AS MAY BE PROVIDED IN A SEPARATE WRITTEN AGREEMENT SIGNED BY SELLER. BUYER'S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT OF THE PRODUCTS OR THE RE-PERFORMANCE OF THE SERVICES, AS APPLICABLE, DURING THE WARRANTY PERIOD, AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, BUYER AGREES THAT RETURN OF THE AMOUNT PAID BY BUYER TO SELLER FOR THE PRODUCTS INVOLVED SHALL PREVENT THE REMEDIES FROM FAILING OF THEIR ESSENTIAL PURPOSE AND SHALL BE CONSIDERED BY BUYER AS A FAIR AND ADEQUATE REMEDY.

10. BACKCHARGES. No backcharges will be paid or allowed by Seller unless (a) Seller is notified in writing of Buyer's intent to incur costs and (b) Seller provides prior written approval of such backcharges.

11. OBLIGATIONS OF BUYER. Buyer is solely responsible for identifying and defining all processes, mechanical considerations, and site requirements, which may affect the performance, reliability or operation of the Goods or Seller's performance of Services. Buyer represents that all information and data provided to Seller by or for Buyer is current, complete, and accurate. Buyer represents and warrants to Seller that Buyer has all necessary rights and permissions to provide all information provided by or on behalf of Buyer to Seller and shall indemnify Seller from any third party with respect to Seller's use of such information in connection with the Contract.



INDEMNITY. In the event that Seller performs onsite services at Buyer's facility,

(a) Seller shall defend, indemnify and hold harmless Buyer against all damages, losses, costs, claims, liabilities, and expenses (including reasonable attorneys' fees), resulting from bodily injury, including death, or damage to tangible property of a Third Party to the extent caused by the negligent acts or omissions of Seller, its officers, directors, employees or agents ("**Seller Group**"); and

(b) Buyer shall defend, indemnify and hold harmless Seller against all damages, losses, costs, claims, liabilities and expenses (including reasonable attorneys' fees), resulting from bodily injury, including death, or damage to tangible property of a Third Party to the extent caused by the negligent acts or omissions of Buyer, its officers, directors, employees or agents ("**Buyer Group**"). All liability, losses, damages, costs or expenses resulting from bodily injury, including death, or damage to tangible property of a Third Party, caused by the joint or concurring acts of Buyer Group and Seller Group, shall be borne by Buyer and Seller to the extent each is determined negligent either by agreement of the parties or by a court of competent jurisdiction. The term "**Third Party**" shall mean any person or entity that is not a member of Seller Group, Buyer Group, the end user of the Goods or subject of the Services, or any of its respective affiliates, parent(s), subsidiaries or any of their respective officers, directors, employees, agents, or subcontractors.

12. DEFAULT. Upon the occurrence of any of the following events:

(a) Seller has not received a payment due from Buyer hereunder by the date such payment is due under the Contract, and such failure remains uncured for a period of ten (10) business days after Buyer's receipt of written notice from Seller of such non-payment;

(b) Seller is unable to meet its warranty obligations and fails to commence to cure within thirty (30) business days after Seller's receipt of written notice from Buyer of such uncured obligation; or

(c) Seller or Buyer fail to perform other material obligations in the Contract and such failure remains uncured for a period of thirty (30) business days after receipt of written notice from the other party of such uncured obligation, or if cure is not possible within that period, the defaulting party fails to make continuous and diligent efforts to cure, then the non-defaulting party, in its sole discretion and without prior notice (other than as provided above) to the defaulting party, may do any one or more of the following:

(i) suspend performance under the Contract; or

(ii) terminate the Contract, whereby any and all obligations of the defaulting party will, at the option of the non-defaulting party, become immediately due and payable or deliverable, as applicable. In the event of default by Buyer, Seller shall have the right to withhold delivery and/or sell the Goods to a third party and deduct from proceeds of such sale the purchase price and all reasonable costs resulting from the default.

The prevailing party shall be entitled to recover all court costs, reasonable attorneys' fees and expenses incurred by the prevailing party in connection with the default, and interest on past due amounts as set forth in the payment terms of the Contract.

13. INTELLECTUAL PROPERTY.

(a) Seller retains all intellectual property rights, whether registered or un-registered, including trademarks, patents, and copyright of all documents, drawing rights, design rights, developed programs, software, firmware, models, patterns, tools, jugs, fixtures and other data provided, fabricated, developed, or otherwise required in the course of the Contract ("**Seller IP**"), and hereby grants Buyer a non-exclusive, non-assignable, non-transferable (except to a downstream purchaser or user of the Goods) royalty-free license to use Seller IP delivered to Buyer or embodied in the Goods solely for the purposes of Buyer's installation, operation and maintenance of the Goods. The foregoing license does not give Buyer the right to reconstruct, repair, reverse engineer, decompile, or deconstruct the Goods or Seller IP.

(b) Seller will defend and indemnify Buyer from any claim, suit or proceeding brought against Buyer based on a claim that the Goods as manufactured and furnished by Seller and used in the manner for which it was intended and sold to Buyer constitutes an infringement of any United States, Canadian or European Union-member patent, if Seller is notified promptly in writing and given authority, information and assistance for the defense of such claim, suit or proceeding. All aspects of the defense and settlement of any such claim, suit or proceeding shall be within Seller's sole discretion. Buyer remains solely responsible for its own costs, including all fees and expenses of its own counsel, if any, or its personnel, which are incurred in conjunction with the defense of such claim, suit or proceeding. Should it be held that the Goods constitute an infringement and the use of the Goods is enjoined, Seller will, at its sole discretion and at its own expense, either procure for Buyer the right to continue using the Goods, replace the Goods with non-infringing goods, modify the Goods to become non-infringing or refund the purchase price for the infringing Goods. Seller's obligations to defend, and indemnify Buyer shall not apply to any liability for infringement:

(i) of any method patent where the Goods are used with other apparatus for carrying out a process resulting in a combination of steps which is deemed to infringe a method patent or patent directed to a combination of steps,



(ii) where the Goods are modified by Buyer,

(iii) where the Goods are used by Buyer in a manner different than the use communicated to and understood by Seller at the time the Goods were sold to Buyer and such use constitutes infringement, or

(iv) with respect to claims of infringement where the Goods were designed and manufactured in accordance with the design or specifications furnished or required by Buyer.

(c) Buyer will indemnify and hold harmless Seller from any suit or proceeding brought against Seller by any third party based on claims resulting from exceptions in Sections 14(b)(i), (ii), (iii) or (iv) as stated above.

14. SOFTWARE and FIRMWARE. In the case of any firmware or software embedded into or supplied with the Goods that is owned by Seller, Seller grants Buyer a non-exclusive, limited, non-sublicensable (except to a downstream purchaser or user of the Goods), non-assignable, royalty-free license to use such firmware or software solely in connection with the Goods. Such limited license does not include the right to make derivative works, decompile, deconstruct, make copies, or re-distribute the firmware or software (except in conjunction with a sale or distribution to a downstream purchaser or user of the Goods). Seller has no right to remove firmware or software embedded in the Goods. If the Goods include providing access to any computer software (e.g. On-Prem, SaaS) provided by Seller ("**Software**") Buyer agrees to comply with Seller's most current standard software agreement regarding such Software (available upon request). If the Goods include third-party software, Buyer agrees to comply with the most current third-party software agreement (available upon request).

15. SUSPENSION.

(a) Buyer may only suspend the Order upon written notice to Seller, subject to payment of Seller's costs.

(b) If Buyer or any of its agents delays Seller's performance due to failure to promptly approve drawings or procedures or due to any other action or non-action on part of Buyer or its agents: (i) Buyer shall reimburse Seller for all costs incurred up to the date of suspension and as a result of such delay (including costs of reactivation), (ii) the delivery time shall be adjusted, and (iii) milestone payments (if applicable) will be adjusted to keep Seller whole for costs incurred up to the date of delay or suspension.

(c) If, due to any action or non-action on the part of Buyer or its agents, Seller is delayed for more than forty-five (45) days, or such longer period of time as deemed reasonable by Seller in its sole discretion, Seller may elect to cancel the Order.

16. FORCE MAJEURE. Force Majeure means any circumstances beyond the reasonable control of either party, including acts of God, fire, explosion, breakdown of machinery or equipment, third party supplier plant shutdown, strikes or other labor disputes of Seller's suppliers or subcontractors, acts of terrorism or war, epidemics, viruses, riots or other civil disturbances or voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any governmental authority, inability to obtain materials necessary for manufacture of the Goods, total or partial failure of any of Seller's usual means of transportation of the Goods, or for failure to obtain necessary governmental approvals, permits or licenses. Neither party will have any liability, other than for the payment of monies owing, for their failure to perform any of their contractual obligations arising out of or in connection with events of Force Majeure.

17. ASSIGNABILITY. The rights and duties under the Contract are not assignable or transferable by Buyer or Seller, in whole or in part, by operation of law or otherwise, without the prior written consent of the non-assigning party, which consent may not be unreasonably withheld, delayed, or conditioned. Notwithstanding, upon written notice, Buyer or Seller may assign this Contract in whole or in part to any of its affiliates which are as equally creditworthy and provided such affiliate is compliant with all applicable laws. Any assignment or attempted assignment in contravention of the foregoing shall be null and void. Any assignee is subject to all of the obligations, liabilities, waivers and limitations of this Contract.

18. GOVERNING LAW. The Contract, and its execution, performance, interpretation, construction and enforcement, shall be governed by the law, both procedural and substantive, of the State of Delaware, without regard to its conflicts of law rules; and all claims relating to or arising out of the Contract, including breach, and formation, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of the State of Delaware, excluding choice-of-law principles. Any action or proceeding between Buyer and Seller relating to the Contract shall be commenced and maintained exclusively in the State or federal courts in Wilmington, Delaware; and, Buyer waives all venue and inconvenience of forum challenges and irrevocably submits itself unconditionally and irrevocably to the personal jurisdiction of such courts. BUYER AND SELLER EACH WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THE CONTRACT.

19. NOTICE. All official notices made under this Agreement must be made via certified or registered mail with return receipt, postage prepaid addressed to the party to whom such notice is given at the address of such party stated in the Contract. All other communications or transmittals under the Contract shall be in writing and shall be deemed received on the day of delivery if personally hand delivered or sent by facsimile or electronic transmission (with written confirmation of the completed transmittal).



- 20. ENTIRE AGREEMENT; AMENDMENT; WAIVERS.** This Contract supersedes all prior negotiations, discussions, and dealings concerning the subject matter hereof, and shall constitute the entire agreement between Seller and Buyer concerning the subject matter hereof. There are no understandings, inducements, commitments, conditions, representations or warranties of any kind, whether direct, indirect, collateral, express or implied, oral or written, from either party to the other, other than as contained in this Contract. No party shall claim any amendment, modification or release of any provisions hereof unless the same is in writing and signed by Buyer and Seller. No waiver by Buyer or Seller of any breach of any terms, conditions or obligations under the Contract shall be deemed a waiver of any continuing or subsequent breach of the same or any other terms, conditions or obligations hereunder.
- 21. ELECTRONIC TRANSACTIONS.** The Contract may be digitally copied and stored on electronic storage media or devices (the “Imaged Agreement”). The Imaged Agreement (once digitally regenerated to paper form), and any facsimile, and all computer records of the foregoing, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form and neither party shall object on the basis that such business records were not originated or maintained in documentary form under any rule of evidence.
- 22. COMPLIANCE.** Buyer and Seller shall:
- (i) comply fully with all applicable laws and regulations in their respective performances of the Contract; and, neither take nor refrain from taking any action that could result in liability for either party under applicable law, including the U.S. Foreign Corrupt Practices Act, UK Bribery Act, the OECD Anti-Bribery Convention or any other applicable anti-bribery law or treaty, or those regulations maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (31 C. F. R. Chapter V) or the U.S. Commerce Department’s Bureau of Industry and Security (15 C.F.R. Parts 730 et. Seq.). Buyer shall comply as follows: (i) Buyer acknowledges that any distribution, sale, transfer or re-export of the Goods is governed by and subject to the trade control laws of the United States and Europe;
 - (ii) Buyer shall not distribute, sell, transfer or re-export the Goods, except in conformance with United States and European law; and,
 - (iii) If Buyer knows or has reason to know that any of its customers intend to distribute, sell, transfer or re-export the Goods, either directly or through incorporation into other products, then Buyer shall inform its customer that the customer is responsible for obtaining any licenses or other approvals from the U.S. or European Government before such distribution, sale, transfer or re-export, by including the following language in Buyer’s purchase order acknowledgement or other appropriate documentation to its customer: NOTICE: The products, technical data, and/or software included in this Order were provided in compliance with the laws and regulations of the United States and Europe. Customer is responsible for obtaining all licenses, permits or other approvals that may be necessary under the laws of the United States or Europe before any distribution, sale, transfer or re-export of such items and for ensuring that the end-user and end use of these products are permitted under U.S. or European law.
- Re-export, diversion, transshipment, or use contrary to U.S. and European law is prohibited and is cause for cancellation of this [purchase order].” Nothing in this Contract shall require Buyer or Seller to take or refrain from taking any action impermissible or penalized under United States, European, or other applicable laws. A Party’s breach of this Section shall constitute cause for immediate termination of the Contract.
- 23. INDEPENDENT CONTRACTORS.** Seller and Buyer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under the Contract or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under the Contract or otherwise at law.
- 24. NO THIRD PARTY BENEFICIARIES.** The Contract is solely for the benefit of, and shall inure to the benefit of, Buyer and Seller, and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.
- 25. SEVERABILITY.** The invalidity or unenforceability of any provision of the Contract shall not affect the validity or enforceability of its other provisions and the remaining provisions shall remain in full force and effect.
- 26. CONFIDENTIALITY.** Except as provided in a separate written confidentiality agreement, all information that Buyer acquires from Seller hereunder, directly or indirectly, and all information that arises out of the sale of the Goods and/or Services hereunder, concerning such Goods, Services, and/or proprietary processes involved, including, but not limited to, information concerning Seller’s current and future business plans, information relating to Seller’s operations, know-how, and other Seller-furnished information shall be deemed Seller’s “**Proprietary Information**”. Buyer shall
- (a) hold Seller’s Proprietary Information in strictest confidence,
 - (b) not disclose it to others and
 - (c) use it solely for purposes of the Contract.



- 27. INSURANCE.** In the event the Seller performs onsite services at Buyer's facility, Seller shall maintain the following insurance coverage during the term of the Contract and, at Buyer's request, shall provide Buyer with a certificate evidencing such coverage:
- (a) Statutory Workers' Compensation and Employer's Liability Insurance, with limits of Five Hundred Thousand USD (\$500,000.00) each accident, Five Hundred Thousand USD (\$500,000.00) disease each employee, and Five Hundred Thousand USD (\$500,000.00) disease policy limit;
 - (b) Commercial General Liability Insurance, with a combined single limit for bodily injury and property damage of One Million USD (\$1,000,000.00) per occurrence and in the aggregate; and
 - (c) Automobile Liability Insurance, with a combined single limit for bodily injury and property damage of One Million USD (\$1,000,000.00) per accident.
- 28. SURVIVAL.** The provisions addressing indemnity, confidentiality, limitation of liability, and all other provisions which by their nature are intended to survive, shall survive expiration or termination of the Contract.
- 29. MISCELLANEOUS.** The captions and section headings set forth in the Contract are used for convenience only and shall not be used in defining or construing any of the terms and conditions set forth in the Contract. The term "**days**", as used herein, shall mean actual days occurring, including, Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "**business days**" shall mean days other than Saturdays, Sundays and holidays where banks are authorized to be closed in the city where Seller's chief executive office is located. The term "**including**" or any variation thereof means "**including, without limitation**" and shall not be construed to limit any general statement that it follows to the specific items immediately following it. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, association, partnerships and corporations, including public bodies and governmental entities, as well as natural persons, and words of masculine gender shall be deemed to include correlative words of the feminine gender and vice versa as the circumstances may require. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 30. LIMITATION OF LIABILITY.**
- (A) NO PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES, OR OTHER ECONOMIC LOSSES, WHETHER DEEMED DIRECT OR CONSEQUENTIAL, ARISING UNDER ANY CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT OR JOINT LIABILITY.
 - (B) THE LIABILITY OF SELLER AND ITS AFFILIATES IS LIMITED TO THE PRICE ALLOCABLE TO THE GOODS OR SERVICES DETERMINED TO BE DEFECTIVE, AND IN NO EVENT WILL THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES BE IN EXCESS OF THE TOTAL PAYMENTS RECEIVED FROM BUYER UNDER THE ORDER REGARDLESS OF CAUSE OR ANY COMBINATION OF CAUSES WHATSOEVER. ALL INSURANCE, BOND AND BANK GUARANTEE OR LETTER OF CREDIT PROCEEDS WHICH MAY BE PAID BY THE INSURERS, SURETIES OR BANKS OF SELLER OR ITS AFFILIATES WILL BE CREDITED AGAINST THE LIMITATION STATED ABOVE AND SHALL REDUCE THE AMOUNT OF THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES.
 - (C) BUYER'S REMEDIES ARE LIMITED TO THOSE REMEDIES EXPRESSLY STATED IN THIS CONTRACT.
 - (D) THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.