

PHOTON AUTOMATION, INC. TERMS AND CONDITIONS OF EQUIPMENT PURCHASE

The relationship between any seller or vendor as described in any goods, products, or equipment sales instruments or agreements entered (collectively "**Seller**") with Photon Automation, Inc., and its affiliated and related companies, subsidiaries, officers, directors, employees and agents (collectively "**Buyer**") for the purchase of any equipment, machine, software, goods, products, labor, training, material, services and related accessories necessary to fully assemble and deliver to Buyer (collectively "**Equipment**") is conditioned upon the terms and conditions contained in this instrument, and Buyer's purchase order and subsequent purchase orders, as they may be amended and supplemented from time to time (collectively "**Agreement**"). Any additional or different terms or conditions proposed by Seller are objected to and will not be binding upon nor of force or effect on Buyer unless specifically accepted in writing and signed by an authorized representative of the Buyer.

1. Price and Payment. The price paid for the Equipment shall be as set forth in the Buyer's purchase order which is incorporated herein by reference ("purchase order"). Unless otherwise agreed to by the Buyer in the purchase order, Buyer shall pay Seller for the Equipment as follows: (1) one-third (1/3) of the purchase price for the Equipment upon acceptance of this Agreement; (2) one-third (1/3) of the purchase price upon successful completion of the factory acceptance test; and (3) the remaining one-third (1/3) of the purchase price for the Equipment shall be payable following the successful final Site Acceptance (hereinafter defined) test. No charges of any kind, including but not limited to, taxes and expenses incurred for boxing, cartage or insurance, will be allowed unless specifically agreed to by Buyer in the purchase order. Buyer shall have the right at all times to set off any amount owing from Seller to Buyer, any component of Buyer or any of its affiliated companies against any amount payable at any time by Buyer in connection with this Agreement.

2. Delivery. Except as otherwise agreed by Buyer in the purchase order, the Equipment shall be delivered DDP (Incoterms 2010) Buyer's designated facility. Transportation charges for the Equipment to Buyer's designated facility shall be prepaid by Seller. Seller assumes all risk of loss and liability arising out of or related to the transportation of the Equipment to Buyer, including but not limited to any and all liability for damages occurring during said transportation. Title and risk of loss shall transfer to Buyer following the successful final site acceptance test as described below. Seller shall deliver the Equipment and all associated software, manuals, procedures, instructions and other data required for the operation of the Equipment to Buyer's designated facility. Time is of the essence for the delivery and installation of the Equipment. If Seller does not comply with Buyer's required delivery schedule as specified in Buyer's purchase order, Buyer, in addition to such other rights, remedies and choices as it may have by contract or by law, may at its sole option either submit a revised delivery schedule to Seller or terminate this Agreement without liability to Seller therefore. If Buyer, because of a Seller delay, submits a revised delivery schedule which provides, or if Buyer otherwise directs that Seller ship by a method other than that indicated on the face of this Agreement or purchase order, Seller will pay any additional transportation charges incurred as a result thereof.

3. Factory Acceptance Test. Upon completion of fabrication of the Equipment at Seller's facility, Seller shall provide Buyer notice that the Equipment is ready for shipment/pre-acceptance testing. Buyer shall have the right to inspect the Equipment prior to shipment at Seller's facility within thirty (30) days of the date Buyer

receives such notice ("Pre-acceptance Inspection Period"). During the Pre-acceptance Inspection Period, Seller shall confirm to Buyer that Equipment complies with all applicable specifications and is otherwise in compliance with the terms of this Agreement. Any defects or deficiencies discovered by Buyer shall be promptly repaired or replaced by Seller at Seller's sole cost and expense, and the Equipment shall be subject to another pre-acceptance inspection or test by Buyer. Buyer shall be responsible for Buyer's travel costs for the first factory acceptance test performed. For any additional factory acceptance tests resulting from non-compliance, or any defects or deficiencies discovered by Buyer and/or Seller, Seller shall be responsible for Buyer's additional travel costs, including hotel rooms and expenses thereto.

4. Installation. Upon the receipt of the Equipment at Buyer's designated facility, Seller shall be responsible for unpacking and inspecting the Equipment in a location at the facility designated by Buyer. Seller's unpacking, inspection and installation of the Equipment shall be performed at a time and manner requested by Buyer in Buyer's discretion so as to not interfere with Buyer's business operations. Upon completion of the delivery inspection, the Equipment or any portion thereof found to be defective or not in compliance with this Agreement shall immediately be rejected in accordance with Section 6 (Rejection). Upon a satisfactory completion of the delivery inspection, Seller shall inspect and approve the Buyer's designated location in the facility for the installation of the Equipment, which approval shall not be unreasonably withheld, and promptly begin installation thereafter. The installation and assembly of the Equipment shall not interfere with Buyer's business operations and shall be performed free from defects, errors, and otherwise in accordance with the terms of this Agreement. During the installation and assembly process, Seller shall comply with all of Buyer's standard safety procedures. At all times during the installation of the Equipment and thereafter, Seller shall keep Buyer's facility free of waste and shall maintain the facility in a condition satisfactory to Buyer. Seller shall be responsible for any damages at the facility caused by an act or omission of Seller and agrees to the fullest extent permitted by law to indemnify, defend and hold Buyer harmless from the same.

5. Site Acceptance Test. Following the installation and assembly of the Equipment, the Equipment ordered under this Agreement shall be subject to site acceptance by Buyer ("Site Acceptance"). Buyer shall notify Seller at least ten (10) days prior to the date of the site acceptance testing, which shall be designed by Buyer to evaluate whether the Equipment is in compliance with all applicable specifications and operates as contemplated in the Agreement. In the event the Equipment fails to operate in compliance with this Agreement and/or does not meet all specifications and requirements contained in the Agreement (including the applicable purchase order), Seller shall at Seller's own expense, immediately make such repairs or adjustments so as to render the Equipment in compliance therewith and the Site Acceptance test shall be repeated. Notwithstanding payment or any prior inspection, final Site Acceptance test will not occur until: (i) Seller has corrected all deficiencies related to the Equipment identified by Buyer, (ii) Seller has provided all documentation related to the Equipment, including but not limited to all operation, maintenance, and training manuals and copies of all technical and mechanical specifications related to the Equipment, including drawings, diagrams and software; (iii) Seller provides evidence to Buyer that all of Seller's subcontractors have been paid, including lien waivers if appropriate; (iv) Buyer has completed all internal

qualifications necessary to ensure the Equipment will function according to its purpose; and (v) Seller has satisfied all other requirements as are specified in the Agreement. In the event Site Acceptance by Buyer is not achieved within thirty (30) days of the date Buyer first began final acceptance testing, Seller shall be deemed in material breach of this Agreement, and Buyer may revoke the Agreement, terminate this Agreement for default, and/or reject the Equipment, in whole or part, in addition to any other remedies Buyer may have at law or in equity. Seller acknowledges and agrees Seller shall be responsible for any and all travel expenses to Buyer's designated facility and other related costs related to the inspection, installation, assembly and the Site Acceptance testing.

6. Rejection. All Equipment purchases are subject to rejection notwithstanding prior payment, a factory acceptance test and the site acceptance test. If any of the Equipment is found at any time to be defective in material or workmanship, or otherwise not in conformity with the requirements of this Agreement, including but not limited to, any applicable drawings, specifications and warranties, Buyer, in addition to such other rights, remedies and choices as it may have by contract or by law, at its option and sole discretion may: (a) reject and return such Equipment at Seller's expense for transportation both ways and all related labor and packing costs and Seller will promptly refund to Buyer all prior payments received by Buyer; (b) require Seller at its sole expense to replace the non-conforming Equipment in accordance with a revised delivery schedule submitted by Buyer; or (c) require Seller to inspect the Equipment and remove and replace nonconforming portion of the Equipment with necessary components that conform to this Agreement. If Buyer elects option (c) above and Seller fails to promptly make the necessary inspection, removal and replacement, Buyer may at its option inspect, remove and replace the nonconforming portion of the Equipment and Seller shall pay the costs thereof.

7. Buyer's Property. Any and all tools, equipment, material, information, software, designs and any other item furnished for fabrication of the Equipment to Seller by Buyer or paid for by Buyer, as well as replacements therefor and attachments thereto, shall be and remain the property of Buyer. Such property, and whenever practical each individual item thereof, shall be plainly marked or otherwise adequately identified by Seller as "Property of Photon", shall be safely stored separate and apart from Seller's property and shall be properly maintained by Seller at its expense under conditions of normal wear. Such property, while in Seller's custody or control shall be held at Seller's risk, shall be kept insured by Seller, at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer and shall be subject to inspection by Buyer upon reasonable notice and to removal at Buyer's written direction. If requested by Buyer, Seller shall prepare the property for shipment and shall redeliver the same to Buyer in the same condition as originally received or manufactured by Seller, reasonable wear and tear excepted.

8. Changes. Seller shall not make any changes in the specifications, physical composition of, or processes used to manufacture the Equipment hereunder without Buyer's prior written consent. However, Buyer shall have the right to make changes of any kind to the Equipment as determined by Buyer in its sole discretion. If such changes affect delivery or the amount to be paid by Buyer, Seller shall immediately notify Buyer in writing and negotiate an adjustment. If the Equipment or any quantity thereof ordered and covered by this Agreement is modified or canceled by Buyer, it shall be Seller's responsibility to make every effort to

minimize charges. In no event shall any cancellation charges apply if they are received by Buyer more than 30 days after Buyer's notice to Seller or any modification or cancellation or if they result from Seller's noncompliance with any of the provisions of either this Agreement and/or Buyer's delivery schedule. All cancellation charges, if accepted by Buyer, shall be the subject of negotiation.

9. Service and Support. Except as otherwise agreed by Buyer in the purchase order, during the operational life of the Equipment, Seller shall provide maintenance and support as requested by Buyer. Seller warrants pricing and availability to Buyer of all repair parts, spare parts, subassemblies, upgrades and service support for the Equipment during the operational life of the Equipment. If Seller is unable to supply any such parts or Seller is unable to obtain another source of supply for Buyer, then such inability shall be considered a default of this Agreement, and Seller shall, provide Buyer with drawings or other technical documents required to either manufacture or buy such parts and the technical information or other rights necessary for Buyer to manufacture or obtain such parts from other sources, together with a non-exclusive license to manufacture or purchase such parts for the purpose of supporting the Equipment. The prices for the parts, support and services shall be as agreed upon by the parties and shall remain firm for the warranty period. Following the warranty period, any price increase shall not exceed five percent (5%) of the previous price for the part, support and/or service.

10. Training. Except as otherwise agreed by Buyer in the purchase order, Seller shall provide all initial training related to the Equipment as reasonably requested by the Buyer at no additional charge. The training shall be conducted at Buyer's facility and on such dates as the parties may agree. Any follow-up training as requested by Buyer shall be provided to Buyer at a price negotiated by the parties in good faith.

11. Compliance with Laws. Seller agrees, represents and warrants as follows: (a) to comply with the applicable provisions of any federal, state or local laws or ordinances and all orders, rules and regulations issued thereunder, and any provisions, representations, or agreements, required thereby resulting from acceptance of this Agreement, including but not limited to, clauses dealing with Equal Opportunity, employment of veterans, employment of handicapped, and utilization of minority business enterprises, and such requirements are incorporated herein by reference; (b) to assure all hazardous materials contained in the Equipment are properly labeled and an applicable material safety data sheet has been submitted to Buyer, in accordance with all federal, state or local environmental laws, including but not limited to, OSHA; (c) to assure that each chemical substance constituting or contained in the Equipment or otherwise transferred to Buyer hereunder which is required or permitted to be reported for the inventory of chemical substances published by EPA pursuant to the Toxic Substances Control Act is as of the time of sale or transfer on the list of such substances published by the Administrator of EPA; and (d) to assure the Equipment covered by this Agreement meet or exceed the Safety Standards established and promulgated under the Federal Occupational Safety & Health Law (Public Law 91-596) and its regulations in effect or proposed as of the date of this Agreement.

12. Certifications. Seller, in accepting this Agreement, represents and warrants that the Equipment furnished hereunder were or will be produced in compliance with all applicable requirements of the Fair Labor Standards Act, as amended. By accepting or performing this Agreement, Seller certifies that Seller: (1) is in compliance with all applicable laws, regulations and codes

of practice with regards to human rights, labor laws and worker's rights, and, (2) is not engaged either directly or indirectly in any form of slavery, servitude, forced labor, human trafficking, or child labor and that Seller will obtain a similar certification prior to the award of any subcontract.

13. Confidential or Proprietary Information. Any knowledge or information which the Seller shall have disclosed or may hereafter disclose to the Buyer, and which in any way relates to the Equipment covered by this Agreement, shall not, unless otherwise specifically agreed to in writing by the Buyer, be deemed to be confidential or proprietary information, and shall be acquired by Buyer free from any restrictions as part of the consideration for this Agreement. All technical and other information obtained or learned by Seller as a result of this Buyer/Seller relationship and all technical and other information furnished by Buyer and Seller shall remain Buyer's property and, unless otherwise consented to in writing signed by Buyer's authorized representative, shall be used only for performance of the work under this Agreement. Seller agrees to hold confidential any and all data, designs, drawings, specifications, methods, processes, techniques, projects, operations, services, trade secrets, business, or technical information, business records and plans, financial statements and information, records, computer programs, receipts and expenditures, know-how, patents and patent lists, vendors, management activities, formulas, test results, employee names, accounting, business plans and strategies, negotiations of contracts, inventories and discoveries, and/or any other information related to the operation of the Buyer's businesses and business of all related entities of Buyer and disclosed to Seller as a result of this Agreement. Until such information has been published or disclosed to the general public, Seller agrees not to use such information for itself or others, or to disclose such information to others, and then only with Buyer's written consent.

14. Warranties. In addition to all other warranties provided by law, Seller warrants as follows: (a) that the Equipment sold hereunder or pursuant hereto will be free of any claim of any nature by any third person and that Seller will convey clear title thereto to Buyer as provided hereunder; (b) that the Equipment sold hereunder or pursuant hereto will be of merchantable quality, free from all defects in design, workmanship and materials, and will be fit for the particular purposes for which it is purchased and that the Equipment is provided, assembled and installed in strict accordance with the highest professional standards, and the specifications and/or the samples, drawings, designs or other requirements (including performance specifications) approved or adopted by Buyer; and (c) that the on-site response time for any warranty related issue shall be as reasonably requested by Buyer; provided however, that in the event of an emergency, no later than twenty-four (24) hours from the time of Buyer's notification. The duration of the warranties contained in this Section shall continue for a period of twelve (12) months from the date the Equipment received a successful final site acceptance test. The parties acknowledge and agree the warranties contained in this Section shall be in addition to and shall not be construed as restricting or limiting any warranties or remedies of Buyer, express or implied, which are provided by contract or law, including, but not limited to, the warranties and remedies contained in the Uniform Commercial Code. Any attempt by Seller to limit, disclaim or restrict any such warranties or remedies of Buyer, by acknowledgment or otherwise, in accepting or performing this Agreement shall be null, void and ineffective without Buyer's written consent.

15. Work for Hire. The Seller shall not use any trade marks, service marks, trade and business names, domain names, design
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rights, copyright, moral rights, rights in databases, patents, logos, rights to sue for passing off, trade secrets, rights in confidential or proprietary information and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world (collectively "Intellectual Property Rights") owned by the Buyer and/or licensed to the Buyer without the Buyer's prior written consent. The parties agree that all Intellectual Property Rights that may subsist anywhere in the world in and to the specifications and requirements contained in the Agreement or otherwise associated with or comprising the Equipment (collectively "Buyer IP"), shall be the sole property of the Buyer, with the exception of any Intellectual Property Rights that were conceived, created or reduced to practice by or for the Seller (alone or with others) prior to commencement of the relevant Agreement and without the use of any specifications and requirements contained in the Agreement ("Seller IP"), all of which Seller IP shall remain the exclusive property of the Seller. The Seller hereby irrevocably transfers, assigns, and conveys all of its right, title, interest and any proprietary right of any kind whatsoever in and to any such Buyer IP to the Buyer, and waives and will cause each of the employees, subcontractors, consultants and other personnel assigned to supply the Equipment to waive in whole in favor of the Buyer any and all moral rights in and to the Buyer IP. The Seller agrees that it shall never claim any right in or to any of the Buyer IP, all of which is to be created for and owned by the Buyer. The Buyer may, without payment of additional compensation to the Seller, make such changes, modifications, adaptations, or revisions to the Buyer IP as the Buyer may in its sole discretion determine or desire, and the Seller agrees that it shall never claim any rights of any nature whatsoever in any such changed, modified, adapted or revised material. The Buyer hereby grants to the Seller a royalty-free, non-exclusive, revocable license to use the Buyer IP, solely for the Seller to supply the Equipment and solely during the term of the relevant Agreement. Upon the expiration or termination of the relevant Agreement, said license will immediately end and all such Buyer IP in the Seller's possession or control shall be returned or destroyed. To the extent that any Seller IP is incorporated in, or is necessary to use the Buyer IP or the Equipment, the Seller grants to the Buyer and its affiliates a royalty-free, world-wide, non-exclusive, irrevocable license to use, disclose, reproduce, modify, license and distribute such Seller IP. The Seller acknowledges and agrees any specifications and requirements contained in the Agreement are prepared and created on a "work for hire" basis and shall immediately become the property of Buyer and used by the Seller under license, and shall be delivered to Buyer by Seller in both printed and electronic forms to Buyer's reasonable satisfaction, including without limitation that specifications shall be delivered in .PDF and Auto-CAD formats. To the extent required, the Seller shall procure that the Buyer is granted an unlimited, irrevocable, world-wide, perpetual, royalty-free license sufficient for the Buyer, its customers or any of its affiliates to make use of the Equipment in the manner intended.

16. Patents. Seller shall defend any suit or proceeding brought against Buyer or its customers based on any claim that any component or apparatus, or any part thereof constituting the Equipment furnished under this Agreement, as well as any software, device or process necessarily resulting from the use thereof constitutes an infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense of same, and Seller shall pay all damages and costs awarded therein. In case said component or apparatus, any part thereof, of any software, device or

process necessarily resulting from the use thereof is in such suit held to constitute infringement and the use of said component or apparatus, part, software or device is enjoined, Seller shall, at its own expense and at its own option, either procure for Buyer the right to continue using said component or apparatus, part, software or device; or replace same with a non-infringing component, apparatus, part, software or device; or modify it so it becomes non-infringing, or remove said component, apparatus, part, software or device and refund the purchase price and the transportation and installation costs thereof.

17. Indemnification. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER SHALL DEFEND, INDEMNIFY AND HOLD BUYER, ITS OFFICERS, DIRECTORS, SHAREHOLDERS, AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, CONTROVERSIES, LIABILITIES, FINES, REGULATORY ACTIONS, LOSSES, COSTS, EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, EXPERT WITNESS EXPENSES AND LITIGATION EXPENSES, ARISING FROM OR IN CONNECTION WITH ANY DAMAGE, ENVIRONMENTAL LIABILITY, PATENT OR INTELLECTUAL PROPERTY INFRINGEMENT, INJURY, DEATH, LOSS, PROPERTY DAMAGE, DELAY OR FAILURE IN DELIVERY OF THE EQUIPMENT, RELATING TO THIS AGREEMENT, THE BUSINESS RELATIONSHIP BETWEEN THE PARTIES, TRANSPORTATION OF THE EQUIPMENT BY THE SELLER OR A THIRD PARTY CARRIER, OR THE EQUIPMENT PROVIDED HEREUNDER, WHETHER BASED IN COMMON LAW, TORT, CONTRACT, STATUTE, INCLUDING ANY AND ALL FEDERAL, STATE OR LOCAL LAWS, OR OTHERWISE (COLLECTIVELY "CLAIMS"), AND REGARDLESS OF WHETHER DIRECTLY OR INDIRECTLY RELATED TO ANY ACTION OR FAILURE TO ACT BY SELLER, OR ITS REPRESENTATIVES, AGENTS, EMPLOYEES OR SUPPLIERS. HOWEVER, SELLER MAY NOT BE OBLIGATED TO INDEMNIFY BUYER FOR THE SOLE NEGLIGENCE OR WILLFUL MISCONDUCT OF BUYER WHERE SUCH INDEMNIFICATION IS CONTRARY TO LAW. IN ANY AND EVERY CLAIM AGAINST BUYER BY ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY SELLER, THE INDEMNIFICATION OBLIGATION UNDER THIS PARAGRAPH MAY NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE UNDER WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

18. Insurance. Seller will procure and maintain, at its own expense, for the duration of Seller's relationship with Buyer and for a period of three (3) years thereafter, certain public liability, property damage, commercial general liability, excess liability, products liability and employee's liability and worker's compensation insurance as Buyer may from time to time determine to be adequate to protect Buyer against the above claims and any claims under applicable workmen's compensation and occupational disease laws. Buyer shall be named an additional insured with respect to any worker's compensation insurance, commercial general liability and excess liability insurance and Seller agrees to annually furnish Buyer with such certificates.

19. Independent Contractor. The parties acknowledge that in performing their obligations hereunder, each party is acting as an independent contractor. Nothing in this Agreement shall be construed to create a partnership, joint venture, franchise or other similar arrangement between the parties. Neither party has the authority to enter into any agreement, or make any warranty or representation on behalf of the other party, except where and to the extent specifically authorized to do so in writing. To the extent that either party utilizes its employees for the performance of its duties pursuant to this Agreement, that party shall be solely responsible for the payment of salaries and wages to such employees and matters relating thereto (including the withholding and/or payment of all federal, state and local income and other payroll taxes), workers compensation, disability benefits, and all such other legal requirements of like nature applicable to such employees.

20. Non-Assignment. Seller shall not assign this Agreement, any interest therein, any right or obligation created thereby or any payment due or to become due thereunder without Buyer's written consent. Any attempt by Seller to make such assignment shall be null and void and any such assignment by operation of law shall give Buyer the option to terminate the Agreement without further liability. Seller shall remain fully liable and responsible for all obligations imposed under the terms and conditions of this Agreement regardless of any such assignment.

21. Modification or Waiver. Except as provided herein to the contrary, the terms of this Agreement cannot be rescinded, modified or waived except in writing, signed by an authorized representative of the Buyer. No substitutions, modifications or variations of this Agreement or of any of their terms and conditions shall be effective without prior written approval of an authorized representative of Buyer.

22. Taxes. Except as otherwise agreed by Buyer in the purchase order, Seller shall pay any and all taxes on the Equipment.

23. Inspection/Audit. Buyer may at reasonable times and upon reasonable notice, perform such inspections and/or audits at Seller's facilities as Buyer deems necessary to assure itself of Seller's compliance with applicable laws and regulation as well as to assure itself that Seller is complying with its obligations to Buyer hereunder.

24. Termination for Cause. Without prejudice to its other rights and remedies, the Buyer shall be entitled to terminate the Agreement with immediate effect by giving notice to the Seller if any of the following occurs: (a) the Seller has committed a material breach of the Agreement (and where such breach is remediable) does not remedy such breach within 14 days after receipt of a notice from the Buyer specifying the breach and requiring it to be remedied; (b) the Seller has committed a material breach of the Agreement which is incapable of remedy; (c) the Seller ceases or threatens to cease to carry on its business or disposes or threatens to dispose of the whole or a substantial part of its undertaking, property or assets or stops or threatens to stop payment of its debts in the reasonable opinion of the Buyer; (d) a voluntary arrangement or a scheme of arrangement or composition with its creditors is entered into in relation to the Seller; (e) a dissolution occurs, a winding-up petition is presented (and not withdrawn or discharged within 14 days) or a winding-up resolution (other than a voluntary winding-up for reconstruction) is passed (whether by the directors or shareholders) in relation to the Seller; (f) a liquidator, receiver or administrator is appointed in respect of the Seller or any of its assets, or notice to appoint an

administrator is given by the Seller; (g) the Seller is affected by a force majeure event which continues for a period of not less than 30 days and which prevents the Seller from performing all, or a material part of, its obligations under the Agreement; (h) there is a change in the control of the Seller which the Buyer, in its absolute discretion, considers unsuitable. Notwithstanding the foregoing, without prejudice to any fabrication work performed by Seller on the Equipment, the Buyer may terminate the Agreement at any time by giving not less than thirty (30) days' notice to the Seller, in which event the Buyer's sole liability shall be to pay to the Seller a reasonable price for any fabrication work already completed by the Seller in relation to Equipment, but the Buyer shall otherwise be free from liability.

25. Applicable law and Dispute Resolution. The parties hereby consent to jurisdiction, venue and application of the laws of the State of Indiana, U.S.A., without giving effect to the conflicts or choice of law provisions thereof. Any and all disputes, complaints, controversies, claims and grievances arising under, out of, in connection with, or in any manner related to this Agreement or the relationship of parties hereunder shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The obligation to arbitrate shall extend to any affiliate, subsidiary, officer, employee, shareholder, principal, agent, trustee in bankruptcy or guarantor of a party making or defending any claim hereunder. Any decision and award of the arbitrator shall be final, binding and conclusive upon all of the parties hereto and said decision and award may be entered as a final judgment in any court of competent jurisdiction. Notwithstanding said Rules, any arbitration hearing to take place hereunder shall be conducted in Evansville, Indiana before one (1) arbitrator who shall be an attorney who has substantial experience in commercial law issues. However, neither party shall institute an arbitration, or any other proceeding to resolve such disputes between the parties before that party has sought to resolve disputes through direct negotiation with the other party. If disputes are not resolved within three (3) weeks after a demand for direct negotiation, the parties shall attempt to resolve disputes through mediation conducted in Evansville, Indiana. If the parties do not agree on a mediator within ten (10) days, either party may request the American Arbitration Association to appoint a mediator who shall be an attorney who has substantial experience in commercial law issues. If the mediator is unable to facilitate a settlement of disputes within forty-five (45) days, the mediator shall issue a written statement to the parties to that effect and the aggrieved party may then seek relief through arbitration as provided above. The fees and expenses of the mediator shall be split and paid equally by each of the parties. In the event of any arbitration between the parties hereto involving this

Agreement or the respective rights of the parties hereunder, the party who does not prevail in such arbitration shall pay all the prevailing party's reasonable attorneys' and experts' fees, costs and expenses incurred by the prevailing party in resolving said matter. As used herein the term 'prevailing party' shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, settlement, or judgment. Each party hereby consents to a single, consolidated arbitration proceeding of multiple claims, or claims involving two (2) or more parties. Either party may apply to any court of competent jurisdiction for injunctive relief or other interim measures as provided for elsewhere in this Agreement, in aid of the arbitration proceedings, or to enforce the arbitration award, but not otherwise. Any such application to a court shall not be deemed incompatible or a waiver of this provision. The arbitrator shall be required to make written findings of fact and conclusions of law to support its award. Except as may be required by law, neither a party nor an arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. By execution of this Agreement, the parties consent to the jurisdiction of the American Arbitration Association and waive any objection which either party may have to any proceeding so commenced based upon improper venue or forum non conveniens.

26. Interpretation. This Agreement together with material incorporated herein by reference, sets forth the entire and only agreement between the parties regarding the subject matter hereof and supersedes any and all prior or contemporaneous agreements, understandings, or proposals whether written or oral, between the parties. As used in this Agreement, the plural shall be substituted for the singular, and the singular for the plural, where appropriate; and words and pronouns of any gender shall be meant to include any other gender or entity. The subject headings herein have been placed and arranged for convenience and shall not be considered in any question of interpretation of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision shall be enforced to the fullest extent permissible and the remaining portion of this Agreement shall remain in full force and effect. This Agreement shall inure to the benefit of and be binding upon both Buyer and Seller, their legal representatives, successors and assigns, except as limited hereinbelow. **IN THE CASE OF CONFLICT BETWEEN THIS AGREEMENT AND ANY OTHER INSTRUMENT ENTERED BY THE BUYER AND SELLER, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL PREVAIL.**