

# TERMS AND CONDITIONS OF SALE

These Terms and Conditions (the "Agreement") govern any product order by and between BECO, INC. ("Company"), with a principal place of business at 50 Milk Street, 16<sup>th</sup> Floor, Boston, MA 02109 U.S.A. and the buyer identified on the purchase order to which these Terms and Conditions are attached ("Customer"). Customer and Company may be referred to in this Agreement individually as a "party" or jointly as the "parties." This Agreement governs all Products, as defined below, provided by Company to Customer.

## 1. Definitions. For purposes of this Agreement:

"**Confidential Information**" means all information or material which (i) gives a party some competitive business advantage, gives a party the opportunity of obtaining some competitive business advantage, or the disclosure of which could be detrimental to the interests of a party; and (ii) which is either (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential and proprietary or (C) from all the relevant circumstances should reasonably be assumed to be confidential and proprietary. The Documentation and Products are deemed the Confidential Information of Company.

"**Documentation**" means Company's then current generally available documentation, specifications, user manuals, etc. for the Products.

"**Products**" means any hardware, software, Documentation, accessories, cabling, material, supplies, parts, and other goods that Company sells or resells to Customer.

"**Purchase Order**" means a purchase order or other similar document or communication from Customer to Company delivered in connection with a sales quote or an SOW.

**2. Evaluation Period.** If the Products are provided on an evaluation basis by the the Company, this Agreement shall be effective commencing on the date the Products are provided by the Company to the Customer and shall automatically expire thirty days thereafter (the "**Evaluation Period**") at which time Customer's right to use the Product shall be terminated unless Customer accepts the complete terms of this Agreement and pays, in full, the amounts applicable for such Products. During the Evaluation Period, the following provisions below shall not apply: Section 5 (Payment Terms), 7 (Warranties and Disclaimers), 8.2 (Company Indemnification), and 10 (Term and Termination). During the Evaluation Period Customer may terminate this Agreement at any time by providing at least ten (10) days prior written notice to Company.

**3. Orders.** Customer may place an order for Products (each, an "**Order**") by submitting the Order to Company on Customer's standard Purchase Order form, an alternate order form approved by Company, or electronic means acceptable to Company. Customer's Order shall be deemed to incorporate these terms and conditions with or without reference in the Order to this Agreement. Orders for Products shall identify the Products, unit quantities, part numbers, descriptions, applicable prices and requested delivery dates. All Orders are subject to acceptance by Company, which acceptance may be evidenced by either a written confirmation of Company acceptance sent by mail, facsimile, or other electronic means, or by shipment of the Products. Except as provided in Section 10.2.2 below, no Orders for Products may be terminated, cancelled, or rescheduled without Company's consent. If Customer asks Company to cancel or reschedule a Product Order less than ten (10) days before the original scheduled shipping date, and Company consents to such cancellation or reschedule, then such Order shall be subject to a charge of fifteen percent (15%) of the total invoice amount relating to the affected Products. Company reserves the right to allocate sales of Products among its customers in its sole discretion.

## 4. Products.

**4.1 Delivery and Title.** All shipments by Company are F.O.B. point of origin and all transportation charges shall be paid by Customer in addition to the price of the Products. Subject to Company's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Customer and title and risk of loss shall thereupon pass to Customer. Selection of the carrier and delivery route shall be made by Company, unless specified by Customer. Company shall use commercially reasonable efforts to initiate shipment and schedule delivery as close as

possible to Customer's requested delivery dates. Customer acknowledges that delivery dates provided by Company are estimates only and that Company is not liable for failure to deliver on such dates, provided that Company will use commercially reasonable efforts to inform Customer of delivery status. Company reserves the right to make deliveries in installments. Delivery of a quantity which varies from the quantity specified in any Order shall not relieve Customer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Customer to cancel other installments.

**4.2 Acceptance and Returns.** All sales are final, non-refundable, and non-returnable except with respect to Products that do not meet applicable specifications in the relevant Documentation or that are not identified in the Order. Inspection and acceptance of the Products shall be Customer's responsibility. Customer is deemed to have accepted the Products unless written notice of rejection is received by Company within ten (10) days after delivery of the Products. Customer irrevocably waives any right to revoke acceptance thereafter. Customer must report any discrepancy in shipment quantity or damage within ten (10) days after delivery. No return of Products will be accepted by Company without a Return Material Authorization ("**RMA**") and associated number, which may be issued by Company in its sole discretion. Returned Products must be in their original, unaltered, undamaged condition, and must be returned in the original shipping cartons complete with all packing materials. All Product returns must be returned freight prepaid in the manner specified in the RMA. If returned Products are claimed to be defective, a complete description of the nature of the defect must be included with the returned Products. Products not eligible for return shall be returned to Customer, freight collect. The acceptance period set forth in this Section 4.2 does not apply where the Products are made available to Customer pursuant to an Evaluation Period.

**4.3 Connectivity.** Customer is solely responsible for all telecommunication or Internet connections and associated fees with respect to the Products.

**4.4 Use of Products in Certain Applications.** Products sold by Company are not designed, intended or authorized for use in life support, life sustaining, nuclear, or other applications in which the failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. If Customer uses or sells the Products for use in any such applications: (i) Customer acknowledges that such use or sale is at Customer's sole risk; (ii) Customer agrees that Company and the manufacturer(s) of the Products are not liable, in whole or in part, for any claim or damage arising from such use; and (iii) Customer will indemnify, defend and hold Company and the manufacturer(s) of the Products harmless from and against any and all claims, damages, fines, sanctions, losses, costs, expenses and liabilities arising out of or in connection with such use or sale.

**4.5 Export/Import Control Compliance.** The sale, resale or other disposition of Products and any related technology or documentation may be subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Customer is solely responsible for complying with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export or import any Products to any country to which such export or transmission is restricted or prohibited. Customer understands and acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

**4.6 Restrictions.** Customer may not: (i) reverse engineer, disassemble, decompile or otherwise attempt to reveal the trade secrets or know how underlying the Products, except to the extent expressly permitted under applicable law; (ii) use Company's intellectual property and Confidential Information to develop a product that is similar to the

Products; (iii) use any Company Confidential Information to contest the validity of any Company intellectual property; (iv) remove or destroy any copyright notices, other proprietary markings or confidentiality legends placed on or made available through the Products; or (v) use the Products in any manner or for any purpose inconsistent with the terms of this Agreement or the Documentation. Firmware and other software Products shall only be used on and in connection with the Products it is embedded in.

**4.7 Intellectual Property.** Company and its licensors and manufacturers own all right, title, and interest, including intellectual property rights, in the Products and all enhancements, modifications, and updates thereto. Except for express licenses granted in this Agreement, Company is not granting or assigning to Customer any right, title, or interest, express or implied, in or to Company's intellectual property. Company reserves all rights in such property.

**4.8 Feedback.** Customer may provide Company with suggestions, comments or other feedback (collectively, "**Feedback**") with respect to the Products. Feedback is voluntary. Company is not obligated to hold it in confidence. Company may use Feedback for any purpose without obligation of any kind. To the extent a license is required under any Customer intellectual property rights to make use of the Feedback, Customer grants Company an irrevocable, non-exclusive, perpetual, royalty-free license to use the Feedback in connection with Company's business, products, and services, including the enhancement of the Products.

**4.9 Limited Software License.** Unless provided otherwise in specific Company end user terms and conditions accompanying a Product, with regard to any firmware (software embedded in and/or provided with a hardware Product; as opposed to stand-alone software), Company grants Customer a limited, non-transferable, non-exclusive license to use the firmware solely in connection with Customer's use of the related hardware Product. Customer may not distribute the firmware in any form, or to use the firmware except as it is embedded in the non-volatile memory component(s) of the hardware Product. All software Products, including embedded software, are licensed, not sold. Apart from the foregoing limited licenses, Customer is not being granted any right, title, or interest in or to the software Products. All such rights are expressly reserved by Company.

**4.10 Third Party Products.** Certain Products may be manufactured by third parties and resold to Customer (the "**Third Party Items**"). Third Party Items may be subject to third party terms and conditions, including end user license agreements, accompanying the Products at the time of delivery (the "**Third Party Terms**"). Customer's use of the Third Party Items will indicate its agreement to be bound by the Third Party Terms. COMPANY MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED WITH REGARD TO ANY THIRD PARTY ITEMS. COMPANY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, QUALITY OF INFORMATION, QUIET ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE WITH REGARD TO THE THIRD PARTY ITEMS. CUSTOMER SHOULD CONSULT THE RESPECTIVE VENDORS/MANUFACTURERS OF THE THIRD PARTY ITEMS FOR WARRANTY AND PERFORMANCE INFORMATION, INCLUDING ANY THIRD PARTY TERMS.

## 5. Payment Terms.

**5.1 Prices.** Prices will be specified by Company and will be applicable for the period specified in the Company sales quote. If no period is specified, prices will be applicable for thirty (30) days. Notwithstanding the foregoing, prices will be subject to increase in the event of an increase in Company's costs or other circumstances beyond Company's reasonable control. Prices are exclusive of taxes, including sales, use, excise, value added and similar taxes or charges imposed by any government authority; domestic and international shipping charges. Company is responsible for payment of the foregoing (with the exception of any Company income or employee taxes) and such charges will be paid

by Customer to Company in addition to the price of the Products and Services.

**5.2 Due Date; Late Payments.** Amounts due for each Product may be invoiced by Company upon delivery of the Product to the carrier at the point of origin; as such, an order for multiple Products may result in multiple invoices. Customer agrees to pay the net amount of each invoice without offset or deduction within thirty (30) days after the date of Company's invoice (unless otherwise noted on the invoice). If any amount is not paid upon the due date, Company shall be entitled to receive the amount due plus interest thereon at the rate of 1.5% per month (or such lower rate as shall be the highest permissible contract rate under applicable law) on all amounts that are not paid on or before the date due. Customer shall also pay all of Company's reasonable costs of collection, including but not limited to reasonable attorney's fees.

**5.3 Credit Approval; Application of Payment.** All Orders are subject to credit approval by Company. Customer agrees to submit such financial information from time to time as may be reasonably requested by Company for the establishment and/or continuation of credit terms. Any payment received from Customer may be applied by Company against any obligation owing from Customer to Company.

**5.4 Security Interest.** Customer grants Company a security interest in each and every Product purchased hereunder, together with any proceeds thereof. Customer hereby irrevocably appoints Company and/or its designee as its attorney-in-fact to execute and file any financing statements or other applicable documents that are necessary to perfect Company's security interest. Company shall have all rights and remedies for breach provided under applicable law with respect to each security interest. As to each Product, Company's security interest shall terminate when Company has received all amounts due to Company for that Product.

## 6. Confidentiality.

**6.1 Confidential Information.** Customer will be provided with Company Confidential Information pursuant to this Agreement, including the Documentation, the embedded software, and the Product specifications and configuration. In the event Customer is required to disclose Confidential Information pursuant to a subpoena or other similar order of any court or government agency, Customer shall promptly inform Company in writing and provide a copy thereof (unless notice is precluded by the applicable process), and shall only disclose that Confidential Information necessary to comply with such subpoena or order.

**6.2 Protection of Confidential Information.** Except as expressly provided in this Agreement, Customer will not use or disclose any Confidential Information without Company's prior written consent. Subject to the foregoing nondisclosure and non-use obligations, Customer agrees to use at least the same care and precaution in protecting such Confidential Information as it uses to protect its own Confidential Information and trade secrets, and in no event less than reasonable care. Customer acknowledges that due to the unique nature of Company's Confidential Information, Company will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, Company shall be entitled to injunctive relief to prevent such unauthorized use or disclosure.

## 7. Warranties and Disclaimers.

**7.1 Product Warranties.** Unless expressly provided otherwise in a Product warranty in terms and conditions accompanying a Product, all Products shall materially conform to their then current Documentation for a period of ninety (90) days from the date of initial delivery. Customer must notify Company of any breach of this warranty within the foregoing ninety (90) day period. Customer's sole and exclusive remedy, and Company's sole and exclusive liability, for a breach of the foregoing warranty will be for Company, in its sole discretion, to repair or replacement of the relevant Product (subject to the provisions of Section 4.2 for RMAs) or terminate the relevant Order and issue a refund for the price paid for the affected Product. Company shall not be responsible for any breach of the foregoing warranty resulting from Customer's abuse or misuse of the Product or failure to use the Product as described in this

Agreement, including failure to use the Product in accordance with its operational requirements.

**7.2 Disclaimers.** EXCEPT FOR THE LIMITED WARRANTIES IN SECTIONS 7.1 OR ANY EXPRESS WARRANTIES PROVIDED IN TERMS AND CONDITIONS ACCOMPANYING A PRODUCT, THE PRODUCTS ARE PROVIDED “AS IS,” WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. EXCEPT FOR THE LIMITED WARRANTIES IN SECTION 7.1 OR ANY EXPRESS WARRANTIES PROVIDED IN TERMS AND CONDITIONS ACCOMPANYING A PRODUCT, COMPANY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE PRODUCTS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION, MARKETING OR PROMOTIONAL MATERIALS, OR ADVICE GIVEN BY COMPANY OR COMPANY’S AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE EXPRESS WARRANTIES PROVIDED HEREIN.

THE PRODUCTS MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. YOU ACKNOWLEDGE AND AGREE THAT COMPANY AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER DATA, WEB-SITES, COMPUTERS, OR NETWORKS. COMPANY WILL NOT BE RESPONSIBLE FOR THOSE ACTIVITIES.

## **8. Indemnification.**

**8.1 Company Indemnity.** Company will defend and indemnify Customer and hold it harmless from any and all claims, losses, deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys’ fees) arising from a claim by a third party that Customer’s authorized use of the Products infringes that third party’s United States patent, copyright, or trade secret rights. The foregoing indemnification obligation of Company is contingent upon Customer promptly notifying Company in writing of such claim, permitting Company sole authority to control the defense or settlement of such claim and providing Company reasonable assistance (at Company’s sole expense) in connection therewith. If a claim of infringement under this Section occurs, or if Company determines a claim is likely to occur, Company will have the right, in its sole discretion, to either (i) procure for Customer the right to continue to use the Products free of the infringement claim, or (ii) modify the Products to make them non-infringing, without loss of material functionality. If neither of these remedies is reasonably available to Company, Company may, in its sole discretion, immediately terminate this Agreement and related Order(s) and, upon return of the infringing Products from Customer, refund the fees paid for such Products, prorated over twenty-four (24) months from initial delivery of the Products to Customer. Notwithstanding the foregoing, Company will have no obligation with respect to any claim of infringement that is based upon or arises out of (i) the use or combination of the Products with any hardware, software, products, data, or other materials not provided by Company, (ii) modification or alteration of the Products by anyone other than Company, (iii) use of the Products in excess of the rights granted in this Agreement, or (iv) any specifications or other intellectual property provided by Customer (collectively, the “**Excluded Claims**”). The provisions of this Section state the sole and exclusive obligations and liability of Company and its licensors and suppliers for any claim of intellectual property infringement arising out of or relating to the Products or this Agreement, and are in lieu of any implied warranties of non-infringement, all of which are expressly disclaimed.

**8.2 Customer Indemnity.** Customer will defend and indemnify Company and hold it harmless from any and all claims, losses,

deficiencies, damages, liabilities, costs, and expenses (including but not limited to reasonable attorneys’ fees) incurred by Company as a result of any claim by a third party arising from (i) Customer’s use of the Products in breach of this Agreement or (ii) the Excluded Claims. The foregoing indemnification obligation of Customer is contingent upon Company promptly notifying Customer in writing of such claim, permitting Customer sole authority to control the defense or settlement of such claim and providing Customer reasonable assistance (at Customer’s sole expense) in connection therewith.

## **9. Limitations of Liability.**

**9.1** NEITHER COMPANY NOR ITS VENDORS AND LICENSORS SHALL HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT OR THE PRODUCTS. THE TOTAL LIABILITY OF COMPANY AND ITS VENDORS AND LICENSORS TO CUSTOMER OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT AND THE PRODUCTS FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES SHALL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE HEREUNDER BY CUSTOMER FOR THE PRODUCT AS TO WHICH THE LIABILITY RELATES. The allocations of liability in this Section represent the agreed, bargained-for understanding of the parties and Company’s compensation hereunder reflects such allocations. The limitation of liability and types of damages stated in this Agreement are intended by the parties to apply regardless of the form of lawsuit or claim a party may bring, whether in tort, contract or otherwise, and regardless of whether any limited remedy provided for in this Agreement fails of its essential purpose.

**9.2** No action arising out of this Agreement may be brought by either party more than two (2) years after such cause of action accrues, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.

## **10. Term and Termination.**

**10.1 Term.** This Agreement shall be effective from the first date Customer receives Products from Company or issues a Purchase Order to Company, and shall remain in full force and effect until terminated in accordance with the terms of this Section 10.

### **10.2 Termination.**

**10.2.1** Subject to the terms of Section 10.3.1 below, either party may terminate this Agreement for any reason (with or without cause) at any time by giving the other party at least thirty (30) days’ prior written notice, provided that the party seeking termination is not in default under this Agreement.

**10.2.2** If Company believes in good faith that Customer’s ability to make payments may be impaired, or if Customer fails to pay any invoice when due and does not make such payment within ten (10) days after receipt of notice from Company of such failure, Company may, in its sole discretion, either: (i) suspend delivery or performance of any Order, or any remaining balance thereof, until such payment is made; or (ii) terminate any Order, or any remaining balance thereof. In either event, Customer shall remain liable to pay for any Products already shipped and all non-standard Products (as designated by Company) ordered by Customer.

**10.2.3** Either party may terminate an Order upon a material breach of the Order by the other, if the breaching party does not cure the breach within thirty (30) days after receipt of written notice from the other party specifying the breach.

### **10.3 Effects of Termination.**

**10.3.1** All Orders existing at the time of termination of this Agreement shall remain in effect and shall be performed in accordance

with and subject to the terms and conditions of this Agreement (all of which shall survive with respect to such Orders), except for any Orders terminated under Section 10.2.3 above.

**10.3.2** In the event of any termination of an Order, Customer shall pay for all Products ordered as of the effective date of termination the particular Order, as applicable.

**10.3.3** The exercise of the right to terminate this Agreement and any Order shall be in addition to any other right and remedy provided in this Agreement or existing at law or equity that is not otherwise excluded or limited under this Agreement.

## **11. Miscellaneous Provisions.**

**11.1 U.S. Governmental Rights.** The software included with the Products are commercial computer software as described in DFARS 252.227-7014(a)(1) and FAR 2.101. If acquired by or on behalf of any the Department of Defense (“DOD”) or any component thereof, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

**11.2 Entire Agreement; Construction; Modifications.** This Agreement, including any and all Orders, constitutes the entire understanding between the parties related to this Agreement which understanding supersedes and merges all prior understandings and all other proposals, letters, agreements, oral or written. The parties further agree that there are no other inducements, warranties, representations or agreements regarding the matters herein between the parties except as expressly set in this Agreement. In the event of any conflict between the body of this Agreement and any sales quote, or Order, the body of this Agreement shall control. As used herein, the term “including” shall mean “including, without limitation”; the term “includes” as used herein shall mean “includes, without limitation”; and terms appearing in the singular shall include the plural and terms appearing in the plural shall include the singular. This Agreement may not be modified, amended or altered in any manner except by a written agreement signed by both parties, and any attempt at oral modification shall be void and of no effect.

**11.3 Purchase Orders.** COMPANY SPECIFICALLY OBJECTS TO ANY ADDITIONAL TERMS BEING ADDED THROUGH A PURCHASE ORDER OR SIMILAR DOCUMENT. IF A PURCHASE ORDER IS REQUIRED BY CUSTOMER, THE PARTIES AGREE THAT ANY ADDITIONAL TERMS CONTAINED THEREIN SHALL NOT BECOME PART OF THE AGREEMENT BETWEEN THE PARTIES AND SPECIFICALLY THAT THE TERMS OF THIS AGREEMENT SHALL SUPERSEDE ANY AND ALL TERMS IN ANY PURCHASE ORDER.

**11.4 Assignment.** Customer may not assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of Company. Any attempted assignment or delegation

without such consent will be void and Company may immediately terminate this Agreement for cause. Except as provided above, this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their successors and assigns.

**11.5 No Waiver.** The waiver or failure of either party to exercise any right in any respect provided for herein shall not be deemed to be a waiver of any further right hereunder.

**11.6 Governing Law; Severability.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to choice of law principles. The parties consent and submit to the jurisdiction and venue of the state and federal courts located in the Commonwealth of Massachusetts for any dispute relating to the terms, interpretation or performance of this Agreement (other than claims for preliminary injunctive relief or other pre-judgment remedies). Notwithstanding the foregoing, Company shall have the right to seek injunctive or pre-judgment relief in any court of competent jurisdiction to prevent or enjoin the misappropriation, misuse, infringement or unauthorized disclosure of Company’s Confidential Information or intellectual property rights. No Federal Acquisition Regulations shall be construed to apply to Company without Company’s written agreement thereto. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement. In the event any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force and effect.

**11.7 Marketing.** Customer agrees that Company may refer to Customer by name, logo, trade name, service marks and trademarks (“Marks”) and may briefly reference Customer’s business in Company’s marketing, promotional and other related materials and on Company’s web site, and Customer hereby grants Company a limited license to do so.

**11.8 Attorneys’ Fees.** The prevailing party will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys’ fees, court costs, costs of investigation, expert fees and other related expenses incurred in connection with any enforcement of rights under this Agreement in law or in equity, including an action for declaratory relief.

**11.9 Survivability.** All provisions of this Agreement relating to confidentiality, non-disclosure, intellectual property, disclaimers, limitation of liability, indemnification, payment, and no hiring, and any other provisions which must survive in order to give effect to their meaning, shall survive the termination of this Agreement.

**11.10 Notices.** Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given: (i) if by facsimile, hand delivery or by delivery service, upon receipt thereof; or (ii) if mailed, three days after deposit in the U.S. mail, postage prepaid. All notices shall be addressed to the parties primary business address or at such other addresses as either party may in the future specify in writing to the other.

**11.11 Headings; Counterparts.** The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.