

Energy Focus Inc. Standard Terms and Conditions of Sale

In these standard terms and conditions of sale (the “**Terms and Conditions**”), “**Seller**” means Energy Focus, Inc. and its affiliates; “**Buyer**” means any natural person, firm, organization or entity that receives a Sales Quote or provides an Order to Seller; “**Products**” means any products offered for sale by Seller that Buyer agrees to purchase pursuant to a Contract; “**Services**” means any services offered for sale by Seller that Buyer agrees to purchase pursuant to the Contract; “**Contract**” means the written agreement (which includes these Terms and Conditions) between Seller and Buyer relating to the sale and purchase of Products or Services for the Contract Price; “**Contract Price**” means the price payable by Buyer to Seller for the Products or Services, but does not necessarily include all permitted charges to be set forth on an invoice;

“**Seller Quote**” means any written document that is:

- prepared by Seller and provided to Buyer that quotes a proposed Contract Price for a definite quantity of identifiable Products or Services,
- received by Buyer before Seller receives an Order from Buyer and
- incorporates or is otherwise subject to these Terms and Conditions;

“**Order**” means any purchase order (or other written document) issued by Buyer to Seller in which Buyer seeks to

- offer to purchase a definite quantity of identifiable Products or Services at a proposed Contract Price or
- accept or acknowledge an Outstanding Sales Quote (as defined below) whether or not such order proposes any different or additional terms to those on or subject to any Outstanding Sales Quote; and

“**Sales Order**” means any written acknowledgment by Seller to Buyer of any Order, or any written confirmation or modification to any information in a Sales Quote.

Terms and Conditions of Sale; Contract Formation

Unless withdrawn by Seller in writing before acceptance by Buyer, the terms and conditions stated on and incorporated by reference into a Sales Quote (which shall include these Terms and Conditions) are valid for the period so stated on the Sales Quote, or, if no such date is provided, 30 days (an “**Outstanding Sales Quote**”). **THESE TERMS AND CONDITION WILL APPLY TO ALL ORDERS, AND NO**

OTHER PROPOSED DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS OF BUYER IN ANY ORDER SHALL BE BINDING ON SELLER, AND ALL SUCH PROPOSALS AND ALTERATIONS ARE HEREBY EXPRESSLY OBJECTED TO AND REJECTED. ANY ACKNOWLEDGMENT OR ACCEPTANCE OF ANY ORDER BY SELLER (E.G., THROUGH A SALES ORDER) IS EXPRESSLY CONDITIONED UPON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS. Unless otherwise expressly agreed to in any writing signed by each of Buyer and Seller, these Terms and Conditions will apply to any Contract and if there is a conflict between the terms and conditions in any of the Sales Quote, the Sales Order, the Order or these Terms and Conditions, the following rules of construction shall apply: The Sales Order will control over the Sales Quote, these Terms and Conditions, and the Order; the Sales Quote will control over these Terms and Conditions and the Order; and these Terms and Conditions will control over the Order.

No sales representative of Seller has the authority to amend, alter, modify or vary any of these Terms and Conditions.

Unless otherwise agreed to in a writing executed by each of Seller and Buyer, a Contract shall become effective only on the first to occur of the following (the “**Effective Time**”):

- when Seller receives an Order from Buyer that confirms agreement with all of the terms and conditions set forth on and subject to an Outstanding Sales Quote,
- when Buyer receives a Sales Order that confirms agreement with all of the terms and conditions that Buyer has agreed will be applicable to an Order,
- when Seller receives an acknowledgment from Buyer agreeing to all of the terms and conditions in and subject to its Sales Order, or
- when Seller first commences any Services or tenders the Products to the Buyer, and Buyer or Buyer's carrier takes possession of the Products, in which case, the time at which Buyer or Buyer's carrier takes possession will be deemed to have been the required delivery date, and all of the other terms and conditions of the Contract will be determined in accordance with the Sales Quote, Sale Order and Terms and Conditions.

In no event, however, shall commencement of performance or shipment be construed as acceptance of any of Buyer's terms and conditions which are different from or in addition to those contained in these Terms and Conditions. The course of performance or usage of trade shall not be applied to modify these Terms and Conditions.

ORDERS; CHANGES AND CANCELLATIONS

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Verbal orders or orders through a third party will not be accepted and do not constitute Orders or an offer to purchase Product or Services, and will not form the basis of any term or condition of the Contract.

After the Effective Time, no alteration or variance to the Contract shall apply, unless agreed to in writing by both Seller and Buyer; provided, however, Seller reserves the right to deliver Products that contain improvements or minor alterations so long as the performance of the Products are not adversely affected and neither the Contract Price nor the delivery date is affected.

SALES MATERIALS; SPECIFICATIONS

Product literature, brochures, specifications, price sheets, or other similar documentation provided by Seller, or available on the Seller's website, is strictly for the convenience of the users and potential customers, and shall not be deemed to be part of any Sales Quote, Sales Order or these Terms and Conditions. Seller believes such documentation is complete and accurate at the time of printing but does not warrant that such documentation is error free.

PRICES

Contract Prices represent those prices in effect at the time of the issuance of the Sales Quotation or Sales Order and are subject to change without notice except in respect of any Outstanding Sales Quotes, but further subject to these Terms and Conditions. All Contract Prices are as stated in a Seller Quote or Sales Order, and specifically override any prices referenced in an Order. All prices and other terms are subject to correction for typographical or clerical errors.

TAXES AND GOVERNMENTAL CHARGES

Contract Prices do not include any taxes or other governmental fees, charges or assessments, including, without limitation, value-added, sales, use or privileges taxes, required governmental withholdings or excise or similar taxes levied by any government, now or hereafter enacted. At Seller's discretion, any such taxes, charges or withholdings may be added to the Contract Price for any Products or Services or may be billed separately. Buyer will pay all such taxes and charges, on or before their due dates. In the event Seller is required at any time to pay any such tax or charge, Buyer will reimburse Seller promptly on demand.

TERMS OF PAYMENT

Unless otherwise stated in Seller's invoice, the Sales Quote, the Sales Order or agreed to in writing by Seller, terms of payment for orders shipped to destinations in the United States will be net thirty (30) days from the date of invoice. The terms of payment are

subject to review of Buyer's credit by Seller. Seller shall have the right, at any time and from time to time, to require cash payments in advance or a letter of credit or other assurance of payment satisfactory to Seller as a condition to acceptance of any order or shipment of any Product or provision of any Service. Unless otherwise agreed to by Seller, payment shall be by check to be drawn on Buyer's corporate account, by wire transfer to Seller's account at a commercial bank designated by Seller, or by Seller's draw upon a letter of credit satisfactory in form and substance to Seller. Unless otherwise specifically agreed to in writing by Seller, a letter of credit is required for shipments outside the United States for all orders. All payments by Buyer shall be made in United States Dollars and shall be paid in full, without set-off, deduction or counterclaim.

Notwithstanding the above, the terms of payment for all on-line purchases of Products shall be by credit card only.

LATE CHARGES; COSTS

If Buyer fails to pay in full without any set-off or deduction any amount due to Seller promptly when due, Seller may recover, in addition to the payment due, interest thereon at a rate equal to the lesser of 1-1/2% per month (18% per annum) and the maximum rate of interest allowable under applicable law and Buyer shall be liable for all costs and expenses, including reasonable attorneys' fees, incurred by Seller in collecting or attempting to collect any and all overdue accounts. If Buyer fails to pay any amount when due, in addition to any other rights or remedies available to Seller at law or in equity, Seller may discontinue the performance of Services under any Contract, discontinue the delivery of Products under any Contract, or deduct the unpaid amount from any amounts otherwise owed to Buyer by Seller under any agreement with Buyer.

SECURITY INTEREST

Buyer hereby grants to Seller a purchase money security interest in the Products until all payments have been made. Seller is authorized to file any financing statements or other documents necessary to perfect Seller's security interests in the Products. Where permitted by applicable law, Buyer's signature on the Sales Quote or on a purchase order issued as a result of the Sales Quote gives Seller the right to sign on Buyer's behalf and file any financing statement or other documents to perfect Seller's security interest in the Products.

PACKAGING AND HANDLING

Seller shall determine the method of packaging for all Products. If Buyer requires special packaging or handling, such request must be made in writing and charges for special packaging, handling, and delivery shall be added to the Contract Price of the Products. Unless specifically agreed to in writing, Seller will not be responsible for the

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payment of any penalties or special handling charges relating to Seller's failure to comply with a customer's special requirement for order processing, handling, packaging, shipping or invoicing.

SHIPMENT, DELIVERY, AND TITLE

Products will be tendered and shipped Ex Works (Incoterms 2010) Seller's plant or warehouse and title to and risk of loss of the Products shall pass to Buyer at such point. Buyer shall obtain and pay for insurance covering such risks at such destination. Seller will select the carrier and routing and ship Products freight prepaid, which will be added to the Contract Price of the Products. Seller may, in its discretion, choose to make partial shipments and shall bill each shipment as it is made, but on terms applicable to the complete Contract. Seller may, at its discretion, offer freight allowances for orders in excess of certain set prices and/or for orders shipped outside the continental United States. Buyer shall contact Seller for the applicable terms and conditions of any freight allowances offered by Seller. Where Seller provides such an allowance to Buyer, Seller will use its own discretion in routing the shipment. If a more expensive means of transportation or other special delivery requirements are requested by Buyer, Buyer assumes and shall pay all additional costs.

Delivery dates of all shipments are estimated and are not guaranteed. The shipment date mentioned on a Sales Quote or Sales Order, if any, is Seller's approximation of a shipment date, and is not a fixed or guaranteed shipment date. Seller assumes no liability in connection with any delay in delivery. Postponement of deliveries at Buyer's request will not be permitted unless prior approval is given by an authorized officer of Seller. Any delay authorized by Seller will result in additional charges in accordance with Seller's standard delay fees unless such additional fees are waived by Seller. Any claims for shortages, losses, or damages sustained in transit shall be made by Buyer with the carrier and must be documented on the delivery receipt. Upon request, Seller will provide evidence of delivery of Products to the carrier, but reserves the right to charge a reasonable fee for all proof of delivery requests.

STORAGE

Buyer shall pay any detention, storage, handling or auxiliary charges assessed by carriers or warehousemen resulting from Buyer's requirements for special service or Buyer's failure to accept delivery in a timely manner.

PRODUCT ACCEPTANCE

All Products delivered hereunder shall be deemed accepted by Buyer as conforming to the Contract, and Buyer shall have no right to revoke any acceptance unless written notice of the claimed nonconformity is received by Seller within ten (10) days of delivery thereof. Notwithstanding the foregoing, any use of a Product by Buyer, its agents,

employees, contractors or licensees, for any purpose, after delivery thereof, shall constitute acceptance of that Product by Buyer. Buyer agrees that tender and delivery of substitute Products that do not adversely affect the performance of the Products will constitute the tender of a conforming Product, and may not reject those substitute Products as non-conforming.

FORCE MAJEURE

Seller shall have no liability or obligation in connection with any failure to manufacture, deliver or perform due to causes beyond Seller's reasonable control including but not limited to strikes, lockouts, fires, riots, wars, acts of God, inability to obtain materials, components or supplies, failure or breakdown of machinery, production scheduling delays, government regulations or other conditions.

ECOMMERCE PRODUCT RETURNS

Products purchased through Seller's ecommerce site ("**Ecommerce Purchases**") are subject to the following conditions:

- Ecommerce Purchases purchased on Clearance Sale or Flash Sale from Seller's website ("**Clearance Items**") are final sales and not returnable except as specifically stated on the warranty which is included with the Clearance Item ("**Clearance Item Warranty**").
- Ecommerce Purchases (excluding Clearance Items) may be returned, in the original packaging and in good condition, for any reason within 30 days from the date of shipment for a refund of the original purchase price less return shipping and handling fees. All returns must be made via the shipping carrier designated by Seller and otherwise in accordance with Seller's General Conditions Regarding All Returns set forth below. A refund will only be issued after inspection to verify the returned products is in good working condition in Seller's sole discretion; if a returned product does not pass inspection, including due to customer damage or mishandling, any refund may be reduced by a restocking fee determined in Seller's sole discretion. If a customer claims a product was damaged or defective when received and returns the product within 30 days from the date of shipment, Seller will, after receipt and verification in its sole discretion of the claimed damage or defect, waive the return shipping and handling fees and provide, at customer's request, either a replacement product via standard shipping or a full refund. After 30 days from the date of shipment, Ecommerce Purchases may only be returned in the event of a warranty breach as specified in the Limited Warranty below. In the event of return of a defective Product which is covered by the Limited Warranty, only replacement Products will be provided to Buyer.

OTHER PRODUCT RETURNS

Products which are not purchased through Seller's ecommerce site ("**Direct Purchases**") may be returned at Buyer's expense as follows:

- for any reason within ninety (90) days of the date of purchase as evidenced by the purchase receipt ("**Return Period**");
- if defective and covered by the Limited Warranty as set forth below or the Clearance Item Warranty; and
- after the Return Period, in Seller's sole discretion, and subject to a restocking fee to be determined in Seller's sole discretion, which may be in excess of the 40% restocking fee specified below.

All returns of Direct Purchases which are not covered by the Limited Warranty are subject to the following terms:

- Seller may at its option issue credit at prices prevailing at the time of shipment, or time of return, whichever is lower, less any applicable restocking or other charges;
- Unsaleable and damaged merchandise may be credited at salvage value or less cost of repairs;
- Returns will be subject to a restocking fee. Product returned in original condition will be assessed up to a 40% restocking fee and any Product returned with a marked box, damaged box, missing components, (e.g. cables, manuals, etc.), or other damage not caused by Seller will be assessed a higher restocking fee to cover the cost of replacements, in each case as determined in Seller's sole discretion.
- No Product may be returned if it is non-standard, made-to-order, or manufactured to Buyer's specific design or specification (including units with non-standard components or accessories), or is outdated, discontinued or phase-out stock product.

GENERAL CONDITIONS REGARDING ALL RETURNS

In the event it is necessary to return Products to Seller, Buyer must contact Seller's customer service department to obtain a Returned Goods Authorization (RGA) number.

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NO PRODUCT RETURNS WILL BE ACCEPTED BY SELLER IF NOT ACCOMPANIED BY A VALID RGA NUMBER. Product returned without an RGA number will either be refused or returned to Buyer at Buyer's expense. Seller is not liable for loss or damage to unauthorized Product returns. Once issued, RGA numbers are valid for 30 days. Any returns received after 30 days of the issuance of an RGA may be refused. Except as set forth above for Ecommerce Purchases, Buyer will pay all transportation costs associated with all returns, including taxes, customs and duties.

All Products returned are subject to inspection.

SERVICES

Unless otherwise agreed in writing within this Contract, Services will be performed during normal working hours of the Seller. Buyer agrees, at its own expense, to:

- provide safe and unimpeded access in and around the Buyer's facility to Seller's personnel during normal working hours,
- provide a suitable supply of electricity and any other services as Seller shall reasonably require from time to time to perform the Services; and take all reasonable steps to ensure the health and safety of Seller's personnel.

Buyer shall not attempt to perform the Services without the prior written consent of Seller. In the case of materials provided or installed by or under supervision of Seller the risk of loss shall pass to Buyer upon delivery of the materials or equipment to Buyer's facility, and Seller shall not be liable for damage to or loss of the materials or equipment after delivery to the Buyer's facility, except to the extent that the damage or loss is caused by the negligent or wrongful act or omission of Seller or its employees or agents.

LIMITED WARRANTY

Seller's limited warranty for the Products and any Services is posted on Seller's website at <https://energyfocus.com/company/terms-and-conditions/warranty>. The terms of the Limited Warranty are hereby incorporated herein by reference.

The Limited Warranty does not apply to Clearance Items. Clearance Items are covered by the applicable Clearance Item Warranty specified on Seller's website.

THE WARRANTIES SET FORTH IN THE LIMITED WARRANTY AND THE CLEARANCE ITEM WARRANTY ARE THE ONLY WARRANTIES MADE BY SELLER IN CONNECTION WITH THE PRODUCTS AND SERVICES AND ARE EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY,

EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

EXPORT CONTROL

Buyer understands that certain transactions of Seller are subject to export control laws and regulations, such as but not limited to the UN, EU and the USA export control laws and regulations ("**Export Regulations**"), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of Seller to export, re-export or transfer Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to such Export Regulations and will from time to time govern the license and delivery of Products and technology abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations. If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, Seller may suspend its obligations and the Buyer's/end-users rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, Seller may at its option terminate the relevant order in all cases without incurring any liability towards the Buyer or end-user.

Buyer warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to Buyer. Buyer accepts the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties. Buyer shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Buyer shall indemnify Seller against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Buyer's or its customers' breach or non-compliance with this section.

ANTI – BRIBERY

Buyer and its owners, officers, directors, employees, or agents have not and will not engage in any activities that violate the United States Foreign Corrupt Practices Act, the UK Bribery Act, or any other anti-corruption laws or laws prohibiting the payment of commercial or private bribes. In particular, and not in limitation of the foregoing, Buyer and its owners, officers, directors, employees, or agents will not pay, offer, or promise to pay, or authorize the payment directly or indirectly, of any money, gift, or anything of value to any Government Official, as defined below, for the purpose of influencing any act or decision of such official or of the government to obtain or retain business, or direct business to any person. As used in this Section,

"Government Official" means any minister, officer, director or employee of a government or any department, agency, or instrumentality thereof, or of a public

international organization (such as the World Bank, International Monetary Fund or United Nations), or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

INDEMNIFICATION

Buyer shall indemnify, defend and hold harmless Seller and its officers, directors, agents, employees, affiliates, successors, and assigns from and against all losses, liabilities, costs, and expenses arising out of or in connection with any claim by third parties for any loss, damage or injury or death caused or alleged to be caused by:

- (a) the negligent use, application, or installation of Product by Buyer or its employees, partners to whom Buyer sold Product, contractors, agents or affiliates, (collectively, “**Buyer Parties**”); or
- (b) the modification of Product or integration of Product into other products by any of the Buyer Parties unless authorized in writing by Seller. Buyer shall not join, settle or otherwise attempt to affect or dispose of any such claim without Seller’s written consent.

PROPRIETARY RIGHTS

Seller shall defend any suit or legal proceeding brought against Buyer by a third party based on a claim that the manufacture and sale of a Product, or any part thereof, constitutes infringement of any patent of the United States, if notified promptly in writing and given authority, information and assistance (at Seller’s expense) for defense of same, and Seller shall pay damages or costs finally awarded against Buyer therein to the extent that such damages and costs are directly and solely attributable to such infringement. The use of such Products by Buyer is beyond the control of Seller and Seller has no obligation or liability whatsoever in connection with any suit claiming infringement by reason of the use of the Products.

Notwithstanding the foregoing, with respect to all Products manufactured by Seller, either in whole or in part, to Buyer’s designs, specifications or instructions, Buyer shall defend and hold harmless Seller from all liability, loss, cost and expense (including attorney’s fees) resulting from claims of alleged infringement of patents, designs, copyrights, trademarks, and other proprietary rights.

If any Product is, or in Seller’s opinion is likely to become, the subject of a claim of infringement under this Section or if Seller receives from a claim of infringement from a third party in relation to any of the Products, Seller shall have the right, without obligation or liability and at its sole option, to:

- procure for Buyer the right to continue to use or sell the Product;
- replace the Product with a non-infringing product, or
- modify the Product in such a way as to make the modified Product non-infringing; or
- repurchase such Product from the Buyer for the Contract Price paid by Buyer less reasonable depreciation; or
- suspend or discontinue supplies to Buyer of the Products or parts to which such notice relates; or
- terminate any agreement to the extent related to such Product.

CONFIDENTIALITY

Buyer shall maintain as confidential any information furnished or disclosed to it by the Seller, whether disclosed in writing or disclosed orally, relating to the business of the Seller, its customers and/or its employees, and the Sales Quote and its terms, including the pricing terms under which Buyer has agreed to purchase the Products and/or Services. Buyer shall use the same degree of care to protect the confidentiality of the disclosed information as it uses to protect the confidentiality of its own information but in no event less than a reasonable amount of care. Buyer may disclose such confidential information to its employees on a need to know basis necessary to perform the transactions contemplated herein. The obligation to maintain the confidentiality of such information shall not extend to information that (a) is or becomes generally available to the public without violation of these Terms and Conditions or any other obligation of confidentiality or (b) is lawfully obtained by the Buyer from a third party without any breach of confidentiality or violation of law.

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and supersedes all prior negotiations, proposals, agreements and understandings, whether oral or written, relating to the Products or Services to be purchased hereunder or otherwise relating to the subject matter of this Agreement. Any representation, warranty, the course of dealing or trade usage not expressly contained or referenced herein shall not be binding on Seller. If the Products or Services purchased from Seller are to be used in the performance of a government contract or subcontract, no government requirements or regulations shall be binding upon Seller unless specifically agreed to by Seller in writing.

APPLICABLE LAW; LIABILITY

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The United Nations Convention on Contracts for the International Sales of Goods is hereby excluded and shall not apply.

UNDER NO CIRCUMSTANCES SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SALE OF PRODUCTS OR SERVICES, IN CONTRACT, TORT OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE PRODUCT TO WHICH SUCH LIABILITY RELATES. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR COMPENSATORY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF USE, LOST REVENUES OR PROFITS, BUSINESS OR GOODWILL EVEN IF SELLER HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

PRODUCT SAFETY

Buyer shall comply fully with all applicable laws, industry safety standards applicable to the manufacture, distribution or sale of items incorporating the Products supplied by Seller, including but not limited to American National Standards Institute (ANSI)/Illuminating Engineering Society of North America (IESNA) RP-27 (or equivalent eye safety labeling standards) and International Standard IEC 62471-2006, published by the International Electrotechnical Commission, including all marking, labeling, and supplemental user and service information (if any) required by the standards, where applicable. Buyer shall comply fully with all applicable safety-related laws, rules, and regulations of any governmental body having jurisdiction to regulate the manufacture, distribution or sale of items incorporating the Products supplied by Seller. Buyer shall obligate all persons and entities buying such Products from Buyer (other than end users) to comply with such industry standards, laws, rules or regulations applicable to such person or entity. Buyer shall defend and hold Seller harmless against any expense, loss, costs or damages relating to any claimed failure by Buyer to comply with such industry standards, laws, rules or regulations or from any bodily injury, illness or property damage resulting from Products manufactured by Buyer which incorporate the Products supplied by Seller.

GENERAL TERMS

- 1. Bankruptcy.** If Buyer becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, Seller may cancel any unfulfilled obligations, or suspend performance; however, Buyer's financial obligations to Seller shall remain in effect.
- 2. Assignment.** Buyer may not assign any rights or obligations in connection with the transactions contemplated herein without the prior written consent of Seller, and any attempted assignment without such consent shall be of no force or effect.

- 3. Governing Law; Jurisdiction and Venue.** All transactions contemplated by these Terms and Conditions shall be governed by the laws of the State of Ohio, without regard to that state's choice of law principles. Any legal suit, action or proceeding arising out of or relating to any Contract or any Products and Services provided by Seller will be instituted in the federal or state courts located in Cuyahoga County, Ohio, unless Seller, in its sole discretion, brings a claim in another court of competent jurisdiction. EACH PARTY, KNOWINGLY AND AFTER CONSULTATION WITH COUNSEL, FOR ITSELF, ITS SUCCESSORS' AND ASSIGNS, WAIVES ALL RIGHT TO TRIAL BY JURY OF ANY CLAIM ARISING WITH RESPECT TO THIS AGREEMENT OR ANY MATTER RELATED IN ANY WAY THERETO.
- 4. Headings.** The headings contained herein are intended for convenience only and shall not be used to interpret the terms hereof.
- 5. Severability.** If any provision of these Terms and Conditions are deemed to be illegal, unenforceable, or invalid, in whole or in part, the validity and enforceability of the remaining provisions shall not be affected or impaired and shall continue in full force and effect.
- 6. Performance.** The failure of Buyer or of Seller at any time to require the performance of any obligation will not affect the right to require such performance at any time thereafter. The failure or the election not to enforce any term or condition in these Terms and Conditions shall not constitute a waiver of Seller's right to enforce that right or condition and nor shall any course of dealing, course of performance, course of conduct, prior dealings, usage of trade, community standards, industry standards, and customary standards and customary practice or interpretation in matters involving the sale, delivery, installation, use, or service of similar or dissimilar products or service as a basis to evidence any waiver.
- 7. Obligations.** Buyer's obligations are independent of any other obligations the Buyer may have under any other agreement, contract, or account with Seller. Buyer will not exercise any right of offset in connection with the terms and conditions in the Sales Quote or Contract or in connection with any other agreement, contract, or account with Seller.

Effective January 25, 2021