

1. Definitions.

- (a) “Buyer” means the individual or entity identified on Buyer’s purchase order, or, if different, on Seller’s Quote.
- (b) “Equipment” means any machinery, apparatus, part or equipment on which Services are being performed.
- (c) “Products” means any machinery, apparatus, part, equipment, accessories, materials or supplies provided by Seller to Buyer under the Quote and these Terms.
- (d) “Quote” means a quotation or proposal provided by Seller to Buyer describing specifications and terms applicable to the provision of certain Services by Seller to Buyer including any revisions and amendments to these Terms or to any terms or specifications in Seller’s quotation or proposal reflected in any acknowledgement, confirmation or sales order transmitted by Seller to Buyer after receipt of Buyer’s purchase order.
- (e) “Seller” means the subsidiary or affiliated entity of Nederman Holding USA, Inc. identified on the Quote.
- (f) “Services” means any services provided or sold by or on behalf of Seller for field installation, commissioning, system audit, troubleshooting, inspection, repair or maintenance of Equipment.
- (g) “Terms” means these Terms and Conditions for the Sale of Products and Field Services.
- (h) “Work Site” means the Buyer’s facility or work site where the Services will be provided.

2. Acceptance.

All orders received from Buyer are subject to acceptance by Seller and Seller reserves the right, in its sole discretion, not to accept any purchase order, including any purchase order issued in connection with a Quote provided by Seller. Without limiting the foregoing, (a) Seller may reject any purchase order if it determines, in its sole discretion, Buyer may not have the ability to perform its obligations hereunder and (b) Seller may condition its acceptance of any purchase order on Buyer’s execution of sale and/or lease documents in form prescribed by Seller and embodying credit terms acceptable to Seller. Seller’s acceptance shall be evidenced by (i) delivery of an order acknowledgment to Buyer or (ii) Seller’s commencement of the work necessary to provide the Products and Services. Unless Seller expressly agrees in writing, these Terms will govern all purchase orders and Quotes for Products and Services, and Seller’s acceptance of any purchase order submitted by Buyer is conditional on Buyer’s acceptance of these Terms. Seller specifically rejects, and Buyer disclaims, all pre-printed provisions in Buyer’s purchase order and any other Buyer forms or documents. Seller’s failure to object to any term or condition in any communication from Buyer will not be construed as agreement to such term or condition, nor will it be deemed a waiver of these Terms. Orders accepted by Seller cannot be cancelled by Buyer except with Seller’s written consent and upon terms that will indemnify Seller against loss including, without limitation, compensation for all work performed or contracted to be performed up to and including the date of cancellation, plus Seller’s reasonable overhead and profit for such work in the amount of twenty percent (20%).

3. **Scope.** Seller will furnish, subject to the terms, conditions and exceptions noted in the Quote, the Products and Services specified in the Quote. The foregoing scope of work is based on quantities of time, materials, Products and specifications as of the date of the Quote.

4. **Changes.** Buyer may, by written notice to Seller, request changes in, additions to, or deletions from the Products or Services. Seller may grant or deny such request in its sole discretion. If any requested change will increase the time required to design, manufacture, fabricate or deliver the Products or to perform the Services, an equitable adjustment will be made in the schedule for the delivery of the Products (or any other deliverable affected by such change) and the performance and completion of the Services. If the Services are being performed on a fixed price basis, and if any change increases the cost to Seller of performing such Services, then an equitable adjustment will be made in the Price (as defined in **Section 6** below). If any requested change will increase the number of Products or change the specifications for the Products, an equitable adjustment will be made in the Price. In the event that any change is requested by Buyer, Seller shall be entitled to halt or delay the design, manufacture, fabrication or shipment of the Products and the performance of the Services until an equitable adjustment with respect to the schedule, Price or both is agreed between Seller and Buyer. All such requests must be on Seller's Change Order Request form and, in order to be effect, such Change Order Request must be executed by both Seller and Buyer.

5. **Delivery and Risk of Loss.** Delivery of all Products shall be made, and risk of loss shall transfer, in accordance with the delivery term set forth in the Quote. Title to any Product shall only pass upon Seller's receipt of payment in full for such Product.

6. **Prices.** The price for the Products and Services shall be as set forth in the Quote (the "Price"); provided, that Buyer acknowledges and agrees that if, at any time during the period between Seller's acceptance of Buyer's purchase order and the date upon which Seller actually orders all steel and steel containing parts and materials necessary to supply the Products covered by such purchase order, the MEPS index price for steel increases by an amount greater than 3% of the price as of the date of Seller's Quote, then Seller shall have the right, in Seller's sole and absolute discretion, to increase the Price by an amount determined by Seller to be necessary to account for such increase in the price of steel. To the extent the Price for the Services is based on a time and materials basis, the Price shall be determined based on Seller's standard labor rates (the "Rate Sheet"), a copy of which is available upon request. Unless otherwise specifically set forth in the Quote, Buyer shall also reimburse Seller for the expenses of Seller's employees, advisors, agents and engineers at Seller's current per diem rates, plus travel and living expenses. In the event of any work stoppage due to any act or omission of Buyer, its representatives, agents, suppliers or contractors or severe inclement weather, Buyer shall be responsible for all costs, fees and expenses of such work stoppage on a time and materials basis.

7. **Taxes.** Seller's prices do not include taxes with respect to the sale, purchase, delivery, storage, processing, use, consumption, transportation or performance of any of the Products or Services or any of the products or materials provided by Seller in connection with the Services. Any such taxes which Seller may be required to pay or collect under any existing or future law, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of Buyer, who shall promptly pay the amount thereof to Seller upon demand, unless Buyer provides Seller with a properly executed certificate representing that Seller is not required to collect any such taxes. Buyer will indemnify and save Seller harmless from any liability, penalties or expenses incurred by Seller as a result of its reliance upon such certificate.

8. **Payment Terms.** Unless otherwise set forth in Seller's Quote, payment terms are net thirty (30) days from the date of Seller's invoice. Seller may demand payment or an Irrevocable Letter of Credit in advance of the performance of any Services if, in Seller's opinion, the credit or financial condition of Buyer is, or is about to become, impaired or Seller has insufficient credit history with Buyer. A monthly finance charge of 1.5% (18%

annually) shall be imposed on any portion of Buyer's account not paid within the terms stated herein or in the Quote from the due date for payment until the actual date of payment.

9. **Standard Lead Times.** Buyer must provide a final purchase order in form and content acceptable to Seller (a "Final PO") a minimum of fourteen (14) days' prior to the required start date for the Services set forth in the purchase order. Any Final PO received by Seller less than fourteen (14) days' prior to the required start date for the Services may be subject to, and Buyer shall be responsible for, certain additional charges as set forth in **Sections 18 and 19**, as well as any additional mobilization charges incurred by Seller. All Products shall be subject to Seller's standard lead times, which time will be based on the date of the Final PO. Buyer acknowledges and agrees that, until receipt and acceptance of the Final PO by Seller, no Services will be scheduled, no parts, supplies or materials ordered, no Products designed, manufactured or shipped, and no commitment regarding timing of the Services or delivery of the Products will be made by Seller. Furthermore, Buyer acknowledges that, to the extent Seller provides any performance dates, timetables or project milestones that all such performance dates, timetables and project milestones are Seller's estimate of such dates and are based, in part, on information supplied by Buyer and are not firm commitments. In addition, all performance dates, timetables and project milestones shall be extended, day for day, for each day of delay in the completion of any milestone, inspection or approval resulting from any act, omission or delay of Buyer or any of Buyer's other contractors, subcontractors, customers or suppliers, or resulting from any other delay not caused by Seller.

10. **Access.** Seller shall have access to the Work Site to permit moving in of all construction equipment and materials needed to maintain or complete any portions of the Services.

11. **Excavation.** To the extent the Quote involves excavation and any unusual obstruction or condition is encountered (such as old foundations, structural steel work, sewer and water pipes, rock boulders, water, quicksand, etc.), the cost to remove such obstruction or remedy such condition shall be at Buyer's sole cost and expense and shall be charged by Seller to Buyer.

12. **Foundations.** Buyer shall furnish foundations, unless otherwise provided in the Quote, and such foundations shall be free from defects in materials, construction, design and workmanship and fit for the intended purpose. Installation and design of foundations shall conform to Seller's loading diagram and any other requirements set forth in the Quote or otherwise provided to Buyer. All foundation surfaces shall be true and level to grade shown on Seller's loading diagram or as set forth in the Quote or otherwise provided to Buyer so that erection can commence without shimming. If Seller agrees in its Quote that it will furnish and install the foundations, Buyer shall establish all reference points from which Seller can determine lines and levels. Curbing and final paving shall be the responsibility of Buyer.

13. **Utilities.** Where necessary and as required, Buyer agrees to make available, without charge, utilities to the Seller, Seller's agents, employees and subcontractors at the Work Site. These utilities shall include electric power for 3 phase, 110/220 Volts, 60 hertz, sufficient potable water for drinking and water for construction purposes, live steam, compressed air in quantities sufficient to drive common air driven equipment, fuel gas, sanitary facilities and telephone service.

14. **Permits.** Buyer shall be responsible, at Buyer's sole cost and expense, for obtaining all licenses and permits required for performance of the Services and Buyer acknowledges that the cost of obtaining such licenses and permits is not included in the Price.

15. **Warranty.**

(a) Seller warrants that the Services described herein are free from defects in workmanship. If any such defect exists or appears within ninety (90) days after the performance of such Services, Seller shall undertake, at its sole expense, prompt remedial action as stated herein to correct the same, provided, however, that Seller shall have no obligation or liability under this warranty unless it shall have received written notice specifying such defect. Seller's obligations under the foregoing warranty shall also be contingent on Buyer's full compliance with all of its obligations under these Terms, the Quote and any other agreement entered into by Buyer and Seller in connection with these Terms or the Quote, including but not limited to payment in full in respect of the Products and the Services.

(b) Seller warrants that the Products will be free from material defects in materials or workmanship and will conform to the specifications set forth in the Quote. If any Product, or any part thereof, fails to meet any of the foregoing warranties upon delivery or within twelve (12) months from the date of start-up of such Product, but in no event later than eighteen (18) months from the installation of such Product at the Work Site, then Buyer shall, upon discovery of such defects or nonconformities, promptly (and in any event within twenty (20) days of discovery), notify Seller of such defects or nonconformities. In the event Buyer complies in full with all of its obligations under these Terms, the Quote and any other agreement entered into by Buyer and Seller in connection with these Terms or the Quote, including but not limited to payment in full in respect of the Products and the Services, Seller shall at its option repair or replace any Product or re-perform any Services that Seller determines in its reasonable judgment and upon inspection to be defective, or, if in Seller's judgment repair, replacement or re-performance would be commercially impracticable, Seller shall issue Buyer a refund or credit in the amount of the Price attributable to the defective Product or Service. Buyer shall afford Seller a reasonable time and opportunity to correct all such defects or nonconformities. This warranty shall not apply to any Product that has not been operated and maintained in accordance with operating instructions or that has been accidentally damaged, or to any Product with defects attributable in any way to installation, modification or repair made by any party other than Seller; nor shall this warranty apply if (i) Buyer or a third party modifies or repairs the Product without Seller's prior written approval; or (ii) after discovery of a defect, Buyer fails to take prompt and reasonable steps to prevent the defect from becoming more serious. This warranty is subject to, and shall be applicable only if, all of the following conditions are met: (i) Seller's instructions as to operation and maintenance have been followed; (ii) the Product and associated products, machinery and equipment have been used under normal operating conditions or under such conditions as heretofore specified by Seller or Buyer and agreed to by Seller; (iii) the Product has been properly stored, operated and maintained and has not been affected by misuse, neglect or accident; (iv) Buyer has not attempted or performed corrective work without Seller's prior written consent as to the nature and expense thereof; and (v) Seller shall have received written notice of any defect no later than twenty (20) days after Buyer first has knowledge of same.

(c) The performance of any Services by Seller with respect to any Equipment, Products, accessories, materials or supplies not manufactured by Seller are specifically excluded from the warranty set forth in this **Section 15**. All warranties with respect to any Products or Equipment supplied by Seller but not manufactured by Seller shall be limited to their respective warranties of the manufacturers thereof, if any, which Seller may be permitted to pass on to Buyer. Seller makes no warranty with respect to any Equipment, accessories, materials or supplies supplied by the Buyer.

(d) THE WARRANTIES IN THIS **SECTION 15** ARE EXCLUSIVE, ARE MADE ONLY TO BUYER AND DO NOT COVER THE EFFECTS OF ABRASION, CORROSION, EXPLOSION, EROSION OR CHEMICALS, OR OTHER DETERIOATION OR DEGREDATION OF THE PRODUCTS OR PARTS THEREOF DUE TO THE PHYSICAL ENVIRONMENT WHERE THE PRODUCT IS LOCATED, OR DUE TO ELECTRICAL OR ELECTROMAGNETIC NOISE ENVIRONMENT OR ABNORMAL CONDITIONS OF TEMPERATURE OR DIRT. EXCEPT AS EXPRESSLY SET FORTH IN THIS **SECTION 15**, SELLER SPECIFICALLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN

BY SELLER OR ITS EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

(e) The warranties in this **Section 15** constitute Seller's entire and exclusive liability for any claim or damages for breach of warranty in connection with the Products and Services. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, THE QUOTE, BUYER'S PURCHASE ORDER OR IN ANY OTHER DOCUMENT OR AGREEMENT RELATED TO THE QUOTE OR THE PROVISION OF THE PRODUCTS OR SERVICES, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF CUSTOMER GOODWILL, BUSINESS INTERRUPTION COSTS, OVERHEAD COSTS, LOST PROFITS, COSTS OF CAPITAL, OR LOSS OF USE OF MONEY ARISING OUT OF OR RELATED TO ANY BREACH OF WARRANTY IN CONNECTION WITH THE PRODUCTS AND SERVICES. CONSEQUENTIAL DAMAGES ALSO INCLUDE ATTORNEYS' FEES.

16. **Rules.** Seller will comply with, and will require that its employees comply with, Buyer's instructions regarding signs, advertisements, fires and smoking, and shall not unreasonably encumber the Work Site outside the site of installation.

17. **Errors in Drawings.** Seller shall have no responsibility for errors in prints, plans or drawings when such prints, plans or drawings are furnished by Buyer, its agents, or its other contractors. In the event that any such errors result in the re-performance of any Services or require additional time or materials, the cost of such re-performance of the Services and the additional time and materials shall be billed to Buyer on a time and material basis in accordance with the rates set forth on the Rate Sheet and Buyer agrees to pay such amount in accordance with **Section 8** of these Terms.

18. **Overtime.** Seller and/or its subcontractors shall not work hours involving premium pay (any pay rate shown in the Rate Sheet other than straight time pay) without Buyer's approval, except no approval shall be required where overtime work or work on an irregular basis is made necessary by the inherent nature of the work involved, such as finishing a pour of concrete, or overtime work is necessary in order to secure a labor force adequate in quality and quantity to perform the Services in a good and workmanlike manner and to complete the work at the earliest date practicable. The Price is based on working eight straight-time hours per day, Monday through Friday inclusive, and does not include any amount for wage premiums for overtime hours or for work on Saturday, Sunday and Holidays. The Price shall be adjusted by the amount of the total wage premiums paid, and of costs incurred with respect thereto for all overtime hours and for all work on Saturday, Sunday and Holidays worked at Buyer's request or necessitated by acts or omissions of the Buyer or its other contractors or in order to secure and maintain a labor force adequate in quality and quantity to perform the installation in a good and workmanlike manner and to complete the installation at the earliest date practicable.

19. **Extra Work Required.** All additional work requested by Buyer will be charged at Seller's rates as specified in the Quote. The same rate will apply to delays by Buyer, adverse weather, or unforeseeable conditions that result in additional time to perform the Services or that cause changes to the Services to be provided.

20. **Bonds.** Should Seller be required to secure completion or payment bonds, Buyer shall be responsible for, and shall promptly pay or reimburse Seller for, the cost of such bonds.

21. **Subcontracting.** Seller reserves the right to subcontract all or any all portion of the Products or Services.

22. **Indemnification.**

(a) To the fullest extent permitted by law, Seller agrees to and will defend, protect, indemnify and hold harmless Buyer and its officers, directors, employees and agents from and against all claims, losses, expenses (including reasonable attorneys' fees), damages, demands, judgments, causes of action, suits, and liability in tort, contract, or any other basis and of every kind and character whatsoever (hereinafter in this and the following paragraphs collectively referred to as "Claims"), to the extent arising out of or resulting from (i) any breach by Seller of these Terms, or (ii) any negligence or willful misconduct of Seller in connection with the performance of its obligations under these Terms. Such obligation to indemnify shall not apply to the extent that any Claim results from the negligence or willful misconduct of Buyer or a related party.

(b) To the fullest extent permitted by law, Buyer agrees to and will defend, protect, indemnify and hold harmless Seller and its officers, directors, employees and agents from and against all Claims to the extent arising out of or resulting from (i) any breach by Buyer of these Terms, (ii) any negligence or willful misconduct of Buyer in connection with these Terms including, without limitation, Buyer's negligent or improper installation, assembly, adjustment, modification, alteration, repair, use, operation or maintenance of any Product or Equipment or component thereof or any conditions at the Work Site. Such obligation to indemnify shall not apply to the extent that any Claim results from the negligence or willful misconduct of Buyer or a related party.

(c) If either Buyer or Seller intends to seek indemnification for any Claim, then such party shall notify the other party promptly in writing, describing such Claim in reasonable detail. The party from whom indemnification is sought shall have the right to conduct and control, through counsel of its own choosing, any third party claim, action or suit, but the party seeking indemnification may, at its election, participate in the defense of any such claim, action or suit at its sole cost and expense.

23. **Insurance.** During the performance of any of the Services at the Work Site, Seller shall maintain (a) commercial general liability insurance with a minimum limit of at least \$2,000,000 per occurrence for bodily injury, death or property damage (b) statutory workers' compensation insurance in the amounts required under applicable state law and employers' liability insurance with a minimum limit of at least \$1,000,000 per occurrence and (c) automobile liability insurance with a combined single limit of liability of at least \$1,000,000 per occurrence for bodily injury, death and property damage. All insurance shall be carried with insurance companies with an A. M. Best rating of A- or better. At Buyer's request, Seller will furnish Buyer with copies of certificates evidencing such policies of insurance.

24. **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THESE TERMS, THE QUOTE, BUYER'S PURCHASE ORDER OR IN ANY OTHER DOCUMENT OR AGREEMENT RELATED TO THE QUOTE OR THE PROVISION OF THE PRODUCTS OR SERVICES, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER IN CONTRACT, TORT, STRICT LIABILITY OR ON ANY OTHER BASIS, FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUES, LOSS OF CUSTOMER GOODWILL, BUSINESS INTERRUPTION COSTS, OVERHEAD COSTS, LOST PROFITS, COSTS OF CAPITAL, OR LOSS OF USE OF MONEY. CONSEQUENTIAL DAMAGES ALSO INCLUDE ATTORNEYS' FEES. Any action for breach of contract or warranty, strict liability or based on negligence must be commenced within one (1) year after the action has accrued and any recovery therefrom will be limited to the replacement of any defective Product, the re-performance of any defective Services or damages not to exceed the lesser of (a) the amount of the Price attributable to the defective Products and Services and (b) ten percent (10%) of the total Price paid for Products and Services pursuant to the Quote.

25. **Remedies for Breach.** A "Breach" of these Terms shall occur if Buyer (a) fails to pay any amount due within thirty (30) days of the due date, (b) files a petition in bankruptcy or seeks relief under any bankruptcy,

reorganization, insolvency, dissolution, liquidation or similar law of any jurisdiction, (c) becomes unable to pay or suspends payment of its debts as they become due, or if a court issues an order appointing a receiver, custodian or administrator over all or part of Buyer's assets, or (d) or any of its affiliates breach any agreement with Seller or any of its affiliates. In the event of a Breach, Seller may terminate any outstanding purchase order. In addition, without waiving any other available remedies, Seller may: (i) declare immediately due and payable all sums due and to become due under any outstanding purchase order; (ii) stop performance of any Services for Buyer; (iii) stop the design, manufacture, fabrication or shipment of any Products and (iv) stop performance of any services or the design, manufacture, fabrication or shipment of any products under any other agreement between Buyer or any of its affiliates and Seller or any of its affiliates.

26. **Collection Costs.** Buyer agrees to pay all reasonable attorney fees and legal costs incurred or paid by Seller in connection with any suit, action or proceeding to collect any amounts owed to Seller under the these Terms or the Quote.

27. **Confidential Information.** All pricing, drawings, plans, disclosures, specifications, patterns or technical or business information furnished at any time to Buyer by Seller shall remain the sole property of Seller. Buyer shall hold all such information in strict confidence, shall not use or divulge to any person or entity any such confidential information, and any and all copies of such confidential information shall be returned to Seller promptly upon Seller's request.

28. **Intellectual Property Rights.** Intellectual property rights (whether arising under patent, trademark, copyright laws or otherwise) to all improvements embodied in designs, tools, patterns, drawings, information and Products supplied by Seller under the Quote and these Terms, and exclusive rights for the use and reproduction thereof, and all intellectual property rights arising out of the performance under the Quote and these Terms shall accrue and be assigned to, and be owned by, Seller, and Purchaser shall execute and deliver such instruments as may be necessary to effect or confirm such ownership.

29. **Force Majeure.** Seller shall not be responsible for any delay or failure in performance of any part of the Quote, these Terms, delivery of the Products or the performance of the Services to the extent such delay or failure is caused by an event beyond the reasonable control of Seller including, without limitation, governmental action, fire, explosion, acts of God, flood, war, riot, accident, blockades, insurrections, riots, epidemics, earthquakes, hurricanes, tornadoes, floods, abnormal snow or hail storms, labor trouble, shortages of labor or materials, increases in material costs, transportation difficulty, acts of the public enemy, the existence of any circumstance making performance commercially impractical.

30. **Assignment.** These Terms are binding upon, and shall inure to the benefit of Buyer, Seller and their successors and permitted assigns. Buyer may not assign all or any portion of its rights or obligations hereunder without the prior written consent of Seller. Seller may assign, delegate or subcontract a purchase order or any of its obligations under the Quote or these Terms, in whole or in part, without Buyer's consent.

31. **No Waiver.** Seller's waiver of any breach of any provision contained in these Terms will not waive any other breach by Buyer. Seller's delay or failure to enforce its rights under these Terms shall not be deemed a waiver of such rights.

32. **Governing Law; No Class Action; Venue; Jurisdiction; Waiver of Jury Trial.** The Quote, these Terms, any agreement entered into in connection with the Quote or these Terms and any affiliated obligations and any action arising thereunder will be governed by and construed in accordance with the laws of the State of North Carolina, including the Uniform Commercial Code as adopted in the State of North Carolina, without regard to conflict of laws principles. Any agreement entered into in connection with the Quote or these Terms shall be deemed entered into in the State of North Carolina. **The United Nations Convention on Contracts for the**

International Sale of Goods shall not apply. All shipping and delivery terms specified in these Terms, the Quote or any other document entered into in connection with these Terms or the Quote will be defined as set forth in the Incoterms 2010 published by the International Chamber of Commerce. No claim or cause of action may be asserted as a class action or on behalf of a class, and no person or entity shall have a right to institute or maintain claims in litigation as a class action or on behalf of a class. BUYER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE COURT LOCATED WITHIN MECKLENBURG COUNTY, NORTH CAROLINA, OR ANY FEDERAL COURT LOCATED IN THE STATE OF NORTH CAROLINA AND CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH ON THE PURCHASE ORDER. NOTHING IN THIS AGREEMENT AFFECTS THE RIGHT OF SELLER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY ACTION OR PROCEEDING AGAINST BUYER IN THE COURTS OF ANY OTHER JURISDICTION THAT HAS JURISDICTION OVER BUYER. TO THE EXTENT PERMITTED BY LAW, BUYER WAIVES TRIAL BY JURY AND WAIVES ANY OBJECTION THAT IT MAY HAVE BASED ON LACK OF JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

33. **Entire Agreement; Amendments.** The entire agreement of Seller and Buyer is expressed exclusively in the terms, covenants and conditions set forth in these Terms, Seller's Quote and Seller's acceptance or acknowledgement of Buyer's purchase order. No agent, representative or employee of Seller has authority to agree, represent or warrant otherwise, except Seller's officers, and then only in writing. These Terms supersede all other written or oral agreements between the parties. Seller and Buyer may modify these Terms, or the associated Quote or purchase order acknowledgement, only by an express written agreement signed by both parties.

34. **Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in the Quote, Buyer's purchase order, these Terms or in any other document or agreement related to the Quote or the provision of the Products or Services shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Quote or these Terms.

35. **Severability.** Any part of these Terms held to be invalid or unenforceable by a tribunal of competent jurisdiction shall be deemed ineffective to the extent thereof without affecting the validity or enforceability of any other part of these Terms.

36. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including but not limited to Sections 7, 8, 15, 22, 24, 25, 26, 27, 28, 32, 35 and 36.