

Movement by Perfection



The Royal League in ventilation, control and drive technology

General Terms and Conditions of Business

August 2022



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THIS DOCUMENT (INCLUDING THE TERMS AND CONDITIONS OF SALE INCLUDED WITH, ATTACHED TO OR CONTAINED IN THIS DOCUMENT), TOGETHER WITH ANY WRITTEN SUPPLY AGREEMENT SIGNED BY BOTH PARTIES RELATED TO THE SALE OF PRODUCT TO PURCHASER AND ANY DOCUMENT PREVIOUSLY SUBMITTED BY SELLER TO PURCHASER, CONSTITUTES THE COMPLETE AND FINAL AGREEMENT OF SELLER AND PURCHASER, AND MAY NOT BE ADDED TO, MODIFIED, SUPERSEDED OR ALTERED EXCEPT BY WRITTEN AGREEMENT OR MODIFICATION SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE, NOTWITHSTANDING ANY TERMS AND CONDITIONS WHICH MAY NOW OR IN THE FUTURE APPEAR ON ANY PURCHASE ORDER, QUOTATION, ACKNOWLEDGMENT OR OTHER DOCUMENT OF PURCHASER. THIS DOCUMENT IS NOT AN ACCEPTANCE BY SELLER OF ANY TERMS AND CONDITIONS CONTAINED IN ANY PURCHASE ORDER, QUOTATION, ACKNOWLEDGMENT OR OTHER DOCUMENT OF PURCHASER, AND ANY SUCH ADDITIONAL TERMS ARE HEREBY OBJECTED TO WITHOUT FURTHER NOTICE TO PURCHASER. SELLER'S OFFER OF PRODUCT IS EXPRESSLY CONDITIONED ON PURCHASER'S ACCEPTANCE OF THIS DOCUMENT AND THE TERMS AND CONDITIONS OF SALE INCLUDED WITH, ATTACHED TO OR CONTAINED IN THIS DOCUMENT.



General Terms and Conditions of Business of ZIEHL-ABEGG Inc.

1. Definitions

- 1.1 “Contract” shall mean the agreement between the Parties consisting exclusively of this document (including its Terms and Conditions of Sale) together with the terms of any written supply agreement signed by both Parties related to the sale of Product to Purchaser and/or to the provision of Services to Purchaser and any document previously submitted by Seller to Purchaser. In the event of a conflict between a term appearing in any document previously submitted by Seller to Purchaser and a term appearing in this document, this document shall control.
- 1.2 “Deliverables” shall mean all documents, work product and other materials that are delivered to Purchaser under this Agreement or prepared by or on behalf of the Seller in the course of the sale of any Product and/or provision of any Services related to this Contract.
- 1.3 “Intellectual Property Rights” shall mean all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights.
- 1.4 “Notice” shall mean all notices, request, consents, claims, demands, waivers and other communications under this Agreement.
- 1.5 “Parties” shall mean the Seller and Purchaser, collectively.
- 1.6 “Product” shall mean the goods supplied pursuant to this Contract.
- 1.7 “Purchaser” shall mean the person or entity listed on the face of this document, and any subsidiary or affiliate of such person or entity receiving Product and/or Services under this Contract.

- 1.8 “Seller” shall mean Ziehl-Abegg, Inc., a Delaware corporation.
- 1.9 “Services” shall mean the services provided pursuant to this Contract.

2. Contract Formation

Purchaser shall be deemed to have accepted the provisions of this Contract, including these Terms and Conditions of Sale, by manifesting such acceptance by any of the following: (a) signing and returning to Seller a copy of this Contract; (b) sending to Seller a written acknowledgement of this Contract; (c) placing a purchase order or giving instructions to Seller respecting manufacture or delivery of Product and/or provision of Services following receipt of this Contract; (d) failing to cancel a pending purchase order within ten (10) days after receiving this Contract; (e) accepting delivery of all or any part of Product; (f) paying for all or any part of Product; or (g) indicating in some other manner Purchaser’s acceptance of this Contract. Seller may revoke its offer to sell Product and/or provide Services at any time prior to Purchaser’s acceptance. Upon acceptance, Purchaser irrevocably agrees and commits to purchase Product and/or procure Services in accordance with this Contract. SELLER HEREBY EXPRESSLY OBJECTS TO AND REJECTS THE PROVISIONS OF ANY PURCHASE ORDER OR OTHER DOCUMENT WHICH IS INCONSISTENT WITH, IN ADDITION TO, IN MODIFICATION OF OR IN CONTRADICTION OF THE PROVISIONS OF THIS CONTRACT (WHICH INCONSISTENT, ADDITIONAL, MODIFIED OR CONTRADICTORY PROVISIONS ARE HEREBY EXCLUDED FROM THIS CONTRACT), AND SELLER’S OFFER AND OBLIGATIONS ARE EXPRESSLY CONDITIONED UPON PURCHASER’S ACCEPTANCE OF THIS CONTRACT, INCLUDING THESE TERMS AND CONDITIONS OF SALE. THIS CONTRACT SHALL BE THE COMPLETE AND EXCLUSIVE CONTRACT BETWEEN PURCHASER AND SELLER WITH RESPECT TO PRODUCT AND/OR SERVICES AND MAY BE MODIFIED ONLY IN A WRITING SIGNED BY SELLER’S AUTHORIZED REPRESENTATIVE. NO PRIOR OR OTHER CONTEMPORANEOUS PROPOSALS, QUOTATIONS, STATEMENTS, FORECASTS, SAMPLES, MODELS, SPECIFICATIONS, COURSE OF DEALING OR USAGE OF TRADE SHALL BE PART OF THIS CONTRACT BETWEEN PURCHASER AND SELLER.

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3. Delivery and Risk of Loss

Except as otherwise provided on the face of this document, (i) the Product shall be shipped FCA Seller's production facility (according to INCOTERMS® 2020) to Purchaser at such locations as Purchaser directs in writing; (ii) all risk of loss, of any Product sold hereunder shall pass to Purchaser at the point of delivery to carrier at Seller's facility; and (iii) Purchaser shall bear the cost of freight from Seller's shipping location to Purchaser's directed location. Seller's performance shall be deemed to have occurred at the point of delivery to carrier at Seller's production facility. Any dates and times quoted for delivery of Product or the provision of services are approximate only. Notwithstanding anything to the contrary herein, as collateral security for the payment of the purchase price of Product, Purchaser hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Purchaser in, to and under all Product, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this Section constitutes a purchase money security interest under the North Carolina Uniform Commercial Code. Purchaser agrees to execute any document deemed necessary or appropriate by Seller, in its sole discretion, to perfect or enforce such purchase money security interest of Seller, or in the alternative, Seller may file or record financing statements or other appropriate documents without Purchaser's signature.

4. (RETROFIT) Services

If Seller will provide any (RETROFIT) Services to Purchaser, this document shall specify the type and detail of such (RETROFIT) Services. In respect of any such (RETROFIT) Services, notwithstanding anything to the contrary contained in this document (including its Terms and Conditions of Sale), Seller does not (nor does any affiliate of Seller) guaranty or offer any warranty in respect of: (a) the actual achievements of any (RETROFIT) Services in terms of energy savings or return on investment ("ROI"), (b) the accuracy of the calculations, or (c) that the ROI will take place within the expected period and in the estimated amounts. Any annual energy savings, calculated on the basis of the assumed parameters of the end-user's current equipment, are non-binding and are purely estimates. Actual energy savings and ROI may differ from those shown in any commercial or technical proposals, which shall be non-binding on Seller.

5. Price

The price of the Product and/or Services shall be the price set out in this document. If no price is set out in this document, the price shall be as set out in Seller's published price list. The price of any Product and/or Services (as applicable): (a) excludes the costs of packaging, insurance and transport of the Product and excludes any applicable import duties and tariffs, customs fees, export licensing fees, or import or export taxes, federal, state, provincial or local sales, use, property, or value added taxes or other any taxes or official charges, all of which are Purchaser's sole responsibility, and (b) shall be quoted in United States Dollars unless other currencies are stated in this document. Prior to Purchaser's acceptance of this Contract, Seller may change any price without notice. Following Purchaser's acceptance of this Contract, Seller reserves the right to reasonably raise prices if there has been a significant increase in the cost of certain factors that impact the determination of such prices, including the cost of materials, the cost of wages, and any governmental or regulatory charges.

6. Acceptance and Rejection

Promptly upon receipt of Product delivered hereunder, Purchaser shall inspect such Product for any damage, defect or shortage. All claims for shortage or non-delivery and any claim for damage or defect which could reasonably be discovered in the course of such inspection shall be waived unless Purchaser shall notify Seller in writing of the same within ten (10) days after receipt of such shipment of Product to which the claim relates. If Purchaser rejects in whole or in part any nonconforming shipment of Product, Purchaser shall provide Seller written Notice of such rejection not later than ten (10) days after receipt of such shipment of Product. If Purchaser fails to provide Seller with such Notice, Purchaser shall be deemed to have accepted the applicable shipment of Product. Upon written Notice of nonconformity of any Product, Seller shall have the right to cure said nonconformity within a reasonable time even though the time for delivery has expired. Except as provided herein, all sales of Product hereunder shall be considered final and Purchaser shall have no right to return Product without the prior written permission of Seller, which permission may be withheld by Seller at Seller's sole discretion.

7. Method of Payment

Except as otherwise provided on the face of this document, all payments due hereunder to Seller shall be paid to Seller in United States Dollars not later than thirty (30) days following the receipt of the applicable invoice. All invoices are payable at Seller's address as listed in such invoice. Except as other-

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wise expressly provided elsewhere in this Contract, all payments shall be due and payable without offset, discount or any reduction in the Contract price, without deduction for any exchange or conversion, and also without deduction for any taxes or duties levied by any governmental authority. Any payment received from or for the account of Purchaser may be accepted and applied by Seller against any indebtedness owing by Purchaser, as shown by the books and records of Seller, without discharge of the remainder of any such indebtedness regardless of any statement by Purchaser referring to or accompanying such payment. Any invoiced amount which is not paid within ten (10) days of its due date shall be assessed a late payment fee at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law with respect to such obligations, whichever is less. Purchaser shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. Seller may, at any time, in its sole discretion, limit or cancel any credit terms given to Purchaser as to time and amount for any reason, including, without limitation, in case of any change of acceptable credit insurance coverage related to Purchaser's account; and as a condition to Seller's obligations under this Contract (including manufacturing or delivering all or any part of Product and/or providing any Service), Seller may, in its sole discretion, require Purchaser to (A) pay in cash an amount sufficient to cover the unpaid Contract price (including all related transportation, storage and other costs to be charged to Purchaser), or (B) open and confirm a letter of credit acceptable to Seller, or (C) comply with other conditions of payment required by Seller from time to time. Seller shall not be responsible for any delay attributable to Purchaser's default of payment terms on prior order or on prior invoices.

8. Default

Purchaser shall be in default and fundamental and material breach of this Contract upon the occurrence of any of the following: (a) Purchaser's uncured breach or nonfulfillment of this Contract or any other contract with Seller; (b) Purchaser's failure to open any letter of credit required by Seller in accordance with this Contract; (c) Purchaser's failure to make timely payment to Seller for any installment of Product; (d) Purchaser's failure to accept any installment of non-defective Product; (e) Purchaser's insolvency, calling of a meeting of its creditors, or general assignment for the benefit of its creditors; or (f) commencement of bankruptcy, insolvency, reorganization, arrangement or similar proceedings concerning Purchaser (but, in the case of involuntary proceedings, only if not dismissed within thirty (30) days after commencement). In the event of any such default by Purchaser, Seller may, in addition to any other rights and remedies under applicable law, exercise any one or more of the following rights and remedies, which are intended to be cumu-

lative and not mutually exclusive: (A) cancel any part of this Contract (including any warranty) or any other contract with Purchaser (with Purchaser liable for damages); (B) defer any shipment under this Contract or any other contract; (C) declare immediately due and payable all outstanding invoices under this Contract or any other contract; (D) immediately repossess all or any part of Product in transit or in the custody or control of Purchaser pursuant to this Contract or any other contract, at the sole risk and expense of Purchaser; (E) finish all or any portion of its performance of this Contract and charge Purchaser up to the full Contract price and (F) re-sell all or any part of Product covered by this Contract or any other contract at public or private sale, with Purchaser responsible for all losses and expenses incurred in such sale.

9. Cancellations

Purchaser shall have no right to cancel a purchase order without first obtaining the prior written consent of Seller. Should Seller consent to the cancellation by Purchaser of a given purchase order, Purchaser shall reimburse Seller for (i) the costs of the any materials acquired or used in contemplation of fulfilling such order, (ii) other direct costs reasonably incurred by Seller in connection with Seller's performance pursuant to such purchase order up to the time of receipt of Notice and (iii) an additional amount equal to 10% of the aggregate amount reimbursed pursuant to subsections (i) and (ii) above as a cancellation processing fee.

10. Limited Warranties

10.1 FOR A PERIOD OF ONE YEAR FROM THE DATE OF PURCHASER'S RECEIPT OF PRODUCT SOLD HEREUNDER, SELLER WARRANTS THAT SUCH PRODUCT SHALL BE OF SELLER'S STANDARD QUALITY AND SHALL MATERIALLY CONFORM TO ANY SAMPLES APPROVED BY PURCHASER, IF ANY. SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. SELLER SPECIFICALLY MAKES NO WARRANTIES AS TO ANY SERVICES OR AS TO COMPLIANCE WITH LAWS, REGULATIONS, STANDARDS AND/OR CONVENTIONS INCLUDING ANY RELATED TO THE ENVIRONMENT OR TO THE PACKAGING, LABELING AND/OR TRANSPORT OF HAZARDOUS GOODS. NO WARRANTY SHALL APPLY TO (I) SHIPPING DAMAGE, (II) DAMAGE CAUSED BY IMPROPER INSTALLATION OR IMPROPER WIRING, INCLUDING INCORRECT ELECTRICAL VOLTAGE, (III) PRODUCT THAT HAS BEEN MODIFIED OR ALTE-

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RED IN ANY WAY, (IV) DAMAGE CAUSED BY CORROSION, ABRASION, OR SEVERE TEMPERATURES, OR (V) PRODUCT THAT HAS BEEN SUBJECTED TO IMPROPER MAINTENANCE, ABUSE, MISUSE, ABNORMAL USAGE, OR ACCIDENT. Other than any sample approved by Purchaser, any samples or specimens only represent the average quality of the Product, and customary and reasonable deviation of the Product from any samples or specimens are permissible. The foregoing warranties are not transferable and are not intended to become the basis of any bargain upon the resale of the Product by Purchaser.

10.2 Purchaser warrants that it shall fully comply with all label directions for the handling, storage, possession or use of Products sold hereunder and Purchaser agrees that it shall indemnify and hold Seller harmless from all claims (including, without limitation, attorneys' fees) of personal injury or property damage resulting from any negligence, gross negligence, recklessness or willful misconduct on the part of Purchaser or from any failure of Purchaser to comply with the terms of this warranty.

10.3 Purchaser further warrants that it shall comply with all applicable laws, regulations and ordinances. Purchaser further warrants that it shall maintain in effect all the licenses, permissions, authorizations, consents and permits that Purchaser needs to carry out its obligations under this Contract. Purchaser further warrants that it shall comply with all export and import laws of all countries involved in the sale of any Product under this Contract or any resale of any Product by Purchaser. Purchaser assumes all responsibility for shipments of any Product requiring any government import clearance. If any governmental authority imposes antidumping or countervailing duties or any other penalties on any Product, Seller will use commercially reasonable efforts to minimize the adverse effects or impacts on the Parties arising from such duties and/or penalties, but Seller shall have the right, in its sole discretion, to (A) charge Purchaser for the actual amount of any such duties and/or penalties or (B) terminate this Contract.

11. Exclusive Remedies

IN THE EVENT PURCHASER REJECTS ANY NONCONFORMING PRODUCT FOLLOWING INSPECTION IN ACCORDANCE WITH SECTION 6 ABOVE (WHETHER OR NOT OCCURRING AS A RESULT OF SELLER'S ALLEGED NEGLIGENCE OR GROSS NEGLIGENCE OR ANY OTHER CAUSE OF ACTION

ARISING OUT OF THIS CONTRACT), THEN PURCHASER'S EXCLUSIVE REMEDY, AND SELLER'S SOLE LIABILITY AND OBLIGATION, FOR SHORTAGE OF PRODUCT, DAMAGED OR DEFECTIVE PRODUCT (WHETHER OR NOT OCCURRING AS A RESULT OF SELLER'S ALLEGED NEGLIGENCE OR GROSS NEGLIGENCE) OR ANY OTHER CAUSE OF ACTION ARISING OUT OF THE CONTRACT, INCLUDING BREACH OF WARRANTY, IS EXPRESSLY LIMITED TO REPLACEMENT OF NONCONFORMING PRODUCT OR PAYMENT OF AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE PRODUCT FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION. PURCHASER SHALL HAVE NO RIGHT TO SETOFF, TO WITHHOLD PAYMENT OR TO MAKE A REDUCTION IN PRICE. PURCHASER'S REMEDY OF REPLACEMENT OR REFUND IS AVAILABLE ONLY IF NONCONFORMANCE WAS NOT CAUSED BY PURCHASER (INCLUDING BUT NOT LIMITED TO PURCHASER'S MISUSE, UNAUTHORIZED MODIFICATIONS, NEGLIGENCE, IMPROPER TESTING, IMPROPER STORAGE, OR IMPROPER TRANSPORTATION) OR BY ACCIDENT, FIRE OR OTHER HAZARD. ANY SUCH REPLACEMENT SHALL BE MADE AS SOON AS PRACTICABLE AFTER PURCHASER NOTIFIES SELLER IN WRITING REGARDING THE REJECTED PRODUCT. ANY SUCH REPLACEMENT OR REFUND SHALL APPLY ONLY TO THE SPECIFIC REJECTED PRODUCT AND NOT TO ALL PRODUCT GENERALLY.

12. Limitation of Liability

WITHOUT LIMITING THE GENERALITY OF ANY OTHER PROVISION IN THIS CONTRACT LIMITING OR EXCLUDING LIABILITY OF SELLER, THE DAMAGES RECOVERABLE BY PURCHASER BASED ON ANY CLAIM OF ANY KIND WHATSOEVER (INCLUDING NEGLIGENCE) ARISING FROM OR IN ANY WAY CONNECTED TO THIS CONTRACT, ANY PRODUCT OR ANY SERVICE SHALL NOT BE GREATER THAN THE ACTUAL CONTRACT PRICE OF THE APPLICABLE PRODUCT OR SERVICE PAID BY PURCHASER WITH RESPECT TO WHICH SUCH CLAIM IS MADE, AND IN NO EVENT SHALL SELLER, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING PUNITIVE OR TREBLE DAMAGES OR ATTORNEY'S FEES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF PURCHASER OR ITS AFFILIATES, CLIENTS OR CUSTOMERS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF BUSINESS, GOODWILL, PROFITS, USE OF MONEY OR USE OF PRODUCTS OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, GROSS NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE IN CONNECTION WITH OR ARISING OUT OF THE CONTRACT, EXCEPT IN THE CASE OF PERSONAL

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INJURY OR PROPERTY DAMAGE WHERE AND ONLY TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. TO THE EXTENT PURCHASER INCORPORATES OR CAUSES OTHERS TO INCORPORATE THE PRODUCT IN ITS OWN PRODUCT OR THE PRODUCTS OF ANY THIRD PARTY, SELLER SHALL NOT BE LIABLE FOR THIRD PARTY CLAIMS FOR INFRINGEMENT OF LETTERS PATENT, REGISTERED DESIGN, TRADEMARK OR COPYRIGHT RESULTING FROM SUCH INCORPORATION AND BASED UPON THE USE OF THE PRODUCT OR THE MANUFACTURE, USE, SALE OR OFFER FOR SALE OF ANY PRODUCT CONTAINING SUCH PRODUCT, EXCEPT AS SUCH LIABILITY FOR THIRD PARTY CLAIMS FOR INFRINGEMENT IS EXPRESSLY REQUIRED BY APPLICABLE LAW AND NOT WAIVABLE BY PURCHASER.

PURCHASER ASSUMES RESPONSIBILITY FOR ALL PERSONAL INJURY AND PROPERTY DAMAGE RESULTING FROM THE HANDLING, POSSESSION, USE, RESALE OR DISPOSAL OF THE PRODUCT. ANY ACTION BY PURCHASER FOR BREACH OF THE CONTRACT BY SELLER OR ANY OTHER CAUSES OF ACTION OF PURCHASER EXPRESSLY ALLOWED UNDER THE CONTRACT MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

13. Indemnity

Purchaser agrees to indemnify, hold harmless and defend Seller and Seller's shareholders, members, managers, directors, officers, employees and agents, and the directors, officers, employees and agents of any Seller parent, subsidiary or related company (the "Seller Indemnitees") from and against any and all claims, suits, losses, damages, costs, fees and expenses arising out of the death or injury to person or damage to property resulting from the sale, marketing or use of any Product by Purchaser or from any negligence, gross negligence, recklessness, or willful misconduct on the part of Purchaser, except to the extent that such claims, suits, losses, damages, costs, fees or expenses arise or result from any negligent or wrongful act or omission of Seller.

14. Insurance

Seller shall obtain insurance coverage as required by law and such other insurance coverage as Seller deems necessary, in its sole discretion, to fulfill its obligations under the Contract.

15. Force Majeure

No liability shall result from Seller's nonperformance or delay in performance hereunder, when due to (i) war (whether or not declared and whether or not the United States or the country in which Purchaser's place of business is located is a participant),

act of the public enemy, act of God, riot, fire, explosion, flood, storm, accident, sabotage, pandemic, or epidemic; (ii) strike, lockout or other labor trouble (whether or not such labor trouble is within the reasonable control of Seller); (iii) compliance with any law, act, regulation, priority, request or recommendation of any governmental authority (including laws, regulations and orders pertaining to the protection of the environment); (iv) unavailability, shortage or significant increase in the cost of fuel, raw materials, energy sources or labor; (v) mechanical failure or breakdown of equipment; or (vi) any contingency beyond the reasonable control of Seller interfering with the production, supply, transportation, or consumption of the Product covered by the Contract or with the supply of raw materials used in connection herewith, provided Seller gives Notice to Purchaser of the commencement, expected duration, estimated effect on ability to perform, and the termination of the event which causes its inability to perform. In such event, quantities so affected will be eliminated from the Contract without liability to either Party thereof. If Seller is prevented from supplying Product due to an event of Force Majeure, Purchaser may obtain a supply of substitute Product during the period of nonperformance by Seller. Upon Notice of Seller's ability to resume performance, Purchaser will make all reasonable efforts to resume purchases under the Contract at the earliest date. Otherwise, the Contract shall remain unaffected. Seller, shall, during any period of shortage due to any event of Force Majeure, allocate its supply of Product and of such raw material among its various uses thereof (e.g., manufacturing and sales) in a fair and equitable manner. In the event deliveries pursuant to the Contract have been suspended due to an event of Force Majeure for any consecutive three (3) month period, either Party may cancel the Contract upon thirty (30) days written Notice to the other Party.

16. Intellectual Property

All Intellectual Property Rights in and to any Deliverables shall be owned by Seller. Seller hereby grants Purchaser a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Purchaser to make reasonable use of the Deliverables.

17. Miscellaneous

17.1 Remedies not Exclusive. Except as provided in Section 11 above, all remedies available to the Parties for breach of obligations herein are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

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- 17.2 Amendments. The Contract may not be supplemented, altered or modified by the use of any other documents or oral communications unless agreed to in writing by Seller. Seller reserves the right to amend and update Seller's its Terms and Conditions of Sale from time to time and any such updated Terms and Conditions of Sale shall apply to all future business relations between the Parties.
- 17.3 Governing Law.
- 17.3.1 For domestic sales, this Contract shall be governed and construed under the laws of the State of North Carolina, excluding its choice of law rules.
- 17.3.2 For international sales, the United Nations Convention on Contracts for the International Sale of Goods (the "Sales Convention") shall, to the extent applicable and as limited herein, govern this Contract and the rights and obligations of the Parties hereunder. Notwithstanding the foregoing, in the event of any inconsistency or conflict between provisions of the Contract (including its Terms and Conditions of Sale), on the one hand, and the Sales Convention, on the other hand, the provisions of the Contract shall govern and prevail. To the extent of any such inconsistency or conflict, the provisions of the Contract shall be deemed to derogate from the provisions of the Sales Convention within the meaning of Article 6 thereof. Further, without limiting the generality of the foregoing, the following provisions of the Sales Convention are hereby excluded from the Contract: Articles 8(3), 9, 11, 16(2), 39(2), 44, 46, 50, and 84(1). Questions that are not expressly settled in the Contract or by application of the Sales Convention are to be settled in conformity with the internal laws of the State of North Carolina, excluding its choice of law rules. For international sales not governed by the Sales Convention, the internal laws of the State of North Carolina, excluding its choice of law rules, shall govern this Contract and the rights and obligations of the Parties hereunder. The Convention on the Limitation Period in the International Sale of Goods is hereby excluded and shall not govern any claim arising from or relating to this Contract or the sale or purchase of Product.
- 17.4 Dispute Resolution.
- 17.4.1 For domestic sales, each Party consents to the exclusive jurisdiction of a state or federal court of competent jurisdiction in Guilford County, North Carolina for purposes of any action brought under or as the result of a breach of this Contract, and each Party waives any objection thereto. The Parties each further consent and agree that the venue of any action brought under or as a result of a breach of this Contract shall be proper in a state or federal court of competent jurisdiction in Guilford County, North Carolina, and they each waive any objection thereto.
- 17.4.2 For international sales, any dispute arising out of or related to this Contract or the sale, use or purchase of Products shall be settled by binding arbitration in the State of North Carolina administered in accordance with Rules of Arbitration of the International Chamber of Commerce in effect on the date of such arbitration, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration proceedings, and all documents, pleadings and awards related thereto shall be in English. The arbitration award shall be stated in the currency of payment specified in the Contract or, if no such currency is specified, in United States Dollars, and the reasons for the award shall be stated therein. The arbitrator(s) shall have no power to alter or modify any provision of this Contract. Any award made pursuant to any such arbitration proceeding will be recognized by and enforceable pursuant to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10 June 1958.
- 17.4.3 The dispute resolution provisions set forth above do not prevent either Party from seeking injunctive relief as appropriate in a court of competent jurisdiction with regard to the other Party's breach of the Contract. Once injunctive relief is granted or denied by a court of competent jurisdiction, the underlying dispute between the Parties will be submitted to the dispute resolution provisions consistent with the procedures of this Section.
- 17.4.4 If any Party institutes any legal suit, action or proceeding against the other Party to enforce this Contract (or obtain any other remedy regarding any breach of this Contract) or otherwise arising out of or relating to this Contract, including, but not limited to, contract, equity, tort, fraud and statutory claims, the prevailing Party in the suit, action or proceeding is entitled to receive, and the non-prevailing Party shall pay, in addition to all other remedies to which the prevailing Party may be entitled, the costs and expenses incurred by the prevailing Party in conducting the suit, action or proceeding, including attorneys' fees and

THE CONTRACT, WHICH CONSISTS EXCLUSIVELY OF THIS DOCUMENT (INCLUDING ITS TERMS AND CONDITIONS OF SALE), TOGETHER WITH ANY WRITTEN SUPPLY AGREEMENT SIGNED BY BOTH PARTIES RELATED TO THE SALE OF PRODUCT TO PURCHASER AND ANY DOCUMENT PREVIOUSLY SUBMITTED BY SELLER TO PURCHASER, FORMS THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND EXCLUSIVELY GOVERNS ALL SALES AND PURCHASES OF PRODUCT HEREUNDER, NOTWITHSTANDING ANY TERMS AND CONDITIONS APPEARING IN ANY PURCHASE ORDER, QUOTATION, ACKNOWLEDGMENT OR OTHER DOCUMENT OF PURCHASER. ANY ADDITIONS, MODIFICATIONS OR CONTRADICTIONS TO THE TERMS OF THE CONTRACT APPEARING IN A PURCHASE ORDER, QUOTATION, ACKNOWLEDGMENT OR OTHER DOCUMENT OF PURCHASER ARE HEREBY EXPRESSLY REJECTED WITHOUT FURTHER NOTICE TO PURCHASER. ANY CONDUCT BY PURCHASER RECOGNIZING THE EXISTENCE OF AN AGREEMENT SHALL BE DEEMED AN ACCEPTANCE OF THE TERMS OF THE CONTRACT.



expenses, and court costs, even if not recoverable by law (including, without limitation, all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings).

17.5 Severability. In the event any provision of the Contract is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of the Contract will remain in full force and effect.

17.6 Waiver. A failure by either Party to insist on performance of any of the terms of the Contract, a failure by either Party to exercise any right or privilege, or a waiver of any breach hereunder shall not constitute a waiver of any other right or privilege, whether of the same or similar type.

17.7 Confidential Information. All non-public, confidential or proprietary information of Seller, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Purchaser, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Contract is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Purchaser shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Purchaser at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

17.8 Nonassignability; Binding on Successors. Any attempted assignment of the rights or delegation by Purchaser of its obligations under the Contract, whether by operation of law or otherwise, shall be void without the prior written consent of the Seller. In the case of any permitted assignment or transfer of or under the Contract by Purchaser, the Contract shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of Purchaser. This Contract is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit,

or remedy of any nature whatsoever under or by reason of the terms of this Contract.

17.9 Ambiguities. Ambiguities, if any, in this Contract shall not be construed against either Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

17.10 Survival of Obligations. Any termination of the Contract shall not affect any monies owing or obligations incurred by either of the Parties prior to the effective date of the termination. Provisions of this Contract which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Contract. The representations and warranties set forth in these Terms and Conditions of Sale shall survive expiration or termination for any reason of the Contract.

17.11 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Contract 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.

17.12 Notices. Any Notice under this Contract shall be in writing and addressed to the Parties at the addresses set forth on the first page of this document or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise expressly provided elsewhere in this Contract, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

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THE CONTRACT, WHICH CONSISTS EXCLUSIVELY OF THIS DOCUMENT (INCLUDING ITS TERMS AND CONDITIONS OF SALE), TOGETHER WITH ANY WRITTEN SUPPLY AGREEMENT SIGNED BY BOTH PARTIES RELATED TO THE SALE OF PRODUCT TO PURCHASER AND ANY DOCUMENT PREVIOUSLY SUBMITTED BY SELLER TO PURCHASER, FORMS THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND EXCLUSIVELY GOVERNS ALL SALES AND PURCHASES OF PRODUCT HEREUNDER, NOTWITHSTANDING ANY TERMS AND CONDITIONS APPEARING IN ANY PURCHASE ORDER, QUOTATION, ACKNOWLEDGMENT OR OTHER DOCUMENT OF PURCHASER. ANY ADDITIONS, MODIFICATIONS OR CONTRADICTIONS TO THE TERMS OF THE CONTRACT APPEARING IN A PURCHASE ORDER, QUOTATION, ACKNOWLEDGMENT OR OTHER DOCUMENT OF PURCHASER ARE HEREBY EXPRESSLY REJECTED WITHOUT FURTHER NOTICE TO PURCHASER. ANY CONDUCT BY PURCHASER RECOGNIZING THE EXISTENCE OF AN AGREEMENT SHALL BE DEEMED AN ACCEPTANCE OF THE TERMS OF THE CONTRACT.



The Royal League



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