
MAYER Textile Machine Corporation

TERMS & CONDITIONS OF SALE

December 1st, 2017

1. Machinery, Products and Services; Terms & Conditions of Sale.

Any machinery that is the subject of a sale by Mayer Textile Machine Corporation ("Seller") is referred to herein as "Machinery." Unless stated otherwise, any parts or products other than Machinery that are the subject of a sale by Seller are referred to collectively as "Products," and each a "Product." Any services sold or provided by Seller to install Machinery at Buyer are referred to as "Installation Services." Unless stated otherwise, troubleshooting, repair, machinery setup or calibration services not related to installation of new Machinery sold or provided by Seller to Buyer are referred to as "Services." All sales by Seller of Machinery and/or Installation Services shall be governed by (a) a separate written agreement signed by an authorized representative of Seller ("Signed Agreement"), and (b) these terms and conditions ("Terms"), whether or not they are specifically referenced in or incorporated by such agreement. Seller will not be deemed to have entered into any contract for the sale or provision of Machinery or Installation Services without a Signed Agreement. All sales by Seller of Products other than Machinery, or for Services other than Installation Services, shall be governed by and subject to (a) a Signed Agreement, Seller's last/final Offer to Sell ("Offer"), or Seller's Order Confirmation ("Confirmation"), as applicable, and (b) these Terms, whether or not they are specifically referenced in or incorporated by the Signed Agreement, Offer, or Confirmation. Sales of Machinery, Products, Installation Services, and/or Services also may be subject to additional signed agreements and documents concerning financing, as applicable. Any irreconcilable conflict between these Terms and any express terms in the Signed Agreement, Confirmation, or Offer shall be resolved in favor of the Signed Agreement, or if none, the Confirmation, or if none, the Offer. Seller's acceptance of Buyer's purchase order or commencement of performance shall not constitute acceptance of any of Buyer's terms and conditions. Any sale of Products other than Machinery, and/or any sale of Services other than Installation Services, that Seller may elect to make without use of a Signed Agreement, Offer, or Confirmation shall be governed by and subject to these Terms and any Seller invoice concerning such sale. These Terms may not be amended or modified except as agreed and approved by Seller in writing. Any terms additional to or different from these Terms, including but not limited to terms contained in any Buyer's purchase order or terms and conditions of purchase, are deemed material and are hereby expressly rejected. Buyer's assent to these Terms shall be conclusively presumed from any of the following (upon which Seller may rely): Buyer's (a) execution of a Signed Agreement; (b) receipt of Seller's Confirmation without written objection sent to Seller within ten (10) days after receipt of the Confirmation, (c) instructing Seller to ship any of the Products or provide any Services after receipt of Seller's Confirmation, (d) acceptance of or payment for all or any part of the Products or Services, or (e) taking any other action evidencing Buyer's acceptance of the benefits of the agreement between the parties.

2. Entire Agreement; Modification.

As to the sale or provision of Machinery and/or Installation Services, these Terms, together with the Signed Agreement, shall constitute the complete and final agreement between Seller and Buyer (hereinafter, this "Agreement"), and shall supersede completely any and all prior oral or written communications, representations or understandings between the parties concerning the subject matter of this Agreement. As to the sale or provision of Products and/or Services, these Terms, together with a Signed Agreement, Confirmation, or Offer, as applicable, shall constitute the complete and final agreement between Seller and Buyer (hereinafter, this "Agreement"), and shall

supersede completely any and all prior oral or written communications, representations or understandings between the parties concerning the subject matter of this Agreement. No modification of this Agreement or waiver of any of its terms will be binding on Seller unless clearly expressed in writing and signed by an authorized representative of Seller. This section excludes, among other things, purported modifications and waivers by oral agreement, course of performance, and usage of trade. Seller and Buyer expressly agree that Seller may modify these Terms from time to time, and such modifications shall be binding upon Buyer.

3. Specifications; Technical Advice.

The only specifications that apply to any Machinery or Products shall be those that are expressly set forth in this Agreement. Seller assumes no obligation, responsibility or liability of any kind for or as to any technical advice, any information or data contained in data sheets, any brochures or other advertising and/or informational material, any properties of samples or specimens and/or structure and durability details, or any other information of any kind furnished to Buyer (including any of the same that concerns the use or capabilities of Machinery or the material specifications, quality requirements, or any other aspect of any products that Buyer desires or intends to produce with any Machinery), any and all of which Buyer accepts and relies on at its sole risk, and none of which shall excuse or release Buyer from its duty of determining, at its own risk, whether the Machinery is suitable for Buyer's purpose. Seller shall not be obliged to check whether any details or specifications provided by Buyer infringe upon any third party property rights, and any risk of infringement shall be borne solely by Buyer.

4. Delivery.

Delivery dates are approximate. Seller's failure to meet an indicated delivery date will not constitute a breach of this Agreement. If Seller's production or delivery is delayed, Seller may allocate production and delivery of Products or Machinery among its customers in a manner it deems reasonable. As to Machinery, no agreed time or period of delivery shall begin until (a) Buyer has met any and all obligations and conditions necessary for the performance of the Agreement by Seller (including in particular Buyer's submission of documents, specifications, drawings and details required for the production of the Machinery); and (b) Seller has received from Buyer any and all information required for manufacture and delivery of the Machinery; and (c) Buyer has provided to Seller any required down payment or advance payment, has provided proof that it has issued any required letters of credit, and has furnished any required security. No Buyer request to modify the Machinery after the Agreement has been signed or for change in specification, delivery time or order value will be deemed effective unless agreed to by Seller in a signed writing (provided, however, that technical changes made by Seller that are due to its manufacturing processes, to legislative changes or to changes resulting from normal product maintenance shall be allowed). In the event of any such accepted Buyer request, Buyer acknowledges and agrees that time of delivery can change and that a new estimated delivery date will be provided by Seller. Acceptance of Machinery or Products by Buyer upon delivery shall constitute a waiver by Buyer of any claim for damages on account of delay in delivery or performance. Installation Services of Machinery can only begin and be performed after Buyer has met all conditions of delivery and delivery and shipment have occurred, and when Buyer provides and maintains all infrastructure and working conditions (including electrical, water, fuel, and other connections, space, and appropriate environmental conditions, including but not limited to appropriate temperature and humidity levels/limits) which Seller, in its discretion, deems necessary or appropriate for the successful installation and/or testing of the Machinery and/or Products that are incorporated in the Machinery. Buyer shall provide, at its own cost and expense and using its own employees or contractors, equipment and tools to place Machinery and its main components in its location.

5. Force Majeure.

Seller shall not be liable for delays in deliveries caused by accidents, breakdowns, strikes, labor disputes, lockouts, floods, fires, explosions, war acts, acts of God, transportation difficulties, shortages or delays in delivery of materials, restrictions imposed by law or Governmental agencies, or caused by any like or different cause or contingency beyond the control of Seller, whether such cause or contingency happens to Seller, or its suppliers or subcontractors, and delays so caused shall not give Buyer grounds for refusing to accept deliveries or for cancellation of this Agreement. If a delivery is delayed for any of the causes aforesaid and continues for a period of six (6) months, then either party hereto may cancel this Agreement upon written notice to the other party. If Buyer cancels, sums advanced by Buyer shall be returned by Seller less any expenses and costs incurred by Seller. If Seller cancels, such advanced sums shall be returned to Buyer. If separate delivery dates are stated for different Products, then said six (6) month period shall be computed separately for each such Product from each such date.

6. Shipment and Risk of Loss.

Shipments from Seller are ex-works unless otherwise agreed by Seller in writing. Shipments to Buyer that originate from Seller's affiliates will be based on INCOTERMS that ensure compliance with export and import laws and regulations. If the INCOTERMS include transfer of risk and loss at a port or any other location, Buyer will be responsible for all demurrage, storage and container charges if Buyer does not arrange timely pickup and onward shipping. If Buyer does not take over any Machinery or Products within seven (7) days after Seller advises Buyer of its availability to Buyer, then, at Seller's option, Seller may store the Machinery or Products at a location of Seller's choice and at Buyer's cost and risk. Once Machinery or Products are transferred, Buyer shall file and pursue any claims related to loss, damage or delay in transit directly with its carrier, and Buyer shall not assert any such claims against Seller or deduct from any amounts owing to Seller.

7. Separate Shipments.

Each shipment by Seller shall be treated separately and distinctly with respect to, but only with respect to, forwarding, terms of payment, and the giving of notice and making of any claims by Buyer.

8. No Cancellation.

Buyer may not cancel this Agreement or any purchase of Machinery or Products, or any part thereof, without Seller's written consent.

9. Inspection; Acceptance.

Buyer shall conduct an inspection of any Machinery or Products upon arrival at Buyer's facility. Buyer shall, within twenty-four (24) hours of arrival, provide written notice to Seller of any damage, and Seller and Buyer will cooperate to address the damage with the carrier and the carrier's applicable insurance coverage. For Machinery, in conjunction with Installation Services, and in any event, within sixty (60) days after receipt of the Machinery, Buyer shall conduct all inspections, examinations and/or testing of the Machinery to the extent it deems necessary to determine the presence of any defects or non-conformities in the Products or Installation Services. If the Machinery is performing in accordance with its applicable specifications, Buyer shall provide written acceptance of the Machinery. Within sixty (60) days after Buyer's receipt of the Machinery, Buyer must give written notice to Seller specifically stating in detail the nature and extent of any claims of any alleged defect or non-conformance in the condition or quality of such Machinery, or of any alleged non-conformance with any agreed specifications. In any event, Buyer's failure to furnish such written notice of alleged defect or non-conformance within such 60-day period shall constitute irrevocable acceptance of the Machinery and Installation Services. In the event Buyer has altered or modified the Machinery in any way, such conduct shall constitute irrevocable acceptance of the Machinery and Installation Services. No claim for damages for non-conforming Products will be allowed unless Buyer provides Seller with written notice of the claim within ten (10) days of the date the Products were delivered to Buyer. To assert such a claim, Buyer must first (a) at Seller's request, return to Seller all (or, if agreed by Seller, a statistically relevant percentage) of the Products claimed to be non-conforming, and (b) provide reasonable evidence to support the claim, including, if requested by Seller, results of diagnostic tests, evaluations, and investigations performed by Buyer. Products for which damages are claimed or may be sought shall not be returned, repaired, or discarded without Seller's prior written consent. If requested by Seller, the defective or non-conforming Products must be returned to Seller at Buyer's expense within ten (10) days of Seller's request. No claims of, rejections of, or returns for non-conforming Products will be permitted unless Buyer cooperates in full with Seller's technical personnel to determine the cause of the non-conformance.

10. Purchase Price; Payment; Taxes.

The purchase price of Machinery and any Products or Services shall be as stated in the Signed Agreement, or if none, the Confirmation, or if none, the Offer. Payment for any Products or Services shall be due immediately upon invoice unless otherwise expressly agreed. Unless otherwise expressly agreed by Seller in writing, all prices are exclusive of packing, packaging, loading, and shipping/carriage charges and costs, cargo insurance, assembly, taxes, and other assessments and/or ancillary expenses or charges of any kind, all of which shall be borne by Buyer, and Buyer further agrees to reimburse Seller for any such payments made by Seller. Buyer shall pay Seller's invoices without discount, set-off or reduction for any reason, including any asserted warranty claims or other claims of non-performance by Seller. Interest shall accrue and be paid by Buyer on all past due amounts at the rate of one and a half percent (1-1/2%) per month or the highest lawful rate, whichever is less.

11. Accord and Satisfaction.

Checks or payments, whether full or partial, received from or for the account of Buyer, regardless of writings, legends or notations upon such checks or payments, or regardless of other writings, statements or documents, shall be applied by Seller against the amount owing by Buyer with full reservation of all Seller's rights and without an accord and satisfaction of Buyer's liability.

12. Security Interest.

To secure all of Buyer's obligations to Seller under this Agreement, Buyer grants Seller a security interest in all Machinery and other Products purchased from Seller, together with all proceeds and products thereof (collectively, the "Collateral"). Buyer agrees not to permit any liens to attach to, and not to dispose of (other than in the ordinary course of business), any of the Collateral prior to satisfaction of all of its obligations to Seller, and Buyer agrees not to permit anything to be done that may impair the value of any of the Collateral or the security intended to be afforded by this Agreement. Buyer shall promptly notify Seller in writing of any attempted liens on, or attachments or captures of, any Collateral by any third parties. Any costs of intervention that may arise shall in any case be borne by Buyer. In the case of a transfer of Buyer's business to a third party, Buyer shall be obliged to inform the third party about Seller's security interest in the Collateral. Buyer agrees to maintain appropriate insurance on all Collateral sufficient to protect Seller's security interest therein. Buyer irrevocably appoints Seller (which appointment is coupled with an interest) Buyer's attorney-in-fact to do all acts and things, including the execution and filing of financing statements, or the filing of this Agreement as a financing statement, that Seller may deem necessary to perfect the security interest created by this Agreement and to protect the Collateral. Buyer agrees to execute promptly any financing statements or further documents which Seller deems necessary to perfect Seller's security interest, and to perform all other acts necessary for the perfection and preservation of such security interest.

13. Defaults.

Each of the following shall constitute a "Default" under this Agreement: (a) Buyer's failure pay in full when due any sum due under this Agreement; or (b) Buyer's failure to pay in full when due any sum due under any other agreement with Seller; or (c) Buyer's breach of any provision of this Agreement, including any of the Terms; or (d) Buyer's breach of any provision of any other agreement with Seller; or (e) Buyer's attempted cancellation of this Agreement; (f) a default by Buyer under any of Buyer's financing agreements relating to Seller, Machinery, Products, Installation Services, or Services; (g) Buyer's inability to obtain financing related to the purchase of any Machinery, Products, Installation Services, or Services under this Agreement; (h) Buyer's insolvency; (i) the commencement of any insolvency or bankruptcy proceeding or reorganization (whether voluntary or involuntary) by or against Buyer or any guarantor of Buyer's obligations under this Agreement; (j) the appointment of a receiver or trustee for Buyer; (k) any assignment for the benefit of creditors made by Buyer; and/or (l) Buyer's failure to provide, upon request, adequate assurances of Buyer's complete and timely performance by Buyer of any and all of its obligations under this Agreement or any other agreement with Seller.

14. Seller's Rights and Remedies upon Default.

Buyer shall be liable to Seller for all expenses incurred and/or damages suffered by Seller in connection with any Default by Buyer. In the event of a Default by Buyer, Seller shall have the right, in its sole discretion and without prejudice to any other rights or remedies available to it, to do any one or more of the following: (a) immediately suspend performance and/or cancel any unfinished portion of this Agreement and/or any other outstanding contracts or orders with Buyer; (b) terminate this Agreement, cancel any other contract or order, modify any payment terms, or withhold further delivery of any Machinery, Products, Installation Services, or Services that are not paid for in full; (c) declare immediately due and payable all unpaid amounts for all Machinery, Products delivered, Installation Services provided, and/or Services provided under this Agreement and/or under any or all other agreements or orders with Buyer; (d) provide Machinery, Products or render outstanding services exclusively upon Buyer's advance payment or upon Buyer's furnishing of security; (e) retain for its sole benefit any advance payment or deposit provided by Buyer to Seller under this Agreement, which advance/deposit Buyer shall conclusively be deemed to have forfeited to Seller; (f) commence any and all suits or proceedings against Buyer to recover all sums due to Seller and/or any and all damages suffered by Seller, which damages may specifically include any and all lost profits and consequential and/or incidental expenses or damages incurred or suffered by Seller; (g) as to any Collateral, exercise any and all of the rights and remedies of a secured party under the Uniform Commercial Code or as otherwise provided by law, including but not limited to requiring Buyer to assemble and make any Collateral reasonably available to Seller at one or more places designated by Seller and reasonably convenient to the parties in connection with the same, and applying any and all proceeds from the disposition of any Collateral to Buyer's obligations in such order as Seller shall elect, and/or (h) pursue any or all other available remedies as allowed by law. Additionally, if Buyer refuses or fails to accept delivery of any Machinery or Products tendered for delivery, then Seller, without prejudice to Seller's other lawful remedies, may either store such Machinery or Products or cause them to be stored in a warehouse, for Buyer's account and at Buyer's cost, risk, and expense, or sell such Machinery or Products, without notice, to any buyer at public or private sale, and hold Buyer liable for any difference between (a) the contract price for such Machinery or Products (and any other unpaid amounts to which Seller is entitled under this Agreement), and (b) the price at which such Machinery or Products are resold less the costs and expenses of such resale, including but not limited to any brokerage commissions. Buyer further agrees that any institution(s) of suit by Seller for any unpaid balance due and owing shall not terminate any security interest of Seller. Buyer will pay as part of the debt secured by the Collateral all amounts incurred by Seller to maintain, repair and otherwise protect the value of the Collateral and/or in taking possession of, disposing of or preserving the Collateral after any default of any of Buyer's obligations to Seller. Buyer agrees to pay all costs, fees and expenses incurred by Seller, including reasonable attorneys' fees and court costs, associated with the collection or recovery of any amounts owed by Buyer to Seller. The remedies of Seller provided herein are cumulative and not alternative, and Seller shall have the right to enforce one or more of said remedies or any other remedy Seller may have in whole or in part successively or concurrently. Seller's rights and remedies set forth in this Agreement are in addition to all legal and equitable rights and remedies available to Seller, under any applicable law.

15. Limited Warranty as to Machinery and Products.

Seller warrants that the Machinery and Products sold hereunder will, for a period of one (1) year from the date of delivery (ex works) thereof, be free from defects in material and workmanship under normal use and service, not arising from any misuse, negligence, acts or omissions of Buyer or its agents or employees or by carriers or accident in connection with the use, installation, transportation or the like of the Machinery or Products, and subject to the further limitations contained in this Agreement. This limited warranty shall not apply to any Machinery or Products, or any components thereof, subject to wear and tear. No damages arising from excessive strain, the use of unsuitable materials, faulty operating conditions, insufficient maintenance, faulty operation, chemical, electromechanical or electric impacts, or any use not expressly authorized by Seller shall be covered by warranty. Buyer's sole and exclusive remedy against Seller arising out of or in connection with any claimed defect in any Machinery or Products, whether for apparent or hidden defects or otherwise, whether based upon contract, strict liability, negligence or otherwise, and whether for personal injury, commercial loss or other monetary loss, shall be, at Seller's option and in Seller's sole discretion, (a) the reconditioning, repair or replacement of such specific individual parts contained in Machinery (but not the Machinery itself) or Products as Seller determines in its sole judgment and upon inspection to be defective, provided that Buyer has given written notice to Seller promptly upon detection of the defects claimed, with details of such defects, or (b) the issuance to Buyer of a credit or refund in the amount of the purchase price of such parts or Product(s), less depreciation from the date of delivery to Buyer, determined in accordance with generally accepted accounting principles. THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SHALL EXPIRE ON THE DATE THAT IS ONE (1) YEAR

AFTER THE DATE OF DELIVERY (EX WORKS) OF THE MACHINERY OR PRODUCTS IN ISSUE. This limited warranty applies only to Buyer and shall in no event expire later than upon the sale or transfer of the Machinery or Product(s) by Buyer to any third party. This limited warranty shall be void if (a) Buyer adds, subtracts or replaces any parts, equipment or accessories to the Machinery or Products purchased unless such accessions or additions are bought from Seller and installed by Seller-approved personnel, or (b) Buyer alters or modifies the Machinery, Products or any components thereof in any manner without Seller's prior express written approval, or (c) Buyer fails to follow the recommended maintenance procedures described in the documentation for the Machinery or Products. Additionally, faulty assembly or commissioning by Buyer or third parties will result in loss of all warranties. Minor variations from the agreed or common condition do not constitute defective Machinery, Products, Installation Services, or Services. In cases where faulty parts are sent for repair to the delivering factory, the cost of transport both ways shall be borne by Buyer unless otherwise expressly agreed by Seller. AN ACTION FOR BREACH OF THIS LIMITED WARRANTY MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

16. Limited Warranty as to Installation Services; Services.

If Seller is providing Installation Services, Seller warrants that the employees or contractors of Seller performing these services ("Technicians") will install the Machinery in accordance with the specifications agreed to by Seller in writing. Seller's obligations under this warranty are EXPRESSLY LIMITED to providing additional or substitute Technicians, or additional Technician time, as needed to cause the Machinery to be installed in accordance with such specifications. Seller's obligations under this section shall cease at such time as Buyer accepts the Machinery, or at such time as the Machinery is functioning in accordance with such specifications, even if Buyer has not accepted the Machinery. If Seller is providing Services, Seller's obligations are limited to performing the work as Seller has agreed in writing. Buyer acknowledges and agrees that such Services cannot be guaranteed; time spent and result of service work will depend on the state of Buyer's machinery/equipment being worked on and/or the nature of identified or unidentified problems. Seller will provide periodic status reports on Services to Buyer, and Buyer shall have right to end the Services, subject to Buyer's obligations to pay for all Services provided prior to termination and perform all other obligations that may be owed to Seller. Any obligations of Seller under this section shall be rendered null and void if Buyer unreasonably interferes with the Technicians, fails to allow the Technicians reasonable access to Buyer's facilities, or fails to provide appropriate infrastructure and working conditions (including electrical, water, fuel, and other connections, space, and appropriate environmental conditions) desirable for the successful installation of the Products. Buyer shall provide, at its own cost and expense and using its own employees or contractors, equipment and tools to place Machinery and its main components in its location, all electrical, water, fuel, and other connections, space, and appropriate environmental conditions as required by the documentation accompanying the Machinery. AN ACTION FOR BREACH OF THIS LIMITED WARRANTY MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

17. Limitation of Liability.

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 15 AND 16 ABOVE, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR TO ANY OTHER PERSONS FOR ANY LOSS OR DAMAGE, DIRECT OR INDIRECT, ARISING OUT OF OR CAUSED BY THE USE, INSTALLATION, OR OPERATION OF THE MACHINERY OR PRODUCTS. SELLER SHALL IN NO EVENT BE LIABLE TO ANY PERSON OR FIRM (INCLUDING ANY ASSIGNEE OF BUYER) EXCEPT BUYER. ANY WARRANTIES AND REMEDIES PROVIDED BY SELLER HEREIN ARE EXCLUSIVE AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, ARE IN LIEU OF ALL OTHER REMEDIES, WARRANTIES OR REPRESENTATIONS BY SELLER, WHETHER SUCH ARE EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL OTHER OBLIGATIONS AND/OR LIABILITIES, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES TO OTHER PROPERTY, INCONVENIENCE, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SALES, LOSS OF REVENUE OR OTHER FINANCIAL LOSS, DEMURRAGE CHARGES, COST OF SHIPMENT, DOWNTIME, LOSS OR DELAY OF USE OF MACHINERY OR PRODUCTS, ANY OTHER DAMAGES RESULTING FROM DELAY IN DELIVERY, LOSS OF USE OR DELAY IN USE OF MACHINERY OR PRODUCTS, OR ANY CLAIMS FOR DAMAGES TO PERSON OR PROPERTY RESULTING FROM THE INSTALLATION SERVICES OR SERVICES OR THE USE OF MACHINERY OR PRODUCTS. THE ESSENTIAL PURPOSE OF THIS PROVISION AND THE LIMITATIONS OF WARRANTY ABOVE IS TO LIMIT THE LIABILITY OF SELLER ARISING OUT OF THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT SUCH LIMITATIONS ARE INTEGRAL TO THE AMOUNT OF CONSIDERATION LEVIED IN CONNECTION WITH THE SALE OF THE MACHINERY OR PRODUCTS AND THE PERFORMANCE OF SERVICES OR INSTALLATION SERVICES, AND THAT IN THE ABSENCE OF SUCH LIMITATION, SUCH CONSIDERATION WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER. No sales representative or other person is authorized to give any additional warranties on Seller's behalf or to assume for Seller any other liability in connection herewith.

18. Confidentiality.

Any pricing, proposals, agreements, offers, confirmations, drawings, documentation and/or other sensitive commercial or technical information provided by Seller to Buyer are proprietary to Seller and (a) shall be held in confidence by Buyer, (b) shall only be used by Buyer in connection with the sale, and (c) shall not be used for any other purposes or disclosed or made accessible in any manner to third parties without Seller's prior written consent. Buyer shall be liable for any loss to Seller or commercial gain by others from Buyer's unauthorized use or disclosure of confidential information occasioned by Buyer's failure to comply with this provision. The reproduction of

such items shall only be permitted upon Seller's prior written approval. Upon request, or when no order is placed, all offer documentation must be returned without delay to Seller.

19. Intellectual Property.

Except to the extent expressly stated to the contrary in a writing signed by Seller, nothing in this Agreement shall be construed as a grant or conveyance to Buyer of any license or other right as to any of Seller's or its affiliates' or any third party's intellectual property rights, whether patent, trademark, trade secret, copyright, or otherwise. All improvements and developments related to the Products and/or the Services, including any joint efforts of Seller and Buyer, will be owned exclusively by Seller, and Buyer shall reasonably cooperate with Seller in executing any assignments and other documents Seller deems necessary to accomplish the same.

20. Indemnification.

Buyer agrees to indemnify, defend and hold harmless Seller, its affiliates, and all of their respective directors, officers, employees, agents, successors and assigns from and against any and all damages, losses, expenses, costs (including without limitation reasonable attorney's and accountant's fees), claims, suits, actions, judgments or other liability asserted against or incurred by Seller arising out of (a) Buyer's breach of its obligations under this Agreement or under any other agreement or arrangement with Seller, (b) Buyer's negligence or misconduct, (c) Buyer's misuse or misapplication of any Machinery or Products or damage to any Machinery or Products caused by Buyer or its employees, agents or customers, (d) infringement or other violation of Seller's or Seller's affiliates' intellectual property rights, and/or (e) any injury or damage of any kind (physical or otherwise) suffered by any Technician or other person at Buyer's facilities if such injury or damage is (i) caused in whole or in part by the negligence, gross negligence, reckless or intentional act or omission of Buyer or any of its employees, agents, representatives, or contractors; or (ii) caused by any dangerous or hazardous conditions or practices at Buyer's facilities.

21. Waiver.

The failure of Seller to enforce any of the provisions of this Agreement shall not be construed as or constitute a waiver of Seller's right to enforce each and every provision of this Agreement.⁴

22. Assignment.

Buyer shall not assign or delegate any of its rights or obligations under this Agreement without the prior written consent of Seller, and any attempt to do so will be ineffective and constitute a Default. This Agreement is for the sole and exclusive benefit of the parties hereto and their permitted successors and assigns. Nothing expressed or referred to in this Agreement will be construed to give any other person any legal or equitable right, remedy or claim under or with respect to this Agreement.

23. Independent Parties.

Seller and Buyer are independent parties and nothing in this Agreement shall make either party an agent, partner, joint venturer, or legal representative of the other.

24. Headings.

The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

25. Severability.

If any provision or part of a provision of this Agreement is declared invalid, illegal, or unenforceable under applicable law, the affected provision will be considered omitted or modified to conform to applicable law. The validity, legality, and enforceability of all other remaining provisions or parts of provisions will remain in full force and effect.

26. Governing Law; Jurisdiction; Venue; Fees.

This Agreement, as well as any dispute between Buyer and Seller concerning any Machinery, Products, Installation Services, or Services, shall be governed by the laws of the State of North Carolina, without regard to its conflict of laws principles. Buyer and Seller agree that, except as expressly provided below, the proper and exclusive venue for any actions, claims or disputes arising out of or related to this Agreement or the breach thereof, or any Machinery, Products, Installation Services, or Services, shall be in the state and/or federal courts located in Guilford County, North Carolina, and each party waives any objections or defenses to such venue and/or such courts' exercise of personal jurisdiction over them and hereby submit to the exercise of personal jurisdiction over them by such courts. It is provided, however, that nothing herein shall prevent Seller from initiating/pursuing any and all actions or proceedings to protect and enforce its security interest in any Collateral (and any related claims) in any jurisdiction in which such Collateral may be located. If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorneys' fees, which shall be no less than its actual and reasonable attorneys' fees.