

TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS OF SALE ("Terms") govern the sale and purchase of goods and services ("Goods") described in the written confirmation of order (the "Confirmation") issued by Structural Composites Industries LLC ("Seller") to the buyer identified on the Confirmation ("Buyer").

The Confirmation, if deemed an acceptance of Buyer's offer, is expressly made conditional on Buyer's unqualified agreement to all Terms set forth in this document. If these Terms are deemed an offer or a counter-offer, acceptance by Buyer is expressly limited to the Terms set forth in this document. Any proposal for additional, conflicting or different terms or any attempt by Buyer to alter any of these Terms shall not operate as a rejection of the offer, and this offer shall be deemed accepted by Buyer without additional, conflicting or different terms. Seller hereby notifies Buyer of Seller's rejection of any additional, conflicting or different terms or conditions in any of Buyer's documents or other communications conveyed by Buyer, and any such additional, conflicting or different terms or conditions shall not be binding on Seller.

1. Quotations; Acceptance.

(a) All quotations are given by Seller and all orders are accepted by Seller only upon and subject to these Terms to the exclusion of any other terms and conditions, including Buyer's terms and conditions of purchase. Quotations expire 21 days from the date thereof (unless otherwise expressly stated in the quotation). No quotation given by Seller is an offer of sale capable of acceptance so as to create a binding contract.

(b) All orders are subject to Seller's written acceptance via a Confirmation issued by Seller. Seller's acceptance of Buyer's order is conditioned on Buyer's unqualified assent to these Terms in lieu of any terms and conditions in Buyer's purchase order or other communication. Seller hereby rejects any term, provision or condition in Buyer's order or other communication differing from, in conflict with, or purporting to add to or modify these Terms, and any such term, provision or condition shall be deemed stricken. In the event of any conflicts, differences or inconsistencies between these Terms and those set forth in any order, quotation, acknowledgment or any other related document, these Terms will govern.

(c) Each accepted order and Confirmation constitutes an entire and separate contract to which these Terms shall apply. If no Confirmation is issued by Seller, Buyer is deemed to accept these Terms as the only terms and conditions governing the purchase and sale of Goods by Buyer's acceptance of delivery of Goods.

2. Delivery Dates. If Seller will be unable to deliver the Goods within 120 days of the delivery date specified in Seller's quotation, then Seller will provide written notice to Buyer of the revised delivery date. Buyer may cancel the delivery of such Goods by giving written notice of cancellation to Seller within 10 days of receipt of such written notice.

3. Order Cancellation. Except as provided in Section 2 Delivery Dates above, if Buyer cancels an order prior to delivery, Buyer shall pay to Seller any actual or anticipated expenses and loss of profits, including but not limited to all costs of research and development, all costs of certification and all costs of custom design and fabrication, each as applicable. The Buyer agrees that such payments are intended as any actual estimate of damages to Seller as a result of the cancellation and are not intended as and shall not be construed as a penalty.

4. Price. "Price" means the price for the Goods identified on the Seller's Confirmation. The Price is Seller's confidential information and shall not be disclosed to any third party. Unless otherwise provided on the Confirmation, all Prices are stated in US dollars and do not include shipping, transportation, storage, special packaging or services, insurance, taxes, duties and other governmental charges. Buyer shall pay any taxes, duties and other governmental charges, whether now or hereafter imposed, levied, collected, withheld or assessed, including but not limited to, excise, harmonized, sales, use, VAT, customs duties, withholding taxes, value added taxes, or similar charges (collectively, "Taxes"), but excluding taxes based on Seller's net income, and Buyer agrees to indemnify Seller against liability for payment of such Taxes. Such Taxes, when required to be collected by Seller, will appear as separate additional items on the invoice. In the event of any increase in excess of ten percent (10%) in the cost to Seller of raw materials (including metal), Seller reserves the right, following consultation with Buyer, to increase the Price.

5. Payment; Security Interest.

(a) Seller will tender invoices for each shipment no earlier than the date of shipment, whether for partial or full delivery.

(b) Unless otherwise provided on the Confirmation, all sales will be either "COD" (collect on delivery) or "CWO" (cash with order). Seller may at any time refuse, modify or withdraw extensions of credit. Seller reserves the right to require payment in advance, COD or by letter of credit, and to otherwise modify credit terms. Unless otherwise provided on the Confirmation, all payments hereunder shall be made in US dollars. Payments not received by the due date shall be subject to interest from the date first past due until the date paid at a rate of 1.5% per month, or the maximum rate permitted by applicable law, whichever is less. All payments shall be made without any deduction or set-off whatsoever.

(c) Buyer grants to Seller, and Seller reserves a purchase money security interest in the Goods, and in the proceeds thereof, for all amounts owing to Seller for such Goods. Upon request by Seller, Buyer shall execute any reasonable documents required for Seller to perfect such security interest. Payment in full of all amounts owed for such Goods shall release the security interest on the Goods.

(d) If any payment is overdue, Seller may suspend or cancel all or any part of any other shipments to Buyer.

6. Buyer's Duty to Warn; Indemnification of Seller. This Section 6 applies when Goods purchased under these Terms are new cylinders or cylinders refurbished by Seller.

(a) Buyer acknowledges that Seller does not customarily affix to Goods warnings labels that set forth hazards related to use of Goods themselves or intended contents ("Substance-specific Warnings"), because, as Buyer hereby acknowledges, Seller is not aware of the ultimate use of Goods or contents with which Goods will be filled. Buyer further acknowledges that Buyer has a duty to warn end-users about dangers inherent in filling and using high-pressure gas cylinders, including a duty to warn end-users about dangers related to filling cylinders with certain gases (including those designated as hazardous substances), and that Seller has no such duty. Buyer shall be solely responsible for, and assumes all obligations for and liability associated with, determining the use of Goods and the foreseeable maintenance and refilling risks, as well as affixing to Goods all appropriate warning labels, including those warning labels required by law and any appropriate Substance-specific Warnings.

(b) Buyer expressly acknowledges that Seller may affix warning labels to Goods at Buyer's written request. In the event that Seller agrees to affix warning labels to Goods at Buyer's request, Buyer shall be solely responsible for, and assumes all obligations for and liability associated with, specifying which warning labels shall be affixed, including Substance-specific Warnings. Seller will affix Substance-specific Warning labels based upon Buyer's written specifications as to intended contents.

(c) Buyer shall defend, indemnify and hold Seller harmless against all demands, actions, claims, losses, liabilities, judgments, damages, costs, expenses, professional fees (including attorneys' fees and other legal costs) arising out of or related to (i) failure or alleged failure to provide or affix warning labels, including Substance-specific Warnings, on Goods, (ii) any deficiencies in warning labels provided or affixed to Goods, or (iii) Seller's act of providing or/and affixing warning labels to Goods in accordance with Buyer's specifications, including causes of action in negligence (whether such negligence be active, passive, sole, joint, concurrent, or gross on the part of the Seller), product liability, strict liability or warranty.

7. Valve Installation; Indemnification of Seller. This Section 7 applies when Goods purchased under these Terms (i) are new or refurbished cylinders onto which Seller installs new or used valves and/or related equipment at Buyer's request and/or (ii) include tapered threaded valves at Buyer's request.

(a) Buyer expressly acknowledges that Seller may install new or used valves (which may include O-rings, gauges, regulators and/or other related equipment and which may include tapered threading as requested by Buyer) onto Goods at Buyer's request and to Buyer's specifications. In the event that Seller agrees to install new or used valves (with or without tapered threading) and/or related equipment at Buyer's request, Buyer shall be solely responsible for, and assumes all obligations for and liability associated with, valve suitability (including compatibility with local standards for the country of use) and operation of valve and related equipment.

(b) Buyer shall defend, indemnify and hold Seller harmless against all demands, actions, claims, losses, liabilities, judgments, damages, costs, expenses, professional fees (including attorneys' fees and other legal costs) arising out of or related to (i) selection of new or used valves and/or related equipment to be installed onto Goods by Seller at Buyer's request, (ii) selection and suitability of tapered valve threading, including any related valve to cylinder connection and seal deficiencies, (iii) installation of new or used valves and/or related equipment onto Goods, (iv) any deficiencies in new or used valves and related equipment installed, or (v) Seller's act of installing new or used valves (with or without tapered threading) and/or related equipment onto Goods in accordance with Buyer's specifications, including causes of action in negligence (whether such negligence be active, passive, sole, joint, concurrent, or gross on the part of Seller), product liability, strict liability, or warranty.

8. Shipment.

(a) Unless otherwise provided on the Confirmation, all Goods sold hereunder shall be shipped FCA Seller's factory (Incoterms 2000). Unless otherwise agreed, any shipment date or period specified by Seller is an estimate only, and time of shipment is not of the essence of the contract. Seller shall not be liable for any loss or damage sustained by Buyer as a result of any delay in delivery. Seller reserves the right to allocate production deliveries among its customers in a fair and reasonable manner. Seller reserves the right to charge extra transport, insurance and other costs for Goods requiring expedition or special risk.

(b) Seller will ship Goods to destinations designated in the order. Seller may choose the method of shipment in its discretion unless the order sets forth specific shipping instructions, in which case Seller will use commercially reasonable efforts to ship the order in accordance with such instructions. Seller reserves the right to ship Goods in installments, and these Terms shall apply to each installment. Seller is entitled to tender an invoice for each installment.

(c) Unless otherwise set forth in the Confirmation, Buyer shall not be entitled to refuse to accept Goods if the quantity supplied is within 5% (plus or minus) of the number ordered. In the event of such excess or deficiency, the price payable shall be adjusted pro rata. Partial deliveries are permitted. Where Goods are shipped in installments, each shipment shall constitute a separate order.

(d) If Buyer is to supply drawings, specifications or other information or data or accessories for Goods, Buyer shall supply the same in sufficient time to enable Seller to deliver Goods and carry out any services in respect thereof. If not so supplied, Seller may rescind the Confirmation and cancel the order without liability whatsoever, and Buyer shall pay for all costs incurred by Seller in respect of the order up to the date of rescission. If Buyer provides drawings, specifications, information or data to Seller for the purposes of any order, Buyer shall defend, indemnify and hold Seller harmless from and against all demands, actions, claims, losses, liabilities, damages, costs and expenses (including but not limited to attorneys' fees and costs) related to the infringement of any patent, copyright, design right or other intellectual property of any third party by such drawings, specifications, information or data, Goods based thereon, or the use thereof.

(e) No changes to, reschedules of or cancellations of any order may be made without Seller's prior written consent (and subject to any terms or conditions Seller may include with such consent). No changes, reschedules or cancellations will be permitted during the 60 day period prior to the scheduled shipment date for Goods.

(f) If Buyer refuses or fails to take delivery of Goods tendered in accordance with these Terms, or fails to take any action necessary on its part for delivery and/or shipment of the Goods, Seller shall be entitled to terminate the order with immediate effect, to dispose of the Goods as Seller may determine, and to recover from Buyer any loss and additional costs incurred as a result of such refusal or failure.

9. Shortages, Damaged Goods and/or Loss in Transit.

(a) Any claims by Buyer in relation to Goods damaged awaiting transit or in transit, shortage or non-delivery must be made in writing to Seller and the carrier, as applicable. In case of shortage, the claim must be made within 3 days of Buyer's receipt of the shipment, and in case of non-delivery of a shipment, within 3 days of the scheduled delivery date. In the case of damage, the claim must be made within 10 days of Buyer's receipt of shipment. Goods in respect of which any claim of damage or shortfall is made must be preserved intact (including packing) for a period of 14 days from Seller's receipt of notice of the claim, within which time Seller and carrier shall have the right to enter Buyer's premises to investigate the claim and inspect Goods.

(b) If no claims are made by Buyer pursuant to paragraph (a) of this Section 9 within the time periods specified therein, Buyer shall be deemed to have accepted Goods upon shipment.

10. Risk and Title.

(a) Risk of loss of or damage to Goods shall transfer to Buyer upon delivery to the carrier.

(b) Until Seller receives full payment in cash or cleared funds for Goods sold to Buyer under these Terms, Seller shall retain title to such Goods, and any proceeds hereof (or claim thereto) shall be held in trust for the benefit of Seller.

(c) To the fullest extent permitted by applicable law, failure on the part of Buyer to pay the Price when due shall give the Seller the right without prejudice to any other remedies (i) to recover Goods with or without prior notice and to enter upon any premises in which Goods may be for the purposes of recovery, and Buyer shall render all reasonable assistance to Seller to enable Seller to so recover Goods, or (ii) to prevent Buyer from reselling or parting with possession of Goods until the Price shall have been paid in full.

(d) Until such time as title passes to Buyer, Buyer shall store Goods separately from other goods of Buyer and in such a manner as they can be clearly identified as the property of Seller. Seller shall be entitled to inspect such storage from time to time.

11. Records. Buyer shall maintain appropriate records (and provide Seller with reasonable access to the same) to ensure that Goods can be traced to end-user(s) to ensure that recall or inspection of Goods can take place, if necessary.

12. Export; Compliance with Law. Buyer acknowledges and agrees that Goods (and the movement, transfer and use thereof) are subject to applicable laws, rules and regulations, including without limitation, laws, rules, regulations, directives and executive orders applicable to the import and export of goods, technology and other materials. Buyer shall comply strictly with all such laws, rules and regulations, including tax and foreign exchange laws, rules or regulations. Buyer shall not export, re-export or otherwise transfer Goods except in compliance with all such laws, rules and regulations. Buyer hereby expressly agrees that, without the prior written authorization of the United States Government for Goods produced in the United States or the Canadian Government for Goods produced in Canada, Buyer will not, and will cause its representatives to agree not to export, re-export, divert, transfer or disclose, directly or indirectly, Goods or any related technical information or materials, or any direct product thereof, to any destination, territory, country, entity, person or national restricted or prohibited under US or Canadian export-control laws, and Buyer agrees to obtain representations from its customers that they will not resell or transfer any Goods to such destinations, countries, territories or persons. Buyer shall be solely responsible for obtaining any necessary export or import licenses or authorizations in respect of Goods, and Seller shall be under no liability whatsoever for Goods exported or imported without the requisite licenses or authorizations. Buyer acknowledges that it is neither an agent nor a representative of Seller. Buyer warrants and agrees that it shall comply with all applicable anti-corruption and anti-bribery laws of any country having jurisdiction over Buyer or the sale of the Goods, including but not limited to the US Foreign Corrupt Practices Act, the Canadian Corruption of Foreign Public Officials Act and the UK Bribery Act.

13. Trademarks; Notices. The name "Lux/er" and associated arrow device and the names "L7X", "L6X", "LCX", "G-Store," "Dyetek" and "DyneCell" are trademarks of Seller. Buyer shall not use these or any other Seller trademarks without Seller's prior written permission. Buyer shall not remove, change or obscure any trademark or proprietary rights notice, indicia of manufacturing origin, patent numbers or serial numbers appearing on Goods.

14. Ownership. Seller shall exclusively own and retain all rights, title and interest in and to intellectual property and other proprietary rights (on a worldwide basis) embodied in Goods and any and all inventions, works of authorship, know-how, ideas or information discovered, developed, made, conceived or reduce to practice, by Seller, in the course of performance of these Terms. No right or license therein is transferred to Buyer under these Terms, and Buyer covenants that it will take no action to register or to otherwise interfere with any such rights in the United States of America, Canada or in any other country. Seller reserves all rights to such intellectual property and other proprietary rights.

15. Changes to Specifications; Discontinuance. Seller reserves the right to make any changes to specifications of Goods that do not materially alter their quality or performance, or where change is necessary to conform to any applicable safety or other statutory requirements. Seller also reserves the right to discontinue sale of Goods at any time.

16. Warranty.

(a) Unless otherwise provided on the Confirmation or set forth in separately published Lux/er, Inc. warranties associated with certain specific products, Seller warrants that, for a period of twelve (12) months after the date on which Seller ships Goods to Buyer (the "Warranty Period"), Goods shall conform substantially to Seller's published specifications for such Goods. If Seller determines any Goods do not conform substantially to published specifications, Seller will, at its option, (i) replace Goods found not to conform to published specifications, (ii) take such steps as Seller deems necessary to bring Goods into conformance with published specifications, or (iii) accept return of Goods found to be non-conforming through Seller's Returned Materials Authorization (RMA) process and refund the Price paid for such Goods. If Seller determines through its RMA process that Buyer's warranty claim is valid, then Seller will be responsible for costs associated with shipping Goods back to Seller and returning either repaired or replaced Goods to Buyer. Seller shall not be responsible for any other costs, including costs of removing or reinstalling Goods. The foregoing states Buyer's sole and exclusive remedy and Seller's sole liability related to the order and condition of Goods contained

in these Terms. Except for warranties expressly stated in these Terms or in separately published Lux/er, Inc. warranties provided by Seller to Buyer for applicable products, THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, ORAL, OR STATUTORY, WITH RESPECT TO GOODS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY, CONDITION OR REPRESENTATION OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFRINGEMENT, SATISFACTORY QUALITY, OR OTHER REPRESENTATION ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ALL OTHER WARRANTIES SELLER OR ANYONE PURPORTING TO REPRESENT SELLER MAY HAVE GIVEN, OR WHICH MAY BE PROVIDED OR IMPLIED BY LAW OR COMMERCIAL PRACTICE, ARE HEREBY EXCLUDED. Seller assumes no liability for results of use of Goods purchased from Seller, including without limitation, their use in combination with other components, assemblies or products, or their suitability or unsuitability for a particular use or environment. In the event that the Goods include tapered threaded valves at Buyer's request, (i) Seller does not warrant or guarantee any level of leak-rate performance, and (ii) Buyer assumes all liabilities pertaining to the performance of the valve-to- cylinder connection and seal. Seller's disclaimer of warranties as set forth in this paragraph shall not be diminished or affected by, and no obligation or liability shall arise or grow out of, Seller's rendering of technical advice or service in connection with Goods furnished under these Terms.

(b) The foregoing warranty shall not apply if

- (i) Buyer fails to give written notice to Seller of the alleged nonconformity within the Warranty Period;
- (ii) Goods are not in the condition in which they were shipped;
- (iii) Goods have not been stored carefully and in strict accordance with any instructions issued by Seller;
- (iv) Stipulations contained on or in warning labels, notices, and technical, operating and maintenance data and manuals relating to the Goods have not been adhered to;
- (v) Goods have been used for a purpose other than that for which they were designed or have been negligently or otherwise misused or (without limitation to the foregoing) subjected to heat, dropped, damaged, contaminated by deleterious substances, over-pressurized, over-filled, fitted with incorrect valves or other attachments or components, or Goods or contents thereof have been interfered with in any way by Buyer, Buyer's agents and/or any intended purchaser from Buyer or user of Goods;
- (vi) Seller's identifying marks have been intentionally removed or defaced; or
- (vii) Goods have been altered, repaired or overhauled by anyone other than by Seller or that are covered by other manufacturers' warranties.

Exclusions set forth in subclauses (i)-(vii) shall be referred to collectively as "Exclusions." Buyer agrees that Seller shall not be liable to Buyer, its agents, employees, representatives, affiliates or any intended purchaser from Buyer or user of Goods in the event of loss or damage arising from any Exclusions, and Buyer shall defend, indemnify and hold Seller harmless from all demands, actions, claims, losses, liabilities, damages, costs and expenses (including but not limited to attorneys' fees and costs) whatsoever arising in connection with any Exclusion.

(c) Without limiting the generality of the foregoing, Seller makes no warranty that Goods are or will be delivered free of claims of any person related to patent, copyright, trademark or other intellectual property infringement, violation of any rights (including intellectual property rights) of third parties, or the like. Buyer assumes all risks, including the risk of suit, that Goods or any use of Goods infringe existing or subsequently issued patents, copyrights, trademarks or other intellectual property rights.

17. Limitation of Liability. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR INDIRECT COSTS OR DAMAGES, INCLUDING, WITHOUT LIMITATION, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, RE-PROCUREMENT OR REPLACEMENT COSTS, LOSS OF DATA, OR LOSS OF PRODUCTION OR PROFIT ARISING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY RELATED TO THESE TERMS AND THE SALE OF GOODS HEREUNDER EXCEED THE AMOUNT PAID TO SELLER FOR THE GOODS FROM WHICH SUCH LIABILITY AROSE. FOR PURPOSES OF THIS PROVISION, SELLER INCLUDES SELLER'S DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUBCONTRACTORS AND SUPPLIERS.

18. Force Majeure. Seller shall not be liable for any failure or delay in performance of its obligations under these Terms due to any cause beyond Seller's reasonable control, including but not limited to (a) an act of God, hurricane, tornado, epidemic, earthquake, flood, fire, severe weather conditions, explosion, accident or similar occurrence; (b) an act of a public enemy, war, terrorism, riot, civil disturbance, strike, labor dispute or similar occurrence (or impending threat of any of the foregoing, if such threat might reasonably be expected to cause injury to people or property); (c) inability to obtain materials or supplies; or (d) the act, order, injunction or judgment of any court, administrative agency, or governmental body with jurisdiction over the performance of a party's obligations under these Terms (collectively, "Force Majeure Events"). In the event of the occurrence of a Force Majeure Event, the date of performance shall automatically be extended for a period equal to the time lost by reason of the delay, and Seller will be entitled to allocate deliveries among its customers in a commercially reasonable manner without incurring any liability for any loss or damage thereby occasioned.

19. Breach. If (a) Buyer fails to pay any amount due under these Terms when due, (b) Buyer breaches or defaults on any provision of these Terms, (c) a receiver is appointed for Buyer or its property, (d) Buyer commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within 60 days, or (e) Buyer is insolvent, liquidated or dissolved, all sums owed by Buyer to Seller shall become immediately due and payable without demand or notice, and Seller shall have the right to cancel any outstanding order immediately upon written notice to Buyer, and without any liability whatsoever to Seller. Upon any such occurrences, Seller may apply any of Buyer's money, which may be in the hands of Seller for the purpose of this or any other order, to the payment of any damages to which Seller may be entitled by reason of such breach. Remedies set forth in this Section 19 are in addition to, and not in lieu of, any rights or remedies Seller may be entitled to in law or in equity.

20. Indemnity. Buyer shall defend, indemnify and hold Seller, its directors, officers, agents, employees, representatives and affiliates harmless from and against all demands, actions, claims, losses, liabilities, damages, costs, expenses, professional fees (including attorneys' fees and other legal costs) arising out of or related to (i) any breach of Buyer's obligations under these Terms, or (ii) the use or alteration of Goods by Buyer or its customers or end-users, including causes of action in negligence, product liability, strict liability or warranty. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. The obligations, indemnities and covenants of Buyer contained in this Section 20 shall survive the consummation or termination of the sale of Goods under these Terms.

21. Assignment. Buyer may not assign the order or these Terms or any interest herein or any right to performance due or to become due hereunder, whether by assignment, subcontract, merger, reorganization, operation of law, or otherwise (all of which shall be deemed to be an "assignment"), without the prior written consent of Seller. Any such actual or attempted assignment without Seller's written consent shall constitute a breach by Buyer and shall entitle Seller to terminate these Terms without further liability hereunder. Seller may assert any counterclaims or set-off that Seller may have against Buyer against any assignee, whether or not such counterclaim or set-off arose under or with respect to these Terms. Seller may freely assign or transfer these Terms. These Terms will be binding upon and will inure to the benefit of parties' permitted successors and/or assignees.

22. Notices. All notices, authorizations, and requests required to be given under these Terms shall be deemed given (a) five (5) days after being deposited in the mail postage prepaid, certified or registered, return receipt requested, or (b) two days after being sent by overnight courier, charges prepaid, and addressed as set forth on the order or Confirmation, as the case may be, or to such other address as the party who is to receive the notice or request so designates by written notice to the other.

23. Severability. If any provision of these Terms is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be severed, and the remaining provisions shall remain in full force and effect. Waiver of one provision of these Terms by Seller shall not act as a waiver of any other provision herein. Seller's pursuit of any remedy shall not foreclose Seller from pursuing any other remedy available under the Confirmation, in equity or at law.

24. Governing Law; Jurisdiction and Venue. The validity, interpretation, construction and performance of these Terms shall be governed by the laws of the State of California for Goods produced in the United States, and the laws of the Province of Alberta for Goods produced in Canada, in each case excluding the body of laws known as conflicts or choice of law. The UN Convention on Contracts for the International Sale of Goods shall not apply. For Goods produced in the United States, the California state courts of Riverside County, California, (or, if there is exclusive federal jurisdiction, the United States District Court of the Southern District of California) shall have exclusive jurisdiction and venue over any dispute arising out of, or in any way related to, these Terms, and Buyer hereby explicitly consents to the jurisdiction of such courts. For Goods produced in Canada, the courts of the Province of

Alberta shall have exclusive jurisdiction and venue over any dispute arising out of, or in any way related to, these Terms, and Buyer hereby explicitly consents to the jurisdiction of such courts.

25. Entire Agreement. These Terms represent the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof, and all prior quotations, invoices, negotiations, understandings, representations, and/or agreements of the Seller and Buyer, whether oral or written, are superseded in their entirety. These Terms may only be amended by a writing signed by both Seller and Buyer, and shall not be modified, supplemented, qualified or interpreted by any trade usage or course of dealing.

26. Waiver; Remedies. No failure or delay on the part of Seller to exercise any rights or remedy under these Terms (whether a single or partial or further exercise) shall be construed or operated as a waiver thereof. Rights and remedies provided are cumulative and are not exclusive of any rights or remedies provided by law.

27. Construction. The section headings contained in these Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of these Terms. To the extent the context requires, the singular shall include the plural and the plural shall include the singular. The word "including" shall mean "including but not limited to" unless otherwise specified.

28. Attorneys' Fees. In any legal proceeding or action to enforce or interpret these Terms, the prevailing party shall be entitled to an award of its attorneys' fees, costs and expenses incurred therein.