

## **SECURIKETT, INC. GENERAL TERMS AND CONDITIONS OF SALE**

69 MILK STREET SUITE 217, WESTBOROUGH, MA 01581

### **1. Acceptance**

These Securikett, Inc. General Terms and Conditions of Sale (the “**Terms and Conditions**”) are incorporated into, govern, control and shall apply to: (i) all proposals, quotations, acknowledgments, confirmation letters and invoices issued by Securikett, Inc. (“**Seller**,”); (ii) all purchase orders, releases, and other documents (“**Purchaser Documents**”) issued by purchaser (“**Purchaser**”); and (iii) the purchase and sale of all goods and services (“**Products**”) provided and/or sold by Seller to Purchaser. Seller’s sale or provision of any Products (“**Contract**”) is expressly conditioned upon Purchaser’s assent to, is governed and controlled by, and is subject to these Terms and Conditions and any inconsistent, conflicting, and/or additional terms in Purchaser Documents or otherwise are deemed material and are expressly rejected, and do not form a part of the Contract. Any acceptance of Seller’s offer is expressly limited to acceptance of these Terms and Conditions and any Purchaser Documents issued from Purchaser to Seller shall constitute Purchaser’s assent to these Terms and Conditions. The Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes any prior discussions, negotiations, agreements and understandings. Purchaser represents that it has not relied upon any promises, statements or representations of Seller with respect to the Products, either oral or written, other than those expressly set forth in this Contract.

### **2. Termination or Modifications of Orders**

Neither the Contract nor any related order may be terminated, cancelled or modified by Purchaser except upon terms acceptable to Seller, as evidenced in a signed writing by Seller’s authorized representative and Purchaser shall pay to Seller all resulting direct, indirect, consequential, incidental and other damages suffered by Seller resulting therefrom and/or any increased costs resulting from any modifications to a Contract or related order approved by Seller.

### **3. Delivery and Acceptance**

All Products will be shipped EXW Seller’s location (INCOTERMS® 2020). Title and risk of loss to the Products shall pass at Seller’s tender of the Products to the carrier. Seller shall use commercially reasonable efforts to cause the Products to be shipped and delivered in accordance with the terms of the Contract. Seller guarantees no delivery dates, as all such dates are estimates only. Seller reserves the right to make partial shipments of Products. Seller shall not be responsible or liable to Purchaser for any loss or damage of any nature whatsoever resulting from Seller’s delayed performance in the shipment and/or delivery of the Products for any reason. The Purchaser shall inspect all Products upon delivery and shall notify Seller in writing of any Product defect and/or non-conformance and Purchaser’s rejection of the Product no later than fourteen (14) days after delivery or else Purchaser’s right to reject such Product shall be irrevocably waived; provided, that Purchaser expressly acknowledges and agrees that minor deviations in quality and quantity of Products shall not constitute grounds for rejection, where “**minor deviations**” are defined as (i) deviations in quality (i.e., non-conformances) in 2% or less of the delivered Products or (ii) deviations in quantity (i.e., over-shipment or under-shipment) of 2% or less of the amount of delivered Product compared to the amount in the applicable Contract or related order. Provided that Purchaser provides timely written notice of rejection as set forth in this section, as Seller’s sole and exclusive liability and Purchaser’s sole and exclusive remedy for such defective or non-conforming Products, in Seller’s sole discretion, Seller shall repair or replace such Products or credit Purchaser’s account for the invoice price of such Products in exchange for Purchaser’s return of the Products. Any rejection by the Purchaser must be in writing and state with specificity all defects and/or non-conformances upon which Purchaser will rely to support its rejection. The Seller shall not be in default because of its delays or failure to deliver or perform under the Contract resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling, or order, governmental acts or restrictions; (ii) the lack of labor or usual means of transportation, shortages or inability to obtain sufficient raw materials, components, equipment, fuel, energy, governmental acts or restrictions, or due to allocations or restrictions upon the use of raw materials, other materials, or labor; (iii) fires, floods, explosions, strikes or other accidents, contingencies, or events, at the Seller’s or the supplier’s plant or elsewhere (whether or not beyond Seller’s control) which directly or indirectly interfere with, or render substantially more burdensome, Seller’s production, delivery or performance; and/or (iv) delays by Purchaser in (a) inspecting or acceptance, (b) in furnishing requested specifications, materials, or information, or Purchaser-Provided Materials (as defined below) or defects in any of the foregoing, and/or (c) in making payments or otherwise. In the event Seller determines in its sole discretion that, due to the inability of its sub-suppliers to provide adequate raw materials making delivery of Products under the Contract impossible or commercially impracticable, Seller may upon written notice to Purchaser deliver products substantially equivalent in price and quality to the Products in fulfillment of the Contract, or, if such substantially equivalent products cannot be obtained through commercially reasonable means, then Seller may terminate the Contract upon written notice to Purchaser without further liability.

### **4. Insurance**

Purchaser, at its sole expense, will maintain insurance coverage on the Products at all times until Seller has been paid in full relative thereto. Such insurance shall cover all risks of loss or damage from any cause whatsoever and shall be in an amount equal to the purchase price of the Products, or the full undepreciated replacement value (new) of the Products, at Seller’s option. All insurance will be of a type, form, in amounts, with a company and under terms and conditions satisfactory to Seller. Purchaser shall designate Seller as a lender loss payee and additional party insured on each insurance policy. Such insurance policy shall provide that no cancellation or nonrenewal thereof will be effective without 30 days prior written notice to Seller of such cancellation or nonrenewal.

### **5. Payment**

Unless otherwise provided in the Contract, all invoices shall be paid within thirty (30) days after delivery. Purchaser shall pay all invoices electronically via ACH, EFT, or wire). If Purchaser fails to pay any invoice when due or if, in the judgment of Seller, the financial condition of Purchaser at any time prior to shipment does not justify the extension of credit, then Seller may require payment in advance or otherwise modify the payment terms upon notice to Purchaser. Interest at the rate of one and one-half percent (1 ½%) per month or at the highest rate allowed by law, whichever is less, shall be charged to all overdue accounts. In the event Purchaser shall be in default of any of the terms hereof, or becomes insolvent or proceedings are instituted to declare Purchaser bankrupt, or a receiver is appointed for Purchaser, Seller may terminate the Contract and upon such termination by Seller, any and all claims or demands against Purchaser held by Seller shall immediately become due and payable. Seller may, from time to time, set-off or recoup any debt Seller owes Purchaser against any debt, credit or other obligation or liability payable by Purchaser to Seller (regardless of whether such debt, credit or other obligation or liability arose out of or relates to the Contract). Purchaser shall have no right of set-off/recoupment with respect to Seller whatsoever.

## **6. Prices**

Unless otherwise provided in the Contract, prices shall be those in effect at the time of delivery and all prices are payable in U.S. dollars. Any tax, duty, custom, inspection or testing fee, insurance, shipping fees, or any other fee, interest or charge of any nature together with all penalties and expenses whatsoever imposed by any governmental authority on or measured by the transactions between Seller and Purchaser shall be added to the price of products, and paid by Purchaser in addition to the prices quoted or invoiced. Prices include Seller's standard packaging. Purchaser is responsible for all shipment, insurance, transportation, customs, duties or other related costs. All tooling ("**Tooling**") purchased or manufactured for use by Seller for the exclusive purpose of fulfilling the Purchaser's order under the Contract will be invoiced separately and Purchaser will be responsible for all payments therefor; provided, that all Tooling will remain the sole and exclusive property of Seller and Purchaser shall obtain no ownership rights in such Tooling whatsoever. Seller reserves the right to increase its prices under a Contract at any time upon written notice to Purchaser in the event that Seller's total costs for the Products (including, without limitation, material costs, transport costs, taxes, duties, tariffs or other governmental charges, and/or currency exchange rate fluctuations) increase ten percent (10%) or more between the date of the Contract and the time of delivery of the Products. Purchaser acknowledges that the goods will be imported by Seller from overseas and that import duties, taxes, fees or other charges or governmental measures may be imposed in connection therewith. Should such duties, taxes, fees, charges or measures be imposed, change or be newly introduced between the date of the Contract and the time of delivery, Purchaser shall bear any resulting additional costs; Seller will notify Purchaser of any such change in writing promptly.

## **7. Warranty and Damage Limitations**

Seller warrants the Products will be free from defects in material and workmanship at the time of delivery. In the event a defect in material or workmanship shall arise within the Warranty Period (as hereinafter defined) and such defect is attributable to Seller, Seller shall within a reasonable period of time, at Seller's sole option, repair or replace the Products (or defective portion thereof) or refund the purchase price thereof (the "**Warranty**"). This Warranty is not a warranty of performance, but a limited warranty as to the condition of the Products at the beginning of the Warranty Period. As used herein, "**Warranty Period**" shall mean three (3) months from the date of delivery of Products.

**EXCEPT AS OTHERWISE PROVIDED IN ARTICLE 10 WITH RESPECT TO INFRINGEMENT CLAIMS AND AS LIMITED THEREIN, PURCHASER'S SOLE AND EXCLUSIVE REMEDY UNDER THE WARRANTY AND THE CONTRACT SHALL BE LIMITED TO, AT SELLER'S SOLE DISCRETION, THE REPLACEMENT OR REPAIR OF ANY DEFECTIVE PRODUCTS OR PART THEREOF, OR A REFUND OF THE PURCHASE PRICE PAID BY PURCHASER FOR THE PRODUCTS IN EXCHANGE FOR PURCHASER'S RETURN OF THE PRODUCTS TO SELLER, FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES OF ANY NATURE. IN NO EVENT SHALL SELLER'S LIABILITY HEREUNDER OR OTHERWISE ARISING (INCLUDING WITHOUT LIMITATION INDEMNIFICATION CLAIMS) RELATIVE TO THE PRODUCTS, WARRANTY, OR THE CONTRACT EXCEED IN ANY EVENT OR UNDER ANY THEORY OR CAUSE OF ACTION, THE PURCHASE PRICE PAID BY PURCHASER TO SELLER FOR THE AFFECTED PRODUCTS. SELLER'S WARRANTY HEREIN IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF SELLER, THE MANUFACTURER OF THE PRODUCTS, AND ANY OTHER ENTITY INVOLVED IN THE DESIGN, MANUFACTURE, SALE, OR SERVICING OF THE PRODUCTS (OR ANY PORTION THEREOF) AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES AND RELATED COMPANIES (COLLECTIVELY, THE "MANUFACTURING AND SELLING COMPANIES"), EXPRESS, IMPLIED OR STATUTORY, OR OTHERWISE CREATED UNDER APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND/OR TITLE. THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE CONTAINED HEREIN, AND ANY REPRESENTATIONS AS TO PERFORMANCE AND OTHER MATTERS, EXCEPT AS CONTAINED HEREIN, WERE FOR ILLUSTRATIVE PURPOSES ONLY AND DO NOT CONSTITUTE A WARRANTY. IN NO EVENT SHALL SELLER AND/OR THE MANUFACTURING AND SELLING COMPANIES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, RECALL EXPENSES AND REPAIRS TO PROPERTY INCLUDING THIRD-PARTY CLAIMS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER OR NOT CAUSED BY OR RESULTING FROM DEFECTS IN THE PRODUCTS, THE NEGLIGENCE OF SELLER AND/OR THE MANUFACTURING AND SELLING COMPANIES, BREACH OF CONTRACT, STRICT LIABILITY FOR INJURIES TO PERSON OR PROPERTY, OTHER TORT, OR INDEMNIFICATION. THE WARRANTY SHALL NOT APPLY TO ANY PURCHASER-PROVIDED MATERIALS INCORPORATED IN PRODUCTS (TO THE EXTENT ANY DEFECT IN THE PRODUCTS ARISES OUT OF SUCH PURCHASER-PROVIDED MATERIALS), ANY PRODUCTS OR PORTIONS THEREOF SUBJECTED TO ABUSE, MISUSE, IMPROPER INSTALLATION, MAINTENANCE OR OPERATION, OR ABNORMAL CONDITIONS; IN THE EVENT PURCHASER FAILS TO COMPLY WITH ANY PRODUCT GUIDELINES OR REQUIREMENTS; PHYSICAL ABUSE OF THE PRODUCTS OR ANY COMPONENT THEREOF; ACTS OF VANDALISM; WHERE PARTS OR COMPONENTS OF THE PRODUCTS ARE CHANGED OR MATERIALS USED WHICH DO NOT CONFORM TO SELLER'S ORIGINAL SPECIFICATIONS; WHERE THE DEFECT IS CAUSED BY DESIGNS, MATERIALS,**

**COMPONENTS OR SPECIFICATIONS PROVIDED BY PURCHASER; ACCIDENTS OR DAMAGE RESULTING FROM, INCLUDING, BUT NOT LIMITED TO, FIRE, WATER, WIND, HAIL, LIGHTNING, EARTHQUAKE, THEFT OR SIMILAR CAUSES NOT CAUSED OR CONTRIBUTED TO BY THE SOLE NEGLIGENCE OF SELLER OR ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS; AND TO PRODUCTS WHICH HAVE BEEN TAMPERED WITH, ALTERED, MODIFIED, REPAIRED OR REWORKED BY ANYONE NOT APPROVED BY SELLER.** Notwithstanding anything to the contrary in the Contract, Seller shall not be responsible for, and shall incur no liability with respect to, any Purchaser-Provided Materials and any other information including, but not limited to, specifications, designs, materials, components and drawings supplied by Purchaser or any of its subcontractors. No agent, employee or representative of Seller or the Manufacturing and Selling Companies has the authority to bind Seller or the Manufacturing and Selling Companies to any affirmation, representation or warranty concerning the Products sold hereunder, and unless such affirmation, representation or warranty is specifically included within the Contract, it will not form part of the basis of the Contract and shall not in any way be binding upon Seller or the Manufacturing and Selling Companies or enforceable by Purchaser. Seller's warranties hereunder are extended to and shall be for the sole and exclusive benefit of the original purchaser-user of the Products. The warranties are not assignable or otherwise transferable to any subsequent user of the Products and any sale or other transfer of the Products or any such attempted assignment and transfer of any warranty shall void Seller's warranties, and Seller shall thereafter have no further obligation or liability with regards thereto.

#### **8. Security Interest**

Purchaser hereby grants to Seller and Seller hereby retains a continuing purchase money security interest in the Products, together with all spare parts, attachments, accessories, modifications and substitutions thereto or thereof, whether heretofore or hereafter acquired by Purchaser, together with all proceeds (as presently or hereafter defined by the Uniform Commercial Code ("**UCC**") or Personal Property Security Act ("**PPSA**") as applicable) thereof. The aforesaid security interest shall secure and act as security for any and all indebtedness, liability and obligations of Purchaser to Seller, now existing or hereafter arising. Purchaser hereby appoints Seller as its attorney in fact, and authorizes Seller to, sign/authenticate on behalf of Purchaser such additional documents/records and make/undertake such actions as may be required from time to time to create, amend, extend, continue, maintain or perfect the security interest described herein or otherwise granted to or retained by Seller. In the event Purchaser shall be in default under the Contract, Seller shall have the remedies of a secured party under the UCC or PPSA in addition to the rights and remedies set forth herein. Purchaser hereby agrees to pay Seller's costs and expenses, including, but not limited to, reasonable attorneys' fees and court costs for the determination of any amount due to Seller arising out of or in any way related to the Contract and/or for the collection of any amounts owing to Seller hereunder or incurred in the repossession of the Products.

#### **9. Patent Infringement**

The Parties agree that the UCC shall not apply with regard to any implied warranties related to intellectual property infringement; provided, however, to the extent the UCC or like statute or law is applicable, Seller warrants to the best of its knowledge that any Product sold hereunder when employed in the manner intended by Seller will not in and of itself infringe any patent of the United States of America ("**U.S.**"). **NOTWITHSTANDING WHAT MAY BE OTHERWISE PROVIDED IN THE CONTRACT INCLUDING ARTICLE 8, PURCHASER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS ARTICLE 10 WITH RESPECT TO THE ABOVE ARTICLE 10 WARRANTY SHALL BE LIMITED TO, AT SELLER'S SOLE AND EXCLUSIVE DISCRETION AND ELECTION, (I) SELLER'S DEFENSE OF ANY RESULTING SUIT OR PROCEEDING, BUT ONLY THE DEFENSE RELATED COSTS OR COVERED INDEMNIFICATION AMOUNT UP TO THE PURCHASE PRICE OF THE PRODUCTS THAT ARE THE SUBJECT OF THE CLAIM, (II) SELLER TO PROCURE FOR PURCHASER A RIGHT TO CONTINUE USING THE PRODUCTS; (III) SELLER TO REPLACE THE PRODUCTS WITH NON-INFRINGEMENT GOODS; (IV) SELLER TO MODIFY THE PRODUCTS SO THEY BECOME NON-INFRINGEMENT BUT SUBSTANTIALLY EQUIVALENT TO THE PRODUCTS; OR (V) SELLER TO REMOVE THE AFFECTED PRODUCTS AND REFUND THE PURCHASE PRICE (LESS ALLOWANCE FOR USE, DAMAGE AND OBSOLESCENCE) THEREOF.** Seller's liability under this Article 10 (and the liability of the Manufacturing and Selling Companies) is conditioned upon Purchaser giving immediate written notice of any such indemnification claim, and giving all such information available to Purchaser and such assistance as required by Seller with respect to such claim, and Purchaser's granting to Seller exclusive control of the settlement and litigation of any such suit, proceeding or claim while Seller is obligated to provide a defense and/or indemnification to the extent Seller elects to provide such a defense/indemnification. Seller makes no warranty against infringement of patent rights or any other intellectual property rights resulting from Products or any portions thereof made to Purchaser's specifications, use of any Purchaser-Provided Materials, or the use of the Products in combination with other products or in the practice of any process. Seller shall have no obligation or liability under this Article 10 with regard to any claims of infringement of patent rights or any other intellectual property rights arising out of relating to Products or any portions thereof made to Purchaser's specifications, use of Purchaser-Provided Materials, or the use of the Products in combination with other products or in the practice of any process.

#### **10. Confidential Data; Intellectual Property Rights**

All models, materials, samples and other information submitted by Seller (or an affiliate) shall remain the property of Seller (or an affiliate) and shall be treated as confidential information of Seller and shall immediately upon expiration or termination of the Contract, be returned to Seller (or to the affiliate). All sketches, models, specifications, drawings, designs, data, information, ideas, methods, patterns and/or inventions made, conceived, developed or acquired by Seller (or an affiliate) in connection with the Contract, and any and all intellectual property rights therein and thereto, shall vest in and inure to Seller's full benefit, notwithstanding any charges therefor that may have been or may be imposed by Seller and any payment made by Purchaser therefor, and shall not be disclosed by Purchaser to third-parties without Seller's prior written consent; provided, that the foregoing shall not apply to Purchaser-Provided Materials. Purchaser hereby grants Seller a perpetual, non-exclusive,

royalty-free, worldwide, sub-licensable, transferable license to use Purchaser-Provided Materials to the extent reasonably necessary for Seller to perform under the Contract. Copyright in all materials made available by Seller (or an affiliate) shall remain in Seller (or an affiliate) at all times. Purchaser acknowledges that any information disclosed to Seller (or an affiliate) has not and will not be confidential or a trade secret unless clearly and conspicuously noted on the disclosure or in a writing delivered to Seller at or prior to the time of the disclosure. Any patentable features or any other intellectual property rights developed by Seller (or an affiliate) shall be the sole and exclusive property of Seller (or an affiliate) and Seller (or an affiliate) shall be under no obligation to refrain from using in its business any information, manufacturing processes, or unpatented disclosures which may pass to it from Purchaser in the performance of the Contract. Seller may disclose to Purchaser information that meets the definition of "personal information" or "personally identifiable information" under applicable federal and state data privacy laws ("**Personal Information**"). Purchaser shall not use or disclose such Personal Information to any nonaffiliated third party other than to carry out the purpose for which Seller disclosed such information to Purchaser. Purchaser shall maintain physical, electronic and procedural safeguards in compliance with applicable federal and state laws and regulations to protect the Personal Information received from Seller.

#### **11. Compliance with Laws**

Purchaser acknowledges that the Products may require certain safety features, protections, registration, testing, certification or other similar procedures under applicable federal, state and local laws, regulations and ordinances. Purchaser represents and warrants that it is familiar with all the applicable federal, state and local laws, regulations and ordinances which are or may be in effect relating to Purchaser's use and operation of the Products. Purchaser shall comply in all respects with any and all such laws and ordinances now or hereafter in effect. The Products (and all technology, and/or software contained therein) are sold for use within the U.S. or Canada only. Purchaser shall (a) comply with all applicable export/export control laws of the U.S. and any other foreign countries, governments, agencies or authorities (collectively, the "**Laws**"), and (b) not export or re-export the Products in violation of any such Laws. In cases where export licenses or approvals are required, Purchaser shall be solely responsible for obtaining such required licenses or approvals from the appropriate governmental agencies or authorities. Upon request by Seller, Purchaser shall provide Seller with all of Purchaser's and the customer's information and documentary and other assistance required to maintain strict compliance with the Laws. Furthermore, Purchaser and its subcontractors will comply with (i) any and all other applicable, international, federal, state, provincial and local law, regulations, executive orders and other rules of law as in effect at any time during the Contract; and (ii) any and all Seller policies addressing such legal requirements. In particular and without limitation, Purchaser and its subcontractors will not take any action that will render Seller liable for a violation of the U.S. Foreign Corrupt Practices Act or similar applicable law ("**FCPA**"), which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, governmental entity, political party or instrumentality to assist it or Seller in obtaining or retaining business or to gain an unfair business advantage. Purchaser further represents that neither it nor any of its subcontractors will utilize forced, compulsory, or child labor in connection with the Contract. Seller may request Purchaser from time to time to certify in writing its compliance (and that of its subcontractors) with the foregoing, and Purchaser will comply with each such request. In addition, to the extent applicable for the Products provided hereunder, Purchaser will comply with all applicable environmental requirements that apply to the Products and hazardous materials. "**Environmental Requirements**" includes without limitation all global, federal, state, provincial, and local laws, rules and regulations pertaining to the protection of human health, safety, wildlife or the environment. "**Hazardous Materials**" includes, without limitation, any material or substance that is regulated by an Environmental Requirement. In particular and without limitation, Purchaser will comply with all applicable global regulations regarding the registration, restriction, prohibition, and/or recyclability of chemicals.

#### **12. Purchaser-Provided Materials**

As part of a Contract Seller may agree to use or incorporate purchaser-provided designs, components, data or other materials ("**Purchaser-Provided Materials**") for or within the Products. Seller is under no obligation whatsoever to examine Purchaser-Provided Materials for defects or advise Purchaser on the suitability of Purchaser-Provided Materials for Products. Seller shall have no liability whatsoever to Purchaser with regard to any defects in Products arising out of use of different hardware or software settings or adjustments when using Purchaser-Provided Materials in digital form. If Purchaser-Provided Materials for a Contract consist of numbers: (i) the absence of such numbers on Products shall not constitute grounds for rejection of Products by Purchaser unless the inclusion of such numbers in Products is expressly agreed in writing by Seller; and (ii) Seller shall not be bound to deliver Products in a certain sequence of numbers unless Seller expressly agrees to such requirement in writing. Any Purchaser-Provided Materials (including data) must remain in Seller's possession for the purpose of Seller's documentation. Seller has no obligation to return Purchaser-Provided Materials to Purchaser or provide copies of any Purchaser-Provided Materials to Purchaser. Purchaser shall indemnify and hold Seller harmless from and against any damages of any kind incurred by Seller arising out of or relating to Purchaser-Provided Materials and/or Seller's use thereof. In the event Seller incorporates Purchaser-Provided Materials (e.g., hologram foils) into Products, Seller shall not be responsible for any defects or non-conformities in Products to the extent arising out of defects in such Purchaser-Provided Materials.

#### **13. Indemnification**

Purchaser shall indemnify and hold harmless the Seller and the Manufacturing and Selling Companies from any and all claims, damages and expenses (including attorneys' fees and costs) under any theory including tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of or relating to: (i) the use, operation, maintenance, repair, storage, sale, processing or other disposition of the Products, (ii) Purchaser-Provided Materials or the

Purchaser's specifications for Products, including without limitation Seller's use thereof, (iii) Purchaser's violation of applicable laws and/or regulations; or (iv) the Purchaser's breach of this Contract.

#### **14. Miscellaneous Provisions**

a. If any term or condition or part of the Contract including, but not limited to, these Terms and Conditions is held to be invalid, the remaining terms and conditions of the Contract shall not be affected thereby. Except as otherwise provided herein, the Contract may be modified, cancelled, or rescinded only by the written agreement of both parties executed by their duly authorized agents. No claim arising out of any breach of the Contract may be discharged in whole or in part by waiver or renunciation of such claim unless such waiver or renunciation is in writing and signed by the parties hereto. The Contract may not be assigned by either party without the express written consent of the other party hereto. In the event of a proper assignment, the Contract shall be binding upon and inure to the benefit of the assigning party's successors and assigns. In the event of any inconsistency between or among the various documents forming the Contract, the following order of precedence will govern interpretation from highest to lowest of these Terms and Conditions, Seller's Order Acknowledgement, Seller's Quotation/Proposal, Purchaser's Order Acknowledgment, and any Purchaser purchase order.

b. All rights available to Seller under the UCC or PPSA, as applicable, except as specifically limited or excluded herein (even though not specifically enumerated herein), are expressly reserved to Seller as remedies available in the event of default. The Manufacturing and Selling Companies shall be extended the benefits and protections of the Contract.

c. EXCEPT TO THE EXTENT THAT PERFECTION OF THE SECURITY INTEREST GRANTED HEREIN IS OTHERWISE MANDATED BY APPLICABLE LAW, THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REFERENCE TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THE PURCHASE AND SALE OF THE PRODUCTS OR THE CONTRACT. WITHOUT LIMITING SELLER'S RIGHT TO COMMENCE ANY ACTION, AT SELLER'S ELECTION, IN ANY OTHER JURISDICTION, PURCHASER HEREBY AGREES THAT ALL DISPUTES OR DIFFERENCES, WHICH MAY ARISE OUT OF THE CONTRACT OR IN CONNECTION WITH IT, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE COMMERCIAL RULES OF ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") (RULES) AS IN FORCE AT THE TIME OF SUCH DISPUTE. THE NUMBER OF ARBITRATORS SHALL BE THREE (3). THE PLACE OF ARBITRATION SHALL BE CHICAGO, ILLINOIS. THE ARBITRAL AWARD SHALL BE SUBSTANTIATED IN WRITING. THE ARBITRAL TRIBUNAL SHALL ALSO BE ENTITLED TO DECIDE ON THE VALIDITY OF THIS ARBITRATION CLAUSE. THE PARTIES AGREE THAT THEY HEREBY WAIVE AND SHALL HAVE NO RIGHT TO SEEK PRODUCTION OF DOCUMENTS OR ANY OTHER DISCOVERY FROM THE OTHER PARTY OR THIRD PARTIES IN CONNECTION WITH THE ARBITRATION PROCEEDING OR OTHERWISE. IN ADDITION, NO PARTY TO A CONTRACT IS PERMITTED DIRECTLY OR INDIRECTLY TO MAKE ANY APPLICATION PURSUANT TO 28 U.S.C. §1782. Seller shall not be required to post any bond or other forms of security in connection with any action for the repossession or replevin of, or otherwise relating to, the Products. PURCHASER WAIVES ANY AND ALL CLAIMS FOR PUNITIVE AND EXEMPLARY DAMAGES AGAINST SELLER AND THE MANUFACTURING AND SELLING COMPANIES AND ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY RELATING TO THE PRODUCTS, THE CONTRACT, THE RELATIONSHIP OF THE PARTIES AND ANY OTHER MATTERS RELATED THERETO.

d. Any proceeding by the Purchaser for breach of or otherwise related to the Contract and/or the Products cannot be filed nor maintained unless (i) it is commenced within one (1) year after the breach or other event giving rise to Purchaser's claim has accrued; (ii) the Purchaser has given timely written notice to Seller of its claim and has provided Seller with reasonable opportunity to cure the breach or other event giving rise to the claim; and (iii) Purchaser deposits the unpaid portion of the purchase price of the Products with the tribunal pending final adjudication. An action shall accrue no later than the delivery of the at-issue Products or services.

e. In the event of Purchaser's breach of the Contract, Purchaser shall be liable to Seller for all damages, including, but not limited to, direct, indirect, consequential damages including lost profits and incidental damages, and costs, including attorneys' fees, incurred by Seller in enforcing the Contract. Purchaser acknowledges and agrees that Seller may share and provide to its related and affiliated companies all data and information Seller becomes aware of as a result of its relationship with Purchaser. The provisions of Sections 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 hereof and any other term that by its nature should survive expiration or termination shall survive the expiration or termination of the Contract for any reason. Seller is granted the right to use the name, logo, trademark and any reference of or to Purchaser, either directly or indirectly, in publicity releases, advertising, case studies, sales literature, and promotional materials.

f. In its relationship with Seller, Purchaser is an independent contractor. Nothing in the Contract shall be construed such that Purchaser shall be considered an employee, agent or partner of Seller. Except as otherwise provided herein, the Contract shall not confer any rights or remedies upon any third-party, other than the parties to this Contract and their respective successors and permitted assigns. Seller, at its discretion, may delegate, assign or otherwise engage the services of any subcontractor to perform any portion of Seller's obligations under this Contract; provided, however, Seller will not be relieved of any obligations under this Contract by virtue of performance of any such obligations by a subcontractor.

#### **Special Terms and Conditions for the Supply of Software**

#### **15. Software; General Provisions**

15.1. These Special Terms and Conditions for the Supply of Software ("Software Terms") shall additionally apply to the extent that the subject matter of the Contract includes the delivery of software.

- 15.2. The Software Terms take precedence over deviating provisions of the Terms and Conditions with regard to the delivery of software.
- 15.3. To the extent Seller supplies software that is the subject of third-party rights, such third-party terms shall apply in addition to the Software Terms, and in the event of conflict with these Software Terms, such third-party terms shall take precedence.
- 15.4. The provisions of these Software Terms also apply to software updated by Seller.

## 16. Delivery

Seller delivers software exclusively in accordance with the contractual agreement on data carriers supplied by Seller, as a download version or pre-installed on the hardware supplied by Seller.

## 17. Warranty for Data

- 17.1. Seller does not warrant that data of a specific content can be generated, processed or stored permanently with the software supplied by Seller. **SELLER MAKES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR FREE OR WILL MEET PURCHASER'S OR ANY OTHER PERSON'S REQUIREMENTS; NOR DOES SELLER MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE. THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.**
- 17.2. The Purchaser shall ensure regular and proper data backup that is commensurate with the associated risks and that is carried out in accordance with the latest technological standards.

## 18. Updates

- 18.1. To the extent Seller provides updates for delivered software, it is done so without Seller having an obligation to do so, Seller retains authority to charge a reasonable fee to Purchaser for said updates, and any updates to software are to be provided in Seller's sole discretion.
- 18.2. Software updates that serve to solve or avoid problems do not constitute acknowledgement of a material defect in the software.

## 19. Rights of Use

- 19.1. If the purchaser does not use the software but delivers it in its entirety or as part of another service to third parties (end customers), only the end customer shall be entitled to the rights specified hereunder. The Purchaser must obtain the same obligation on the part of the end customer and inform Seller of the name and full address of the end customer in writing or in text form.
- 19.2. The software may only be used to the extent set forth in the Contract:
- 19.2.1. If Seller has provided the software pre-installed on hardware supplied by Seller, the Purchaser is entitled to run the software on this hardware only for the contractually specified purposes.
- 19.2.2. If Seller has provided the software on a data carrier or as a download for use with hardware supplied by Seller, the Purchaser is entitled to install the software on one end device and run it in connection with the hardware supplied by Seller for the contractually specified purposes, unless a higher number of installations has been contractually agreed.
- 19.2.3. If Seller has provided the software on a data carrier or as a download for purposes other than use with hardware supplied by Seller, the Purchaser is entitled to install the software on one end device and run it for the contractually specified purposes. The Purchaser is entitled to install the software on another end device and to allow it to expire for the contractually specified purposes, provided that it deletes the software on the end device on which the software was previously installed.
- 19.2.4. To the extent that the Contract provides that the software can only be used by a certain number of persons or only by certain persons, the Purchaser shall only be entitled to the aforementioned rights to this extent. In this case, Seller is entitled to measure and monitor the extent of actual use with the technical means specified in the specification, including the transfer of the corresponding data to Seller.
- 19.3. The permissible use of the software only includes the proper use by the Purchaser or its end customer for its own commercial purposes. In no event shall the Purchaser have the right to lease or otherwise sub-license the software, to publicly reproduce or make available the software by wire or wireless means, or to make the software available to third parties, whether for a fee or free of charge, subject to Sections 21.1 and 21.5.
- 19.4. The Purchaser shall not edit, modify, copy or otherwise reproduce the software provided. The Purchaser is entitled to make a backup copy. The Purchaser shall visibly mark the backup copy with the note "Backup copy" as well as a copyright notice from the manufacturer.

## 20. Transfer to Third Parties

The Purchaser shall not be entitled to transfer the Products or the acquired software to a third party unless advance consent is received from Seller in a signed writing.

- 20.1. The Purchaser shall prevent the unauthorized access of its employees and other third parties to the delivered software and the associated documentation by means of appropriate precautions, in particular the storage of the original data carriers and the backup copy in a secure location. Copyright notices, serial numbers and other features serving to identify the

software program may not be removed from the data carrier or the documentation or changed in any way.

- 20.2. Any software contained within or supplied with the Products shall be in an executable form only. The source code shall not be included or provided and is not sold and will not be delivered and shall remain the property of the Seller. Seller hereby grants Purchaser a non-exclusive, perpetual, worldwide, non-transferable (except as permitted by Seller), non-sublicensable (except as permitted by Seller), royalty-free license to use the software to the extent necessary to make reasonable commercial use of the Products. In no event is the Purchaser entitled to license or otherwise sub-license any software or to deliver, distribute, circulate or communicate it publicly or make it otherwise accessible to any third-party. Purchaser shall not alter, copy, or otherwise reproduce any software delivered for its use.

## **21. Prohibited Actions**

Purchaser shall not:

- a. use the software for purposes other than those for which it was designed;
- b. decompile the software;
- c. bypass or circumvent encryption or security mechanisms of the software; or
- d. analyze the software for the purposes of reverse engineering.

## **22. Rights of Third Parties, Right of Withdrawal**

- 22.1. To the extent that Seller delivers software that is the subject of third-party rights, as a condition of the Purchaser's use of the software, the Purchaser hereby agrees to the terms communicated by Seller at the time of acceptance of the Contract. If the Purchaser fails or refuses such acceptance, Seller is entitled to cancel the Contract and recover all resulting damages. In the event of termination, expiration or cancellation of the Contract, Purchaser shall immediately thereupon stop using the software and return same to Seller.
- 22.2. Seller is entitled to inform the Purchaser of the terms and conditions of the rights of third parties before, during or after execution of the Contract, to the extent these Terms and Conditions do not impair the contractually agreed use of the software by the Purchaser and the third party does not require or demand acceptance of the provisions as a condition of use of the software.

## **23. Audit**

- 23.1. The Purchaser shall, at Seller's request, allow Seller to verify compliance with the Purchaser's obligations set out in these Terms and Conditions, including without limitation these Software Terms. For this purpose, the Purchaser must provide Seller with all information and documents required for the audit for temporary inspection. Furthermore, Purchaser shall grant Seller access to all devices on which software supplied by Seller is installed for the aforementioned purposes. For this purpose, the Purchaser shall grant Seller access to Purchaser's business premises during usual business hours at Seller's request after a notice period of at least 10 calendar days. Seller is entitled to transfer the aforementioned rights through a third party bound by confidentiality obligations consistent with those provided in the Contract, who will not be a competitor of the Purchaser. Seller will ensure that the exercise of its rights will have as little impact as possible on the Purchaser's business operations.
- 23.2. If the Purchaser does not use the software, but delivers it in its entirety or as part of another service to third parties (end customers), Seller shall also be entitled to the rights specified in Section 23.1 against the end customer and Purchaser shall obtain same from the end customer for the benefit of Seller.

Boston, August 2024