

## GENERAL TERMS AND CONDITIONS

These **GENERAL TERMS AND CONDITIONS** apply to all customers buying products from **ABRAMS Industries Inc.**

### 1. GENERAL TERMS

ABRAMS INDUSTRIES INC. (in the following "Seller") and all customers of ABRAMS INDUSTRIES INC. (in the following "Buyer") agree, that the following terms and conditions (in the following "Terms and Conditions") apply to all products, materials and services (in the following "Goods") ordered from the buyer or subsequently ordered pursuant to any contract between the seller and the buyer are subject to these Terms and Conditions unless otherwise agreed to explicitly in writing.

### 2. ACCEPTANCE OF TERMS

The Terms and Conditions set forth herein constitute all of the Terms and Conditions of our contract. Our acceptance and shipment of your order is explicitly made conditional on your acceptance of our Terms and Conditions set forth herein. Any and all terms, conditions or provisions specified by the buyer in the buyer's purchase order or otherwise (whether oral, typed, written or printed) that in any way change, modify, amplify, differ from, or add to these Terms and Conditions or those in the confirmations are void and of no effect, even if (i) The seller does not expressly object to such terms, conditions or provisions; or (ii) such terms, conditions or provisions are specified subsequent to these Terms and Conditions or the confirmation or invoice. The buyer is hereby put on notice that no terms additional to or deviating from these Terms and Conditions shall become part of the contract, unless and until written acceptance of such additional or deviating terms, signed by an officer of the seller has been issued to the buyer. The buyer's acceptance of any goods supplied by the seller shall, without limitation, constitute acceptance of these Terms and Conditions.

### 3. PRICES/DELIVERY TERMS

ALL PRICES ARE NET PRICES, SHIPPING TERM IS FREE ON BOARD (FOB) ORIGIN (WAREHOUSE OF SELLER), INCOTERMS 2020, UNLESS OTHERWISE EXPRESSED IN WRITING.

Freight costs and custom expenses will be prepaid and added to the charge. All risks are transferred to the buyer when the goods are handed over to the carrier at the place of dispatch.

Payment is due in the currency as shown on the invoice within five (5) days with a two (2) % discount, within ten (10) days with a one (1) % discount or thirty (30) days net from the invoice date, unless otherwise indicated on order confirmation or invoice. Credit card payments are subject to a fee up to four (4) % of the total amount.

Prices stated are subject to change without notice in the event of (i) alterations in specifications, quantities, designs, or delivery schedules; (ii) increases in the cost of labor, raw and auxiliary materials, including fuel, power, alloy and scrap surcharges, any other material supplied, (iii) foreign or domestic legislation enacted by any level of government, including tax legislation which increases the cost of producing, warehousing or selling the goods purchased hereunder; and/or (iv) changes in currency exchange rates. Any such change shall be charged to the buyer's account. No general discount (other than the above mentioned) will be allowed unless specifically set forth in the order confirmation or invoice. Written quotations automatically expire thirty (30) days after the date the quotation is issued and are subject to termination by notice within that thirty (30) day period. The buyer agrees to pay a delinquency charge of one and one half percent (1.50 %) per month on the invoiced amounts not paid within thirty (30) days of the invoice date or, if such rate shall exceed the maximum rate permitted by applicable law, then a delinquency charge calculated at such maximum rate permitted by applicable law. Interest shall be payable monthly in arrears on the first day of each month. The seller may require full or partial payment in advance, if the scope of the buyer's order exceeds a total of two thousand (2,000) USD or if the conditions require these measures. In the event of cancellation of orders, the seller reserves the right to charge the buyer and buyer shall pay all of the seller's costs to date of cancellation, including costs of currency commitments or restocking fees. All outstanding payments shall immediately become due and owing should the buyer fail to make any payment when due or should a receiver be appointed for all or any substantial part of the buyer's property and assets, or should a petition in bankruptcy, arrangement or reorganization be filed by or against the buyer pursuant to the provision of any bankruptcy act or any amendments thereto or any insolvency or receivership statute. The seller reserves the right to increase the sale price and/or amend these Terms and Conditions at any time prior to the expected or requested shipment date, provided that written notice of such change or price increase is sent to the buyer at least ten (10) days prior to shipment. The buyer shall be deemed to have accepted such change or increase unless the buyer cancels the order, subject to reasonable charges for expenses incurred (including restocking fees) and work executed by the seller or its suppliers, at least five (5) working days prior to the expected or requested shipment date.

### 4. WARRANTY/REMEDY

THE SELLER WARRANTS THAT ALL MATERIALS AND GOODS DELIVERED BY THE SELLER WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AND WILL BE IN CONFORMITY WITH ANY SPECIFICATIONS AGREED UPON IN WRITING BY THE SELLER.

ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION OR QUALITY OF THE GOODS NOT EXPRESSLY SET FORTH HEREIN, ARE HEREBY EXCLUDED. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE MINIMUM PERIOD PERMITTED BY APPLICABLE LAW. NO AFFIRMATION OF THE SELLER, BY WORDS OR ACTION, OTHER THAN AS SET FORTH IN THIS WARRANTY CLAUSE SHALL CONSTITUTE A WARRANTY. GOODS WHICH MAY BE SOLD BY THE SELLER BUT WHICH ARE NOT MANUFACTURED BY THE SELLER ARE NOT WARRANTED BY THE SELLER, BUT ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURERS THEREOF. THE SELLER'S WARRANTY DOES NOT APPLY TO ANY GOODS WHICH HAVE BEEN SUBJECTED TO IMPROPER INSTALLATION OR USE, OR ANY UNAUTHORIZED REPAIR, MODIFICATION OR ALTERATION (INCLUDING BUT NOT LIMITED TO USE OF UNAUTHORIZED PARTS OR ATTACHMENTS), MISHANDLING, MISAPPLICATION, NEGLIGENCE, AND/OR ACCIDENT. **THE BUYER HAS**



**TO INSPECT THE DELIVERED PRODUCTS WITHIN FIVE (5) DAYS AFTER RECEIPT OF THE GOODS AND NOTIFY THE SELLER IMMEDIATELY AFTER DETECTION OF A DEFECT OR NONCONFORMITY WITH THE ORDER.** THE SELLER, UPON TIMELY NOTIFICATION AND SUBSTANTIATION THAT THE GOODS HAVE BEEN STORED AND MAINTAINED IN ACCORDANCE WITH THE SELLER'S RECOMMENDATIONS AND STANDARD INDUSTRY PRACTICE, WILL CORRECT NON-CONFORMITIES AT ITS OPTIONS, EITHER BY REPAIRING ANY DEFECT OR BY SUPPLYING REPLACEMENT GOODS. IN NO EVENT SHALL THE SELLER BE LIABLE IN CONTRACT OR IN TORT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, SUCH AS BUT NOT LIMITED TO THE BUYER'S LOSS OF PROFITS, REVENUE, GOOD WILL, OR CLAIMS OF CUSTOMERS OF THE BUYER FOR ANY LOSS. THE REMEDIES OF THE BUYER SET FORTH HEREIN ARE EXCLUSIVE, AND THE LIABILITY OF SELLER WITH RESPECT TO ANY CONTRACT, OR ANYTHING DONE IN CONNECTION THEREWITH SUCH AS THE PERFORMANCE OR BREACH THEREOF, OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, TECHNICAL DIRECTION, REPAIR OR REPLACEMENT OF ANY GOODS, INCLUDING LATENTLY DEFECTIVE GOODS, COVERED BY OR FURNISHED UNDER THIS CONTRACT WHETHER IN CONTRACT, IN TORT, OR OTHERWISE SHALL NOT EXCEED THE PRICE OF THE DEFECTIVE GOODS REPAIRED OR REPLACED. THE SOLE PURPOSE OF THE STIPULATED REMEDY SHALL BE TO PROVIDE BUYER WITH FREE REPAIR OR REPLACEMENT OF DEFECTIVE GOODS, LATENT OR OTHERWISE, IN THE MANNER PROVIDED HEREIN. THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS SELLER IS WILLING AND ABLE TO REPAIR OR REPLACE DEFECTIVE GOODS IN THE MANNER PRESCRIBED. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OF QUALITY WHETHER WRITTEN, ORAL, OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

## 5. **FURTHER WARRANTY PROVISIONS AND REMEDIES**

- a. Any warranty claim by the buyer with reference to the goods sold hereunder shall be deemed waived by the buyer unless submitted in writing to the seller within five (5) days following the date of receipt of the goods.
- b. No alteration or amendment to the above conditions listed herein shall be binding to the seller except if made in writing duly executed by an officer of the seller.
- c. The seller shall have no liability for any loss arising out of goods which conform to written specifications provided or accepted by the buyer which are agreed upon in writing by the seller; and no liability for any loss, whether the goods conform or not, to specifications not agreed upon in the above manner.
- d. The seller's remedies relating hereto shall be cumulative and in addition to any other remedies provided herein or by law or in equity.

## 6. **LIMITATION OF LIABILITY**

THE SELLER'S LIABILITY (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR ITS GOODS SHALL BE LIMITED TO REPLACING THE GOODS DELIVERED BY THE SELLER TO BE DEFECTIVE, OR AT THE SELLER'S OPTION, TO REFUNDING THE PURCHASE PRICE OF SUCH GOODS OR PARTS THEREOF, PROVIDED, HOWEVER, THAT THE COST OF SUCH REPLACED GOODS SHALL NOT EXCEED THE TOTAL VALUE OF THE CONTRACT. THE PARTIES HERETO EXPLICITLY AGREE THAT THE BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST THE SELLER SHALL BE FOR THE REPLACEMENT OF THE DEFECTIVE GOODS OR, WITH THE SELLER CONSENT, THE REFUND OF THE PURCHASE PRICE OR ALLOWANCE THEREOF. THE BUYER HEREBY AGREES THAT THIS EXCLUSIVE REMEDY SHALL NOT BE DEEMED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE SO LONG AS THE SELLER IS WILLING AND ABLE TO REPLACE DEFECTIVE GOODS IN THE PRESCRIBED MANNER OR REFUND THE PURCHASE PRICE OR GIVE BUYER AN ALLOWANCE THEREOF. AT THE SELLER'S REQUEST, BUYER WILL PROVIDE ANY ALLEGEDLY DEFECTIVE GOODS. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE SELLER SHALL BEAR NO LIABILITY FOR THE REPAIR OR REPLACEMENT OF GOODS DAMAGED (SUCH DAMAGE INCLUDING BUT NOT LIMITED TO CRACKING) DUE TO HEAT TREATMENT PROCESS. CRACKING OR OTHER DAMAGE TO MATERIALS (INCLUDING STEEL) IS AN UNAVOIDABLE PERIODIC SIDE EFFECT OF THE HEAT TREATMENT PROCESS, WHICH MAY RESULT IN DAMAGES IN EXCESS OF THE COST OF SERVICES RENDERED BY THE SELLER. BUYER UNDERSTANDS AND AGREES THAT ANY LOSS INCURRED AS A RESULT OF DAMAGE SUFFERED DURING THE HEAT TREATMENT PROCESS SHALL BE BORNE BY BUYER, AND ACCORDINGLY, BUYER MAY SEEK, AT BUYER'S SOLE DISCRETION AND EXPENSE, TO PROCURE AN INDEPENDENT INSURANCE POLICY, THAT EXPRESSLY EXCLUDES ANY RIGHT OF SUBROGATION AGAINST THE SELLER, TO PROTECT AGAINST SUCH LOSS. BUYER UNDERSTANDS AND AGREES THAT IN THE EVENT THAT IT CHOOSES NOT TO PROCURE INSURANCE COVERING SUCH LOSS, IT SHALL HAVE NO RECOURSE AGAINST THE SELLER WHATSOEVER WHETHER FOR REPAIR OR REPLACEMENT OF GOODS DAMAGED THEREBY, OR OTHERWISE.

## 7. **DISCLAIMER OF CONSEQUENTIAL AND INCIDENTAL DAMAGES**

IN NO CASE WILL THE SELLER BE LIABLE FOR REMOVAL OR INSTALLATION COSTS, DOWNTIME, THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, DAMAGE TO OTHER PROPERTY, LOSS OF BUSINESS OR PROFITS, LOSS OF PRODUCTION, LOSS OF USE OR ANY OTHER SIMILAR OR DISSIMILAR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES EVEN IF THE SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES WHICH ANY PERSON, CORPORATION OR OTHER ENTITY MAY SUFFER OR CLAIM TO SUFFER OR INCUR OR CLAIM TO INCUR AS A RESULT OF ANY DEFECT IN THE GOODS OR IN ANY CORRECTION OR ALTERATION THEREOF MADE OR FURNISHED BY THE SELLER OR OTHERS. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED BY THE USE OF THE GOODS). BUYER SHALL INDEMNIFY THE SELLER AGAINST ALL LIABILITY, COSTS OR EXPENSES, WHICH MAY BE SUSTAINED BY THE SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

## 8. **ACCEPTANCE OF GOODS, DELIVERY AND TRANSPORTATION**

UPON THE BUYER'S RECEIPT OF SHIPMENT, THE BUYER SHALL IMMEDIATELY INSPECT THE GOODS. UNLESS THE BUYER PROVIDES THE SELLER WITH WRITTEN NOTICE OF ANY CLAIM OR SHORTAGES OF OR DEFECTS IN THE GOODS, INCLUDING WITHOUT LIMITATION ANY CLAIM RELATING TO QUANTITY, WEIGHT, CONDITION, LOSS OR DAMAGE THERETO, WITHIN FIVE (5) DAYS AFTER RECEIPT OF SHIPMENT, SUCH GOODS SHALL BE DEEMED FINALLY INSPECTED, CHECKED AND ACCEPTED BY THE BUYER. The seller shall use its own discretion in choice of carrier and method of packing. The seller shall not be responsible for insuring shipments. Any delivery date quoted to the buyer is only an estimate based on present



scheduling requirements. The seller shall have the right to make partial deliveries and to be paid, pro rata, for the goods so delivered notwithstanding the existence of a specific delivery schedule, which is stated to be of the essence, nor of the fact that any partial delivery is made in advance of such schedule. The seller reserves the right, with respect to each delivery, to make deliveries in installments. All such installments may be separately invoiced and paid for when due, without regard to subsequent deliveries.

**9. TITLE AND RISK OF LOSS**

Title to any goods sold and risk of loss of such goods passes to the buyer upon delivery by the seller to the carrier, and any claims for losses or damage shall be made by the buyer directly to the carrier.

**10. CREDIT TERMS**

All orders and shipments shall at all times be subject to the approval of the seller's credit department. If, subsequent to the confirmation of orders, circumstances arise with respect to the financial condition of the buyer which in the opinion of the seller threaten the buyer's ability to make payments when due hereunder, or should the buyer fail to make payments when due or otherwise fail to perform its outstanding obligations then the seller may refuse to perform further hereunder unless the buyer makes payment in full or provides sufficient security in a form acceptable to the seller within a period of ten (10) business days from receipt of notice therefore by the seller. Should the buyer fail to comply with the seller's request contained in such notice within the aforementioned period, then the seller may terminate the contract, defer or cancel the order and/or recover damages based on the buyer's breach and, in such event, the seller shall not be liable for breach or nonperformance of this contract in whole or in part. The seller's failure to exercise any right accruing from any default of the buyer shall not constitute a waiver of our rights and shall not impair our rights with respect to a particular default or in case of any subsequent default of the buyer.

**11. SECURITY INTEREST**

TO SECURE PROMPT PAYMENT OF THE PURCHASE PRICE FOR THE GOODS, THE BUYER HEREBY GRANTS TO THE SELLER A PURCHASE MONEY SECURITY INTEREST IN THE GOODS AND ALL PROCEEDS THEREOF (in the following "Collateral"). Upon any default by the buyer, the seller shall have all rights, remedies and privileges in and to the collateral as provided by the applicable sections of the Uniform Commercial Code as presently in effect and as amended from time to time. The seller is hereby given a power of attorney to sign and file all necessary financing statements on behalf of the buyer with respect to the Collateral. The seller may authorize any third party to do such acts on behalf of the seller as the seller is authorized to do under this provision.

**12. COSTS OF COLLECTION**

If, at any time, the seller incurs any legal expenses or other costs or expenses in connection with: (i) any litigation, contest, suit, dispute, proceeding or action in any way relating to the collateral; (ii) any attempt by the seller to enforce any rights of the seller against the buyer or any other person which may be obligated to the seller hereunder; or (iii) any attempt to inspect, verify, protect, preserve, restore, collect, sell, liquidate or dispose of the collateral; then, in any such event, the expenses and costs (including attorney's fees) relating to any of the foregoing events or actions shall be payable by the buyer on demand to the seller and shall be considered additional obligations hereunder secured by the collateral. The seller reserves the right to revoke any credit extended to the buyer at any time, because of the buyer's failure to pay for any goods when due or for any reason deemed good and sufficient by the seller.

**13. TAXES**

Any sales, use or similar taxes, export charges, fees or other levies, taxes, duties, governmental charges or surcharges now or hereafter imposed under any present or future law in connection with the production, sale, delivery, use or proceeds of the goods, including without limitation any equipment, accessories, and attachments (including replacements thereof or spare or replacement parts thereof), any installation, repair, maintenance, and instructional services, and any processes or know-how (whether patentable or otherwise) and software, shall be payable by buyer, and if such taxes or fees are paid or are required to be paid by the seller, the amount thereof shall be added to and become part of the price payable by the buyer hereunder, unless the buyer provides the seller with a valid tax exemption certificate.

**14. EXPORT COMPLIANCE**

The buyer agrees and covenants to comply with all export control laws of the United States of America. If, at any time, the buyer knows or has reason to believe that the covenant set forth in the preceding sentence has not been, may not have been, or may not be, complied with by any party (a "Non Compliance Event"), the buyer shall have an affirmative obligation to give actual notice thereof to the seller immediately and without delay. The buyer agrees and covenants further that the seller may, in its sole discretion, terminate any and all of its obligations under the contract or hereunder because of any Non-Compliance Event (regardless of whether the buyer has given notice as required by this section), and that the seller shall not be subject to any liability as a result of, or in connection with, any such termination.

**15. PACKAGING**

Prices stated are based on the seller's standard packaging. The seller reserves the right of packaging the goods in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier.

**16. DELAYS/FORCE MAJEURE**

Unless explicitly specified to the contrary, goods in stock will be shipped immediately, and goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. The seller will be not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of these Terms and Conditions caused by or imposed by: (a) strikes, fires, disasters, riots, acts of God, (b) acts of the buyer,



(c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor or supplier delay including, but not limited to failure by subcontractor or supplier to make timely delivery, or (f) any other cause of condition beyond the seller's reasonable control. In the event of any such delay or nonperformance, the seller may, at its option, and without liability, cancel all or any portion of the contract and/or extend any date upon which any performance hereunder is due.

**17. TERMINATION, CANCELLATION AND CHANGES**

Orders cannot be terminated, cancelled or modified, or shipment deferred after acceptance of the buyer's order by the seller, except with the seller's written consent and subject to reasonable charges for expenses incurred and work executed by the seller or its suppliers. The buyer shall be obligated to accept any portion of the goods shipped or delivered by the seller pending the seller's written approval of cancellation. Orders for custom made material may not be canceled after the seller has been in production, unless the seller agrees in writing.

**18. RETURNED PRODUCTS**

Delivered goods returned to the seller require prior written approval from the seller before such goods will be accepted. Handling, inspection, restocking and invoicing charges will be assessed, if applicable, plus any outgoing packing and freight expenditures paid by the seller. All returns allowed must be shipped to the seller prepaid and must be in excellent resale condition. Goods processed to the buyer's specifications are not returnable.

**19. NO WAIVER**

Forbearance or failure of the seller to enforce any of the Terms and Conditions stated herein, or to exercise any right accruing from default of the buyer, shall not affect or impair the seller's rights arising from such defaults; nor shall forbearance or failure be deemed a waiver of the seller's rights in case of any subsequent default of the buyer.

**20. SEVERABILITY**

If any provision of these Terms and Conditions is unenforceable or invalid, these Terms and Conditions shall be interpreted and enforced to the greatest extent possible as if the unenforceable provision or portion had never been a part hereof.

**21. ASSIGNMENT**

These Terms and Conditions shall be binding upon and shall inure to the benefit of the successors and assigns of the buyer and the seller provided, however, that the buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of the seller.

**22. GOVERNING LAW**

These Terms and Conditions shall be construed in accordance with and governed by the substantive and procedural laws of the State of Illinois without regard to its conflict of law provisions. All actions or proceedings arising directly or indirectly from these Terms and Conditions shall be litigated only in the courts of the State of Illinois or United States federal courts situated therein and the parties hereby consent to the jurisdiction and venue of such courts.

**23. DISPUTE RESOLUTION**

Any dispute of any nature whatsoever arising out of or relating to this contract, whether sounding in contract, statute, tort, fraud, misrepresentation or any other legal theory, including, but not limited to, disputes relating to or involving the existence of, interpretation, construction, validity, performance, termination or breach of this contract, or any confirmation, invoice, credit application, purchase order or other agreement between the parties relating to the subject matter hereof (in the following "Dispute"), shall be resolved as follows:

a. A Dispute in which the amount in controversy is equal to or less than One Hundred Thousand Dollars (\$100,000), exclusive of interest, attorneys' fees and costs, shall be determined by binding arbitration in accordance with the then-current Expedited Commercial Rules of the American Arbitration Association ("AAA"), to the extent such rules do not conflict with the provisions of this Section 23. The award made by the arbitrator shall be final and binding upon the parties. The arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

b. Any claim submitted to arbitration shall be governed by the Expedited Commercial Rules of the AAA; except that (1) Provision 22 shall govern applicable law and construction, (ii) the locale of any arbitration will be in the State of Illinois or agreed to by the parties in writing, (iii) the arbitration panel will consist of a single arbitrator, selected pursuant to the rules of the AAA, (iv) the language of the arbitration shall be English, (v) any arbitration award shall state the arbitrator's material findings of fact and conclusions of law, and (vi) subject to clause d. below, a party may seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel; provided that such action shall not constitute a waiver of the provisions of this Section 23 which shall continue to govern any and every dispute between the parties

c. A Dispute in which the amount in controversy is greater than One Hundred Thousand Dollars (\$100,000), exclusive of interest, attorneys' fees and costs, or any dispute to require arbitration under this agreement, to enforce judgment upon an arbitration award, or to seek preliminary injunctive or other equitable relief from any court of competent jurisdiction to preserve the status quo pending establishment of an arbitration panel shall be brought or otherwise commenced in any state court located in, or federal court having jurisdiction over, Will County, Illinois. Each party (i) expressly and irrevocably consents and submits to the exclusive jurisdiction of each state court located in, or federal court having jurisdiction over, Will County, Illinois (and each appellate court located in the State of Illinois) in connection with any such legal proceeding; (ii) agrees that each state court located in, or federal court having jurisdiction over, Will County, Illinois shall be deemed to be a convenient forum; and (iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in any state court located in,



or federal court having jurisdiction over, Will County, Illinois, any claim that such party is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this contract or the subject matter of this contract may not be enforced in or by such court.

d. A prevailing party in arbitration or litigation, including without limitation, litigation to require arbitration or to obtain preliminary relief pending establishment of an arbitration panel, or in litigation to confirm or enforce an arbitration award will be entitled to recover its reasonable attorneys' fees and costs.

**24. ENTIRE CONTRACT**

THE BUYER AND THE SELLER HEREBY AGREE THAT THESE TERMS AND CONDITIONS ALONG WITH THE APPLICABLE TERMS OF THE PURCHASE ORDER AND ACKNOWLEDGMENT OR INVOICE SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN BUYER AND THE SELLER AND NO PRIOR OR CONTEMPORANEOUS ORAL OR WRITTEN STATEMENT, CORRESPONDENCE, SAMPLE OR OTHER TERMS, QUOTATIONS OR UNDERSTANDINGS SHALL MODIFY, ALTER OR IN ANY WAY AFFECT THE TERMS THEREOF.

**Issued: 03-01-2022**

