



BEL-KAP-STEEL L.L.C.  
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## BEL KAP STEEL, LLC GENERAL TERMS AND CONDITIONS OF SALE

By continuing to perform the purchase of steel products ("Steel products") described in any Sales Order Confirmation (a "Confirmation") furnished by Bel Kap Steel, LLC (the "Distributor") to any purchaser (a "Customer"), such Customer accepts and agrees to all of the terms, conditions and other provisions set forth in these General Terms and Conditions of Sale, regardless of any and all inconsistent and/or contrary provisions contained in any purchase order or similar document furnished to the Distributor by such Customer (an "Order") and/or contained in any general terms and conditions of purchase or similar document of such Customer; any such Order, general terms and conditions of purchase and/or similar document of such Customer shall be subject to, and shall be deemed to be amended, superseded and controlled by, this Agreement (as defined below). Such acceptance of this Agreement by the Customer is a condition of the Distributor's acceptance of any purchase order placed by the Customer and is a condition of the Distributor's performance of the sale of any Steel products to the Customer. Furthermore, this Agreement (i) embodies all understandings and agreements between such Customer and the Distributor (the "Parties"), and determines all rights, duties and remedies of the Parties, in connection with such Order, and (ii) can be amended effectively only by means of a writing issued by the Distributor or a writing signed by the Distributor (to evidence its acceptance thereof) within 10 days after the Distributor's receipt of such writing from the Customer.

1. DEFINITIONS. Certain terms and phrases are defined throughout this Agreement. Certain other terms and phrases used in this Agreement are set forth below and shall have the following meanings:

- (a) This "Agreement" means any Confirmation issued by the Distributor, as supplemented by all of the terms, conditions and other provisions set forth in these General Terms and Conditions of Sale.
- (b) "Applicable Rate" means the rate of interest equal to the lesser of: (i) seven point five percent (7.5%); or (ii) the maximum rate permitted by applicable law.
- (c) "Distributor Parties" means Distributor, its affiliates and subcontractors, and their respective officers, directors, employees and agents.
- (d) "Customer Parties" means the Customer, its affiliates and subcontractors, and their respective officers, directors, employees and agents.
- (e) "Governmental Authority" means any national or local governmental authority, agency, body, court, commission, department, or similar body, whether domestic or foreign.
- (f) "Product" means all Steel products to be provided by Distributor to Customer under this Agreement, as specifically detailed in the Confirmation.
- (g) "Services" means the provision of Product by Distributor to Customer under this Agreement.
- (h) "Taxes" means any and all present and future taxes, including taxes based on gross receipts, net income (or profits), or property value (including the value of assets), withholding taxes and value added taxes imposed by any Governmental Authority with regard to the Product and any related services to be furnished hereunder, and includes all forms of taxes, including impositions, levies, fees, duties or other similar charges imposed by any Governmental Authority, as well as any applicable interest and penalties.

2. TERMS AND CONFIRMATION OF ORDERS.

(a) The quantity, pricing (inclusive of any Taxes specified in the Confirmation, the "Product Price"), delivery timetable, and other pertinent details of any order of Product by the Customer shall be indicated in the Confirmation. No amendment may at any time be made by the Customer to any term whatsoever of the Confirmation, nor to any related drawings, designs, blueprints or other specifications, unless the Customer first obtains Distributor's express consent thereto in writing.

(b) Any delivery terms stated in the Confirmation are subject to the following conditions:

- (i) The Distributor is permitted to make partial deliveries to the Customer, which the Customer will utilize best efforts to accommodate.
- (ii) Without limitation of Section 11 of this Agreement, any time of delivery indicated in the Confirmation may be extended by the Distributor without penalty should any of the following occur:
  - (1) Any disturbance at the Product manufacturer's plant;
  - (2) Any delay or difficulty associated with the delivery or availability of essential raw materials and construction materials to the Product manufacturer;
  - (3) Difficulties with the energy supply at the Product manufacturer's plant; or
  - (4) Any administrative or operational measure or impediment resulting in a late delivery of any Product by the manufacturer to the Distributor.

3. PRICING.

- (a) In consideration for the delivery of Product, the Customer shall pay the Product Price to Distributor, without taking account of any actual or alleged deduction, offset or counterclaim whatsoever, in accordance with Sections 2, 3 and 4 of this Agreement and in the manner detailed in the Confirmation.
- (b) Product Prices quoted in offers made by Distributor are not binding.
- (c) Distributor may require Customer to pay Distributor a deposit and/or make progress payments to Distributor, if and as detailed in the Confirmation.
- (d) In all circumstances, the Customer shall be responsible for paying applicable fees and Taxes in accordance with Section 7 of this Agreement.
- (e) The Distributor does not warrant that the Product Price is the lowest net price offered or given by the Distributor, or by any other distributor or seller, for products of the same or similar quality and quantity as the Product specified in the Confirmation, and, in the event that the Product Price is not the lowest net price offered or given for such product, the Customer shall not have any resulting recourse, damages or remedy against the Distributor and shall remain bound by all the terms, conditions and other provisions of this Agreement.

4. INVOICING.

- (a) The Product Price, less any deposit, will be billed in the manner described in the Confirmation. The Customer shall pay, or cause to be paid, the Product Price in the invoiced currency via funds transfer or ACH transaction from a bank account of the Customer to a bank account of Distributor that shall be designated by Distributor in writing.
- (b) Any disputes over invoiced quantities will be promptly reviewed by Distributor with the Customer and any resulting adjustments, if agreed upon in writing, will be applied to the invoice in question. If any dispute is not resolved by the Parties within thirty (30) days after the notice of a dispute is delivered by the Customer to Distributor, then the dispute shall be resolved through the dispute resolution process provided in Section 22 of this Agreement.

5. CERTAIN CUSTOMER OBLIGATIONS. In addition to its other obligations under this Agreement, the Customer shall have the following obligations:

- (a) to procure and maintain any and all authorizations, consents, licenses, permits, approvals, certificates, or orders of any authority necessary for the Customer to take possession of the Product (the "Required Approvals") and;
- (b) to comply with all applicable codes and local, national and other laws, rules and regulations relating to Customer's obligations under this Agreement and to Customer's utilization of Product, including, without limitation, all applicable safety regulations.



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6. WARRANTY DISCLAIMER; NOTICE OF DEFECTS. NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, REPRESENTATIONS, UNDERSTANDINGS, GUARANTEES OR PROMISES HAVE BEEN MADE TO OR RELIED UPON BY THE CUSTOMER IN MAKING THE DETERMINATION TO EXECUTE THIS AGREEMENT AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, COMMON LAW, UNIFORM COMMERCIAL CODE AND STATUTORY WARRANTIES AND INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, ARE HEREBY DISCLAIMED BY DISTRIBUTOR. TO THE EXTENT IT IS NOT ABLE TO BE DISCLAIMED BY DISTRIBUTOR, ANY WARRANTY SHALL RUN SOLELY TO THE CUSTOMER AND NOT TO ANY PURCHASER FROM THE CUSTOMER NOR TO ANY OTHER ENTITY OR INDIVIDUAL, AND ANY CLAIM UNDER ANY SUCH WARRANTY MUST BE MADE TO DISTRIBUTOR IN WRITING (A) WITHIN 10 DAYS AFTER THE CUSTOMER'S RECEIPT OF THE AFFECTED PRODUCT OR, IF THE BREACH OF WARRANTY IS NOT CAPABLE OF BEING DISCERNED UPON THE CUSTOMER'S RECEIPT OF SUCH PRODUCT, THEN (B) WITHIN 10 DAYS AFTER THE EARLIEST DATE ON WHICH SUCH BREACH WAS CAPABLE OF BEING DISCERNED BY THE CUSTOMER, BUT, IN ANY CASE AND UNDER ANY CIRCUMSTANCES WHATSOEVER, (C) WITHIN SIX MONTHS AFTER THE CUSTOMER'S RECEIPT OF SUCH PRODUCT.

7. TAXES AND FEES.

(a) In the event that the Product Price payable to Distributor under this Agreement is subject to any Taxes not specified in the Confirmation and not included in the Product Price thereunder, the Product Price shall be increased by an amount which, after the payment of all Taxes, leaves Distributor with the amounts Distributor would have received if Distributor had been exempt from all Taxes (the "Tax Adjustment"). As part of any Tax Adjustment, the Customer shall pay such additional amounts ("Additional Amounts") as may be necessary so that the net amount received by Distributor under this Agreement after the payment of any applicable Taxes (including any taxes on Additional Amounts) will equal the amount Distributor would have received if such Taxes had not been payable.

(b) In the event that Distributor is required to pay any Taxes that are not covered by the Tax Adjustment, the Customer shall reimburse Distributor in U.S. Dollars for the amount of such Taxes (together with such Additional Amounts as would be required to cover any additional Taxes payable by Distributor as a result of such reimbursement) within thirty (30) days of the date on which Distributor provides the Customer with a written request for reimbursement, including appropriate supporting documentation.

(c) The Customer shall indemnify Distributor from and against any liabilities and expenses incurred by Distributor (including reasonable legal fees and costs) as a result of the failure of the Customer to meet its obligations under this Section 7, provided that the Customer shall not be obligated to indemnify Distributor for penalties directly attributable to the failure of Distributor to provide the documentation required by Section 7(d) within a reasonable period after a request for such documentation from the Customer.

(d) At the request of the Customer, Distributor shall provide such documentation and make such filings as may be reasonably requested by the Customer in order to determine the Additional Amounts payable by the Customer to Distributor under this Section 7, in compliance with the tax rules and regulations of applicable Governmental Authorities, including but not limited to:

(i) All documentation to register Distributor in the Tax Information Registry (RIF); and

(ii) All financial and accounting information necessary for the Customer and Distributor to prepare and file the income tax returns and other tax returns to be filed by Distributor (provided that the Customer shall not file any such tax returns without the prior written consent of Distributor, which consent shall not be unreasonably withheld or delayed). For these purposes, Distributor shall keep records of all income and expenses attributable to the Product sold (and any related services performed) under this Agreement.

(e) Distributor shall notify in writing the Customer of all tax credits and rights that may result from any excess Tax withholdings or payments made by Customer or Distributor. Provided that the Customer is in compliance with all of its obligations under this Section 7, Distributor shall transfer and assign to the Customer any rights that Distributor may have in such excess tax withholdings or payments and, at the request of the Customer, shall execute and deliver such documentation in respect of such transfer and assignment as the Customer may reasonably request.

8. COMPLIANCE WITH, AND EFFECT OF, LAWS, CODES AND STANDARDS.

(a) The parties acknowledge and agree that the Product Price has been established based on the assumption that the Product will not be modified prior to delivery due to changes in any laws, rules or regulations of any Governmental Authority.

(b) The Customer shall at all times advise Distributor of any unfavorable requirements affecting the ability of Distributor to deliver **Steel products** resulting from any change in (or any change in the interpretation or application of) any laws, rules or regulations of the jurisdiction in which the delivery is to take place. If a change hereunder is not a practical manner by which to address any such unfavorable requirements, Distributor may, at its option (i) terminate this Agreement for commercial impracticability or impossibility; (ii) require the Customer to reimburse Distributor for any costs or expenses incurred by Distributor due to such termination; and/or (iii) exercise any other right or remedy which may be available to Distributor under any applicable law.

9. CUSTOMER INSURANCE.

(a) Customer shall procure and maintain, at the Customer's own cost and expense and at all times at which Customer or any other Customer Party is in possession or control of any of the Product, the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the activities of the Customer and the Customer Parties while utilizing the Product. The Customer shall furnish Distributor with certificates of insurance evidencing coverage required by this clause. The certificates for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

(i) The Customer shall maintain the following types of coverage in favor of Distributor with no less than the specified limits:

(1) Product Liability Insurance in a reasonable amount per occurrence for property damage and bodily injury arising out of use of the Product. The coverage shall be provided on an occurrence basis and shall include coverage for the following: Premises, Operation, Explosion, Collapse and Underground Property Damage, Hazard, Independent Contractors, Broad Form Property Damage, and Personal Injury;

(2) Umbrella Liability Insurance with reasonable Umbrella Liability Coverage per occurrence.

(ii) The Customer shall arrange for Distributor and the Distributor Parties to be covered as additional insureds with respect to liability arising out of the activities performed involving the Product by or on behalf of the Customer or Customer Parties.

10. REPRESENTATIONS.

(a) Representations and Warranties of Distributor. Distributor hereby represents and warrants to the Customer as follows:

(i) Distributor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida.

(ii) Distributor has full power and authority to enter into this Agreement and consummate the transactions contemplated hereby.

(iii) This Agreement has been authorized by all necessary action of Distributor and is a valid and binding agreement of Distributor, enforceable against Distributor in accordance with its terms.

(b) Representations and Warranties of the Customer. The Customer hereby represents and warrants to Distributor as follows:

(i) The Customer is a company duly organized, validly existing and in good standing under the laws of its jurisdiction of formation.

(ii) The Customer has full power and authority to enter into this Agreement and consummate the transactions contemplated hereby.



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(iii) This Agreement has been authorized by all necessary action of the Customer and is a valid and binding agreement of the Customer, enforceable against the Customer in accordance with its terms.

(iv) The Customer has complied, and will comply, with all laws and requirements of Governmental Authorities affecting the Customer's purchase and utilization of Product. The Customer has not received any written notice of, and to the Customer's knowledge there are not, any pending investigations asserting non-compliance with government regulations in connection with Customer's business or otherwise adversely affecting Customer's ability to purchase and utilize the Product.

(v) Customer has appropriate expertise to utilize Product in a non-hazardous manner and will, on an ongoing basis, utilize appropriately trained and qualified personnel to install and operate Product in compliance with all applicable laws and regulations.

11. FORCE MAJEURE AND RELATED MATTERS.

(a) Definition of Force Majeure.

(i) A "Force Majeure Event" means any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that materially and adversely affects the performance by such Party of its obligations under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by such Party through the exercise of diligence and reasonable care.

(ii) Force Majeure Events hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the above requirements:

- (1) Failure or delay caused by earthquakes, floods, tornadoes and other natural disasters;
- (2) Revolutions and acts of war;
- (3) Interference by civil unrest or military authorities;
- (4) The withdrawal, suspension or cancellation by any Governmental Authority of the Customer's business, or the Customer's loss or non-renewal of any environmental or other permits required for the operation of the Customer's business;
- (5) Strikes or work stoppages (declared, legal or de facto) and lockouts;
- (6) Nationalization or other expropriation by any Governmental Authority of some or all facilities, equipment, plants, furnaces, generators, land or buildings of either Party; or
- (7) Sabotage, acts of terrorism or acts of vandalism that prevent the normal operation of equipment, facilities, plants, generators or other personal property of either Party.

(iii) Force Majeure Events shall expressly not include the following events and circumstances, except and to the extent that they result directly from a Force Majeure Event:

- (1) any inability of the Customer to obtain in a timely manner the approvals necessary for the use of the Product in the operation of the Customer's business;
- (2) the loss of the Customer's markets; or
- (3) the Customer's inability to operate its business economically.

(b) Notice. Given the occurrence of an event of this nature, the affected Party shall notify the other Party, in writing, of the grounds of any Force Majeure Event within seven (7) calendar days from the time that the Force Majeure Event becomes evident. Similarly, the affected Party shall notify the other Party, in writing, of the resumption of the obligation in question if and when the Force Majeure Event is overcome or no longer applicable.

(c) Excuse Due To Force Majeure. Upon the occurrence of a Force Majeure Event, the affected Party shall be excused, pursuant to this Section 11, from any performance or other obligations under this Agreement to the extent, but only to the extent, that:

- (i) The suspension of performance is of no greater scope and of no longer duration than is caused by such Force Majeure Event; and
- (ii) The affected Party uses due diligence to remedy its inability to perform; provided, however, that this Section 11 shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the affected Party, are contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of such Party.

(d) Right to Terminate Agreement. In the event that either Party is unable to perform any of its material obligations under this Agreement due to a Force Majeure Event, and the Force Majeure Event continues for more than thirty (30) consecutive days despite the affected Party's reasonable commercial efforts to remedy its inability to perform, then either Party may, at its option, terminate this Agreement; provided that such termination by the Customer shall not, under any circumstances, terminate or otherwise excuse the Customer's obligation to pay to the Distributor the full Product Price in respect to any Product for which Distributor has paid, or is legally bound to pay, the Product manufacturer.

12. LIMITATIONS OF LIABILITY.

(a) The total aggregate liability of Distributor, on all claims of any kinds whether in contract, warranty, indemnity, tort (including negligence), or any other contractual or extra-contractual liability of any nature, strict liability, or otherwise, and under any system, theory or principle of law, arising out of the performance or breach of this Agreement by Distributor, or relating to the Product, shall in no event exceed Distributor's insured limits.

(b) In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise, shall Distributor, any of the Distributor Parties or any of Distributor's suppliers be liable for the Customer's loss of profit or revenue, loss of use of equipment, cost of personal injury, cost of pollution claims, cost of substitute equipment or services or replacement power, or downtime costs, or for any such damages or costs of any of the Customer's customers or any third persons. The Customer shall indemnify, defend and hold Distributor and the Distributor Parties harmless from and against any such claims of the Customer's customers or any third persons.

(c) If Distributor furnishes the Customer with advice or assistance concerning the Product which is not required pursuant to this Agreement, the furnishing of such advice or assistance shall not subject Distributor to any liability whatsoever, whether in contract, indemnity, warranty, tort (including negligence), or other contractual or extra-contractual liability of any nature, strict liability, or otherwise, and under any system, theory or principle of law.

(d) The limitations on liability set forth in this Section 12 shall prevail over any conflicting or inconsistent provisions contained in this Agreement, except to the extent such conflicting or inconsistent provisions contain lower limits and/or greater restrictions on the liability of Distributor and/or the other Distributor Parties.

13. WAIVER OF EXTRAORDINARY DAMAGES.

(a) **IN NO EVENT SHALL THE DISTRIBUTOR OR ANY OF THE DISTRIBUTOR PARTIES BE LIABLE TO CUSTOMER OR ANY THIRD PERSON FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE OR EXEMPLARY DAMAGES UNDER ANY CIRCUMSTANCES, EVEN IF THE DISTRIBUTOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. CUSTOMER'S EXCLUSIVE REMEDY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM SALES OF PRODUCT, INCLUDING, BUT NOT LIMITED TO, ANY ALLEGATIONS OF BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR STRICT LIABILITY, SHALL BE LIMITED TO EITHER THE REPLACEMENT OF THE PARTICULAR STEEL PRODUCTS FOR WHICH A CLAIM IS MADE AND PROVED OR THE RETURN OF THE PORTION OF THE PRODUCT PRICE ALLOCABLE TO SUCH STEEL PRODUCTS, AT DISTRIBUTOR'S OR SUPPLIER'S OR MANUFACTURER'S OPTION, AS APPLICABLE.**



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(b) IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE AND GENUINE ESTIMATE AND APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES, AND NOT A PENALTY. THE LIMITATIONS OF WARRANTY AND DAMAGES CONTAINED HEREIN ARE AN ESSENTIAL PART OF THE BARGAINED-FOR CONSIDERATION IN THIS AGREEMENT; BUT FOR SUCH LIMITATIONS, DISTRIBUTOR WOULD NOT HAVE AGREED TO SELL THE PRODUCT AT THE PRICE SET FORTH IN THE CONFIRMATION.

14. INDEMNIFICATION.

(a) In consideration of furnishing the Product specified in the Confirmation and other good and valuable consideration set forth herein, it is expressly understood that Distributor, the Distributor Parties, and Distributor's directors, officers, employees, attorneys and agents (each, an "Indemnified Party") assume no liability for accidents, injuries to persons or damage to property arising out of or related to the Product, regardless of the cause of any such accidents, bodily injury or property damage and regardless of any negligence on the part of an Indemnified Party. The Customer shall, to the maximum extent permitted by law, defend, indemnify and hold harmless each Indemnified Party from and against any and all claims, demands, actions, liability (including without limitation any liability arising under international, federal, state or local law or regulation) or proceedings brought against an Indemnified Party, of any nature whatsoever including, but not limited to, claims and lawsuits for losses of any kind, property damage, personal injury or death that are alleged to have arisen from or alleged to be connected with the presence, use, misuse, maintenance, installation, distribution, removal, manufacture, design, operation or condition of the Product, specifically including claims or losses alleged or proved to have arisen from the joint or sole negligence of an Indemnified Party. The indemnification included within this Section 14 shall include the indemnification by the Customer of costs and attorneys' fees incurred by any Indemnified Party.

15. DEFAULT AND REMEDIES.

(a) The Customer shall be in default under this Agreement (a "Customer Default") if:

- (i) the Customer shall fail to pay any amount required to be paid by the Customer under this Agreement when the same becomes due and payable;
- (ii) the Customer shall fail to perform or observe any other material covenant, condition or agreement to be performed or observed by it under this Agreement and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof by Distributor;
- (iii) any material representation or warranty made by the Customer in this Agreement or in any document or certificate furnished by the Customer in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof by Distributor; or
- (iv) the Customer shall become bankrupt or insolvent or make an assignment for the benefit of its creditors.

(b) Upon the occurrence of any Customer Default, Distributor may, at its option:

- (i) terminate this Agreement; and/or
- (ii) exercise any resulting and/or other rights and remedies which may be available to it under any applicable law, including without limitation any right or remedy available under the Uniform Commercial Code, all of which rights and remedies shall be cumulative.
- (iii) charge interest on overdue amounts at the applicable rate as defined.

(c) Subject to Sections 2 and 11 of this Agreement, Distributor shall be in default under this Agreement (a "Distributor Default") if:

- (i) Distributor shall fail to perform or observe any material covenant, condition or agreement to be performed or observed by it under this Agreement and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof by the Customer; or
- (ii) Any material representation or warranty made by Distributor in this Agreement or in any document or certificate furnished by Distributor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof by the Customer.

(d) Upon the occurrence of any Distributor Default, the Customer may, at its option but subject to all limitations, and all conditions and other provisions, set forth in this Agreement, terminate this Agreement and exercise such rights and remedies as are available to the Customer, as a result of its termination of this Agreement, under applicable law.

(e) Upon termination of this Agreement, the Parties shall be released from any and all obligations under this Agreement, except for the following:

- (i) The Customer shall be obligated to pay Distributor any outstanding Product Prices payable by the Customer through the date of such termination.
- (ii) The obligations of the Parties under Sections 12, 14, and 16 shall not expire following the termination of this Agreement; and
- (iii) The obligations of the Customer under Section 7 shall continue until the expiration of any statute of limitation applicable to the Taxes covered by such Section.

(f) Each Party shall pay all costs, charges and expenses, including reasonable attorneys' fees and expenses, incurred by the other Party in the collection of any sums that may be due and owing to the other Party by such Party under this Agreement, except to the extent otherwise provided as to the costs of arbitration in Section 22.

(g) The Customer shall have no right to terminate this Agreement for the Customer's convenience and shall, instead, be entitled to terminate this Agreement only as a result of the occurrence of a Distributor Default. Nor shall the Customer have any right, in the absence of the occurrence of a Distributor Default, to assert that the Customer has any grounds for insecurity with respect to Distributor's performance under this Agreement or any grounds to request that Distributor provide a performance bond or any other assurance of Distributor's performance hereunder.

16. SERVICES AND HEALTH AND SAFETY MATTERS.

(a) The Customer shall take all reasonable precautions, at all times, to ensure the safety of the public, and of any personnel of the Distributor and/or the Distributor Parties, at all sites where the Product is delivered to or utilized by the Customer.

(b) The Customer shall indemnify and defend Distributor for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to (i) the presence of any hazardous materials at any delivery site, (ii) any improper handling or disposal of any hazardous materials by the Customer, or (iii) any hazardous materials brought onto any delivery site or produced thereon at any time by parties other than Distributor.

17. WAIVER OF IMMUNITY. To the extent that the Customer may in any jurisdiction claim for itself or its assets immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process, the Customer hereby agrees not to claim and waives such immunity to the fullest extent permitted by the laws of that jurisdiction.

18. NOTICES. Any notices desired or required to be given pursuant to this Agreement shall be in writing and shall be delivered in accordance with the following: (i) by personal delivery, in which case notice is deemed given when delivered to the addressee; or (ii) sent prepaid by registered or certified mail or internationally recognized courier delivery service (such as DHL), in which case notice is deemed given on the date of delivery. Any notices hereunder shall be delivered to Distributor at the address set forth below, to the Customer at the same address at which any invoice hereunder is to be delivered (as reflected in Distributor's records), or to either Party at such other address as may be designated in writing by such Party to the other Party in accordance with the provisions of this Section 18:



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19. **GOVERNING LAW.** This Agreement shall be governed by, construed and enforced in accordance with, the substantive laws of the State of Florida, without regard to its principles of conflicts of laws.

20. **MODIFICATION: WAIVER.** Modifications, waivers, additions or amendments to this Agreement shall be binding on a Party only if they are in writing and signed by a representative of such Party. The failure of either Party to enforce, at any time or for any period of time, any of the provisions of this Agreement shall not constitute a waiver of such provisions or of the right of such Party to enforce each and every provision hereof.

21. **ASSIGNMENT.** Neither Party shall assign, sell, pledge or hypothecate this Agreement or any of its rights hereunder, in whole or in part, without the prior written consent of the other Party (which such other Party may grant or withhold in its sole discretion), whether directly, indirectly or by operation of law, provided that Distributor may assign its right to receive the Product Price to any Distributor Party or lender. No permitted assignment or sublease shall relieve a Party of any of its obligations under this Agreement.

22. **DISPUTE RESOLUTION.**

(a) All disputes arising in connection with this Agreement shall be settled, if possible, by negotiation between the Parties. If settlement cannot be reached by negotiation, then the dispute shall be finally settled by arbitration. Each Party shall have the right by giving notice to the other Party to refer a dispute or controversy to arbitration by three arbitrators at any time without recourse to common or commercial courts. The notice shall identify the name and address of the arbitrator appointed by the Party giving notice and the points of dispute.

(b) The arbitration shall be conducted in the English language, in accordance with the Rules of Arbitration of the International Chamber of Commerce in effect on the date of the institution of arbitration by either Party, before three arbitrators appointed in accordance with said Rules. The venue for the arbitration shall be Miami-Dade County Florida. In arriving at their decision, the arbitrators shall consider the pertinent facts and circumstances and be guided by the terms and conditions of this Agreement; and, if a solution is not found in the terms of this Agreement, the arbitrators shall apply the governing law of this Agreement. Both Parties shall have the right to present documentary evidence and witnesses and to cross-examine witnesses. The decision of the arbitrators shall be final and binding upon both Parties, and neither Party shall seek (nor shall either party have any right of) recourse to a court of law or any other authorities to appeal for modification of such decision. Reasonable expenses of the arbitration shall be borne as the arbitrators may determine. On the request of either Party, a transcript of the arbitration shall be prepared and made available to the Parties.

(c) Any award rendered in arbitration hereunder may be enforced in, and the parties hereby consent to the sole and exclusive jurisdiction of, the courts of the State of Florida in Miami-Dade County and/or the United States District Court for the Southern District of Florida.

23. **MISCELLANEOUS.**

(a) Any provision of this Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition of unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(b) In any case where the consent or approval of either Party is required, no such consent or approval shall be valid unless the same shall be in writing and signed by a representative of such Party.

(c) All representations, warranties and indemnities of either Party contained in this Agreement or in any document or certificate delivered by such Party pursuant hereto or in connection herewith shall survive the execution and delivery of this Agreement and the expiration or other termination hereof.

(d) The captions in this Agreement are for convenience only and shall not define or limit any of the terms hereof.

(e) Any oral or written representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Party. Each Party agrees that it has not relied on, or been induced by, any representations of the other Party not contained in this Agreement.

(f) No ambiguity in any provision of this Agreement shall be construed against either Party by virtue of the fact that such Party, or its counsel, drafted such provision.