

The Terms and Conditions of Sale contained herein (the “Agreement”) constitute the entire Agreement between ThinKom Solutions Inc. (“Seller” or “ThinKom”) and the party which places a purchase order with ThinKom (“Buyer”) and shall control all purchases of Products or Services (as hereinafter defined) by Buyer from Seller. Seller will not be bound by any terms of Buyer’s purchase order unless expressly agreed to in writing by Seller. No form of acceptance except Seller’s written or electronic acknowledgement provided to Buyer shall constitute valid acceptance of Buyer’s purchase order, any such acceptance is expressly conditioned on Buyer’s assent to the terms hereof and the exclusion of all additional or different terms except as may be set forth in written agreement expressly modifying or superseding these terms. Buyer shall be deemed to have assented to the terms hereof, whether or not previously received, upon accepting delivery of anything shipped by Seller. If tender of these terms is deemed an offer, acceptance is expressly limited to the terms hereof and Seller hereby gives notice of its objection to and rejection of any additional or different terms proposed by Buyer in its purchase order or any other documents, such terms being considered as material alterations to these Terms and Conditions.

### **1. PRODUCTS**

1.1. “Product(s)” shall mean any products identified on (a) Seller’s proposal or quotations or (b) Seller’s acknowledgments of a purchase order. In the event of any inconsistency between the proposal or quotation and the acknowledgment, or the purchase order and the acknowledgment, the acknowledgment shall control.

1.2. Seller shall give Buyer prior notice of proposed alterations to any Product which Seller deems necessary to comply with applicable safety standards and/or governmental regulations, or to make a Product non-infringing with respect to any patent, copyright or other proprietary interest. If Buyer does not consent to any such alteration within fifteen (15) days following the receipt of notice, Seller shall have the right, by written notice to Buyer, to consider the Order to have been canceled pursuant to the provisions of Paragraph 5.2 below.

1.3 “Services” shall mean any services identified on (a) Seller’s proposal or quotations or (b) Seller’s acknowledgments of a purchase order. In the event of any inconsistency between the proposal or quotation and the acknowledgment, or the purchase order and the acknowledgment, the acknowledgment shall control.

### **2. PRICE QUOTATIONS; ORDERS**

2.1. All prices published by Seller or quoted by Seller’s representatives may be changed at any time without notice. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller’s price in effect at the time of shipment. All prices

are subject to adjustment on account of specifications, quantities, shipment arrangements or other terms or conditions which are not part of Seller's original price quotation.

2.2. Buyer shall purchase Products by issuing a written purchase order (the "Order") signed by an authorized representative, indicating specific Products, quantity, unit price, total purchase price, shipping instructions, requested delivery dates, bill-to and ship-to addresses, tax exempt certificates, if applicable, and any other special instructions. Any contingencies contained on such order are not binding upon Seller. All Orders are subject to acceptance in writing by Seller at its corporate headquarters.

2.3. Any notice or instruction from Buyer received subsequent to Seller's acknowledgment which has the effect of changing the specifications, scope of work, or other terms will be effective only upon an appropriate adjustment in the price and/or delivery date, and the written acceptance of any such change by Seller.

2.4. The shipment of an Order to Buyer or consignee located outside the United States may be subject to the issuance of a license or other permit(s) by the United States Commerce Department, United States Department of State and/or other United States department or agency; acceptance of all such Orders is conditioned upon and subject to the issuance of such license and/or permit; in the event that Seller is unable to obtain such license(s) or permit(s), Seller may cancel such Order and shall have no further liability to Buyer.

### **3. PAYMENTS AND RISK OF LOSS**

3.1. Unless otherwise agreed to in writing by Seller, payment shall be made in U.S. Dollars by Buyer by electronic wire transfer to Seller's designated bank. Advanced payment equal to 50% of the Order shall be transferred upon Seller's acceptance of the Order. Final payment to be made to Seller upon notification from Seller that item(s) are ready for shipment. Seller shall ship product as soon as practicable after receipt of payment.

3.2. If the Order requires consignment and/or delivery by Seller to a place(s) located outside the United States, unless otherwise agreed to in writing by Seller, title to and risk of loss for the Product(s) shall pass from Seller to Buyer, "EXW Seller's warehouse" (as defined in International Chamber of Commerce, [Incoterms 2010](#)), pick up and loading charges for the account of Buyer. In all other cases, unless otherwise agreed to in writing by Seller, title to and risk of loss for the Product(s) shall pass from Seller to Buyer, "FOB Seller's warehouse".

3.3. Notwithstanding Section 3.2, if shipment of any Product is delayed at Buyer's request, Seller may invoice Buyer for such Product and risk of loss of such Product will pass to buyer on the date the Seller is prepared to make shipment to Buyer.

3.4. Unless otherwise agreed to in writing by Seller, Buyer shall be responsible for insuring the Products at and after the time it assumes the risk of loss.

3.5. Unless otherwise stated in writing by Seller, all prices quoted are exclusive of any tax, duty, or other fee of any nature, imposed upon this transaction by any Federal, state or local government of the United States and/or foreign government authority; all such taxes, duties, customs and other fees shall be paid in accordance with “FCA Seller’s warehouse” (as defined in International Chamber of Commerce, Incoterms 2010), and are in addition to the price quoted or invoiced (unless Buyer shall present an exemption certificate acceptable to the taxing authorities); in the event Seller is required to prepay any such tax, duty, custom or other fee, Buyer will provide payment to Seller prior to shipment of product(s).

3.6. Buyer hereby acknowledges and agrees that Seller shall retain a purchase money security interest in all Products sold hereunder and in all proceeds from their resale by Buyer to secure payment by Buyer of the purchase price. Buyer further acknowledges and agrees that Seller shall retain such purchase money security interest in addition to all other remedies at law. In the event of a failure by Buyer to perform in a timely manner any obligation of Buyer to Seller, the Buyer hereby agrees to assemble all secured collateral for the defaulted obligation and make such collateral available to Seller at a place reasonably convenient to both parties. In the event Buyer disposes of any such collateral, any proceeds from such disposition shall be applied to the amount of Buyer’s outstanding obligation as provided by law. Buyer hereby authorizes Seller to file one or more financing and continuation statements, and amendments thereto, in order to secure Seller’s interest in the Products purchased hereunder without the signature of Buyer where permitted by law. A carbon, photographic or other reproduction of this Agreement or any financing statement covering the Products purchased hereunder or any part thereof shall be sufficient as a financing statement where permitted by law.

3.7. If at any time Buyer is delinquent on the payment of any invoice or is otherwise in breach of any obligation to Seller, Seller may, at its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any Order or may, at its option, require Buyer to prepay for further shipments. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys’ fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller’s rights hereunder.

#### **4. SHIPPING AND DELIVERY**

4.1. Shipping dates will be established by Seller upon its receipt and acceptance of an Order from Buyer. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver.

4.2. Unless Seller receives and acknowledges written shipping instructions from Buyer regarding shipment thirty (30) days prior to the delivery date, Seller may select and engage on Buyer's behalf third parties, including U.S. domestic and international forwarders(s) and carrier(s), for the transportation, clearance and delivery of the Products. The selection by Seller of a particular company shall not mean that Seller warrants or represents that the company will properly perform such services and Seller shall not be responsible for any delays or damages caused by such third parties, nor shall such third parties be considered to be an agent of Seller. In the event Seller pays or is required to pay or prepay any fees or charges related to these services, Buyer shall make payment to Seller for said fees or charges prior to shipment of product(s).

4.3. All shipments provided for hereunder may be made in a single delivery or in lots, at the discretion of Seller.

### 5. **CANCELLATION; RETURNS**

5.1. In the event that either party defaults in any of the terms, conditions, obligations, undertakings, covenants, or liabilities set for therein, the other party shall give the defaulting party written notice of such default. If the defaulting party does not remedy such default within sixty (60) days following receipt of written notice thereof, the party giving notice may cancel the Order by providing the defaulting party with a written notice of cancellation. In addition, either party may cancel the Order by providing written notice to the other party in the event the other party becomes insolvent, files a petition for bankruptcy under any chapter of the U.S. bankruptcy laws, enters into any arrangement or composition with creditors, or goes or is put into liquidation, or, in the case of the Buyer, is unable to meet its debts, as they become due. Except as provided in Paragraph 2.3, cancellation of the Order shall not relieve either party from its obligations hereunder which shall have accrued prior to such cancellation. Cancellation by Buyer of the Order pursuant to this article shall be Buyer's sole and exclusive remedy for any breach by Seller prior to delivery.

5.2. Except as provided in paragraph 5.1, Orders acknowledged and approved by Seller can only be canceled by Buyer with the mutual agreement of Buyer and Seller. In the event an Order is agreed to be canceled, Buyer will be liable for no less than the sum of (i) the sales price of all finished goods, (ii) the total cost of all work in process and all raw materials purchased for the Product, including long lead time and/or bulk material, (iii) a reasonable profit with respect to unfinished goods and (iv) any other obligations, liabilities, expenses and /or costs incurred by Seller in connection with the Order (including, but not limited to, any administrative, freight and restocking costs and expenses). In no event will Buyer's liability under this section exceed the total value of the canceled portion of the Order. Credit will not be allowed for Products returned without the prior written consent of Seller.

5.3. If the Products or Services are being purchased to complete a U.S. Government contract which can be and is terminated for the government's convenience, Buyer will give prompt

notice to Seller of the terminations thereof and will promptly reimburse Seller in accordance with the provisions of the termination article of such government contract. In addition, Buyer shall be liable for, and include in any such reimbursement amount, all of Seller's costs incurred in connection with, arising out of or otherwise associated with the cancellation of the Order for the government's convenience, including, without limitation, administrative costs and expenses incurred in connections with the preparation and processing of all documentation in connection therewith.

### **6. LIMITED WARRANTY**

Seller warrants that the Products will operate substantially in conformance with Seller's published specifications when subjected to normal, proper and intended usage by properly trained personnel, for a period of one (1) year from the date of shipment to Buyer (the "Warranty Period"). Seller agrees during the Warranty Period, provided it is promptly notified in writing upon the discovery of any defect and further provided that all costs of returning the defective Products to Seller are pre-paid by Buyer, to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with said specifications. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the provisions of Section 4 above. In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by the warranty provided in this Section 6, Buyer shall pay Seller therefor at Seller's then prevailing rates.

EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, SELLER DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

### **7. NO REVERSE ENGINEERING**

It is an express condition of this Agreement that Buyer shall neither reverse engineer, decompile, deconstruct, disassemble, synthesize, or extract any element of and/or otherwise

discover any Confidential Information (as hereinafter defined), nor request nor accept any disclosure of Confidential Information from a third party who reverse engineers, decompiles, deconstructs, disassembles, synthesizes, or extracts any element of and/or otherwise discovers any Confidential Information, nor otherwise attempt to derive Confidential Information contained or embodied in Seller's Products. In the event that Buyer breaches any obligation set forth in the preceding sentence, or otherwise misappropriates or makes unauthorized use of Seller's Confidential Information, any intellectual property resulting or deriving from the breach(es) shall be for Seller's benefit, and Seller shall be the sole and exclusive owner of that intellectual property. Buyer will execute an assignment of invention(s) in the form approved by Seller, for any intellectual property arising from breach of this Section 7. The aforementioned provisions shall in no way be considered to abridge, supplant or otherwise limit other legal or equitable remedies available to Seller for such breaches, and Seller may seek redress for such breaches to the fullest extent allowable by law. The obligations in this Section 7 shall survive termination of this Agreement.

### **8. PATENT INDEMNITY**

8.1. Seller will defend but not pay damage awards/settlement payments for any claim, suit or proceeding brought against Buyer so far as it is based on a claim that any Product supplied hereunder infringes an existing patent (as of the effective date of this Agreement) within the United States, if notified promptly in writing of the claim and given full authority, information, and assistance for the defense. If such claim has occurred, or in Seller's opinion is likely to occur, Buyer agrees to permit Seller, At Seller's option and expense, either to procure for Buyer the right to continue using the Product or to replace or modify the same so that it becomes non-infringing, or, if neither of the foregoing alternatives is reasonably available, remove the Product and return Buyer the price thereof as depreciated or amortized by an equal annual amount over the lifetime of the Product as established by Seller.

8.2. Notwithstanding anything to the contrary contained herein, Seller shall not have any liability to Buyer to the extent that any infringement or claim thereof is based upon (i) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (ii) compliance with Buyer's designs, specifications or instructions, (iii) use of the Product in an application or environment for which it was not designed or (iv) modifications of the Product by anyone other than Seller without Seller's prior written approval.

8.3. Buyer shall defend and hold Seller harmless against any and all costs, expenses, judgments, liabilities and losses for alleged infringement of any patents or other proprietary rights which result from Seller's compliance with Buyer's designs, specifications or instructions.

8.4. Notwithstanding any other provisions hereof, Seller shall not be liable for any claim based on Buyer's use of the Products as shipped after Seller has informed Buyer of

modifications or changes in the Products required to avoid such claims and offered to implement those modifications or changes, if such claim would have been avoided by implementation of Seller's suggestions.

8.5. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY WITH RESPECT TO INFRINGEMENT OR ALLEGED INFRINGEMENT BY THE PRODUCTS OF PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF THIRD PARTIES AND SELLER DISCLAIMS, ALL WARRANTIES, CONDITIONS OR OTHER TERMS CONCERNING NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS.

### **9. EXPORT LICENSING REQUIREMENTS AND IMPORT PERMITS**

9.1. If the Order requires consignment and/or delivery by Seller to a place(s) located outside the United States, Seller shall obtain all U.S. export licenses, permits and/or approvals required by the United States government. Buyer shall be responsible for providing in a timely fashion complete and accurate information requested by Seller or any United States government agency necessary to obtain such license, permit or approvals and Buyer shall notify Seller promptly, in writing, of any changes in information or circumstances previously provided to Seller. Buyer acknowledges that Seller may rely on all statements made by Buyer in connection with this Order and Buyer will indemnify and hold Seller harmless of any fines, penalties forfeitures and/or damages of whatever nature incurred by Seller based upon its reliance on Buyer's statements. Notwithstanding Paragraph 2.3 above, in the event that a license cannot be obtained as a result of information which is not timely provided and/or is inaccurate and/or has changed, Seller shall have the right to treat the Order as canceled by Buyer and subject to the terms of Paragraph 5.2 above.

9.2. Buyer hereby agrees (i) to comply with all relevant export and re-export laws, rules, and regulations, including, without limitation, the US Export Administrations Regulations, and (ii) not to export, or to allow the export or re-export of, any products or technology related to the products in violation of such laws, rules and regulations, or without all required licenses and authorizations.

9.3. Except as agreed to in writing by Seller, Buyer shall solely be responsible for obtaining any and all licenses, permits, approvals, etc., required for importation of the Products into a foreign country and/or compliance with its laws.

### **10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

10.1. All technical and commercial information and ideas which Seller has supplied or shall supply to Buyer, excluding public domain information or property in Buyer's possession in tangible form before receiving such information from Seller ("Confidential Information"), is proprietary to Seller and disclosed to Buyer in confidence for the limited purpose of assisting Buyer in the evaluation or use of Seller's products. Buyer shall not, without Seller's prior

written consent, disclose or make available such Confidential Information to any other person or use such Confidential Information, except for such limited purpose. All Confidential Information shall be returned to Seller on demand, and, in any event, when no longer needed by Buyer in connection with Seller's products. In addition to Seller's other remedies, Buyer agrees that any benefit or property derived by Buyer, or any party to which Buyer has sold Seller product(s) and/or disclosed Seller Confidential Information, from any unauthorized use of Confidential Information shall be the sole and exclusive property of Seller. Sale of products or services to Buyer does not convey a license, implied or otherwise, under any patent, copyright, trademark or trade secret in which Seller has an interest, nor does it convey rights to any descriptive data, including but not limited to Seller's drawings, schematics, software, secrets, processes, or tooling.

10.2. Nothing shall be deemed to transfer to either party any right or license of any kind in any of the other party's intellectual property.

### **11. SOFTWARE**

With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains ownership of and title to all software products provided hereunder.

Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. Buyer is authorized to include software product(s) provided by Seller in the re-sale of any Seller product(s) provided that Buyer restricts its customer(s) to the same limited use rights outlined in this Agreement. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. For purposes of Section 117 of the Copyright Act of 1976, as amended, and for all other purposes, Seller will be considered the owner of the software products and related documentation provided hereunder and any copies thereof, and of all copyright, trade secret, patent, trademark and other intellectual property rights therein. Buyer agrees not to sell, transfer, license, loan or otherwise make available to third parties the software products and related documentation provided hereunder. Buyer may not modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. The source code for the software products supplied hereunder will not be disclosed to Buyer, and Buyer may not disassemble, decompile or reverse engineer the software products supplied hereunder.



Buyer agrees to hold in confidence the software products and related documentation supplied hereunder and not to disclose or make available in any form the same, except to Seller's and Buyer's employees and agents. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof.

Certain of the software products provided by Seller may be owned by one or more third parties and licensed to Seller. Seller and Buyer intend and agree that software products owned by third parties and provided hereunder are being sublicensed to Buyer, that such third parties retain ownership of and title to such software products and that such third parties may directly enforce Buyer's obligations hereunder in order to protect their respective interests in such software products. The warranty and indemnification provisions set forth herein shall not apply to software products owned by third parties and provided hereunder.

### **12. TOOLS AND DIES**

Any fixtures, dies or tools for which Seller may pay and charge to Buyer's account in connection with Buyer's Order shall not become Buyer's property unless otherwise specifically agreed in writing. All such equipment may be used by Seller for any purposes, whether with respect to Buyer or otherwise, and/or be disposed of in Seller's sole discretion.

### **13. LIMITATION OF LIABILITY, LIMITATION ON BRINGING ACTION**

13.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF WARRANTY, BREACH OF CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.

13.2. No action shall be brought by Buyer for any breach by Seller more than one (1) year after delivery of the Product or Services.

### **14. FORCE MAJEURE**

Seller shall be excused from any liability, loss or damage to Buyer or any other person or party for failure to manufacture or deliver, or any delay in delivery, arising from any events beyond

Seller's control regardless of whether or not they were foreseeable by either party when the Products were ordered. Such uncontrollable events include, but are in no way limited to, acts of God, war, riot, civil disobedience, embargoes, acts of civil or military authorities, fires, floods, accidents, Government priorities or regulations, quarantine restrictions, acts of Buyer, strikes, labor stoppages, labor disputes, differences with workman decrees, delays in transportation, and shortages of cars, fuel, labor or materials.

### **15. GENERAL TERMS**

15.1. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, USA, as if performed wholly within the State and without giving effect to the principles of conflict of law. Except as provided above, any controversy that cannot be settled directly between Buyer and Seller shall be settled by binding arbitration in Los Angeles, California, USA, in accordance with the rules then prevailing of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof, with no right of appeal therefrom.

15.2. No waiver of rights under this Agreement by either party shall constitute a subsequent waiver of this or any other right under this Agreement.

15.3. Neither this Agreement nor any rights under this Agreement, other than monies due or to become due, shall be assigned or otherwise transferred by Buyer (by operation of law or otherwise) without the prior written consent of Seller. This Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties.

15.4. In the event that any of the terms of this Agreement become or are declared to be illegal by any court of competent jurisdiction or arbitrator(s), such terms shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.

15.5. Neither party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

15.6. This Agreement, including the Warranty referenced herein, constitutes the entire agreement between the parties hereto concerning the subject matter of this Agreement, and there are no understandings, agreements, representations, conditions, warranties, or other terms, express or implied, which are not specified herein. This Agreement may only be modified by a written document executed by authorized representatives of Seller and Buyer.

## WARRANTY

1. ThinKom Solutions Inc. (Seller) warrants to the original purchaser that each of its products, when shipped will be and will perform in accordance with applicable specifications. The limit of liability under this warranty is, at Seller's option, to repair or replace any product or part thereof which shall within one year of delivery, be returned by the Buyer to an address designated by Seller, and shall, as determined by examination by Seller prove defective in material and/or workmanship. Warranty returns must first be authorized in writing by Seller. Disassembly of any Seller product by anyone other than an authorized representative of Seller shall void this warranty in its entirety. Seller reserves the right to make changes in any of its products without incurring any obligation to make the same changes on previously delivered products.
2. Components and subsystems having been repaired by Seller shall be warranted for that repair for ninety (90) days. For products that are still within the original warranty period as described above, the original warranty (if longer) will take precedence.
3. As a condition to the warranties provided for herein, the Buyer will prepay the shipping charges for all products returned to Seller for repair and Seller will pay the return shipping.
4. The Buyer will pay the cost of inspecting and testing any goods returned under the warranty which are found to meet the applicable specification and which are not defective or not covered by this warranty.
5. Products sold by Seller hereunder shall not be considered defective or non-conforming to the Buyers' order if they (a) satisfactorily fulfill the performance requirements that were (i) provided by the Buyer to Seller or (ii) as published in Seller's product specification literature, or (b) are in accordance with any written agreement between the Buyer and Seller, or (c) are in accordance with samples approved by the Buyer. This warranty shall not apply to any products or parts thereof which have been subject to accident, negligence, alteration, abuse, or misuse. Seller makes no warranty whatsoever in respect to accessories or parts not supplied by it.
6. Limitations of Warranty, Damages and Liability  
**EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO WARRANTIES, CONDITIONS, GUARANTEES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTIES, CONDITIONS, GUARANTEES OR REPRESENTATIONS, WHETHER EXPRESSED OR IMPLIED, IN LAW OR IN FACT, ORAL OR IN WRITING. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF WARRANTY, BREACH OF CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.**

7. All matters regarding this warranty shall be interpreted in accordance with the laws of the State of California, USA, and any controversy that cannot be settled directly shall be settled by arbitration in Los Angeles, California, USA in accordance with the rules then prevailing of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.