



Terms and Conditions of Sale (North America)

Except as otherwise agreed by Elo Touch Solutions, ("Seller") in writing, the following terms and conditions will apply to all orders received and all sales made by Seller.

1. GENERAL: The terms and conditions set forth herein constitute the sole and entire agreement between Seller and the buyer ("Buyer") of goods and/or services from Seller with respect to the subject matter hereof. Any term or condition in any order, confirmation or other document furnished by Buyer which is in any way inconsistent with or in addition to the terms and conditions hereof is hereby expressly rejected, and Seller's acceptance of any offer or order of Buyer is hereby expressly made in reliance on Buyer's assent to all terms and conditions hereof. If Buyer objects to any of the terms or conditions hereof, such objection must be made in writing and received by Seller at Seller's stated address within ten (10) days after this document is transmitted to Buyer. Failure to so object shall be conclusively deemed to be acceptance of the terms and conditions hereof. Seller's failure to object to any term or condition in any oral or written communication from Buyer, whether delivered before or after the date hereof, shall not constitute an acceptance thereof or a waiver of any term or condition hereof. All correspondence pertaining to this order or to any of the terms and conditions covered by this order, will be in the English language.

2. TAXES: The prices set forth herein are not subject to trade or other discounts and, except as otherwise expressly stated herein, do not include federal, state or local taxes applicable to goods or services involved in this transaction. All such taxes shall be paid by Buyer unless Buyer provides Seller with evidence satisfactory to Seller of exemption from such taxes. When Seller is required by law or regulation to collect such taxes, Seller will state such taxes separately on the invoice with respect to the goods or services to which the taxes pertain.

3. PRICES: The sale price(s) for goods delivered hereunder ("Products") are accepted as stated on Seller's order acknowledgment and will include the cost of Seller's usual factory tests and inspections. All quotations of Seller are subject to change at any time prior to acceptance of an order and expire forty-five (45) days from the date given. All prices are subject to change without notice and may be subject to any increase which may be in effect on the date of shipment. Except as otherwise expressly stated herein, any service calls or other service work performed by Seller shall be at Buyer's expense in accordance with Seller's standard rates for such services. Buyer acknowledges that the pricing of the Products and services and the other terms of this Agreement have been set based on this Agreement providing for an agreed allocation of the risk for any defective Products or services between the parties. Buyer further acknowledges that the pricing and terms would have been different if there had been a different allocation of the risk.

4. DELIVERY, TITLE PASSAGE AND INSURANCE:

(a) Delivery. Delivery or shipping dates, if any, set forth herein are approximate only and merely represent Seller's best estimate of the time required to make delivery or shipment. Time is not of the essence with respect to the transaction covered by these Terms and Conditions of Sale, except with respect to Buyer's obligation to make all related payments. Seller's obligations hereunder will be dependent upon Seller's ability to obtain the necessary raw materials. Seller will not be liable for any loss or expense (consequential or otherwise) incurred by Buyer as a result of any delay in delivery for any reason other than arbitrary refusal by Seller to perform. Seller reserves the right to make partial deliveries. Lead time on orders and rescheduling are governed by Seller's published policies as amended from time to time at Seller's discretion.

(b) Title Passage for Domestic Sales. Except as otherwise expressly stated herein, all deliveries hereunder to destinations in the United States, Canada, or Mexico will be F.O.B. Seller's plant via a carrier selected by Buyer at its option, or otherwise by Seller, freight collect, to Buyer and will be packed in Seller's standard shipping packages. In all such cases title and risk of loss or damage will pass to Buyer upon Seller's delivery of the Products to the carrier for shipment to Buyer and no loss or damage will relieve Buyer of any obligation hereunder, including payment for lost or damaged Products. If shipment of any Product is delayed at Buyer's request, Seller may invoice Buyer for such Products, and risk of loss of such Products will pass to Buyer, on the date that Seller is prepared to make shipment to Buyer. Buyer shall reimburse Seller for any and all costs of storage incurred by Seller after the date that Seller is prepared to make shipment.

(c) Title Passage for Export Sales. Except as otherwise expressly stated herein, all deliveries hereunder to destinations other than the United States, Canada or Mexico will be via a carrier selected by Buyer at its option, or otherwise by Seller, freight collect, to Buyer and will be packed in Seller's standard shipping packages. In all such cases (regardless of the designated X-Works) title and risk of loss or damage will pass to Buyer on departure from Elo, unless pre-approved that Elo is to pay freight of the Products. No loss or damage will relieve Buyer of any obligation hereunder, including payment for lost or damaged Products. All risks of transportation, prior to the passage of title, are for the account of Seller. Seller will have the exclusive right, as owner, to control the shipment, including the right to take possession of the Products from third parties, such as banks, transport companies, or customs officials, or Buyer at any time and at any point up to the time that title passes to Buyer. Neither (i) the time, method, place or medium of payment provided for herein or any combination of the foregoing, nor (ii) the manner of consignment provided for, whether for or to the order of Buyer or its agent, will in any way limit or modify the rights of Seller, as the owner of the Products, to have control over and the right to possession of the Products until the title thereto passes to Buyer as provided for above. In the event that a bank has, by reason of credit extended to Buyer or for any other reason, an interest in the shipment, it is agreed that Seller may consign the Products to said bank through

the usual channels; in each such case, the full right of ownership of and control over the shipment will remain in Seller until title passes to Buyer as provided herein. The terms "ownership" and "title" as used in these Terms and Conditions of Sale mean full beneficial ownership of the Products and not merely bare legal title retained for security purposes.

(d) Insurance. Buyer will pay, or reimburse Seller for, all insurance on the Products. Any insurance proceeds collected by Buyer for Seller's account will be promptly remitted to Seller in U.S. Dollars. Any insurance policies purchased, whether by Buyer or Seller, will be for the benefit of Seller, whether or not Seller is named as an insured in such policies, until title and risk of loss or damage to the Products pass to Buyer. Where possible, all insurance policies will provide that they are for the benefit of Seller and Buyer "as their interests may appear."

5. BUYER'S CONDITION: This agreement and all shipments made hereunder shall at all times be subject to the approval by Seller of Buyer's financial condition. If the financial condition of Buyer at any time becomes unsatisfactory to Seller, in Seller's sole discretion, or if Buyer fails to make any payment when due, in addition to any other rights Seller may have Seller may defer or decline to make any shipment or shipments hereunder or may condition any such shipment upon receipt of satisfactory security or cash payments in advance.

6. PAYMENT TERMS: Except as otherwise expressly stated herein, Seller shall invoice Buyer at the time of shipment of each installment on payment terms of cash in advance, except where open account credit is established and maintained to Seller's satisfaction, in which case payment terms shall be net thirty (30) days from date of shipment. A discount for early payment may apply. All payments shall be in U.S. Dollars, Buyer shall make all payments as provided herein without regard to whether Buyer has made or may make any inspection or use of any Products. Any invoiced amount which is not paid when due shall bear interest at the rate of one and one-half percent (1-1/2%) per month or the highest rate then permitted by law, whichever is less, until paid in full. On orders for shipment to countries other than the U.S.A., payment on all sales will be made through the medium of a Letter of Credit to be established by Buyer at its expense including any bank confirmation charges. All Letters of Credit will be in favor of and acceptable to Seller, will be maintained in sufficient amounts and for the period necessary to meet all payment obligations, will be irrevocable and issued, or confirmed, by a bank in the U.S.A. satisfactory to Seller within fifteen (15) days after acceptance of any order, will permit partial deliveries and will provide for pro rata payments upon presentation of Seller's invoices and Seller's certificates of delivery F.O.B. Seller's factory or of delivery into storage with certification of cause therefore and for the payment of any termination charges.

7. SECURITY INTEREST: Seller retains a security interest in all Products and all proceeds and products thereof until all amounts due or to become due hereunder have been paid. Any repossession and removal of Products shall be without prejudice to any of Seller's other remedies at law or in equity. Buyer agrees, without further consideration, at any time to do or cause to be done, executed and delivered, all such further acts and instruments (including without limitation financing statements appropriate for filing) as Seller may reasonably request in order to perfect Seller's security interest.

8. CONTINGENCIES: Seller shall not be liable for delay in performance or nonperformance of any of its obligations hereunder, in whole or in part, if such performance is rendered impracticable by the occurrence of any contingency or condition beyond the control of either Seller or Seller's suppliers, including without limitation war, sabotage, embargo, riot or other civil commotion, failure or delay in transportation, act of any government or any court or administrative agency thereof (whether or not such action proves to be invalid), labor dispute (whether or not involving Seller's employees), accident, fire, explosion, flood or other casualty, shortage of labor, fuel, energy, raw materials or machinery or technical failure. If any such contingency or condition occurs, Seller may allocate production and deliveries in any reasonable manner and may include in such allocation any regular customers, whether or not then under contract, and Seller's own requirements. If, as a result of any such contingency, Seller's performance is delayed by more than six (6) months, the prices set forth herein shall be subject to appropriate adjustment by Seller.

9. LIMITED WARRANTY; SUITABILITY

(a) Except as otherwise stated herein or in an order acknowledgment delivered to Buyer, Seller warrants to Buyer that the Products (x) shall be free of defects in materials and workmanship from the date of shipment for the period of time identified by product at the following website <http://www.elotouch.com> (each a "Warranty Period"), and (y) shall be free of liens and encumbrances when shipped to Buyer. If Seller agrees in writing to provide and does provide system design, drawings, technical advice, or any other services to Buyer in connection with Products, then Seller further warrants to Buyer during the applicable Warranty Period that such services shall be undertaken in accordance with Seller's reasonable technical judgment based on Seller's understanding of pertinent technical data as of the date of performance of such services. Seller's warranties will not apply to any Product with respect to which there has been (i) improper installation or testing, (ii) failure to provide a suitable operating environment, (iii) use of the Product for purposes other than that for which it was designed, (iv) failure to monitor or operate the Product in accordance with applicable Seller specifications and good industry practice, (v) use of any Product with software drivers, touch controllers, and or sensors that are not approved or tested by the Seller, (vi) unauthorized attachment or removal or alteration of any part of the Product, (vii) unusual mechanical, physical or electrical stress, (viii) modifications or repairs done by other than Seller, or (ix) any other abuse, misuse, neglect or accident. In no circumstance shall Seller have any liability or obligation with respect to expenses, liabilities or losses associated with the installation or removal of any Product or the installation or removal of any components for inspection, testing or redesign occasioned by any defect or by repair or replacement of a Product.

(b) Seller makes no warranty regarding the model life of monitors. Seller's suppliers may at any time and from time to time make changes in the monitors delivered as Products or components.

(c) Buyer shall notify Seller in writing promptly (and in no case later than thirty (30)

days after discovery) of the failure of any Product to conform to the warranty set forth above, shall describe in commercially reasonable detail in such notice the symptoms associated with such failure, and shall provide to Seller the opportunity to inspect such Products as installed, if possible. The notice must be received by Seller during the Warranty Period for such Product. Unless otherwise directed in writing by Seller, within thirty (30) days after submitting such notice, Buyer shall package the allegedly defective Product in its original shipping carton(s) or a functional equivalent and shall ship it to Seller at Buyer's expense and risk.

(d) Within a reasonable time after receipt of the allegedly defective Product and verification by Seller that the Product fails to meet the warranty set forth above, Seller shall correct such failure by, at Seller's option, either (i) modifying or repairing the Product or (ii) replacing the Product. Such modification, repair or replacement and the return shipment of the Product with minimum insurance to Buyer shall be at Seller's expense. Buyer shall bear the risk of loss or damage in transit, and may insure the Product. Buyer shall reimburse Seller for transportation costs incurred for Products returned but found by Seller not to be defective. Modification or repair of Products may, at Seller's option, take place either at Seller's facilities or at Buyer's premises. If Seller is unable to modify, repair or replace a Product to conform to the warranty set forth above, then Seller shall, at Seller's option, either refund to Buyer or credit to Buyer's account the purchase price of the Product less depreciation calculated on a straight-line basis over Seller's stated Warranty Period. THESE REMEDIES SHALL BE BUYER'S EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY.

(e) EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, SELLER GRANTS NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE PRODUCTS, THEIR FITNESS FOR ANY PURPOSE, THEIR QUALITY, THEIR MERCHANTABILITY, THEIR NONINFRINGEMENT, OR OTHERWISE. NO EMPLOYEE OF SELLER OR ANY OTHER PARTY IS AUTHORIZED TO MAKE ANY WARRANTY FOR THE GOODS OTHER THAN THE WARRANTY SET FORTH HEREIN. SELLER'S LIABILITY UNDER THE WARRANTY SHALL BE LIMITED TO A REFUND OF THE PURCHASE PRICE OF THE PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS BY BUYER OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES.

(f) Buyer assumes the risk and agrees to indemnify Seller against and hold Seller harmless from all liability relating to (i) assessing the suitability for Buyer's intended use of the Products and of any system design or drawing and (ii) determining the compliance of Buyer's use of the Products with applicable laws, regulations, codes and standards. Buyer retains and accepts full responsibility for all warranty and other claims relating to, or arising from, Buyer's products which include or incorporate Products or components manufactured or supplied by Seller. Buyer is solely responsible for any and all representations and warranties regarding the Products made or authorized by Buyer. Buyer will indemnify Seller and hold Seller harmless from any liability, claims, loss, cost or expenses (including reasonable attorneys' fees) attributable to Buyer's products or representations or warranties concerning same.

(g) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, SELLER SHALL NOT BE OBLIGATED TO PERFORM ANY OF THE WARRANTY OBLIGATIONS SET FORTH IN THIS CLAUSE 9 (nine) IN THE EVENT THAT BUYER IS IN DEFAULT OF ITS PAYMENT OBLIGATIONS UNDER ANY PURCHASE ORDER PLACED WITH SELLER (REGARDLESS OF WHETHER THE ITEMS FOR WHICH WARRANTY IS SOUGHT HAVE BEEN PAID FOR IN FULL).

10. LIMITATION OF LIABILITY AND INDEMNITY: Notwithstanding any other provision herein or in any other document or communication, (a) Seller's liability and obligations with respect to any claim(s) resulting or arising from or relating to this Agreement, whether in contract, strict liability, tort or otherwise, and even if Buyer's exclusive remedy fails of its essential purpose, shall in no event exceed in the aggregate the total purchase price received by Seller for the Products (or, in the case of obligations arising from or relating to particular Products or services rendered in connection herewith, the purchase price of such Products or amount received by Seller for such services, respectively), and (b) Seller shall in no event be liable to Buyer or any other person or entity, whether in contract, strict liability, tort or otherwise, for special, indirect or consequential damages of any kind whatsoever, or claims of any third parties. By accepting delivery of the Products ordered, Buyer agrees that it indemnifies and holds harmless Seller from and against all claims, loss, damage and liability, including without limitation for personal injury, property damage or commercial loss of whatever kind, directly or indirectly arising from or relating to the hazards inherent in Buyer's facilities or activities.

11. MEDICAL APPLICATIONS: In connection any anticipated use of Products by Buyer in medical applications, Buyer acknowledges and agrees that:

(a) Seller's products are manufactured under normal industrial conditions, which may not satisfy the requirements applicable to products manufactured for certain medical applications. It is the sole responsibility of persons contemplating medical uses of Seller's products to comply with all applicable laws, regulations, codes and standards, including but not limited to the U.S. Federal Food, Drug and Cosmetic Act and regulations of the Food and Drug Administration. Seller's products have not been designed, manufactured, tested or qualified for use in certain medical applications (including life support systems) and Seller has not sought or received any rulings from the FDA or any other federal, state, or local government agency as to the safety, effectiveness or appropriateness of its products for such applications. Persons intending to evaluate or to use Seller's products for medical purposes must rely on their own medical and legal judgment without any representation on Seller's part.

(b) Buyer will indemnify, defend, and hold harmless Seller and its officers, directors, employees, agents, and contractors from and against any and all losses, claims, damages, liabilities, and expenses (including reasonable attorneys fees) arising out of or based upon any bodily injury or property damage arising from Buyer's incorporation of Products as part of any product made by Buyer for medical applications, including without limitation cardiac pacemakers, defibrillators, electrodes, leads, and programmers, and components thereof. Seller shall give Buyer written notice of any such claim and shall cooperate in the defense of such claim at Buyer's expense.

12. ACCEPTANCE; RETURNS: Buyer shall inspect Products promptly upon their

receipt. Unless Buyer notifies Seller in writing within seven (7) days after the receipt of Products or the rendering of services that the Products or services are nonconforming, describing the nonconformity in commercially reasonable detail, Buyer shall be deemed to have accepted the Products or services. Buyer may not revoke its acceptance of Products or services and shall be barred from any remedy unless Buyer notifies Seller in writing within thirty (30) days of receipt of Products or rendering of services that the Products or services are nonconforming, describing the nonconformity in commercially reasonable detail, and that Buyer considers Seller in breach. Acceptance as aforesaid shall constitute acknowledgment of full performance by Seller of all its obligations hereunder. No Products delivered and accepted under this Agreement are subject to returns except upon (a) written approval of Seller and (b) payment of a fair and equitable restocking charge as determined by Seller's restocking charge policy at the time of return.

13. PATENTS: Seller agrees to settle or defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any Product constitutes direct infringement of any issued United States patent. Seller shall pay all damages and costs finally awarded therein against Buyer, provided Seller is informed by Buyer in writing within ten (10) days after receipt by Buyer and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to settle or defend such suit or proceeding. In the event such Product or any part thereof is, in such suit, held to constitute infringement and the use of such Product or part thereof is enjoined, Seller shall, by its own election and at its own expense, either (a) procure for Buyer the right to continue using such Product, or modify it so that it becomes non-infringing or (b) remove such Product, or part thereof, and grant Buyer a credit thereon and accept its return. Seller shall not be obligated to settle or defend any suit or proceeding, or be liable for any costs or damages, if the alleged infringement arises out of compliance with Buyer's specifications or any addition to or modification of the Product after delivery thereof or from use of the Product or any part thereof in conjunction with other goods or in the practice of a process. Seller's obligations hereunder shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged infringement unless Seller thereafter gives Buyer express written consent for such continuing alleged infringement. Seller shall not be bound in any manner by any settlement hereunder made without its prior express written consent, nor shall Seller be liable for any incidental or consequential damages arising out of patent infringement. Seller's liability hereunder shall not exceed the purchase price paid by Buyer for the allegedly infringing Product. If infringement is alleged prior to completion of delivery of a Product, Seller may decline to make further shipments without being in breach of this Agreement. **THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF SELLER FOR PATENT INFRINGEMENT AND IS IN LIEU OF ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD THERETO.** Buyer agrees, at its expense, to settle or defend and to pay costs and damages finally awarded in any suit or proceeding against Seller based on an allegation that any Product furnished hereunder according to designs or specifications furnished by Buyer infringe any patent, provided Buyer is promptly notified in writing of such suit or proceeding and is given all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to defend or settle any such suit or proceeding.

14. PROPERTY FURNISHED BY BUYER: If Buyer furnishes any monitors or other components, tools, dies, jigs or other property or facilities to Seller in connection with the performance of this Agreement, Buyer shall bear all risk of loss or damage with respect to such property or facilities and shall indemnify and hold Seller harmless from and against all loss, cost, expense or liability arising in connection with its use of any such property or facilities. Seller shall not be responsible for any delay in performance or nonperformance hereunder or the failure of any Product to conform to applicable specifications resulting, in whole or in part, from Seller's use of property or facilities furnished by Buyer.

15. PROPRIETARY INFORMATION: As used herein, the term "Proprietary Information" includes any information of a confidential or proprietary nature obtained from Seller and any information obtained from Seller which is not readily available to Seller's competitors and which, if known by a competitor of Seller, might lessen any competitive advantage of Seller or give such competitor a competitive advantage. Seller retains ownership of all Proprietary Information and all documentation which contains Proprietary Information. Buyer shall not disclose, duplicate or reproduce any Proprietary Information nor shall Buyer use any Proprietary Information other than in the course of performing its obligations hereunder. Buyer shall take all reasonable steps to prevent the disclosure, duplication or reproduction of any Proprietary Information. Notwithstanding the foregoing, Buyer shall not be required to refrain from disclosing or using any Proprietary Information which has become known to Buyer if the original source of such Proprietary Information was not Seller or any person or party affiliated with Seller or having a relationship of confidentiality with or an obligation of confidentiality to Seller.

16. CANCELLATION: Neither this Agreement nor any release hereunder is subject to cancellation by Buyer except upon (a) written request of Buyer, (b) written approval of Seller, and (c) the payment to Seller of a fair and equitable cancellation charge. Because Seller's expenses related to canceling firm orders are dependent upon (i) Seller's inventory carrying costs, (ii) the likelihood of Seller quickly selling the subject Products to other buyers, (iii) Seller's other related out-of-pocket costs, and (iv) administrative costs, the amount of cancellation charge Buyer shall pay to Seller will be determined solely by Seller.

CANCELLATION OF STANDARD PRODUCT: If Seller determines the Product being canceled to be Standard Product, the amount of the cancellation charge will vary according to the (a) quantity being canceled, (b) time frame between Buyer's request to Seller to cancel and the order's scheduled ship date, and (c) dollar amount of order being canceled. The calculation of the exact cancellation charge will be governed by Seller's published policies as amended from time to time at Seller's discretion. In no case will the cancellation charge be less than twenty percent (20%) of the original agreed upon purchase price.

CANCELLATION OF CUSTOM PRODUCTS: If Seller determines the Product being canceled to be Custom Product, Buyer agrees to pay Seller for all of Seller's out of pocket costs associated with the cancellation of the order including, but not limited

to:

(i) raw materials, (ii) work in process, (iii) inventory carrying costs, (iv) scrapping and disposal fees, and (v) a reasonable and equitable profit for Seller, which shall not be less than twenty percent (20%) of such costs. In no case will the cancellation charge be less than Seller's actual costs (including overhead and other indirect costs). The amount of cancellation charge to be charged to Buyer shall be determined at the sole discretion of Seller and may equal 100% of the amount of the order at the time of Seller's receipt of Buyer's request for cancellation. Buyer is entitled to receive a written notice from Seller setting forth how the cancellation charge was calculated. Upon payment of the cancellation charge, Buyer shall be entitled to receive all raw materials and work in process, and Seller agrees to ship such goods to Buyer at Buyer's expense.

Seller reserves the right, by written notice of default, to cancel any order, without liability to Buyer, in the event of the happening of any of the following: insolvency of Buyer, the filing of a voluntary petition in bankruptcy by Buyer, the filing of an involuntary petition to have Buyer declared bankrupt, the appointment of a receiver or trustee for Buyer, the execution by Buyer of an assignment for the benefit of creditors, the discontinuance of business by Buyer, or the sale by Buyer of the bulk of its assets other than in the usual course of business.

17. DEFAULT The following shall constitute events of default of the Buyer. If the Buyer: (a) defaults on any of its payment or other monetary obligations and such default continues for a period of ten (10) days after receipt of written notice of such default; or (b) fails to perform any other material obligations of Buyer under this Agreement and such failure continues for a period of fifteen (15) days after receipt of written notice of such failure; or (c) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall take any corporate action to authorize any of the foregoing, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or (d) has an involuntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 45 days, or an order for relief shall be entered against it; then the Seller may forthwith terminate this Agreement without further notice to Buyer.

Termination of this Agreement by the Seller in accordance with this Article shall not relieve Buyer of any liability for damages or otherwise which may have been incurred by reason of any breach of this Agreement. The remedies of the Seller hereunder shall be cumulative, and shall be in addition to any other remedies available to Seller at law, in equity or otherwise.

18. RESCHEDULES: Buyer is permitted one reschedule opportunity with no charge. A reschedule cannot extend further than 30 days from original ship date requested. Additional reschedules will be subject to a ten percent (10%) penalty based on total amount of the order or portion of the order rescheduled.

19. RESALE OF COMPONENT PRODUCTS: Buyer agrees that it shall not resell any component Products purchased from Seller unless Buyer is an authorized distributor of Seller's products. Seller shall not be obligated to provide any warranty service or other technical support for any component Products not purchased directly from Seller or an authorized distributor of Seller.

20. NO LICENSE: Neither this Agreement nor any purchase of Products hereunder shall be construed to confer upon Buyer or its customers any license under any patent or other proprietary rights of Seller, except the right to use such goods for the purposes for which they are sold.

21. NON-WAIVER OF DEFAULT: No failure by Seller to insist on strict performance of any term or condition hereof shall constitute a waiver of such term or condition or any breach thereof, nor shall such failure in any way affect Seller's legal remedies with respect to any default by Buyer hereunder.

22. APPLICABLE LAW: This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, excluding laws directing the application of the laws of another jurisdiction.

23. ASSIGNMENT: Buyer may not transfer or assign this Agreement or any interest herein, by operation of law or otherwise, without the prior express written consent of Seller. Any attempted transfer or assignment without such consent shall be void. Seller may assign its rights and delegate its duties hereunder.

24. ENTIRE AGREEMENT; MODIFICATION: This Agreement supersedes all prior written and oral agreements and understandings between Seller and Buyer with respect to the Products and services specified herein. No representation or statement not contained herein shall be binding upon Seller as a warranty or otherwise. No addition to or waiver, modification or cancellation of any provision hereof shall be binding upon Seller unless in writing and signed by a duly authorized representative of Seller.

25. NOTICES: All notices and other communications hereunder shall be in writing and shall be mailed by first-class, registered or certified mail, postage prepaid, to the parties hereto at their respective designated addresses, subject to the right of either party to change such address upon ten (10) days' prior written notice.

26. EXPORT CONTROL: The Parties acknowledge that any products, software, and technical information (including, but not limited to, services and training) provided by either Party under this Agreement are or may be subject to export/re-export laws and regulations of the United States and any use or transfer of such products,

software and technical information must be authorized under those Laws. The Parties agree that they will not use, distribute, transfer or transmit the products, software or technical information (even if incorporated into other products) except in compliance with export/re-export Laws. If requested by either Party, the other Party agrees to sign all necessary export-related documents as may be required to comply with export/re-export Laws

reference: GA000041 REV Q, 12/2011

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