

SCHULER INCORPORATED - TERMS AND CONDITIONS OF SALE



7145 Commerce Boulevard
Canton, MI 48187
Telephone: 734-207-7200
Telefax: 734-207-7222

SELLER'S ACCEPTANCE OF ALL OF PURCHASER'S PURCHASE ORDERS IS EXPRESSLY CONDITIONED UPON PURCHASER'S ASSENT AND ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS, WHICH MAY BE ADDITIONAL TO OR DIFFERENT FROM THOSE STATED IN PURCHASER'S PURCHASE ORDER:

1. **ACCEPTANCE OF ORDERS:** All purchase orders for goods or services received by Seller from Purchaser (a "Purchase Order") shall be considered offers to purchase goods or services. Seller may accept the Purchase Order by issuing a written, signed acknowledgment or by commencing performance under the terms of the Agreement. "Agreement" means the contract or agreement between Purchaser and Seller regarding the sale of Goods or furnishing of services. The Agreement consists of the front portion of the "Purchase Order" issued by Purchaser (as modified by these Terms and Conditions of Sale), any written Acceptance document delivered to Purchaser by Seller, and these Terms and Conditions of Sale. The Agreement also includes any terms and conditions contained in any other Seller proposals, quotations, or documents incorporated by reference in Purchaser's Purchase Order or Seller's Acceptance. To the Purchaser's Purchase Order or any accompanying terms and conditions have additional or conflicting terms, these Terms and Conditions of Sale shall control and supersede the Purchaser's conflicting Purchase Order terms and conditions and all such Purchaser's Purchase Order terms and conditions are expressly objected to by Seller without further notification. The Agreement constitutes the entire agreement between the parties with respect to the transaction covered by it. No modification or waiver of any of the terms and conditions contained therein and no additional or different terms and conditions shall be effective unless agreed to in writing by an officer of Seller. "Seller" means Schuler Incorporated. "Goods" mean the Goods identified in Purchaser's Purchase Order, as modified by Seller's Acceptance. Purchaser acknowledges that it alone has selected the type and quantity of Goods being purchased from Seller.
2. **PRICES:** Stated prices apply only to the specific quantities and delivery schedule shown. Prices do not include sales, use, excise, privilege or other taxes, export or import fees (including without limitation costs incurred for export packing and for duties, tariffs, licenses and other governmental impositions), shipping or transportation costs or any insurance charges, and Purchaser shall pay all such taxes, fees, costs and charges. Prices under this Agreement are based on continuous manufacture for rates of delivery specified. All sales are payable in U.S. Dollars unless otherwise specified in the Seller's quotation documents. The price of the Goods includes raw materials costs at current market costs; however, the parties agree that the price of the Goods shall adjust for any increase in the cost of raw materials purchased by Seller for the manufacturing of the Goods. The prices quoted by Seller are subject to change without notice at any time prior to acceptance of the Purchase Order by Seller, including without limitation, based upon currency fluctuations from date of the quotation. If the Purchase Order indicates that the purchase price includes duties, tariffs, licenses and other governmental impositions, the purchase price is based upon the amount of those duties, tariffs, licenses and other governmental impositions as of the date of the Purchase Order, and in the event of any increase in those costs, the purchase price shall be increased equivalently.
3. **DELIVERY:** The delivery date shall be set forth on the Purchase Order. All delivery dates are estimates. Seller's obligation to deliver Goods is conditional on the timely receipt by Seller of documents and information necessary for the manufacturing of Goods and completion of the Purchase Order, any down payment, Purchaser's compliance with this Agreement, and Purchaser's maintaining credit satisfactory to Seller. Seller may suspend or delay performance or delivery at any time pending receipt of assurances, including full or partial prepayment or payment of any amounts owed, adequate to Seller in its discretion, of Purchaser's ability to pay. Failure to provide such assurances shall entitle Seller to cancel this order without further liability or obligation to Purchaser. Seller may also require Purchaser to pay for shipments C.O.D. in the event Seller does not receive adequate assurances of payment, in its sole discretion. Except as is otherwise specified in the Seller's quotation documents, all shipments shall be delivered F.O.B. Seller's facility, and all deliveries shall be via common carrier or some other reasonable means chosen by Seller. Risk of loss shall pass to Purchaser at the F.O.B. point upon delivery of such Goods to the common carrier. Shipments will not be insured except at Purchaser's written request and expense. Title shall pass to Purchaser after Seller receives final payment. Nothing herein shall be construed as limiting Seller's right to stop the goods in transit and repossess same if payment of the purchase price, as required under the contract, has not been made to Seller. Standard packing for domestic shipment is included in the quoted price. Partial shipments shall be allowed. Purchaser must accept delivery when Seller has completed its work on the Goods.
4. **PAYMENT AND SECURITY INTEREST:** Purchaser will be invoiced upon shipment of the Goods or any part of the Goods. Unless otherwise stated, full payment will be due upon delivery. No discounts may be taken without the written agreement of Seller. Each shipment shall be considered a separate and independent transaction and payment thereof shall be made accordingly. If Purchaser does not pay on time, Seller reserves the right to charge Purchaser 1-1/2% per month (or the maximum rate permitted by law, if less) on the unpaid balance until paid. Payment of such interest shall not operate to release Purchaser from its obligation to make payments on their due date. Purchaser shall immediately reimburse Seller for the costs and expenses of collection (including, without limitation, costs and expenses of investigation, costs and expenses of legal actions or proceedings and attorneys' fees and expenses, whether or not legal action is actually commenced) of any overdue amount owed by Purchaser to Seller, and such collection costs shall also be subject to the interest charges. Purchaser may not hold back or set-off any amounts owed to Seller in satisfaction of any claims asserted by Purchaser against Seller or any of Seller's affiliates. Purchaser hereby grants Seller a purchase money security interest in the Goods wherever located, including all substitutions, replacements and proceeds thereof, including insurance proceeds, to secure Purchaser's obligation to pay the purchase price and any other charges owed to Seller by Purchaser, and agrees that these documents shall be effective as a security agreement between Seller and Purchaser as to the Goods. Purchaser further agrees that Seller may (but is not obligated to) take any actions it deems appropriate to evidence and perfect such security interest, including but not limited to requiring a separate security agreement and filing Uniform Commercial Code financing statements. Purchaser authorizes Seller to file such financing statements, and Purchaser shall execute a written security agreement in favor of Seller in the form prepared by Seller and presented to Purchaser. While subject to Seller's security interest, Purchaser will keep the Goods free and clear from any and all other liens, claims, taxes and encumbrances.
5. **FINANCIAL STATEMENTS; INSURANCE:** During the period of Seller's performance under the Agreement and while the Goods are subject to Seller's security interest, Purchaser will deliver to Seller such financial statements as Seller may from time to time request. During any period in which Seller has a security interest in the Goods, Purchaser shall keep the Goods insured against all risks of loss or damages from every cause whatsoever for not less than the replacement value thereof. The insurance shall be in form and amount, and from an insurer, suitable to Seller and shall name Seller as loss payee under physical damage coverage as its interest may appear and as additional insured under liability coverage. Each insurer shall agree, by endorsement upon the policy issued by it and furnished to Seller, that it will give Seller not less than thirty (30) days written notice before the policy shall be altered or canceled.
6. **CHANGE AND CANCELLATION:** Following Acceptance by Seller:
 - (a) This Agreement shall not be subject to cancellation, change, or reduction in amount, nor to any suspension by Purchaser of deliveries, without Seller's prior written consent.
 - (b) Any request by Purchaser for changes to the Goods or the processes involved in manufacturing the Goods shall be subject to the Seller's written agreement and shall entitle Seller to modify the price of the Goods and any other terms of the Agreement affected by such change, including without limitation delivery dates, transportation terms and packaging requirements. Purchaser shall pay any additional costs of Seller by reason of any change, interruption of production or other action or default of Purchaser. Any agreed upon changes shall be affected by a written change order.
 - (c) In event of a cancellation/termination agreed to by the parties, made pursuant to Section 12 below or caused by the default of Purchaser, Purchaser, in addition to and not to the exclusion of Seller's other remedies at law, equity or under this Agreement, shall immediately pay to Seller the following amounts which shall be invoiced by Seller: (i) the contract price for all Goods or services which have been completed in accordance with this Agreement, (ii) for work-in-process and raw materials incurred by Seller in furnishing the Goods or services, 120% of Seller's actual full cost including burden and overhead costs as determined by Seller in accordance with Seller's standard accounting practices, plus a charge for any packing and storage, less, however, any amounts received from the Seller's sale of the Goods or material to others, (iii) Seller's actual costs of settling all claims by subcontractors or suppliers terminated by Seller in connection with the cancellation of the Agreement, (iv) Seller's actual cost to store the items to be purchased and, if necessary, relocate production to an alternate source; (v) any unamortized tooling costs, development/design costs, engineering costs, start-up costs, program capital costs and supplies that are unique to the products or Goods purchased, (vi) Seller's expected profit from the performance of the Agreement, and (vii) Seller's incidental and consequential damages resulting from the termination or breach by Purchaser, including, but not limited to, any costs and expenses incurred by Seller associated with securing protection against currency fluctuation, costs for advance purchasing of essential items and technical support, attorneys' fees and other professional fees incurred by Seller as a result of the termination or breach. Upon an agreed cancellation, all work on the order or part thereof canceled shall be stopped as promptly as is reasonably possible by Seller.
7. **ACCEPTANCE AND REJECTION:** In the event of any shortage, damage or discrepancy in or to a shipment of Goods or other nonconformity, Purchaser shall notify Seller within 30 days of delivery of the Goods to Purchaser. After such period and in the absence of such notice to Seller, Purchaser shall be deemed to have accepted the Goods. All sales are final and Goods cannot be returned without Seller's prior written authorization determined in Seller's sole discretion.
8. **TOOLING** (if applicable): Unless supplied by Purchaser or until purchased by Purchaser from Seller, Seller shall own all tools, jigs, dies, gauges, fixtures, molds, and patterns ("Tools") necessary for the production of the Goods. The cost of changes to the Tools necessary to make design and specification changes shall be paid for by Purchaser. Seller shall have no repair, replacement or insurance requirements for the Purchaser's Tools, and Purchaser, at its expense, shall be solely responsible for such matters. Seller shall provide ordinary repair and maintenance for its Tools over the useful life of the Tool, not to exceed 5 years. Purchaser shall pay, or reimburse Seller if it pays, all personal property taxes and other charges or expenses that Seller pays or incurs related to the Purchaser's Tools. Seller may move and relocate all Tooling used in the production of the Goods, and Seller shall notify Purchaser of any change in the location of any Purchaser owned Tools. Provided Purchaser is not in default under the Agreement, Seller shall make those Tools which are special for the production of the Goods available to Purchaser for purchase at a mutually agreeable price, provided, however, that this Agreement shall not apply if such Tools are used to produce Goods that are the standard stock of Seller or Seller manufactures like Goods for others or otherwise uses the Tools in connection with other Tools or processes.
9. **LIMITED WARRANTY:** Subject to the other terms of these Terms and Conditions of Sale:
 - (a) Seller warrants that at the time of delivery the Goods will be free from defects in materials and workmanship, except to the extent Purchaser furnishes raw materials, no warranty is given for those materials. The foregoing warranty shall be effective for a period of one year from the date of shipment by Seller to Purchaser (the "Warranty Period"). Samples, descriptions, drawings, literature, representations, and other information concerning Goods contained in Seller advertisements or other promotional materials or statements or representations made by Seller's employees or sales representatives are for general informational purposes only, are not binding upon Seller and are not a representation or warranty by Seller. Purchaser acknowledges that Seller is not aware of any specific intended use of the Goods by Purchaser or any end user customer, and therefore Seller DOES NOT WARRANT THE GOODS FOR FITNESS FOR ANY PARTICULAR PURPOSE. No warranty is given as to the design of the Goods furnished by Purchaser.
 - (b) THIS LIMITED WARRANTY IS PURCHASER'S EXCLUSIVE REMEDY. EXCEPT AS HEREIN PROVIDED, SELLER SHALL NOT BE LIABLE TO PURCHASER IN ANY MANNER WITH RESPECT TO THE GOODS. PURCHASER AGREES THAT SELLER HAS MADE AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF WHATEVER NATURE. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES TO THE SUITABILITY, RELIABILITY, DURABILITY, FITNESS FOR USE, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, CONDITION OR QUALITY OF THE WORK, SERVICES OR GOODS FURNISHED PURSUANT TO THIS AGREEMENT.
 - (c) Purchaser must notify Seller of any claim for breach of warranty promptly following discovery of the claim. Seller shall have no liability for any damages suffered by Purchaser due to delay and notifying Seller of the warranty claim.
 - (d) For manufactured Goods - Purchaser must contact Seller and obtain a return material authorization (RMA) number prior to returning any Goods to Seller for any reason. Upon receipt and inspection of returned Goods, Seller will report its findings to Purchaser. Seller will, within a reasonable time, in its sole discretion and election, either repair, replace or issue a credit for the purchase price of any Goods found by Seller to be defective if such Goods are returned by Purchaser and received by Seller prior to expiration of the Warranty Period with written information including the type of Goods, RMA number, original purchase order and invoice number, date code, and a reasonable description of the defect. Failure to comply with these requirements shall nullify and void this limited warranty. Purchaser shall pay for all transportation and repair or replacement charges in the event Seller determines that the Goods are not defective or not returned within the Warranty Period.
 - (e) For Goods consisting of Equipment - Purchaser must contact Seller's warranty service department prior to the expiration of the Warranty Period with written information including the type of Goods, original Purchase Order and invoice number, date code, and a reasonable description of the defect. Seller will within a reasonable period of time inspect the Goods, and if found to be in need of service covered by the limited warranty, Seller will, within a reasonable time, in its sole discretion and election, either repair Goods or replace that portion of the Goods found by Seller to be defective. Failure to comply with these requirements shall nullify and void this limited warranty. Purchaser shall provide Seller with access to the premises at which the Goods are to be serviced. Purchaser shall provide or ensure the availability of adequate utilities (including electricity, gas and water) and the necessary equipment and devices (including cranes, rigging and hoists) at the premises, as necessary for Seller to service the Goods, at Purchaser's cost.
 - (f) No allowance will be made for repairs made by Purchaser. This limited warranty does not cover normal maintenance or items consumed during normal operation, nor normal wear and tear, use under circumstances exceeding the recommended limitations or application, failure to observe operating instructions, excessive loading, use of unsuitable media, the influence of chemical or electrolytic action or improper building or erection work not undertaken by Seller, abuse, mishandling, misuse, accident, unauthorized repair or alteration, improper installation, lack of proper maintenance, negligence, or damage caused by natural causes such as fire, storm, or flood. The terms of this limited warranty do not extend to any product or part which has been manufactured using engineering specifications or data submitted by Purchaser or any product or part, including without limitation any electrical or electronic components or software or equipment, supplied by or on behalf of Purchaser or Purchaser's affiliates. Seller does not warrant consumable products or parts which have a life under normal usage shorter than

the Warranty Period. If the Goods or Seller's services relate to re-manufacturing/refurbishment work) any defect of any product or part attributable in whole or in part to engineering or design specifications which were inherent to the equipment being re-manufactured/refurbished prior to its delivery to Seller. Clutches, bearings, motors, pumps, power supplies, software materials and similar purchased items are warranted only to the extent that they are warranted by the manufacturers thereof. Expendable items such as bulbs, filters, fuses, inserts and the like are excluded from all warranties.

(g) Repair or replacement parts furnished by Seller which prove defective in material or workmanship within ninety (90) days from the date of shipment (the "Warranty Period" for purposes of these parts) will be repaired or replaced by Seller FOB Seller's factory; provided that Purchaser sends Seller prompt written notice during the Warranty Period of the defect and establishes that the part has been properly installed, maintained and operated. Parts furnished as part of Seller's original equipment limited warranty service will be warranted under the same terms as the original Goods for the remainder of the original Warranty Period.

(h) All service and/or technician services furnished by Seller for Purchaser's Goods are furnished on an "AS IS WHERE IS" basis and without any warranty of any kind, direct or indirect, express or implied.

10. **LIMITATION ON WARRANTY:** THIS LIMITED WARRANTY IS PURCHASER'S EXCLUSIVE REMEDY. EXCEPT AS HEREIN PROVIDED, SELLER SHALL NOT BE LIABLE TO PURCHASER IN ANY MANNER WITH RESPECT TO THE GOODS. PURCHASER AGREES THAT NEITHER SELLER NOR ANY AGENT, EMPLOYEE OR REPRESENTATIVE HAS MADE AND MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF WHATEVER NATURE THE WORK, SERVICES OR GOODS FURNISHED PURSUANT TO THIS AGREEMENT. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES TO THE SUITABILITY, RELIABILITY, DURABILITY, FITNESS FOR USE, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, COMPLIANCE WITH LAW, RULE, OR REGULATION, CONDITION OR QUALITY OF THE WORK, SERVICES OR GOODS FURNISHED PURSUANT TO THIS AGREEMENT. The limited warranty is limited to the first purchaser and is not transferable.
11. **LIMITATION ON DAMAGES:** SELLER SHALL HAVE NO LIABILITY OR OBLIGATION FOR ANY DAMAGES SUFFERED BY PURCHASER WITH RESPECT TO ANY ORDER IN EXCESS OF THE PURCHASE PRICE FOR THE COMPLETED GOODS. SELLER SHALL NOT IN ANY EVENT OR UNDER ANY LEGAL THEORY (WHETHER TORT, CONTRACT OR OTHERWISE) BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, NON-ECONOMIC OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, WHETHER ARISING FROM THE FURNISHING OF SERVICES, THE SALE OF GOODS, ANY DEFECT IN THE GOODS, ANY USE OR INABILITY TO USE THE GOODS, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. All claims against Seller must be made within one (1) year of the delivery of the Goods (or the applicable portion of the Goods) and thereafter shall be forever barred. Seller's sole responsibility shall be the repair or replacement of Goods covered by the limited warranty, and in no event shall Seller have any liability for loss of use or downtime related to equipment subject to a warranty claim nor shall Seller bear other costs, including without limitation the costs of shipping or installation.
12. **TERMINATION, DEFAULT and REMEDIES:** The Agreement may be terminated by Seller at any time if (a) the terms governing the contract are not strictly complied with by Purchaser, (b) the Purchaser becomes insolvent, makes an assignment for the benefit of creditors or is unable to meet its obligations as they become due, (c) a petition in bankruptcy or insolvency is filed by or against the Purchaser, (d) any amounts due to the Seller by the Purchaser are unpaid, or (e) Seller reasonably believes that Purchaser will not be able to pay Seller the amounts due hereunder. Such termination shall not prejudice Seller's rights to any amounts due under this Agreement. In the event of the breach of this Agreement by Purchaser, in addition to any other rights or remedies available to it, Seller may suspend performance of this Agreement until Purchaser's breach has been cured. In the event of a breach of this Agreement by either party which is not cured within 30 days after written notice of default by the other party (other than the failure to pay money when due, in which case no notice of default shall be necessary), in addition to any other rights or remedies a party may have, the non-breaching party may terminate this Agreement by written notice to the other.
13. **DRAWINGS, ETC.:** All drawings, layouts, diagrams, specifications, and other material or information acquired or developed by Seller or furnished to Purchaser by Seller concerning the Goods and services shall remain the exclusive property of Seller, and Purchaser agrees to treat all such materials and information as confidential and proprietary to Seller unless prior written permission to the contrary is given by Seller. Technical information and data furnished by Purchaser to Seller in connection with Goods and services of this Agreement are disclosed on a non-confidential basis unless otherwise required by the Purchaser and agreed to in writing by the Seller. Similarly, any software included in the Goods and services sold or provided by Seller remains the exclusive property of the Seller, and no ownership in the software is sold or transferred to Purchaser. Seller provides Purchaser with a limited, non-exclusive, non-transferable license to use the software with the specific Goods in which the software is installed and which were sold to Purchaser by Seller. This license shall not entitle the Purchaser to modify or alter the software, and the Purchaser shall not use any such software with any other equipment or machinery. None of the software associated with Goods sold to Purchaser shall be designated as works made for hire, and Purchaser claims the exclusive copyright in all such software. Software updates and maintenance must be purchased separately by Purchaser.
14. **ELECTRICAL EQUIPMENT:** If the Goods include electrical equipment, Seller shall supply Seller's stock parts and equipment, unless Purchaser and Seller agree otherwise and such requirements are specified in the Purchase order. If Purchaser purchases the equipment directly, Purchaser shall comply with Seller's detailed specifications for the purchase, and the equipment will be mounted and wired by Seller's laborers at Purchaser's sole expense. Seller does not warrant any equipment it does not supply.
15. **UNAUTHORIZED MODIFICATIONS:** Purchaser agrees that Seller does not warrant and Seller shall not be liable for any loss, cost, damage, expenses or claims of any sort whatsoever, including without limitation those arising from, relating to or in connection with personal injury, death, or property damage, due to or on account of any/all modifications of the software, hardware and/or accompanying documentation related to the Goods manufactured/supplied by Seller, and/or included in the Seller's scope of supply, unless such modifications are made by Seller or are made pursuant to Seller's written directions or the pre-production plans/designs approved in writing by Seller.
16. **USE OF MERCHANDISE (if applicable - including Press, Die, Equipment Sales/Service):** It is Purchaser's responsibility to provide all proper devices, tools and means which may be necessary to protect against damage to property or injury to person arising from installation, operation or repairs of the Goods at Purchaser's premises. Purchaser shall ensure the use of all necessary cranes at its premises to facilitate Seller's work. Purchaser shall indemnify and hold Seller harmless from and against any and all liabilities, claims, expenses and costs based upon damage to property or injury to or death of any person arising out of or in any way connected with the installation, operation or repairs of Goods at or upon Purchaser's facilities.
17. **PRODUCT DESIGN:** Seller is not responsible for and expressly disclaims any liability, responsibility or warranty for the design or any portion of the design of the Goods which is based upon the designs or specifications furnished and/or required by Purchaser. All prices are based upon the design for the Goods as approved by Purchaser, and any change in the design requested by Purchaser or, if required for the manufacturing of the Goods, by Seller, may result in a modification to the price. Seller retains all rights, title and interest to all works of authorship, methods, inventions, discoveries, developments, improvements, ideas and innovations, whether patentable or not, conceived, written, designed, developed, invented, derived, made or otherwise produced by Seller. Purchaser agrees not to contest or assist anyone else to contest Seller's ownership of such intellectual property.
18. **ASSIGNMENT:** Purchaser shall not, without Seller's prior written consent, assign or transfer the Agreement or any interest therein, either voluntarily or by operation of law. Seller may assign, subcontract or delegate some or all of its obligations under this Agreement to one or more third parties.
19. **PURCHASER'S USE AND OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA):** It is Purchaser's responsibility to provide all proper devices, tools and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the Seller's product. The operator's manual or machine manual, ANSI Safety Standards OSHA regulations and other sources should be consulted to implement the above. Seller considers that it is in substantial compliance with the general requirements of OSHA directly associated with Operator Safety and Noise Level Control. The technical detail of OSHA and many additional references to other standards render it impossible to state compliance or objection unless specific sections or paragraphs of OSHA are identified by the Purchaser or user. Because of changes which occur in OSHA, state codes, local codes and company safety programs, Seller must be advised by Purchaser or user if they feel modifications in the machine are required for compliance. A quotation will be submitted for changes.
20. **INSTALLATION (if applicable - including Press, Die, Equipment Sales/Service):** If the Agreement requires Seller to install the Goods:
- (a) Purchaser shall provide Seller with access to the premises at which the Goods are to be installed, to allow Seller to meet the installation schedule stated in the Agreement; and if no schedule is specified, to allow Seller to install the Goods promptly after they have been shipped. Purchaser shall be responsible for any additional costs incurred by Seller by reason of Purchaser's failure to provide access to such premises as required above, including but not limited to storage costs, and travel, meals and lodging for installation personnel.
- (b) Purchaser shall provide or ensure the availability of adequate utilities (including electricity, gas and water) at the premises, as necessary for Seller to install the Goods, at Purchaser's cost.
- (c) Seller shall indemnify, defend, and hold Purchaser harmless from all demands, claims, suits, liabilities, damages, judgments, costs and expenses, including reasonable attorney fees, with respect to any injury or death of any person, or property damage, to the extent caused by Seller, its subcontractors and/or the employees, agents, or representatives of any of them; except to the extent the injury, death or damage is attributable to the negligence or intentional conduct of Purchaser or its employees or agents.
- (d) The Goods shall be deemed to be installed and accepted by Purchaser upon the earlier of Purchaser's written acceptance of the Goods or the Goods become operational and perform their normal functions according to manufacturer specifications.
- (e) If appropriate in light of the nature of the Goods, and subject to any installation schedule specified in the Agreement, Seller may separately install components of the Goods, in which case installation and acceptance shall be determined separately with respect to each component.
21. **FORCE MAJEUR:** Any delay or failure of Seller to perform its obligations under this Agreement shall be excused if, and to the extent that, it is caused by an event or occurrence beyond reasonable control of Seller, including without limitation, acts of God, acts of any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes, and slowdowns) inability to obtain power, material, equipment, labor or transportation, or court injunction or order.
22. **INTERNATIONAL SALES:**
- (a) This Agreement and all purchase orders issued under it shall be governed by the Uniform Commercial Code as adopted in the State of Michigan, and not the United Nations Convention for the International Sale of Goods.
- (b) It shall be Purchaser's responsibility to inform and instruct Seller regarding the packaging and marking of all Goods so as to comply with the applicable law of the destination country if other than Seller's country.
- (c) Purchaser shall be responsible for any necessary export or import licenses, and for any documentation, costs and fees that may be necessary for the Goods to be shipped internationally.
- (d) Purchaser shall be responsible for the payment of all export and import duties, tariffs and taxes (including those of Seller's country), and for any additional costs associated with clearance of the Goods through foreign and U.S. Customs.
23. **MISCELLANEOUS:** This Agreement shall be governed by Michigan law. Michigan shall be the exclusive jurisdiction for all claims, disputes or proceedings related to this Agreement, and the parties agree that the Wayne County Circuit Court and the Federal District Court for the Eastern District of Michigan are convenient forums. This Agreement constitutes the entire Agreement between Seller and Purchaser with respect to this subject matter, and supersedes all prior understandings and agreements. This Agreement may be modified or amended only by the written agreement of the parties. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any preceding or succeeding breach of the same provision. No extension of the time for performance of any obligation or other act shall be deemed to be an extension of the time for the performance of any other obligation or any other act.