

The following Terms and Conditions are the Terms and Conditions of Sale of the products ("Products") supplied by Robertshaw Controls Company, Robertshaw Canada, Inc., and their affiliates (each hereinafter "Company").

THE TERMS AND CONDITIONS PROVIDED BELOW AND IN ANY ATTACHMENTS HERETO ARE COMPANY'S EXCLUSIVE TERMS AND CONDITIONS OF SALE, SHALL APPLY TO ALL PRODUCTS PROVIDED HEREIN, AND SHALL SUPERSEDE ANY INCONSISTENT, ADDITIONAL OR PREPRINTED TERMS AND CONDITIONS CONTAINED IN DISTRIBUTOR'S PURCHASE ORDER OR ANY OTHER DISTRIBUTOR DOCUMENT. COMPANY DOES NOT AGREE TO ANY PROPOSED ADDITION, MODIFICATION OR DELETION BY DISTRIBUTOR, OR DISTRIBUTOR'S CUSTOMERS, OF THESE TERMS OR TO ANY TERMS OR CONDITIONS SET FORTH IN DISTRIBUTOR'S OR DISTRIBUTOR'S CUSTOMER'S ORDERS. ANY SUCH TERMS AND CONDITIONS ARE HEREBY REJECTED AND CONSIDERED NULL AND VOID.

THESE TERMS AND CONDITIONS CAN BE VARIED ONLY BY A WRITTEN DOCUMENT SIGNED BY COMPANY. COMPANY RESERVES THE RIGHT TO MODIFY THESE TERMS AND CONDITIONS OF SALE AT ANY TIME WITHOUT PRIOR NOTICE TO DISTRIBUTOR. ANY REVISED TERMS AND CONDITIONS, HOWEVER, WILL ONLY AFFECT THOSE ORDERS RECEIVED BY COMPANY AFTER THE EFFECTIVE DATE OF THE REVISION.

Distributor will ensure by its contract with the end user or ultimate owner or its buyer that Company is given the benefit of these Terms and Conditions of Sale, including the exclusions and limitations of liability set forth herein, or as hereafter modified by Company, by all such users, owners and buyers and Distributor will indemnify Company, its officers, directors, shareholders, employees, agents and representatives against any actions, claims, demands, liabilities, damages, losses, costs and expenses including, but not limited to, attorneys and expert witness fees, to the extent that Company would not be liable to Distributor under these Terms and Conditions of Sale if the claim had been made by Distributor. Distributor will ensure that these Terms and Conditions of Sale for the Products are transmitted to its end customer(s) upon resale or transfer of the Product. Accordingly, except as to those terms in Sections I, Distributor Recognition; II, Ordering Information; III, Pricing; IV, Payment Terms; V, Freight and Delivery Terms; VI, Inspection and Acceptance; and VIII, Return Material Authorization, which are exclusive to Distributor, any reference to "Distributor" in these Terms and Conditions shall also include Distributor's customers, transferees, assigns, affiliates, or whoever else takes control or possession of the Product.

#### **I. DISTRIBUTOR RECOGNITION**

- A. Recognition as a non-exclusive Company distributor is based upon market coverage, product knowledge, and general effectiveness in representing specific Products supplied by Company. Distributor acknowledges that Company may sell directly or to any third party that Company selects as and when Company so desires in its sole and absolute discretion. Distributor represents to Company that Distributor is engaged in business solely as a stocking distributor and its primary customers for Company's Products are HVACR contractors and others who directly engage in the installation and servicing of environmental controls, heating, ventilation and air conditioning controls and equipment. Distributor acknowledges that Company's Products are designed for specific applications and Distributor agrees it shall not market, resell, distribute, or recommend the use of any of Company's Products in any application where the use of the Product is not as intended or designed by Company or does not conform to Company's specifications for use, and shall indemnify Company, its officers, directors, shareholders, employees, agents and representatives for all such unauthorized use. Company shall have no responsibility, and/or liability and the Product Warranty set forth herein shall be void, if Distributor uses or recommends the use of any Product for any application for which it is not intended or designed.
- B. Distributor agrees that Company's arrangement with Distributor can be terminated by Company with or without cause, upon fourteen (14) days notice unless otherwise agreed in writing by Company and Distributor. In the event of termination, all of the goodwill and other proprietary and intellectual rights in and to Company's Products shall remain the sole property of Company. Distributor will not be entitled to any compensation or payments including, but not limited to, expenses, lost profits, sales or revenue, loss of goodwill or otherwise, as a result of Company's termination.
- C. Distributor agrees to provide a credit application and Tax Resale Certificate, if applicable, to Company's Credit Department to obtain credit approval in order to set up Distributor's account. Distributor also agrees to periodically furnish Company, at Company's request, updated financial information. Recognized distributors must maintain minimum annual net purchases of \$5,000 USD or CND, respectively.

#### **II. ORDERING INFORMATION**

- A. Company will only accept orders from its recognized Distributors, or the Distributor's recognized branches. Possession of Company's product catalog or Price Schedule does not constitute authority or right to purchase items directly from Company.
- B. To submit orders, please fax order to:

USA and Canada	800.426.0804
International	951.737.8261
- C. Orders must state Distributor's account number, ship to address, catalog part number, item description, quantity ordered and unit price. Orders will not be processed without this information confirmed in writing by Distributor.
- D. Order changes by Distributor must be made in writing, or verified in writing, before Company can complete processing of the order, and shall be subject to the terms of Section V below.
- E. All Products may be combined in a single order for best pricing and freight terms.
- F. Products carrying the footnote "@" are only available in the multiples shown. Some items are also noted with a required minimum purchase quantity that must be followed. Company reserves the right to increase the order quantity in compliance to item minimums and multiples without authorization by Distributor or to refuse to accept the order.
- G. A minimum net billing of \$100 USD or CND, respectively, per order, per branch drop shipment applies (excluding freight and/or applicable taxes).
- H. Orders will only be accepted for shipment to one destination. Portions of orders for shipment to other addresses will be considered separately for pricing, freight, and item minimum and multiple requirements.
- I. Drop shipments to destinations other than a recognized Distributor's address, or its recognized branch address, will require approval based solely at the discretion of Company. If approved, additional charges may apply. Standard order terms and requirements will apply.
- J. Nothing in these Terms and Conditions of Sale requires or is intended to require Company to accept any purchase order from Distributor, and Company shall have no liability to Distributor or to any third party in the event Company decides not to accept any order.
- K. All orders are final once shipped to Distributor.

### III. PRICING

- A. PRICES ON ALL ORDERS ARE SUBJECT TO CHANGE OR WITHDRAWAL WITHOUT NOTICE AT ANY TIME. Written notification of pending price increases will be made in advance of the effective date of the price change, whenever practicable. Except where prices are specifically designated in Company's quotation as "Firm" for a specified period of time, all Products shipped on or after the effective date of a price change will be invoiced at the new price level. Company reserves the right to make price changes during the term of an existing Agreement (unless expressly agreed otherwise in such Agreement) or any blanket orders. Company's Policy and Distributor Price Schedule may be electronically downloaded in their current versions through Company's online literature service at [www.Robertshaw.com](http://www.Robertshaw.com). International Distributors should contact their customer service representative for current Price Schedules.
- B. Prices do not include any applicable taxes, excises, duties, quotation fees or other government charges or surcharges that Company may be required to pay or collect under any existing or future law. Distributor agrees to pay or reimburse Company for any applicable taxes, charges or surcharges that Company or Company's agents or suppliers are required to pay. Prices may also be adjusted at any time, with or without notice, for changes in exchange rates.
- C. In the event any order submitted by Distributor to Company contains pricing not in accordance with the then-current Price Schedule, or its special quoted pricing, Company will notify Distributor of the discrepancy in price and Distributor shall correct the pricing in writing by either acknowledging the correction on a revised order confirmation, a pricing approval form, or by submitting a new order to Company. All orders shall be placed on hold until Distributor provides written acknowledgment of correct pricing.

### IV. PAYMENT TERMS

- A. Subject to Company's Credit Department approval, standard invoice payment terms are Net 30 days from date of shipment.
- B. Payments can be made either via check, certified check, money order, wire transfer, or irrevocable and confirmed letter of credit, paid to the order of the remittance name specified on the respective invoice. All billings and payments shall be in United States Dollars (USD) or CND, respectively. International Distributor's billings and payments shall be in the agreed currency. Company may require check in advance, cash in advance, or a Letter of Credit (LOC) on international accounts, which Distributor shall furnish upon request.
- C. If Distributor's order requires check in advance, supplies and raw materials may not be purchased and Product may not be produced or shipped until payment is received and funds are cleared from the bank upon which they are drawn. In the event standard or non-standard Product is produced and funds do not clear Distributor's bank, Distributor is liable to Company for all associated costs and damages thereof including, but not limited to, price of Products already shipped (plus freight charges); finished goods; costs of work-in-progress, vendor items, raw materials and parts Company cannot return, vendor cancellation charges, if any and other costs related to the order or incurred therewith. Applicable Product lead-times will begin once funds clear.
- D. Invoices are due and payable in one installment and any portion of the price which is not paid on time shall be subject to a service charge at the lesser of one and one half percent (1-1/2%) per month (18% per annum), or the maximum rate permitted by law, from the due date until the amount is paid in full. Company shall be entitled to recover from Distributor all costs for collection, including reasonable attorneys fees and court costs, incurred by Company in connection with any amount due Company from Distributor. Company reserves the right to withhold shipments or require Distributor to provide prepayment or a check in advance if, in Company's judgment, Distributor presents a credit risk.
- E. Deductions are not allowed without prior written authorization from Company. Any invoice corrections or money owed Distributor will be issued in the form of a credit from Company to Distributor's account.

### V. FREIGHT AND DELIVERY TERMS

- A. Unless otherwise agreed by Company in writing, the delivery terms for all orders are Ex works (Company's shipping point) (EXW, Incoterms 2010).
- B. For US and Canada Distributors, regular ground freight will be prepaid by Company via carrier of Company's choice on individual orders with a minimum net value of \$2,500.00 USD or CND, respectively, before applicable taxes, and shipping at one time to any recognized Distributor or its branch. Orders less than \$2,500.00 USD or CND, respectively, will be prepaid by Company but will be at Distributor's expense and freight charges will be added to Distributor's invoice.
- C. Unless otherwise agreed by Company in writing, international Distributor's freight will be prepaid by Company via carrier of Company's choice and freight charges will be added to Distributor's invoice.
- D. If Distributor requests and Company agrees, in its sole discretion, to arrange for shipment of Products as an accommodation to Distributor, Distributor must furnish Company with Distributor's carrier account number and carrier information. All freight, storage, insurance or other costs of shipment shall be paid by Distributor and, if advanced by Company, shall be added to Distributor's invoice.
- E. Distributor may request to pick up Product at Company's distribution facility site and Company may honor such request, in its sole discretion, provided Distributor notifies Company's Customer Service Department at least forty-eight (48) hours in advance of the pick-up date and Company confirms such request in writing within twenty-four (24) hours of Distributor's notice. In no event may Distributor pick up Product unless Distributor has received written confirmation from Company allowing such pick up.
- F. Company agrees to use commercially-reasonable efforts to meet delivery schedules requested by Distributor, but shall have no liability for failure to do so for any reason.
- G. Company reserves the right to select the manner in which the Product is packaged. Quoted prices include regular packing. Special requirements for packing will be subject to extra charges, unless otherwise agreed by Company in writing.
- H. Orders acknowledged by Company may not be canceled or amended, or deliveries deferred by Distributor, except with Company's prior written consent, and then only upon such terms as shall be acceptable to Company. In the event of order cancellation, in whole or in part, Distributor shall be liable to Company for all costs and damages arising from or related to such cancellation including, but not limited to, price of Products already shipped (plus freight charges finished goods; costs of work-in-progress, including vendor items, raw materials and parts Company cannot return, vendor cancellation charges, if any and other documented costs related to the order.
- I. Title and risk of loss to all Products shall pass to Distributor upon delivery by Company to a carrier at Company's shipping point.
- J. Export/Import and Code of Conduct Compliance. If Distributor distributes Company's Product outside the United States, Distributor shall be responsible for compliance with all applicable export, re-export and import control laws and regulations imposed on the Product; any related technical information by the

United States government or by any foreign country; trade sanctions and embargo laws, regulations, rules, licenses, orders and requirements including, but not limited to, the U.S. Export Administration Regulations, rules and regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control, EU Regulation No. 428/2009, any regulations in force within any relevant territory, and any orders issued under the foregoing in force from time to time. Distributor shall obtain all validated governmental authorizations or licenses, as required. Upon Company's request, Distributor shall furnish statements certifying such compliance either annually or on a per-order basis and shall cooperate in any audit or inspection related to applicable export or import control laws or regulations. Distributor shall comply with the Robertshaw Supplier Code of Conduct and the Robertshaw Code of Conduct, including their Anti-Bribery provisions, copies of both of which are available upon request to Company. Distributor shall indemnify and hold Company and its directors, officers, shareholders, employees, agents and representatives harmless for any and all liability including, but not limited to, any and all fines, penalties, losses, costs, damages or expenses (including attorneys', expert and witness fees) incurred by Company as a result of, or relating to, Distributor's noncompliance with the terms herein.

- K. Harmonized Tariff Schedule (HTS) and export classification numbers such as Schedule B, ECCN, and the like, if provided by Company, represent solely an opinion of Company. Under no circumstances shall Company be liable whatsoever for the validity or any inaccuracies therein. Distributor shall be solely responsible for ensuring the proper classifications are declared on the shipment documents and to the relevant authorities. Company urges Distributor to consult with a subject matter expert, such as an attorney or a licensed Freight Forwarder, to review and determine the correct classification for the imported/exported Products.

#### VI. INSPECTION AND ACCEPTANCE

- A. Distributor shall inspect all deliveries within two (2) business days of receipt. In the event there is damage to Product or shortage of Product, Distributor shall notify the carrier and Company within the two (2) business-day period and provide a copy of the signed packing list noting the damage or shortage thereon. All other Products shall be deemed to have been finally inspected and accepted by Distributor within ten (10) days after date of invoice, unless a written notice of claim is given by Distributor to Company within the 10-day period. This ten (10) day period applies to all other discrepancies, including discrepancies in invoicing, shortage or damage, and excludes shortage in shipment caused by carrier or damaged shipment caused by carrier, as provided above, which requires two (2) business days notice. No Product subject to a claim may be returned without the prior authorization of Company. Authorized return shipments must be sent to Company accompanied by a packing slip, and include Company's Return Materials Authorization (RMA) Number, purchase order number, Company's invoice number, the number of cartons and items received, condition of cartons and any other relevant facts that would be helpful in tracing the cause of the discrepancy, and must have transportation charges prepaid.
- B. Company will verify all reports of shipping discrepancies and, where applicable, will issue a credit invoice. No prior debits will be accepted.

#### VII. WARRANTY

##### A. Warranty

1. Company warrants its standard Products listed in the then-current Distributor Price Schedule to be free from defects in workmanship and material under normal use and service and to perform substantially in accordance with published Company specifications (subject to reasonable tolerances) in effect at the time of acceptance of Distributor's order, for a period of twelve (12) months from the date the Product is placed in use (proof of installation is required), or eighteen (18) months from the date of manufacture, whichever occurs first (the "Warranty Period").
  2. Exceptions from the Warranty stated above:  

Some Products may contain extended warranties. Please refer to the Product's documentation for specific warranty coverage, if applicable.

    - Plastic items are not warranted for failure after installation in a machine or assembly.
    - Product subjected to abuse or damage is not warranted. Abuse or damage may be indicated by, but not limited to, one or more of the following:

Burned contacts	Abuse or tampering
Stripped threads	Missing parts
Water or fire damage	Improper installation or application
Split castings	
  3. Products that fail during the Warranty Period and otherwise qualify under the terms of Company's Warranty will, in Company's sole discretion, be (i) credited to Distributor's account at Distributor's lowest net invoice amount, (ii) repaired, or (iii) replaced provided that the Products are returned to Distributor pursuant to Section VIII(B) below. Payment deductions for warranty returns are not allowed. In no event shall the warranty claim exceed the Product price allocated to the Distributor's lowest net invoice price over either the previous twelve (12) months, or since inception of an Agreement between Company and Distributor, if any, whichever is less. If a returned Product is determined by the Company, in its sole discretion, to fall under the Warranty above, and if Distributor has requested on the packing list that a replacement Product be sent to Distributor, then Company will issue a replacement Product in lieu of issuing a credit to Distributor. Company reserves the right to supply suitable substitutes for Warranty Products that are not currently in production or otherwise available. Costs of Product removal or reinstallation, including labor, are not the responsibility of Company and not included in the Warranty.
  4. THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, OR REPRESENTATIONS, BY OPERATION OF LAW OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOST SALES, LOST REVENUES OR PROFITS, LOSS OF USE, OR GOODWILL ARISING OUT OF OR RESULTING FROM THE USE OR INABILITY TO USE COMPANY'S PRODUCTS. ANY STATEMENTS OR REPRESENTATIONS MADE BY OTHER PERSONS, ENTITIES, OR ANY THIRD PARTIES ARE SPECIFICALLY DISCLAIMED AND SHALL BE NULL AND VOID.
  5. THE FOREGOING REMEDY SHALL BE THE DISTRIBUTOR'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S SOLE OBLIGATION FOR FAILURE OF PRODUCT TO CONFORM TO THE WARRANTY.
- B. Return for Warranty Consideration
1. All Products to be considered for warranty must be returned to Company with freight and transportation charges prepaid.

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2. Product returned to Company must be packaged in such a manner that will prevent any further damage to the Product during transit. The Warranty terms above shall not apply to any items damaged in transit.
3. An itemized packing slip, including Distributor's name and address, is required for each shipment to Company of Product(s) to be considered for warranty. The packing slip must contain a reference number, items and their quantities being returned, reason for warranty return, date of installation, date of failure, and a contact name at the Distributor in case further information is required.
4. For Distributors within North America (USA and Canada), all cartons must be clearly identified as WARRANTY PRODUCT and returned to:

USA Distributors: Warranty Department Robertshaw c/o Loera Customs Brokerage 5845 Padre Island Hwy Brownsville, TX 78521	Canada Distributors: Warranty Department Robertshaw 1175 Corporate Drive, Unit 5 Burlington, ON L7L 5R6
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For International Distributors, please contact your customer service representative for return authorization and procedures.

### C. Inspection of Product

1. Company will inspect each item to confirm that the returned Product qualifies for the Warranty in Section VII. If the inspection by Company does not disclose any defect covered by the Warranty, then Company shall notify Distributor accordingly and the Distributor has the option to request Company to scrap the Product or return it at Distributor's expense. AT COMPANY'S OPTION, COMPANY MAY SCRAP THE PRODUCT WITH NO FURTHER LIABILITY TO DISTRIBUTOR, UNLESS DISTRIBUTOR NOTIFIES COMPANY OTHERWISE WITHIN ONE (1) WEEK OF COMPANY'S NOTIFICATION.
2. In the event Distributor sends Company goods that were not manufactured and/or distributed by Company, Company will notify Distributor. Distributor has the option to request Company to scrap the product or return it at Distributor's expense. AT COMPANY'S OPTION, COMPANY MAY SCRAP THE PRODUCT WITH NO FURTHER LIABILITY TO DISTRIBUTOR, UNLESS DISTRIBUTOR NOTIFIES COMPANY OTHERWISE WITHIN ONE (1) WEEK OF COMPANY'S NOTIFICATION.

D. Final disposition of any warranty claim shall be determined solely by Company and shall be final and binding.

## VIII. RETURN MATERIAL AUTHORIZATION (FOR NEW AND UNUSED PRODUCT RETURNS)

- A. Returns will not be accepted, nor credits given, without a factory authorized Return Materials Authorization (hereinafter "RMA"). RMAs are only issued to the original point of purchase location for current manufactured and/or distributed items that fall within the Warranty terms and have been purchased within the previous twelve months. Returns will not be accepted for special order or non-stock items (as indicated in the Price Schedule).
- B. In order to request an RMA number, Distributors must provide the invoice number, sales order number (or customer's purchase order number), the item numbers and quantities of Products they wish to return, and the reason for return to their Sales or Customer Service Representative.
- C. RMA Processing
  1. The RMA number is valid only if the Product it refers to is received at the address specified on the RMA form, freight and transportation charges prepaid, within fourteen (14) days from the date of Company's-issued authorization. Company may reject the request if Product is received after fourteen (14) days from the date of Company's-issued authorization.
  2. The Product must be received in its original saleable condition (including all accessories and inserts), in its original packaging, and undamaged. Damaged Product will not be accepted for return or replacement, even if a RMA number has been issued.
  3. Credit for the return will be based on the lowest net invoice amount for the Distributor over the last 12 months, or per the Agreement between Company and Distributor, if any, unless proof of purchase for the actual shipped Product is provided.
  4. All returns are subject to a minimum fifteen percent (15%) restock charge or \$15.00 USD, whichever is greater. Company will not accept returns that do not have a proper RMA or are sent to Company in error.

## IX. DISCONTINUED PRODUCTS

- A. Company reserves the right to discontinue distribution of any Product without notice, or substitute material or complete devices, when items ordered are not currently in production or otherwise available.

## X. PERMISSIBLE VARIATIONS

- A. Company may, prior to the delivery of Product to Distributor, make changes in the Product including, but not limited to, changes to the model, design, component parts or dimensions. In addition, Company may make any change or variation in the Product that is within industry, government or professional organization standards or specifications applicable at the time of manufacture, without notice to Distributor. Distributor hereby agrees to accept any Product that may incorporate any such changes or variations, and any increase in price resulting from such changes or variations will be for the account of Distributor.

## XI. FORCE MAJEURE

- A. Company shall not be liable for any delay or failure in performance, or for any damages suffered by the Distributor by reason of such delay, if caused or arising directly or indirectly from any act beyond Company's reasonable control including, but not limited to, acts of God; vandalism; sabotage; accidents; fires; floods; strikes or other labor disputes; mechanical breakdowns; shortages or delays in obtaining suitable parts, equipment, material, labor, power or transportation; acts of suppliers; interruption of utility services; acts of terrorism, or acts of any unit or agency of government. Any delays so occasioned shall affect a corresponding extension of Company's performance dates that are, in any event, understood to be approximate.

## XII. LIMITATION OF LIABILITY

Notwithstanding any other provision in these Terms and Conditions, Company's liability shall be limited as follows:

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- A. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF SALES, PROFITS OR REVENUE, LOSS OF USE, LOSS OF GOODWILL OR INCREASE IN OPERATING COSTS.
- B. IN NO EVENT SHALL COMPANY'S LIABILITY EXCEED THE AMOUNT PAID TO COMPANY FOR THE PRODUCT FOR THE QUANTITIES OF COMPANY'S PRODUCTS GIVING RISE TO ANY SUCH LIABILITY, EXCEPT WITH RESPECT TO THIRD-PARTY CLAIMS FOR PERSONAL INJURY, WHICH SHALL BE LIMITED TO COMPENSATION FOR SUCH PERSONAL INJURY.
- C. COMPANY SHALL NOT BE LIABLE TO DISTRIBUTOR FOR ANY CLAIMS, DAMAGES, EXPENSES, FEES, COSTS, LOSSES, CAUSES OF ACTION, OR SUITS WHICH ARISE OUT OF OR RELATE TO THE SALE OF PRODUCT DUE TO THE DIRECTION, NEGLIGENCE, ACT, OMISSION, OR USE OF THE PRODUCT IN A MANNER NOT SPECIFICALLY AUTHORIZED, INTENDED OR DESIGNED BY COMPANY, WILLFUL MISCONDUCT, OR OTHER FAULT OF ANY NATURE WHATSOEVER OF DISTRIBUTOR, ITS EMPLOYEES, AGENTS, SERVANTS, CUSTOMERS, OR END USERS.
- D. THE ABOVE LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS WHETHER THE CLAIM FOR RECOVERY IS BASED ON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, INFRINGEMENT, STRICT LIABILITY OR OTHER TORT.
- E. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED ABOVE IS THE DISTRIBUTOR'S EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### XIII. CONFIDENTIALITY

- A. Company's Price Schedules, quotes and any discounts contained herein are considered confidential and/or proprietary information of Company and Distributor shall in no instance share any Price Schedules or discounts, business discussions, financial information, or other confidential and/or proprietary information of Company with any other person, group, entity, or third party.

### XIV. GENERAL

- A. This document shall be governed by and interpreted in accordance with the laws of the State of Illinois, USA, regardless of the laws that might otherwise govern under Illinois principles of conflicts of laws and without regard to the United Nations Convention on Contracts for the International Sale of Goods. Venue for any dispute shall be exclusively in the Circuit Court of DuPage County, the Circuit Court of Cook County, or the US District Court for the Northern District of Illinois, Eastern Division.
- B. Company and Distributor expressly agree that all terms and conditions, quotations, purchase orders and any related documents and correspondence be drafted and interpreted in the English language.
- C. In the event that any of the provisions hereof shall be held invalid, illegal, void or unenforceable, the remaining provisions shall remain in full force and effect as written.
- D. As used herein, the terms Distributor and Company include their respective heirs, executors, personal representatives, successors and assigns, including their corporate successors by purchase, merger and acquisition.
- E. Distributor may not assign its rights or obligations, or any portion thereof, without the advance written consent of Company.
- F. Paragraph headings are inserted for convenience of reference only and shall not be used in the construction or interpretation hereof.
- G. Company's failure to assert any of its rights under these Terms and Conditions of Sale shall not be deemed a waiver of such rights and shall not extend to or affect any other right Company may possess or to any subsequent or dissimilar event.
- H. These Terms and Conditions of Sale supersede any and all previously published versions issued by Company. Except where there exists a fully executed agreement between Distributor and Company, these Terms and Conditions of Sale constitute the entire agreement between Distributor and Company and supersede all previous and/or contemporaneous understandings and agreements, whether verbal or written, express or implied, relating to the subject matter herein. Any changes to these Terms and Conditions of Sale must be in writing and signed by an authorized representative of Company.