

## **XELEUM LIGHTING, LLC.**

### **Terms & Conditions – Purchase Orders**

The following terms and conditions apply to all purchase orders issued by Xeleum (hereinafter, “Xeleum” or “Buyer”).

**1. Acceptance.** This purchase order together with the terms herein (the "Purchase Order") constitutes Xeleum's offer to Seller and shall become a binding contract upon the terms and conditions stated herein upon acceptance by Seller by any expression of acceptance or commencement of performance, whichever occurs first. Any terms and conditions proposed by Seller in acknowledging or accepting Xeleum's offer which are different from or in addition to the terms set forth in the Purchase Order shall not be binding upon Xeleum and shall be void and of no effect, except to the extent expressly accepted in writing by Xeleum's authorized procurement representative. This Purchase Order, together with any attachments, constitutes the entire agreement of the parties. No waiver, modification or addition to the terms of the Purchase Order shall be valid unless in writing and signed by the parties. "Deliverables" means the goods, materials, products, software, technical data, intellectual property, drawings, personal property, personnel, services or items identified and/or listed in the Purchase Order issued by Xeleum Lighting, LLC., including its wholly owned subsidiaries, (collectively "Xeleum").

**2. Payment and Prices.** Xeleum shall not be billed at prices higher than those stated on the Purchase Order. Unless otherwise specified, the price includes all charges for packing, storage and transportation to point of delivery. Seller will pay all delivery charges in excess of any delivery charge Xeleum has agreed to pay. The price stated includes all taxes except state or local sales or use tax or similar taxes, which Seller is required by law to collect from Xeleum. Such taxes, if any, shall be separately stated in Seller's invoice and paid by Xeleum unless an exemption is available. Seller agrees that any price reduction made with respect to the items covered by the Purchase Order subsequent to its placement but prior to payment will be applicable to the Purchase Order. A "correctly presented" invoice from Seller will contain the Purchase Order Number sent to the billing address on the Purchase Order. Seller represents that prices quoted to or paid by Xeleum shall not exceed current prices charged to any other customer of Seller for deliverables which are the same or substantially similar to, and in the same or substantially similar quantities as the Deliverables. Seller shall refund or Xeleum may set off against subsequent invoices any amounts paid by Xeleum in excess of such price(s).

**3. Delivery.** The Deliverables must be shipped complete by the date requested but not be shipped more than one week in advance of the time or times specified herein, without Xeleum's prior written approval. Except as otherwise provided herein, Xeleum shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Xeleum's option, be returned to Seller, or held for disposition at Seller's expense and risk. Seller's invoice shall describe the items, state the Purchase Order Number and be attached to the original bill of lading or other shipping receipt.

**4. Changes.** Xeleum may make changes in drawings, specifications, quantities, delivery schedules, or methods of shipment or packaging on any goods at any time. If such changes result in an increase or decrease in cost, an equitable adjustment of price and delivery schedules may be made, or Xeleum may, at its option, terminate the Purchase Order if agreement on an adjustment cannot be reached. Claims for adjustment, if any, must be asserted by Seller within ten days of the change order.

**5. Warranties.** Seller warrants that the Deliverables will conform to applicable specifications, instructions, drawings and data, and that samples will be merchantable, of good material and workmanship, free from defects and will be fit and sufficient for the purpose intended. These warranties shall be in addition to all other warranties, express, implied or statutory. Payment for, inspection of, or receipt of articles or services shall not constitute a waiver of any breach of warranty. Seller's warranties shall run to Xeleum, its affiliates, subsidiaries, customers or users of the Deliverables and shall not be deemed to be exclusive of any other remedy at law or in equity available to Xeleum, its affiliates, subsidiaries, customers or users of the Deliverables. Xeleum's inspection, approval, acceptance, use of, or payment for all or any part of the Deliverables shall in no way affect its warranty rights. Seller shall at its expense indemnify, defend and hold harmless, Xeleum, its directors, officers, employees, affiliates, subsidiaries, agents, customers and end users, from any and all loss, damages or liability (including, without limitation, reasonable legal fees and costs) arising out of or resulting in any way from any defect in the Deliverables, or from any act or omission of Seller, its agents, employees or permitted subcontractors in connection with the Deliverables. This indemnification shall be in addition to Seller's warranty obligations.

**6. Inspection and Tests.** All goods ordered hereunder will be subject to inspection and testing by Xeleum to the extent practicable at all times and places, including the period of manufacture and in any event prior to acceptance. Such goods will be subject to final inspection and acceptance by Xeleum during a reasonable period following delivery to Xeleum. It is expressly agreed that inspections and/or payments prior to delivery will not constitute final acceptance. If the goods delivered do not meet the specifications, or otherwise do not conform to the requirements of the Purchase Order, Xeleum shall have the right to reject such goods. Goods which have been delivered and rejected in whole or in part may, at Xeleum's option, be returned to Seller or held for disposition at Seller's risk and expense. Xeleum will have the right, but not the obligation to examine Seller's records for the purpose of determining compliance with the terms of the Purchase Order. Should a compliance review be performed, Xeleum or its duly designated representatives will provide reasonable notice to Seller and the records may be examined only during the normal business hours. Xeleum will bear all costs of audit. The right to audit shall expire 18 months after the expiration or termination of the Purchase Order.

**7. Xeleum's Property.** Title to and right of immediate possession of any property, including without limitation, patterns, tools, jigs, dies, intellectual property of any kind, software, firmware, drawings, designs, plans, reports, data, specifications, equipment or materials of any type furnished or paid for by the Xeleum shall remain in Xeleum. No

articles made therefrom shall be furnished by Seller to any other party without Xeleum's prior written consent. Seller shall keep adequate records of such property, which shall be made available to Xeleum upon request, and shall store, protect, preserve, repair and maintain such property in accordance with sound industrial practice, all at Seller's expense. Unless otherwise agreed to by Xeleum, Seller shall insure Xeleum's interest in such property against all risks of theft, loss or damage (including extended coverage). Copies of certificates of insurance evidencing this coverage will be furnished to Xeleum on demand. In the event that Xeleum's property becomes lost or damaged to any extent from any cause while in Seller's possession, Seller agrees to indemnify Xeleum or replace such property, at Seller's expense, in accordance with Xeleum's request. At the completion of the goods requested by Xeleum in the Purchase Order for which Xeleum's property was required, Seller shall request disposition instructions for all such property, or the remainder thereof, whether in its original form or in semi-processed form. Seller agrees to make such property available to Xeleum at Xeleum's request, in the manner requested by Xeleum including preparation, packing and shipping as directed. Expenses for preparation for shipment will be for Seller's account and shipment shall be made F.O.B. Xeleum's facility.

**8. Drawings and Specification Review.** If, during the term of the Purchase Order, Xeleum's representatives review drawings, specifications, or other data developed by Seller in connection with the Purchase Order and make suggestions or comments or approve such documents and data, such action is only an expression of opinion by Xeleum and shall not serve to relieve Seller of any responsibility for the reliability, quality, rate of output, cost, delivery, performance or any other requirements of the Purchase Order.

**9. Drawings and Data.** Seller shall keep confidential all information, drawings, specifications, or data furnished by Xeleum, or prepared by Seller specifically in connection with the performance of the Purchase Order, and shall not divulge or use such information, drawings, specifications or data for the benefit of any other party. Except as required for the efficient performance of the Purchase Order, Seller shall not make copies or permit copies to be made without the prior written consent of Xeleum. Seller shall not use, either directly or indirectly, any such data or any information derived therefrom for any purpose other than to perform the Purchase Order without obtaining Xeleum's written consent. Seller shall return all information, drawings, specifications, or data of Xeleum upon termination of this agreement or upon Xeleum's demand.

**10. Use of Information.** Seller agrees that all information heretofore or hereafter furnished or disclosed to Xeleum by Seller in connection with the placing or filling of the Purchase Order is furnished or disclosed as a part of the consideration for the Purchase Order, that such information is not, unless otherwise agreed to by Xeleum in writing, to be treated as confidential or proprietary and that Seller shall assert no claims by reason of the use or disclosure of such information by Xeleum, its assigns or its customers.

**11. Advertisements.** Seller shall not in any manner advertise or publish the fact that it has furnished Xeleum, or contracted to furnish Xeleum, the goods or services herein

mentioned without prior written consent of Xeleum. Seller shall not disclose any details in connection with the Purchase Order to any party except as may be otherwise provided.

**12. Tooling.** Unless otherwise specified in the Purchase Order, all tooling and/or all other articles required for the performance hereof shall be furnished by Seller, shall be maintained in good condition and replaced when necessary at Seller's expense, and if furnished by Xeleum, returned to Xeleum upon demand.

**13. Termination.** Xeleum may terminate the performance of the work under the Purchase Order in whole at any time, or from time to time in part, by written notice to Seller. Upon receipt of such notice, Seller shall, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities and supplies in connection with the performance of the Purchase Order and shall proceed to cancel promptly all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to the Purchase Order. Upon the termination of work under the Purchase Order, full and complete settlement of all claims of Seller with respect to the terminated work shall be made as follows:

13.1. As compensation to Seller for such termination, unless such termination is for the default of Seller, Xeleum shall pay Seller the percentage of the total order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done, that are not recoverable in the normal course of Seller's business, as Seller's full compensation for the work completed under the Purchase Order; and

13.2. Upon Xeleum's payment to Seller in accordance with this paragraph, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling and other things for which Seller has paid such vest in Xeleum. Nothing contained in this paragraph shall be construed to limit or affect any remedies, which Xeleum may have as a result of default, by Seller.

**14. Default - Cancellation.** Xeleum reserves the right, by written notice of default, to cancel the Purchase Order without liability to Xeleum, in the event of the happening of any of the following: insolvency of Seller, the filing of a voluntary petition in bankruptcy by Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Xeleum reserves the right, without any liability to Xeleum, upon giving Seller written notice, to (i) cancel the Purchase Order in whole or in part, by written notice to Seller and Seller shall be liable to Xeleum for all damages, losses and liability incurred by Xeleum directly or indirectly resulting from Seller's breach, or (ii) obtain the goods ordered herein from another source with any excess cost resulting therefrom chargeable to Seller, if such deficiencies are not remedied. The remedies herein provided shall be cumulative in addition to any other remedies provided at law or in equity.

**15. Force Majeure.** Neither party shall be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or any Governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.

**16. Compliance with Laws.**

**16.1. General:** Seller shall comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws.

16.2. Where and if applicable, Seller will comply with the following Federal Acquisition Regulations: (i) 52.222-26 "Equal Opportunity", (ii) 52.222-35 "Affirmative Action for Special Disabled and Vietnam Veterans", (iii) 52.222-36 "Affirmative Action for Handicapped Workers." Executive Order 11246 of the Rehabilitation Assistance Act, the Equal Opportunity Clauses found at 41 Code of Federal Regulations sections 60-1.4(a) (1-7), 60-250.4(a-m) and 60-741.5 (a) (1-6).

**16.3. Customs:** Upon Xeleum's request, Seller will promptly provide Xeleum with a statement of origin for all Deliverables and United States Customs documentation for Deliverables wholly or partially manufactured outside of the United States.

**17. Indemnification.** Seller will defend, hold harmless and indemnify Xeleum from and against any liability and expenses (including, without limitation, attorney and other professional fees and disbursements) arising from or in connection with any damages, injuries or third party claims or demands to recover for personal injury, death, or property damage caused by or arising out of any of the Deliverables (regardless of whether such claim or demand arises under tort, negligence, contract, warranty, strict liability or other legal theories), except to the extent such injury, damage or loss results from Xeleum's negligent actions, alteration or misuse.

**18. Insurance.** If the Purchase Order contemplates the provision of services by Seller, Seller shall maintain and keep in force at its own expense, the following insurance at limits reasonably requested by Xeleum: Commercial General Liability (including products and contractual liability), Commercial Automobile, Worker's Compensation, and Professional Liability. Seller shall provide a Certificate of Insurance to Xeleum to verify such coverage, which shall provide at least 30 days Notice of Cancellation to Xeleum.

**19. Intellectual Property Indemnification .** Seller shall indemnify and save harmless Xeleum, its successors, assigns, customers or users of its products, from and against all loss, liability and damage, cost and expense (including reasonable attorney fees), resulting from any claim that the manufacture, use, sale or resale of any Deliverables supplied under the Purchase Order infringe any patent or patent rights, trademark, copyright or other intellectual property right of a third party, and Seller shall when

notified, defend any action or claim of such infringement at its own expense.

**20. Assignment .** Neither the Purchase Order nor any rights or obligations therein may be assigned by Seller nor may Seller delegate the performance of any of its duties hereunder without Xeleum's prior written consent.

**21. Applicable Law and Jurisdiction.** The validity, interpretation and performance of these terms and conditions shall be governed by the laws of the State of New York without reference to conflict of laws principles. The parties agree that any action related to this agreement shall be venued in the Federal District Court or the Superior Court for the State of New York, and the parties hereby irrevocably commit to the jurisdiction of these courts.

**22. Attorneys' Fees.** In the event there is any dispute concerning the terms of this agreement or the performance of any party, and any party retains counsel for the purpose of enforcing any of the provisions of this agreement or asserting the terms of this agreement in defense of any suit filed against said party, each party shall be solely responsible for its own costs and attorneys' fees incurred in connection with the dispute irrespective of whether or not a lawsuit is actually commenced or prosecuted to conclusion.

**23. Invoices and Notices.** All correspondence and invoices covering the Purchase Order must be addressed to Xeleum's Purchasing Department at the address indicated on the Purchase Order. The parties agree that for any transactions subject to the Purchase Order, facsimile signatures shall be accepted as original signatures, orders may be transmitted electronically and any document created pursuant to the Purchase Order may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of the Purchase Order or any document created hereunder, based on the use of a facsimile signature, electronic order or the use of a copy retrieved from an electronic storage system.

**24. Severability.** In case any one or more provisions contained in the Purchase Order shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**25. Title.** With the exception of software not specifically developed for Xeleum under the Purchase Order, (i) all Deliverables shall be the sole and exclusive property of the Xeleum, and where applicable, shall be considered "works made for hire" under the U.S. Copyright Act (Title 17, United States Code), and all intellectual property, proprietary and industrial rights associated with Deliverables shall be owned exclusively by Xeleum; (ii) by the Purchase Order, Seller assigns to Xeleum for no additional consideration all such rights to the Deliverables, including the right to any extensions and renewals of such rights; and (iii) if requested by Xeleum, Seller shall, without additional consideration, sign a separate written assignment of such rights to Xeleum or any other document necessary for Xeleum to establish, maintain or enforce such rights in the Deliverables.

**26. Hazardous Chemicals and Hazardous Materials.** Prior to shipment or transfer of any hazardous chemical(s), as defined by regulations promulgated pursuant to the Occupational Health and Safety Act ("OSHA"), Seller shall provide Xeleum with a complete, up-to-date Material Safety Data Sheet and shall properly mark such hazardous chemical(s) with a label satisfying the requirements of OSHA's Hazard Communication Standard (29 CFR Part 1910.1200 et seq.). Any shipment or transfer by Seller of any hazardous material(s) (as defined by regulations promulgated by the U.S. Department of Transportation ("DOT") and Appendix A of Federal Standard number 313A), shall be conducted consistent with the requirements of DOT regulations promulgated at 40 CFR Part 171 et seq.

**27. Relationship of Parties.** The Seller and Xeleum are independent contractors. Nothing in the Purchase Order shall be deemed to create a partnership, joint venture, franchise, employment, or agency relationship between the parties. Neither party shall have the power or authority to bind or obligate the other party.

**28. Limitation of Liability.** In no event shall Xeleum be liable for any incidental, indirect, special, consequential or punitive damages, even if Xeleum knew or should have known of the possibility of such damages.

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# XELEUM LIGHTING, LLC.

## ORDER ACKNOWLEDGEMENT - TERMS AND CONDITIONS

### **1. Terms and Conditions of Sale.**

The Terms and Conditions contained herein are exclusive and in lieu of all other Terms and Conditions appearing on Buyer's purchase order or elsewhere, and shall govern all sales of goods and products by Xeleum Lighting, LLC. (hereinafter, "Xeleum" or "Seller") to Buyer regardless of the form or medium of Buyer's purchase order, and regardless of whether Seller's actions are deemed to be a prior offer of Buyer's purchase order or an acceptance thereof. In case of a conflict between these Terms and Conditions and Buyer's purchase order or any of Buyer's other terms and conditions, these Terms and Conditions shall prevail except where Seller has expressly agreed to the conflicting term in writing. Acceptance by Buyer of Seller's performance hereunder (which acceptance shall be effective immediately at the start of such performance) shall evidence Buyer's agreement to the foregoing, to the acceptance of any different or additional terms, and that any additional terms shall not constitute a material alteration of Buyer's terms.

**2. Termination.** Buyer may terminate for convenience only upon written agreement of Seller. Buyer may terminate for Seller's material breach if Seller, after written notice, fails to cure such material breach within 90 days of receipt of such notice. Any termination by Buyer must be in writing. In the event of a termination by Buyer or Seller for any reason other than a material breach by Seller that Seller fails to cure, Buyer shall pay Seller termination charges consisting of all of Seller's costs and expenses incurred in connection with Seller's performance (including without limitation labor, material and overhead), all costs and expenses incurred as a result of the termination, any of Seller's other incidental damages and Seller's expectation damages. Regarding any breach by Buyer hereunder, Seller reserves all rights and remedies available hereunder, in equity or at law.

**3. Price.** Unless otherwise stated on the face hereof, all prices indicated in this order acknowledgement are quoted F.O.B. Seller's shipping address. Prices do not include any sales, use, excise or other taxes or assessments. All sales, use, excise and other taxes and assessments shall be borne by Buyer. Prices are subject to change without notice.

**4. Payment.** The terms of payment are as stated on the face hereof. Payments not received when due bear interest at the lower of 12 percent per annum or the maximum rate allowed by applicable law. Seller reserves the right to limit, cancel or revoke the credit of Buyer at any time and for any reason, and Seller may require or demand payment or adequate assurances of performance from Buyer prior to performing any aspect of the sale of goods hereunder. Seller reserves all rights to reclaim goods delivered and not paid for upon discovery of Buyer's insolvency.

**5. Delivery.** The delivery date is only an estimate of when the product will be shipped. Seller assumes no liability for loss, damage or consequential damage due to delays. Seller reserves the right to make delivery in installments (including both advance shipments and back orders) unless Buyer expressly states otherwise in Buyer's purchase order. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delivery of an installment shall not relieve Buyer of its obligation to accept remaining deliveries. Seller shall be excused for any delay in performance or delivery due to acts of God, war, terrorism,



riot, embargoes, acts of civil or military authorities, fire, floods, accidents, quarantine restrictions, factory conditions, strikes, labor disputes, delays in transportation, shortage of transport vehicles, labor or materials, or any circumstance or cause beyond the control of Seller in the reasonable conduct of its business.

**6. Packaging.** Unless otherwise agreed upon by the parties, packaging of goods being shipped shall be at the sole discretion of Xeleum.

**7. Inspection.** Buyer may inspect, or provide for inspection, at the point of receipt of shipment. Buyer shall inspect goods immediately. Seller reserves the right to make changes at any time in manuals, drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation or carrier. If any such changes alter the cost or the time required for performance or delivery, an equitable adjustment will be made and this agreement modified in writing accordingly. Buyer agrees to accept such changes subject to this paragraph.

**8. Returns.** No goods shall be returned to Seller without Seller's express and written consent, a return authorization number, and return instructions. Goods to be returned must be shipped to the location specified by Xeleum, freight prepaid. Risk of loss of goods being returned remains with Buyer until proper return to Seller as described herein. If goods are being returned for credit, Xeleum reserves the right to apply a restocking charge of 30%. Such credit or refund shall be calculated based upon the lower of the invoice price for such goods and the price existing at time of return. In order to return for credit, goods must be returned by the original purchaser, unused and in the original unopened and undamaged packaging. Goods that have been discontinued or are non-standard because they were modified or custom made are not returnable.

**9. Title and Risk of Loss.** Title passes to Buyer upon full payment to Seller for the products. All risk of loss passes to Buyer as the products are loaded onto the carrier, and Seller is not responsible for damage or loss in transit. Except as otherwise provided herein and expressly stated with respect to shipping terms, Buyer must obtain adequate insurance to cover the products from the time risk of loss has passed from Seller.

**10. Warranty.** Xeleum's warranty for products are available at Xeleum's website or upon request. EXCEPT AS EXPRESSLY STATED IN THE PRECEDING SENTENCE, SELLER DISCLAIMS ALL AND DOES NOT MAKE ANY ADDITIONAL REPRESENTATIONS, WARRANTIES AND/OR INDEMNITIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY REPRESENTATIONS, WARRANTIES AND/OR INDEMNITIES AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, PRICE, PATENT OR ANY OTHER MATTER. THIS SECTION SURVIVES THE TERMINATION OR CANCELLATION HEREOF.

**11. Remedies.** IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION OF THIS AGREEMENT, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY, OR OTHERWISE.

**12. Indemnification.** To the maximum extent allowed by law, Buyer must defend and indemnify Seller and its employees and agents against all costs, expenses, liabilities, losses and claims

incurred by Seller as a result of Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the products;

**13. Confidentiality.** All information, property and rights regarding the products and services of Seller and its affiliates hereunder, including without limitation manuals, drawings, documents, specifications, samples, models and pricing schedules, shall be confidential information, property and rights of and belonging to Seller. Buyer shall not disclose any such information and shall take all precautions to protect such information from disclosure. The obligations hereunder shall survive any termination hereof. Without the express written consent of Seller, Buyer shall have no right or license to use the name or marks of Seller or its affiliates for any purpose.

**14. Statute of Limitations.** All claims and actions resulting from any action by Seller hereunder as to the products or services delivered or performed hereunder must be brought within the period set forth in the warranty for such product.

**15. Governing Law.** The validity, construction and performance hereof is governed by, and must be construed in accordance with, the laws of the state of New York, without regard to its conflicts of law provisions, including without limitation the Uniform Commercial Code. Buyer and Seller irrevocably consent to the venue of the courts having situs within New York County, New York and consent and submit to the jurisdiction of any court located within such county. The U.N. Convention on Contracts for the International Sales of Goods does not apply.

**16. Assignment, Successors and Assigns.** Seller may assign or subcontract its rights and obligations hereunder. Buyer may not assign any interest herein or delegate any obligation hereunder. This agreement and these Terms and Conditions shall be binding upon the parties successors and permitted assigns.

**17. Entire Agreement.** This document comprises the complete and final agreement between Seller and Buyer and supersedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Seller and Buyer, either written or oral, on its subject. No other agreement, quotation or acknowledgment in any way purporting to modify any of the terms hereof is binding upon Seller unless made in writing and signed by Seller's authorized agent. This agreement may not be altered or modified except by written agreement of Seller and Buyer. Any other representations or warranties, statements, models, samples, affirmations, descriptions or advice made by any person, including employees or other agents of Seller, that are inconsistent herewith must be disregarded by Buyer and are not binding upon Seller. The waiver by Seller of any breach by Buyer of any provision hereof shall not be construed to be either a waiver of the provision itself as to subsequent application or any other provision hereof.

**18. Severability.** If any provision of the Sales Agreement is held by a court of competent jurisdiction to be contrary to law or public policy, the remaining provisions of the Sales Agreement remain in full force and effect.