

General Terms & Conditions - Baumann Automation, Inc. (USA)

1. Applicability.

- (a) These terms and conditions of sale (these "Terms") are the only terms governing the sale of the goods ("Goods") and services ("Services") by Baumann Automation, Inc. ("Seller") to the buyer ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods and Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. The acceptance of the purchase order or performance by the Seller does not mean acceptance of the Buyer's terms and conditions. Unless otherwise agreed, our terms shall be deemed to have been accepted when the order is placed or when the order confirmation is received. But at the latest when our delivery or service is acknowledged and accepted.
- (b) The accompanying quotation, order confirmation of sale or invoice (the "Sales Confirmation") and these Terms (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
- (c) Notwithstanding anything to the contrary contained in this Agreement, Seller may, from time to time change the Services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

2. Delivery of Goods and Performance of Services.

- (a) The Goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss, or damage in transit. Unless otherwise agreed, the quoted delivery dates/deadlines are to be regarded as provisional and not yet binding estimates. If binding delivery dates/deadlines have been agreed, these shall be eligible for a reasonable extension if they cannot be met due to circumstances for which the Seller is not responsible. The technical complexity is the defining criterion for whether an extension for deliveries and services is deemed reasonable, unless a shorter or longer period is reasonable in individual cases, taking into account the interests of both parties, or is agreed by mutual consent. The delivery deadline begins on the date of the Seller's written confirmation, but not before all details for executing the order and all other conditions to be met by the ordering party for the proper execution of the contract are clarified. The above also applies to delivery dates.
- (b) The agreement of binding drop dead dates or fixed delivery deadlines must be expressly stated as a drop dead date and is only binding if this has been agreed in text form

- (c) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Baumann GmbH, Oskar-von-Miller-Str. 7, 92224 Amberg, Germany (the "Delivery Point") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods immediately after the Seller's written notice that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point, and will unload and release all transportation equipment promptly so Seller incurs no demurrage or other expense.
- (d) Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer's purchase order.
- (e) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- (f) Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.
- (g) With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, preliminary technical work, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may reasonably request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.
- (h) If preliminary technical work is required from the Buyer, this must be carried out on time and be free of defects. If such documents, information and data as described in Section 2(g) are not received on time, or if necessary preliminary work is not carried out on time and/or with defects still present, the Buyer is not entitled to demand that delivery dates/deadline be adhered to. In this case, a claim for damages due to delays is precluded. The delivery date/deadline shall be deemed to be reasonably extended.

3. Non-Delivery.

- (a) The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- (b) Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received.
- (c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.
- (d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for any non-delivery of Goods.

4. Quantity.

If Seller delivers to Buyer a quantity of Goods of up to 10 % more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Title and Risk of Loss.

Unless otherwise agreed, all Goods furnished hereunder will be shipped FCA, Plant Amberg/Deutschland (per Incoterms 2020) and title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. Seller is not responsible for damage or loss in transit, regardless of whether or not Buyer may have the right to reject or revoke acceptance of said Goods. Seller can arrange for in-transit insurance at Buyer's expense but will not do so without Buyer's written instructions. Unless otherwise stated in the Agreement documents, all Goods will be shipped freight prepaid by Buyer and billed. Charges for shipping may not reflect net transportation cost paid by Seller. Seller shall be entitled to make partial deliveries or deliveries prior to the agreed-upon delivery date, provided that Seller notifies Buyer of the same.

As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code.

6. Buyer's Acts or Omissions.

If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

7. Inspection and Rejection of Nonconforming Goods.

- (a) Buyer shall inspect the Goods within 5 days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.
- (b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility located at Oskar-von-Miller-Str. 7, 92224 Amberg, Germany. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point.
- (c) Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

8. Price.

- (a) Buyer shall purchase the Goods and Services from Seller at the prices (the "Prices"), pursuant to Seller's valid quotation. If the Prices should be increased by Seller before delivery of the Goods to a carrier for shipment to Buyer, then these Terms shall be construed as if the increased prices were originally inserted herein, and Buyer shall be billed by Seller on the basis of such increased prices.
- (b) Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of the Services.
- (c) Our prices are ex-works plus packaging and statutory value added tax. Unless otherwise agreed, the Seller's prices for all deliveries and services, are in EUR/€.
- (d) The costs for packaging and packing material shall be borne by the Buyer. The packaging and packing material is to be returned to the Seller. The costs of the return transport shall be borne by the Buyer. For deliveries outside of the USA, the return of any of the packaging is not required.

- (e) All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any Governmental Authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personal or real property, or other assets.

9. Payment Terms.

- (a) Unless otherwise agreed, Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice. Buyer shall make all payments hereunder by wire transfer in EUR/€.
- (b) Buyer shall pay interest on all late payments at the lesser of the rate of 3% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods or performance of any Services and stop Goods in transit if Buyer fails to pay any amounts when due hereunder.
- (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

10. Buyer's cooperation: Third-Party machines.

- (a) The Buyer shall be obligated to perform all acts of cooperation required for the contractual realization of Seller's performance obligations early enough, completely and without defects. If the Buyer has to provide materials (e.g. drawings, dimensions, parts, components, samples, etc.) (the "Materials"), the Buyer guarantees the following:
 - (i) All Materials, supplies and information required for the delivery of the Goods must be handed over to Seller early enough and in sufficient quantity;
 - (ii) the Materials, supplies and information are to be clearly marked, identified without any doubt in the delivery notes and packaged in a suitable manner;
 - (iii) All Materials, supplies and information shall be delivered by the Costumer using the delivery clause "DDP – Plant Amberg/Germany" (Incoterms 2020). Possible costs and fees (customs duties, taxes, insurance, etc.) paid by Seller shall be refunded by the Buyer plus an additional handling fee;
- (b) Delays caused by the Buyer because of non-compliance of Section 10 (a) and/or additional costs are incurred, the Buyer alone shall be liable for such delays and any incurred costs.
- (c) In case the implementation of third-party machines or third-party products are required or requested by the Buyer the following conditions must be met:
 - (i) The third-party machines' manufacturer or importer shall have a registered office within the EU and shall have a valid approval (EC declaration of conformity, manufacturer's declaration or installation declaration) in accordance with the applicable EU directives;

- (ii) operating instructions in English or German and the official language of the place of installation, in accordance with the applicable regulations, including drawings and plans;
- (iii) risk assessments, in accordance with current regulations.
- (d) Modifications on the third-party machines performed by the Buyer will only be accepted by Seller with the manufacturer's proven written consent.
- (e) The Buyer shall request adjustments of the interfaces from the manufacturer, if adjustments are deemed necessary by Seller.
- (f) The Seller or its affiliates will not perform any technical modifications to third-party systems/machines or third-party products.

11. Limited Warranty.

- (a) Seller warrants to Buyer that for a period of 24 months from the date of shipment of the Goods ("Warranty Period"), that such Goods, excluding custom made goods, will materially conform to the agreed specifications and will be free from material defects in material and workmanship.
- (b) Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.
- (c) EXCEPT FOR THE WARRANTIES SET FORTH IN Section 11(a) AND Section 11(b), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; OR (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- (d) Products manufactured by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.
- (e) The Seller shall not be liable for a breach of the warranties set forth in Section 11(a) and Section 11(b) unless: (i) Buyer gives written notice of the defective Goods or Services, as the case may be, reasonably described, to Seller immediately after the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given

a reasonable opportunity after receiving the notice of breach of the warranty set forth in Section 10(a) to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods or Services are defective.

- (f) The Seller shall not be liable for a breach of the warranty set forth in Section 11(a) or Section 11(b) if: (i) Buyer makes any further use of such Goods after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.
- (g) Subject to Section 11(e) and Section 11(f) above, with respect to any such Goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.
- (h) Subject to Section 11(e) and Section 11(f) above, with respect to any Services subject to a claim under the warranty set forth in Section 11(b), Seller shall, in its sole discretion, (i) repair or re-perform the applicable Services or (ii) credit or refund the price of such Services at the pro rata contract rate.
- (i) THE REMEDIES SET FORTH IN Section 11(g) AND Section 11(h) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN Section 11(a) AND Section 11(b), RESPECTIVELY.

12. Limitation of Liability.

- (a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- (b) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES DIRECTLY OR INDIRECTLY CAUSED BY THIRD-PARTY PRODUCTS OR INSTALLATIONS.
- (c) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL

OF THE AMOUNTS PAID TO SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.

- (d) The limitation of liability set forth in Section 12(c) shall not apply to (i) liability resulting from Seller's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Seller's acts or omissions.

13. Insurance.

During the term of this Agreement and for a period of 1 year thereafter, Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$ 25 Mio with financially sound and reputable insurers. Upon Seller's request, Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in these Terms. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with 7 days advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

14. Compliance with Law.

Buyer shall comply with all applicable laws, regulations, and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

15. Termination.

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

16. Waiver.

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. Confidential Information.

All non-public, confidential or proprietary information of Seller, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. Force Majeure.

No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Seller hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, epidemics, pandemics or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; and (f) national or regional emergency; and (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the control of the Impacted Party. The Impacted Party shall give notice within 3 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 5 consecutive days following written notice given by it under this Section 18, either party may thereafter terminate this Agreement upon 5 days' written notice.

19. Assignment.

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. Relationship of the Parties.

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries.

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms.

22. Governing Law.

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of New York. The regulations of the UN Sales Convention (CISG) are expressly excluded.

23. Submission to Jurisdiction.

Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the City of New York City and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

24. Notices.

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the addresses set forth in the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

25. Severability.

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term

or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival.

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Insurance, Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.

27. Amendment and Modification.

These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.