

## **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

These General Terms and Conditions of Sale and Delivery (these "Terms") are applicable to all U.S. customers ("Buyers" and each, individually, "Buyer") of PiNK North America Corp., a Delaware corporation ("Company").

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

1.1. Company shall sell and deliver to Buyer and Buyer shall purchase and accept from Company the products (herein, the "Equipment") described on or in any confirmed order, agreement or quotation, or any combination thereof (the "Order"), pursuant to the terms and conditions of the Order and those specified below, which taken together shall constitute the entire agreement between Company and Buyer regarding the Equipment (herein, the "Agreement").

1.2. No other terms or conditions shall be of any effect unless otherwise specifically agreed to by Company in a separate written agreement duly signed by an officer of Company. Buyer will be deemed to have assented to all Terms if any part of the Equipment is accepted by Buyer. If Buyer finds any Term not acceptable, Buyer must so notify Company at once and must reject the Equipment delivered under this Agreement. Any additional or different terms or conditions contained in Buyer's order or response hereto shall be deemed objected to by Company and shall be of no effect. No general terms and conditions of a Buyer shall at any time form a part of the content of any contract or agreement between Buyer and Company, even if they are not further expressly rejected by Company.

1.3. Unless otherwise agreed in writing, all quotations for Equipment are valid for a period of two (2) months from the date of issue. Subsequent modifications in quantity or quality, if such are requested by Buyer, generally will cause a modification of the quoted price. Drawings and samples enclosed with any quotation remain the property of Company. All drawings and samples shall be treated confidentially by Buyer and must be returned to Company after usage.

1.4. No Order is binding upon Company until acceptance of the Order in writing or the delivery of the Equipment to the Buyer. Notwithstanding any prior acceptance of an Order by Company, Company shall have no obligation if Buyer is in breach of any of its obligations hereunder, or any other agreement between the Buyer and Company, at the time Company's performance is due.

1.5. All verbal agreements concerning the terms of any Order, including agreements made by telephone, shall have no force and effect unless and until acknowledged by Company in writing.

1.6. Buyer shall bear all costs associated with the cancellation or modification of the Order.

### **2. Prices**

2.1. All price quotations are Ex Works (per Incoterms 2020) Company's parent facility in Wertheim/Main, Germany and do not include costs for packaging, postage or other freight charges, insurance or taxes, if any.

2.2. Prices quoted in a currency other than United States Dollars are based on the official exchange rate on the date of the quote. Prices will be invoiced on the basis of the currency exchange rate in effect on the date of confirmation of any Order.

2.3. Company may without notice to Buyer increase the price of the Equipment by the amount of any new or increased tax or duty (excluding franchise, net income and excess profits taxes) which Company may be required to pay on the manufacture, sale, transportation, delivery, export, import or use of the Equipment or the materials required for its manufacture, or which affects the cost of such materials.

2.4. In the event the order value of Buyer's order is less than two hundred and fifty U.S. Dollars (\$250 USD) (the "Minimum Order Value"), Company may charge Buyer an additional handling fee.

### **3. Terms of Payment**

3.1. Unless otherwise agreed to in writing by the Company, Buyer is obliged to pay thirty percent (30%) of the purchase price within thirty (30) days from the date of the order confirmation or receipt of Company's initial invoice, whichever is later, an additional sixty percent (60%) is due upon the date of the Factory Acceptance Test ("FAT"), as defined in Section 6. below, and payable within thirty (30) days from the date of the FAT or receipt of Company's FAT invoice, whichever is later, and the final ten percent (10%) shall be due upon successful Site Acceptance Test ("SAT"), as defined in Section 6. below, and payable within forty-five (45) days from the date of successful SAT or receipt of Company's final invoice, whichever is later.

3.2. Company may without notice change or withdraw extensions of credit at any time. If Company ceases to extend credit terms before shipment, Buyer's sole remedy shall be cancellation of its order. If Buyer does not receive notice before shipment, its sole remedy shall be rejection of the Equipment immediately upon delivery.

3.3. If the Buyer fails to make payment on or before the date required, Buyer shall pay interest to the Company at the rate of two percent (2%) per month or such lesser amount permitted by law. The specification or charging of interest shall not be deemed an agreement to extend credit.

3.4. If Buyer fails to observe these Terms or the terms of any other agreements between Company and Buyer, or if Buyer becomes insolvent, all balances then due and owing to the Company shall become due immediately, notwithstanding any agreed upon payment periods. Any Orders that have been confirmed by the Company but not yet filled shall in such cases become cancelable at the sole discretion of Company.

3.5. Buyers do not enjoy a right of set-off under any circumstances.

### **4. Delivery Terms**

4.1. Except as otherwise agreed in writing, the Equipment shall be sold and delivered EXW (per Incoterms 2020) Company's parent facility in Wertheim/Main, Germany. Delivery shall be deemed effected when the Equipment is placed at Buyer's disposal at such facility. Risk of loss and damage shall pass to Buyer upon delivery in accordance with the foregoing. Title to the Equipment shall pass to Buyer upon full payment of the purchase price.

4.2. Any agreed delivery period shall commence only after Company's written acceptance of the Order and after all technical and commercial details, drawings, specifications and other required documentation have been clarified and approved by Company. Delivery periods refer to the date on which the Equipment is made available for pickup at the delivery location specified in Section 4.1. All delivery dates are approximate and time shall not be of the essence. In the case of framework or call-off arrangements where quantities are not fixed in advance, delivery periods and quantities shall be agreed separately for each individual call-off or delivery request. If Buyer fails to collect the Equipment within a reasonable period after notification of readiness for pickup, delivery shall be deemed effected upon such notification, risk shall pass to Buyer, and Company may store the Equipment at Buyer's risk and expense.

4.3. Buyer shall bear and pay all costs and expenses associated with transportation, freight, insurance, loading, export clearance, import duties, customs charges, taxes (including VAT, sales, use, property or similar taxes), levies and governmental charges of any kind arising in connection with the sale and delivery of the Equipment, excluding taxes based on Company's net income.

4.4. Buyer shall determine the mode of transportation and carrier and shall notify Company accordingly at the time the Order is placed. Subject to available facilities at the shipping point, Company shall make the Equipment available for pickup consistent with such instructions. If Buyer fails to provide timely shipping instructions, Company may arrange transportation at Buyer's cost and risk.

4.5. Company shall use reasonable efforts to make the Equipment available within the agreed delivery period. Except in cases of willful misconduct or gross negligence, Company shall not be liable for delays in delivery. Since delivery occurs EXW, Company shall not be responsible for loss of or damage to the Equipment occurring after delivery, including during transit.

4.6. With respect to Equipment manufactured to Buyer's specifications ("Special Orders"), Company shall be entitled to rely on the accuracy and completeness of all technical data, drawings, specifications and other information provided by Buyer. Buyer shall be responsible for any defects, delays or additional costs resulting from inaccurate or incomplete specifications.

4.7. Unless otherwise agreed in writing, all tools, models, molds, plans, drawings, blueprints, software, technical documents and other materials developed or used by Company in connection with any Order or Special Order (collectively, "Tools") shall remain the exclusive property of Company, even if Buyer has borne all or part of the development or manufacturing costs.

## **5. Security Interest**

5.1. As security for the timely payment and performance of all Buyer's indebtedness to Company, Buyer hereby grants to Lender a first priority security interest in the Equipment following delivery thereof to Buyer ("Collateral"). Such Interest shall remain in force until payment in full of the entire purchase price for the Equipment and any other amounts due to the Company by Buyer.

5.2. If so requested by Company, Buyer shall deliver to Company, in form and substance satisfactory to Company, and duly executed as required by Company, financing statements and other security interest perfection documentation in form and substance satisfactory to Company, duly filed under the UCC in all jurisdictions as may be necessary, or in Company's opinion, desirable, to perfect Company's security interest and lien in the Collateral, in order to establish, perfect, preserve and protect Company's security interest as a legal, valid and enforceable security interest and lien, and all property or documents of title, in cases in which possession is required for the perfection of Company's security interest.

## **6. Acceptance**

6.1. The Equipment shall be deemed accepted by Buyer ("Acceptance") upon successful completion of a Factory Acceptance Test ("FAT") at Company's parent facility in Wertheim/Main, Germany, conducted by Company or its authorized representatives. The FAT shall take place within ten (10) days following Company's notification to Buyer that the Equipment is ready for testing, or at such other time as mutually agreed in writing. Acceptance shall be deemed accomplished if the Equipment proves to be fully operational with respect to its main technical functions and specifications as defined in the Order and if:

6.1.1. Buyer is present during the FAT and does not raise written objections concerning the performance of the Equipment and does not decline Acceptance without reasonable grounds; or

6.1.2. Buyer is not present during the FAT and Company does not identify any material defects or technical malfunctions during the FAT.

6.2. After delivery and installation of the Equipment, the parties shall perform a final test run of the Equipment at Buyer's site ("Site Acceptance Test" or "SAT"). The SAT shall take place within ten (10) days after completion of installation, or at such other time as mutually agreed in writing. If successful, the Equipment shall be deemed accepted for purposes of commissioning at Buyer's site ("Site Acceptance"). Site Acceptance shall be accomplished if the Equipment proves to be fully operational with respect to its main technical functions and specifications as defined in the Order

6.2.1. Upon successful completion of the SAT, Buyer shall confirm Site Acceptance to Company by issuing an "Acceptance Certificate," which shall set forth, at a minimum, the serial number of the Equipment, the date and time of the Acceptance Test, its duration, and the technical personnel attending.

6.2.2. If the Equipment is accepted with technical reservations, which shall be the case if the main technical functions and specifications of the Equipment, as specified in the Order, are achieved but certain non-critical deviations remain, such reservations shall be documented in sufficient technical detail in a "Punch List" attached to the Acceptance Certificate. The parties shall mutually agree on a roadmap to resolve the Punch List items and periodically assess progress.

If the parties cannot agree on whether the SAT has been successfully completed, either party may request that the American Association of Engineering Societies designate an impartial expert, whose determination shall be final and binding on the parties.

6.2.3. All materials required for the Acceptance Tests shall be provided by Buyer at no additional charge to Company. Each party shall bear its own personnel costs in connection with the Acceptance Tests.

6.3 If the Equipment is not accepted at the SAT, Company shall take reasonable measures to remedy the deficiencies and to ensure compliance with the terms of the Order. If such remedial measures require substantial modifications to the Equipment, a new SAT shall be conducted thereafter within a reasonable time. The foregoing shall constitute Buyer's sole and exclusive remedy in connection with failure of the SAT.

## **7. Warranty and Limitations**

7.1. Company warrants solely to the original purchaser of Equipment that for the Warranty Period (as defined below), Equipment will be free from defects in materials and workmanship under normal use and will conform to Company's published specifications of Equipment. Notwithstanding the foregoing, Company retains its right to deviate from its published specifications due to the latest innovations and improvements in function and design of Equipment.

7.2. The foregoing warranty is subject to the proper storage, transportation and use of Equipment and does not include defects due to normal wear and tear or deterioration.

7.3. Subject to the terms and conditions set forth in Sections 7.2 and 7.8, Buyer shall inspect the Equipment:

7.3.1. during the FAT in accordance with Section 6.1; and

7.3.2. upon delivery, solely for transport damage and evident defects not reasonably detectable during the FAT, and in any event no later than five (5) calendar days after delivery.

Buyer shall provide Company with written notice of any such defects within such period. If Buyer fails to provide written notice within five (5) calendar days after delivery, the Equipment shall be deemed accepted with respect to such defects and any related warranty claims shall be waived.

7.4. In the event of latent defects, Buyer must give written notice to Company within and no later than 1 (one) months from the date of delivery of the Equipment. In the absence of exercising this right, Buyer waives any other subsequent rights. The damaged Equipment and the relevant packaging must be preserved in order to allow Company and/or the shipper to examine it.

7.5. Buyer shall immediately notify Company in writing of any other defects of the Equipment and return such defective Equipment. Company's sole obligation under the foregoing warranty is, at Company's option, to repair, replace or exchange the defective Equipment. Any repaired, replaced or exchanged Equipment shall remain subject to the Warranty Period set forth in Section 7.8. If Company has received notification from Buyer, and no defects of the Equipment could be discovered, Buyer shall bear the costs that Company incurred as a result of the notice. It shall be in Company's sole discretion to determine if the Equipment has a defect. There shall be no claims based on nonperformance of the Equipment other than those granted in the Agreement.

7.6. Company does not warrant that products manufactured by Buyer using the Equipment, nor the methods of use of the Equipment selected by Buyer, do not infringe the intellectual or proprietary rights of any third party. Buyer assumes sole responsibility for such compliance.

7.7. Company shall indemnify and defend Buyer against third-party claims to the extent arising from (i) a claim that the Equipment, as designed and supplied by Company and used in accordance with the Order, directly infringes a valid proprietary right, or (ii) bodily injury caused by proven design or manufacturing defects of the Equipment. This indemnity shall not apply to claims arising from modifications of the Equipment, use in combination with products not supplied by Company, or use contrary to Company's specifications or instructions. Company's obligations under this Section are subject to the limitations set forth in Section 8.

7.8. The Warranty Period shall be twelve (12) months commencing on the date of delivery pursuant to Section 4. If shipment or collection of the Equipment is delayed solely due to Buyer's instructions or failure to provide timely shipping instructions, the Warranty Period shall commence no later than thirty (30) days after Company's written notice that the Equipment is ready for shipment.

7.9. The Warranty shall not apply to defects arising from:

- 7.9.1. storage of the Equipment in a non-climate-controlled environment, outdoors, or otherwise exposed to wind, precipitation, or other adverse environmental conditions;
- 7.9.2. installation, set-up, modification, or start-up by any person other than Company-authorized technicians, unless otherwise agreed in writing;
- 7.9.3. failure to have the Equipment installed and commissioned by Company-authorized technicians within forty-five (45) calendar days after successful completion of the FAT, unless such delay is solely attributable to Company's failure to provide personnel within a reasonable time after Buyer's written request.

7.10. Company does not authorize any person or party to assume or create any obligation or liability on its behalf in connection with the Equipment other than as expressly set forth herein.

7.11. Company may perform its warranty obligations directly or through the Manufacturer. Buyer shall reasonably cooperate with Company and the Manufacturer in the investigation and resolution of warranty claims.

7.12. All warranty claims and related notices shall be directed to Company at the address set forth below:

PiNK North America Corp.  
1301 Avenue of the Americas, 15th Floor  
New York, NY 10019  
Fax: + 1646-405-1027  
Email: sales@pink-north-america.com

7.13. THE WARRANTY SET FORTH IN SECTION 7.1 IS MADE IN LIEU OF ALL OTHER WARRANTIES (WHETHER EXPRESS OR IMPLIED), RIGHTS OR CONDITIONS, AND BUYER ACKNOWLEDGES THAT EXCEPT FOR SUCH LIMITED WARRANTY, THE EQUIPMENT IS PROVIDED "AS IS." COMPANY SPECIFICALLY DISCLAIMS, WITHOUT LIMITATION, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE.

## **8. Limitation of Liability**

8.1. UNDER NO CIRCUMSTANCES SHALL COMPANY BE LIABLE FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF EARNINGS, PROFITS, REVENUE, GOODWILL OR USE, INCURRED BY BUYER OR ANY THIRD PARTY, WHETHER IN AN ACTION BASED UPON EQUITY, CONTRACT, TORT, STRICT LIABILITY, OR IMPOSED BY CASE LAW OR STATUTE, OR OTHERWISE, EVEN IF PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2. NOTWITHSTANDING THE TERMS AND CONDITIONS SET FORTH IN SECTION 8.1., COMPANY'S LIABILITY – WHETHER BASED UPON CONTRACT, TORT, EQUITY, NEGLIGENCE OR ANY OTHER LEGAL CONCEPT – SHALL IN NO EVENT EXCEED THE VALUE OF BUYER'S ORDER TO WHICH THE DAMAGES ARE PERTAINING TO, AS DESCRIBED ON THE ORDER FORM, OR THE ORDER VALUE FOR ONE (1) CALENDAR YEAR, WHICHEVER AMOUNT IS LOWER. IT IS AGREED AND ACKNOWLEDGED THAT THE PROVISIONS OF THIS AGREEMENT ALLOCATE THE RISKS BETWEEN COMPANY AND BUYER IN AN EQUITABLE MANNER, THAT COMPANY'S PRICING REFLECTS THIS ALLOCATION OF RISK, AND BUT FOR THIS ALLOCATION AND LIMITATION OF LIABILITY, COMPANY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.

8.3. IN JURISDICTIONS THAT LIMIT THE SCOPE OF OR PRECLUDE LIMITATIONS OR EXCLUSION OF REMEDIES OR DAMAGES, OR OF LIABILITY, SUCH AS LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR DO NOT ALLOW IMPLIED WARRANTIES TO BE EXCLUDED, THE LIMITATION OR EXCLUSION OF WARRANTIES, REMEDIES, DAMAGES OR LIABILITY SET FORTH ABOVE ARE INTENDED TO APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. BUYER MAY ALSO HAVE OTHER RIGHTS THAT VARY BY STATE, COUNTRY OR OTHER JURISDICTION.

## **9. Force Majeure**

9.1. Neither party shall be liable to the other, or to any third party, for any failure or delay in the performance of its obligations under this Agreement to the extent caused by events beyond its reasonable control, including, without limitation, fire, storm, flood, earthquake, explosion, accident, acts of public enemy, war, riot or civil unrest, sabotage, strikes, lockouts, labor disputes or shortages, work slowdowns, stoppages or delays, pandemics, shortages or failures or delays in energy, materials, supplies or equipment, transportation embargoes or delays, acts of God, breakdowns in machinery or equipment, or, except as otherwise provided in this Agreement, acts, regulations, or priorities of any federal, state, or local government.

9.2. When the event operating to excuse performance by either party shall cease, this Agreement shall continue in full force until all deliveries have been completed.

## **10. Patents and Copyrights**

10.1. The entire rights, title, interest and the ownership of the know-how, technical information, specifications or documentation, ideas, concepts, methods and techniques, processes, patents, copyrights, trade secrets, design rights, technology and inventions developed or created by Company, or by any third parties commissioned by Company, shall be the right and ownership of Company. Buyer shall keep all such information confidential and shall not reveal such information to any third parties, unless and until such information is not confidential, as defined below in Section 12 of this Agreement. Furthermore, Buyer shall not use such information other than in connection with the use of the Equipment.

## **11. Indemnification**

11.1. Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold the other Party and its affiliates and their respective officers, directors, employees and agents harmless from and against all third-party claims, losses, liabilities, damages, expenses and costs, including attorney's fees and court costs, arising out of the Indemnifying Party's (i) gross negligence or willful misconduct or (ii) material breach of any terms of this Agreement. The Indemnifying Party's liability under this section shall be reduced proportionally to the extent any act or omission of the other Party, or its employees or agents, contributed to such liability. The Party seeking indemnification shall provide the Indemnifying Party with prompt written notice of any claim and give complete control of the defense and settlement to the Indemnifying Party, and shall cooperate with the Indemnifying Party, its insurance company and its legal counsel in its defense of such claim(s). This indemnity shall not cover any claim in which there is a failure to give the Indemnifying Party prompt notice to the extent such lack of notice prejudices the defense of the claim. THIS SECTION 11 STATES THE ENTIRE OBLIGATION AND THE EXCLUSIVE REMEDIES WITH RESPECT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS AGREEMENT.

## **12. Confidentiality**

12.1. The parties acknowledge that, under the Agreement, one party may disclose to the other confidential and/or sensitive information ("Confidential Information"). The party disclosing information is referred to as the "Disclosing Party" and the party receiving information as the "Receiving Party." Confidential Information shall mean all information disclosed by the Disclosing Party to the Receiving Party which is non-public and either proprietary or confidential in nature and related to the Disclosing Party's business or activities including, but not limited to, financial, legal, technical, marketing, sales and business information, which is (a) marked as confidential at the time of disclosure; or (b) is unmarked (e.g., disclosed orally or visually) but is identified as confidential at the time of disclosure; or (c) due to the nature of the information or the circumstances of disclosure, would be understood by a reasonable person to be confidential. The Receiving Party shall maintain the Confidential Information in strict confidence and limit disclosure to its officers, employees, subcontractors, and legal and financial advisors who have a need to know such information to perform the Agreement. The Receiving Party shall only use Confidential Information in furtherance of its performance of the Agreement, and not for any other purpose or for the benefit of any third party. Receiving Party's obligations to protect the Confidential Information will survive for five (5) years after the termination of this Agreement, provided, however, that with respect to Confidential Information that constitutes a trade secret under applicable law, such rights and obligations shall survive such expiration or termination until, if ever, such Confidential Information loses its trade secret protection other than due to an act or omission of Receiving Party or its related parties. These confidentiality obligations shall not apply to any information which: (i) was lawfully in Receiving Party's possession before receipt from Disclosing Party; (ii) at or after the time of disclosure, becomes generally available to the public other than through any act or omission of the Receiving Party; (iii) is developed by Receiving Party independently of any Confidential Information it receives from Disclosing Party; or (iv) Receiving Party receives from a third party free to make such disclosure without, to the best of Receiving Party's knowledge, breach of any legal or contractual obligation. In no event shall Provider's use or disclosure of information relating to the development, improvement or use of any of the Provider's products be subject to any limitation or restriction. If the Receiving Party is confronted with legal action to disclose Confidential Information it shall, unless prohibited by applicable law, provide prompt written notice to the Disclosing Party to allow the Disclosing Party an opportunity to seek a protective order or other relief it deems appropriate. If disclosure is nonetheless required, the Receiving Party shall limit its disclosure

to only that portion of the Confidential Information which it is advised by its legal counsel must be disclosed. All Confidential Information shall remain the property of the Disclosing Party. All copies of Confidential Information shall be returned to the Disclosing Party promptly upon the Disclosing Party's request or within ten (10) days of the expiration or termination of this Agreement.

12.2. If the Receiving Party discovers that any Confidential Information has been used, disseminated, or accessed in violation of this Agreement, it will promptly notify the Disclosing Party, take all commercially reasonable actions available to minimize the impact of the use, dissemination, or publication, and take all necessary steps to prevent any further breach of this Agreement. The Receiving Party agrees and acknowledges that any breach or threatened breach regarding the treatment of the Confidential Information may result in irreparable harm to the Disclosing Party for which there may be no adequate remedy at law. In such event, the Disclosing Party shall be entitled to seek injunctive relief, without the necessity of posting a bond, to prevent any further breach of this Agreement, in addition to all other remedies available in law or equity.

### **13. Miscellaneous Terms**

13.1. Any controversy or claim arising out of or relating to this Agreement, or the negotiation or breach thereof, shall be exclusively settled by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association ("AAA"). The award shall be final and binding. Judgment upon the award rendered by the arbitrator or the arbitrators may be entered in any court having jurisdiction thereof. The arbitration shall be held in New York, New York, shall be conducted in the English language, and shall be conducted (i) if the amount in dispute is less than two hundred fifty thousand U.S. Dollars (\$250,000 USD), before a single arbitrator determined by a mutual agreement between Company and Buyer, or if no agreement can be reached, then selected by the AAA, or (ii) if the amount in dispute is two hundred fifty thousand U.S. Dollars (\$250,000 USD) or more, before three (3) arbitrators. The arbitrator(s) shall make detailed findings of fact and law in writing in support of his, her or their decision, and shall award reimbursement of attorney's fees and other costs of arbitration to the prevailing party, in such manner as the arbitrator shall deem appropriate. The losing party shall reimburse the prevailing party for reasonable attorneys' fees and disbursements, the costs of the arbitration (including but not limited to the fees and expenses of the arbitrator and expert witnesses) and the costs incurred by the prevailing party in successfully seeking any preliminary equitable relief or judicially enforcing any arbitration award.

13.2. This Agreement shall be governed by and construed in accordance with the law of the State of New York, without giving effect to principles of conflict of laws. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply to this Agreement.

13.3. If any provision contained in this Agreement is held to be invalid, illegal or unenforceable, such invalid, illegal or unenforceable provision shall be severed from the remainder of this Agreement, and the remainder of this Agreement shall be enforced. In addition, the invalid, illegal or unenforceable provision shall be deemed to be automatically modified, and, as so modified, to be included in this Agreement, such modification being made to the minimum extent necessary to render the provision valid, legal and enforceable. Notwithstanding the foregoing, however, if the severed or modified provision concerns all or a portion of the essential consideration to be delivered under this Agreement by one party to the other, the remaining provisions of this Agreement shall also be modified to the extent necessary to equitably adjust the parties' respective rights and obligations hereunder.

13.4. In the event of a violation or threatened violation of Company's proprietary rights, Company shall have the right, in addition to such other remedies as may be available pursuant to law or this Agreement, to temporary or permanent injunctive relief enjoining such act or threatened act. The parties acknowledge and agree that legal remedies for such violations or threatened violations are inadequate and that Company would suffer irreparable harm.

13.5. The parties hereto are independent contractors and nothing in this Agreement shall be construed as creating a joint venture, employment or agency relationship between the parties.

This Agreement, including any Schedules attached hereto, contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements between them, whether oral or written, of any nature whatsoever with respect to the subject matter hereof. This Agreement is binding upon the parties hereto, their successors and permitted assigns.

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