

**Last Updated:** December 2020

**ENGINEERED FLOORS, LLC**  
INCLUDING ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS (“SELLER”)

**STANDARD TERMS AND CONDITIONS OF SALE**

Seller agrees to sell to the Customer identified in the “Sold to” box on Seller’s Invoice (the “Customer”) the Product(s) described on such Invoice (the “Products”), upon the terms and conditions (a) contained herein, (b) in the Seller’s Order Acknowledgment (“Order Acknowledgment”), (c) in Customer’s Credit Application (“Credit Application”), (d) in Seller’s Invoice (“Invoice”), and (e) any Privacy Policy and Terms of Use of Seller on Seller’s website, and as each of the foregoing may be amended by Seller from time to time (collectively, these “Terms”). With respect to any Product purchased by a Customer for resale, the term “End User” means the original final purchaser of such Product from Customer.

THESE TERMS CONTAIN IMPORTANT INFORMATION REGARDING CUSTOMER’S RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT APPLY TO CUSTOMER. PLEASE READ THESE TERMS CAREFULLY. BY PLACING AN ORDER FOR PRODUCTS, CUSTOMER AFFIRMS THAT THE INDIVIDUAL PLACING SUCH ORDER FOR CUSTOMER IS OF LEGAL AGE, HAS THE LEGAL AUTHORITY ON BEHALF OF CUSTOMER TO BIND CUSTOMER, AND THAT CUSTOMER ACCEPTS AND IS BOUND BY THESE TERMS.

**1. Binding Terms.** Seller’s sale to Customer is limited to and expressly made conditional on Customer’s assent to these Terms, which supersede (a) all prior agreements, representations, discussions or negotiations, whether written or oral, between Seller and Customer, with respect to the subject matter hereto, and (b) any conflicting terms and conditions contained in any purchase order (“Purchase Order”), e-mail or other writing by Customer. Unless otherwise expressly agreed to in writing by Seller, by placing any order to Seller, Customer hereby affirms and agrees (x) to be bound by these Terms, and (y) that any additional or conflicting terms or conditions set forth in Customer’s Purchase Order, e-mail or other writing by Customer are not binding or applicable to any transactions between Seller and Customer. These Terms are subject to change by Seller at any time without prior written notice, in Seller’s sole discretion. Any changes to these Terms will be in effect as of the date of such change. Customer should review these Terms prior to purchasing the Products. Customer’s continued submission of Purchase Orders after any such changes will constitute Customer’s acceptance of and agreement to such changes to these Terms.

**2. Transportation and Delivery.** All Products shall be delivered within a reasonable time after the date of Seller’s Order Acknowledgment, subject to the availability of the Products. Unless otherwise agreed to in writing by the parties, Seller shall deliver the Products F.O.B. Seller’s shipping location using Seller’s standard methods for packaging the Products. Customer shall be responsible for all loading, transportation, insurance, and other related costs. Shipment shall be made by the method and carrier Customer requests, where Seller agrees. If Seller does not agree with Customer’s request, shipment shall be made by the method Seller deems appropriate. Customer and/or carrier shall be fully responsible for any claim of lost, damaged, stolen or otherwise imperiled Products during shipment. Seller shall not be directly or indirectly liable for any loss, any damage of the Products in transit, or for any delivery failures or delays for any reason, including, but not limited to, any force majeure event described in Section 19. Seller reserves the right to deliver in installments and to allocate inventories and production when, in its opinion, such delivery or allocation is necessary. Seller, at its option, may assess reasonable demurrage charges to Customer for any delivery detained for Customer’s convenience beyond the free time allowed. If the carrier charges Seller with any such fees, Seller shall pass them through to Customer, at the rate in effect on the date of shipment as established by the carrier.

**3. Price; Taxes.** Customer shall purchase the Products from Seller at the price(s) (the “Price(s)”) set forth in the Invoice. All Prices are subject to change or to be withdrawn without notice. Unless otherwise specified or required by law, all Prices are quoted and billed exclusive of all sales, use, and excise taxes, value added tax, import/export charges, taxes and fees related to the production, sale or

delivery of material or products provided by Seller, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Customer. All such taxes, charges, and fees, where applicable, may appear as a separate and additional item on the Invoice or be separately billed by Seller. Customer shall be solely responsible for payment of all such taxes, charges, and fees and, where applicable, for providing a valid sales tax exemption certificate with the Purchase Order. Customer shall reimburse Seller for all taxes, excises or other charges that Seller may be required to collect for and/or pay to any government authority pursuant to the sale or transportation of the Products.

**4. Payment Terms.**

(a) Customer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of the Invoice. Customer shall make all payments hereunder in accordance with the payment terms on the Invoice. Credit cards are subject to Seller's then prevailing convenience fee. Payment for shipments released on open account are subject to payment terms herein or in the Credit Application. Seller reserves the right at any time to suspend credit or to change credit terms when in Seller's sole discretion, Customer's financial condition so warrants, with or without prior notification to Customer.

(b) Customer shall pay interest on any payment not made when due at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly beginning on the date such payment becomes past due, and continuing thereafter until paid in full. Customer shall pay Seller for all costs incurred in collecting any past due payments, including, but not limited to, reasonable attorneys' fees. Customer shall pay to Seller a Seller's then-prevailing fee for each check returned to Seller or ACH denial due to insufficient funds. If Customer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof from Seller, 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 further delivery to Customer of any Products and/or terminate any outstanding Purchase Order.

**5. Set-Off.** Customer 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. Seller shall have the right, at its sole discretion, to set-off against any amounts, and withhold from any payment which it may owe to Customer pursuant to any Invoice, credit balance, Purchase Order, agreement, sale, or other transaction, for any claims or other receivables Seller has against Customer. In the event a credit remains on a Customer's account unused for one year, the credit shall be removed, and escheatable credits will be donated to a qualified charitable organization of Seller's selection. The Customer shall be sent a notice prior to the donation. In the event of a Customer bankruptcy filing, Customer consents to Seller's exercise of the aforementioned rights and agrees to consent to any relief sought by Seller under Section 362 of the United States Bankruptcy Code or any successor, replacement or modification of such section or similar provision of state, local or foreign law.

**6. Specifications.** Except as expressly otherwise agreed in writing by Seller, all Products shall be produced in accordance with Seller's standard practices. Specifications are subject to change without notice and are subject to Seller's manufacturing tolerances. The Price of cut carpet does not include makeup or finishing, which is the sole responsibility of Customer. On all Purchase Orders for cut Product, the ends of the Products shall be unfinished. Purchase Orders for cut Products or for special sizes or colors may not be cancelled. All other orders may be cancelled upon written notice to Seller and upon payment of all applicable restocking fees. Purchase Orders for multiple rolls of carpet or boxes of Products must specify "one dye lot" whenever such is required. Color and texture may vary from any sample or from dye lot to dye lot. Seller reserves the right to substitute or change raw materials used to manufacture the Products due to improved technology, to improve quality and/or performance, or if supply conditions or other factors require such change. Moreover, Seller reserves the right to discontinue any of the Products.

**7. Inspection and Rejection.** Customer shall inspect each Product immediately upon receipt. Except as otherwise provided on the Invoice, within five (5) days after its receipt of a Product, Customer shall give written notice to Seller of any claim that such Product does not conform with the terms of the Purchase Order. Notwithstanding anything herein to the contrary, if Customer fails to give such notice, or

fails to promptly furnish Seller evidence requested by Seller, then (a) the Product shall be deemed to conform to the terms of the Purchase Order, (b) Customer shall be deemed to have accepted and agrees to pay for the Product in accordance with these Terms, and (c) Customer forever releases and discharges Seller from all claims and demands related to this Section 7. In order for Customer to timely revoke acceptance of any Product delivered, Customer must notify Seller in writing within ten (10) days of Customer's deemed acceptance of the Product (per paragraph (b) above), fully specifying all defects and nonconformities. The failure to timely specify such defect or nonconformity shall constitute a waiver of that defect or nonconformity. For the avoidance of doubt, if a Customer timely rejects a Product and Seller repairs or replaces it, the time periods in this Section 7 will start over based on the date Customer receives the replacement Product.

**8. Limited Warranty.**

(a) Seller warrants to Customer for a period of one (1) year beginning from the date of delivery of a Product ("Warranty Period") that the Product shall conform to Seller's published specifications in effect as of the date of manufacture and be free from defects in workmanship, material and construction.

(b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 8, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; OR (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, AND, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. NOTWITHSTANDING THE FOREGOING OR ANY WARRANTY OR OTHER TERMS SET FORTH HEREIN, THE PRODUCTS SOLD AS OTHER THAN FIRST QUALITY, SUCH AS IRREGULARS, PROMOTIONAL PRODUCTS, MILL ENDS, SECONDS OR REMNANTS, ARE SOLD "AS IS" "WHERE IS," WITHOUT ANY WARRANTY WHATSOEVER OF ANY KIND, AND NO CLAIMS WILL BE CONSIDERED FOR ANY SUCH PRODUCT.

(c) Certain products manufactured by a third party ("Third Party Products") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, Products made by Seller. Third Party Products are not covered by the warranty in Section 8(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, WHETHER EXPRESS OR IMPLIED BY LAW, INCLUDING ANY (I) WARRANTY OF MERCHANTABILITY; (II) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (III) WARRANTY OF TITLE; (IV) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; OR (V) COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

(d) All Products must be purchased through Seller or a Seller-authorized retailer or reseller. Seller will not accept any returns or extend any credit for any Products purchased from unauthorized third party sellers or resellers. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, AND SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, FOR ANY OF THE PRODUCTS SOLD BY UNAUTHORIZED THIRD PARTY SELLERS OR RESELLERS, WHETHER EXPRESS OR IMPLIED BY LAW. ANY PRODUCTS BOUGHT FROM UNAUTHORIZED THIRD-PARTY SELLERS OR RESELLERS USING ANY WEBSITE FROM ANY PERSON OR ENTITY THAT IS NOT AN AUTHORIZED SELLER OR RESELLER SHALL BE PURCHASED "AS IS," "WHERE IS," WITH NO WARRANTIES WHATSOEVER.

(e) With respect to a valid claim for breach of warranty made during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace the defective Products, or (ii) credit or refund all or an appropriate portion of the Price of the defective Products; provided that, if Seller so requests, Customer shall, at Seller's expense, return the Products to Seller.

(f) This warranty, as it applies between Seller and Customer, is not transferable. THE REMEDIES SET FORTH IN THIS SECTION 8 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN.

(g) In addition to the foregoing, Seller may provide to End Users of any Product a written warranty accompanying such Product or set forth on Seller's website at the time of purchase by End User. Customer shall not provide or extend to any End User of a Product any warranty or make any representations or warranties to any End User about such Product except as otherwise agreed to in writing by Seller or otherwise provided by Seller in writing.

## **9. Limitation of Liability.**

(a) IN NO EVENT SHALL SELLER, OR ANY LICENSOR, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, OR REPRESENTATIVES, BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PROFIT, OR DIMINUTION IN VALUE, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, 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 ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND THE SALE OF PRODUCTS CONTEMPLATED HEREIN, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO SELLER FOR THE APPLICABLE PRODUCTS.

(c) To the extent permitted by law, Seller's liability to Customer shall be limited to the express warranties set forth herein and in any other written warranty provided by Seller to the applicable Products. Seller shall not be bound by any claim adjustment made by Customer without prior written approval by Seller's authorized representative. Any unauthorized returns are subject to refusal by Seller and may be returned to Customer on a freight collect basis. In any return of a Product, title will not pass until Seller takes possession of such Product after verifying the authorization of the return.

(d) No remedy shall be provided for any Product containing visible defects before it is cut and/or installed, unless Seller has given prior written authorization for installation.

(e) Any action by Customer for breach of these Terms, including, without limitation, warranty claims or claims for damages on account of the condition, quality or grade of the Products, must be commenced within twelve (12) months after the cause of action accrues. A cause of action accrues for breach of these Terms when the breach actually occurs, whether or not the parties are aware of the breach at the time. Any cause of action for breach of warranty, or a cause of action arising from the condition, quality or grade of the Products, shall accrue upon the date of delivery of the Products. This Section 9 is not intended to revive any claim that may be time barred pursuant to any other provision of these Terms.

**10. Warranty Claims.** Any warranty claim must be submitted to Seller in writing using Seller's claims form within ten (10) days of Customer's knowledge of the claim. Claims must identify the Invoice number and date, style number and color, roll or pallet number, yardage or number of cartons involved, alleged defect and location of the Product. Adjustments may be contingent upon Seller's examination of the Product and a determination that the Product was defective at the time it was originally shipped to Customer. Seller will only consider claims that, at the time the claim is made, are based on an alleged manufacturer's defect that is not a result of improper selection or application, improper installation, improper maintenance or cleaning, abuse or alteration, or accident or negligence in the use, storage, handling or transportation of the Product. Seller shall not be liable for packing and labor costs in connection with Customer's return of the Products or for labor or other costs involved in site preparation or Product installation or removal.

## 11. Intellectual Property.

(a) These Terms do not grant Customer or any of its End Users the right to use any Intellectual Property Rights (defined below) except as described in this Section 11. Subject to these Terms and any Intellectual Property Rights policy of Seller from time to time, Seller hereby grants to Customer a non-exclusive, non-transferable, and non-sublicensable license to use Seller's trademarks, trade names, copyrighted materials, logos, slogans, designs and distinctive advertising marks of Seller ("Trademarks") applicable to a Product as provided and instructed by Seller solely on or in connection with the resale of such Product in accordance with these Terms and in accordance with all guidelines and instructions from Seller regarding such use. Customer shall not use the Trademarks in any manner likely to confuse, mislead or deceive the public, or to be injurious or inimical to the best interests of Seller. Other than the express licenses granted by these Terms, Seller grants no right or license to Customer, by implication, estoppel, or otherwise, to any Products or any Intellectual Property Rights of Seller. Seller shall retain sole ownership of all goodwill associated with the Trademarks and each Product, as represented and symbolized by the Trademarks.

(b) Subject to the express rights and licenses granted by Seller under these Terms, Customer acknowledges and agrees that: (i) any and all of Seller's Intellectual Property Rights are the sole and exclusive property of Seller or its licensors; (ii) Customer shall not acquire any ownership interest in any of Seller's Intellectual Property Rights; (iii) any goodwill derived from the use by Customer of Seller's Intellectual Property Rights inures to the benefit of Seller or its licensors, as the case may be; (iv) if Customer acquires any Intellectual Property Rights in or relating to any Product purchased under these Terms (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law or otherwise, these rights are deemed and are hereby irrevocably assigned to Seller or its licensors, as the case may be, without further action by either party; and (v) Customer shall use Seller's Intellectual Property Rights solely for the purposes of performing its obligations under these Terms and only in accordance with these Terms and the instructions of Seller.

(c) "Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (i) patents; (ii) Trademarks; (iii) internet domain names, whether or not Trademarks, registered by any authorized private registrar or governmental authority, web addresses, web pages, website, and URLs; (iv) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (v) trade secrets; and (vi) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, these rights or forms of protection under the laws of any jurisdiction throughout any part of the world.

(d) Seller shall indemnify Customer against any judgments rendered against Customer in any suit or proceeding, based on any claim that a Product sold hereunder infringes any United States patent, unless such Product was made in accordance with materials, designs or specifications furnished by Customer, in which case Customer shall indemnify Seller against any judgment for damages and costs which may be rendered against Seller. The party seeking indemnification must provide the indemnifying party notice in writing within thirty (30) days after the party seeking indemnification receives notice of any such claim. The party seeking indemnification shall give the indemnifying party and its counsel all necessary authority and assistance to enable the indemnifying party to defend or settle such claim as it deems appropriate. Neither Seller nor Customer shall in any event be liable to the other for special, indirect, incidental exemplary or punitive or consequential damages arising out of or resulting from infringement of patents. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY TO CUSTOMER UNDER THE PROVISIONS OF THIS SECTION 11 EXCEED THE AGGREGATE SUM PAID TO SELLER FOR THE ALLEGEDLY INFRINGING PRODUCT.

(e) Notwithstanding anything to the contrary in these Terms, Seller has no obligation whatsoever to indemnify or defend against any claim (whether direct or indirect) under Section 11(d) if the claim or corresponding losses arise out of or result from, in whole or in part:

- (i) the claimant's negligence or more culpable act or omission;
- (ii) the claimant's failure to comply with any of its obligations set out these Terms;
- (iii) the claimant's use of a Product in any manner that does not conform with the then-current usage instructions or guidelines provided by Seller;
- (iv) the claimant's marketing, advertising, promotion, or sale of a Product in any manner not otherwise authorized under these Terms; or
- (v) the claimant's use of a Product in combination with any products, materials, or equipment supplied to the claimant by a person or entity other than Seller if the infringement would have been avoided without the modification or change.

**12. Confidential Information.** All non-public, confidential or proprietary data and information, including but not limited to specifications, samples, patterns, designs, plans drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, obtained by Customer from Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media ("Confidential Information"), and whether or not marked, designated, or otherwise identified as "confidential," is confidential and shall be held in strict confidence by Customer and used solely for the purposes originally intended in connection with any Purchase Order or Order Acknowledgment, and shall not be disclosed or copied unless authorized in writing by Seller. Customer shall treat such Confidential Information and resulting work product with the same degree of care and confidence that it uses to protect its own proprietary or Confidential Information (but not less than a reasonable standard of care) and shall ensure that each of its employees to whom such data, information or work product is known is held to a similar standard. Customer shall not use Seller's name in advertising or publicity of any kind without Seller's prior express written consent. Customer acknowledges and agrees that nothing in these Terms is intended to transfer ownership of any Seller Confidential Information or intellectual property to Customer or other party, and Customer shall have no ownership interest in any such information. Upon Seller's request, Customer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section 12. For purposes of this Section 12, Confidential Information does not mean information that is in the public domain, known to Customer at the time of disclosure, or rightfully obtained by Customer on a non-confidential basis from a third-party.

**13. Electronic Data Interchange.** If Seller and Customer mutually agree to use an Electronic Data Interchange ("EDI") system to facilitate purchase and sale transactions, Customer agrees that it will not contest (a) any contract of sale resulting from an EDI transaction under the provisions of any law relating to whether agreements must be in writing or signed by the party to be bound thereby; or (b) the admissibility of copies of EDI records under the business records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form. Seller and Customer shall negotiate and agree on technical standards and methods to use in making EDI purchases, and will use reasonable security procedures to protect EDI records from improper access. In the event of a conflict, the business records maintained by Seller regarding EDI purchases made by Customer shall be deemed to be conclusive.

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

**15. Customer Bankruptcy.** In the event of bankruptcy or insolvency of Customer, either voluntarily or in the case of a receiver appointed for the benefit of creditors, Seller may elect to terminate

any outstanding Purchase Order without any further obligation or liability of Seller. In the event of termination, Seller shall, after taking into account payments made by Customer to Seller, be entitled to be paid by Customer for all outstanding Invoices and other expenditure made under these Terms, and any direct and indirect loss suffered by Seller including without limitation Seller's loss of profit on such Purchase Order and the legal costs of Seller, including reasonable attorney's fees (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach. Termination of a Purchase Order shall be without prejudice to the rights of Seller accruing up to the date of termination.

**16. Disputes.** If a dispute arises between Customer and Seller regarding the construction of these Terms, a party's rights and obligations hereunder, or the performance of those obligations (a "Dispute"), a party shall notify the other party in writing of the Dispute. The parties shall attempt in good faith (which shall include, without limitation, the direct involvement of a vice president or higher officer of each party) to resolve the Dispute within thirty (30) days of receipt of such notice. If the Dispute is not so resolved, then the parties agree first to try in good faith to settle the Dispute by agreeing upon a private mediator and any other rules/procedures within twenty (20) days thereafter, and to conclude such mediation within sixty (60) days of the retention of the mediator. In the event the parties cannot timely agree upon a private mediator, then mediation shall not be required. If the Dispute is not resolved by mediation as provided above, and either party brings an action to enforce any remedy set forth herein, (a) no party shall be entitled to any damages for lost profits, lost business, or any consequential, punitive or exemplary damages related to the other party's failure to perform hereunder; and (b) the prevailing party shall be entitled to receive reasonable legal fees and other litigation costs incurred.

**17. Governing Law; Exclusive Jurisdiction; Venue.** These Terms, and all matters arising out of the relationship between Seller and Customer, shall be construed and governed exclusively according to the laws of the State of Georgia, without regard to choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia. Any legal suit, action, or proceeding arising out of a Dispute (which was not resolved by mediation pursuant to Section 16) shall be instituted in the federal district court located in Rome, Georgia or the courts of the State of Georgia located in the City of Dalton and/or as applicable, County of Whitfield. Customer submits to the exclusive jurisdiction of such courts in any suit, action, or proceeding. Customer expressly waives any and all objections Customer may have to venue, including, without limitation, the inconvenience of such forum, in any such courts.

**18. Relationship of Parties.** Nothing contained in these Terms shall be construed to create a partnership, joint venture or other form of joint enterprise, agency, employment, or fiduciary relationship between the parties and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.

**19. Force Majeure.** Seller shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemics, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**20. General Provisions.** These Terms, and any applicable published Seller warranty, represent the entire agreement with respect to the terms of sale of Products to Customer. If Seller has duly executed an agreement with a Customer which has terms that conflict with these Terms, then the conflicting terms in the executed agreement shall govern. No amendment or modification of these Terms shall be binding upon Seller unless made in writing and signed by Seller; provided that, Seller may modify, amend, revise, and/or replace these Terms at any time in Seller's sole discretion. No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Seller. A waiver

by Seller of any breach or default by Customer of any of these Terms shall not be deemed to be a continuing waiver or a waiver of any other breach or default of any other Term, but shall apply solely to the instance for which the waiver is directed. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from these Terms 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. Customer shall not assign or otherwise transfer any of its rights or interests in or delegate any of its obligations under, these Terms, in whole or in part, without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section 20 shall be void and ineffective. No assignment or delegation relieves Customer of any of its obligations under these Terms. If any portion of these Terms is found to be invalid, illegal, or unenforceable by any court of competent jurisdiction, the invalid, illegal, or unenforceable term shall be severed from these Terms, and the remaining Terms shall be valid and fully enforceable as written.