1. Applicable Terms and Conditions
(a) These terms and conditions of sale establish the rights, obligations, and remedies of Buyer and Seller that apply to any order issued by Buyer for the purchase of Seller’s products and/or services (“Products”). No additional or different terms or conditions, whether in writing or oral, and whether contained in any purchase order or other communications issued by Buyer in connection with the purchase of Products from Seller, will become part of the terms and conditions of sale unless expressly agreed to in writing by Seller.

2. Price, Payment Terms, and Title
(a) The prices set forth in Seller’s transmittal including or attaching these terms and conditions constitutes an offer, offer to be accepted by Buyer in writing. Seller reserves the right to modify or withdraw credit terms at any time without notice. If Buyer fails to fulfill the terms of payment, Seller may defer further shipments to Buyer or, at its option, cancel the unshipped portions of Buyer’s order. Buyer agrees to pay interest on all past due invoices at the lesser of 18% per annum, compounded monthly, or the highest contractual rate allowable under the law.

3. Delivery and Risk of Loss
(a) Unless otherwise agreed in writing, all deliveries of Products will be EXW (Incoterms 2000) Seller’s facility. Products will be packed in Seller’s standard commercial shipping packages. Charges for shipping may not reflect transportation costs paid by Seller. Buyer will reimburse Seller for all costs of storage and handling incurred by Seller after the date that Seller is prepared to ship.

4. Acceptance
Acceptance shall occur, or not, before when Buyer fails to reject within ten (10) days after delivery of the Products. Buyer may rightfully reject only when a reasonable inspection shows that the Products fail to conform substantially to the specifications for the Products. Buyer waives any right to revoke acceptance. Buyer’s remedies for nonconformity detected after acceptance are limited to those expressly provided in these terms and conditions for breach of warranty.

5. Limited Warranty
Seller will to each original Buyer of Products that are sold, at the time of delivery to the Buyer, in good working order and conform to Seller’s official published specifications, provided that no warranty is made with respect to any Products, component parts, or accessories manufactured by others but supplied by Seller. Seller warrants to Buyer that this warranty will not be violated if Buyer experiences defects within the applicable warranty period is limited to, at its option, replacing the Product, refunding the purchase price of the Product, or replacing the Product with similar Product at Seller’s option, so long as Buyer returns the Product to Seller in its original packaging, together with any manuals or instructions then in effect. Seller’s obligations under these terms and conditions will be dependent upon Seller’s ability to obtain necessary raw materials and components. Seller shall have the right to make reasonable changes in the design, specifications and to ship to up to forty (40) days in advance of shipping date.

6. Force Majeure
Seller shall not be liable for any failure to perform or delay in its performance resulting directly or indirectly from or contributed to by any acts of God, acts of Buyer or another Buyer, acts of government or any governmental authority, embargoes, strikes, lockouts, other labor disputes, fires, accidents, floods, epidemics, war, armed conflict, or other causes beyond Seller’s reasonable control ("Force Majeure Event"). If Seller elects, the time for performance shall be extended by a period equal to the time lost between the date of force majeure event and the date Seller will be prevented from completing Buyer’s order or any part thereof because of any Force Majeure Event, then Buyer agrees promptly upon request and upon receipt of invoice thereto, to pay for any Product or Products then completed.

7. Work Product
"Work Product" shall include, without limitation, all designs, discoveries, creations, works, devices, masks, models, work in progress, service deliverables, inventions, products, special tools, computer programs, procedures, all other documents, drawings, and information and material received from Buyer in connection with the design or development of any Work Product. The Work Product shall remain the sole right and property of Seller, and Buyer will not be entitled to any equivalent rights or licenses to or ownership of, the Work Product, and Buyer shall hold itself to the terms of confidentiality and nondisclosure that Seller requires from Buyer.

8. Patent Indemnity
In the event any Product is made in accordance with drawings, samples or manufacturer specifications designated by Buyer, Buyer agrees to indemnify, and hold Seller harmless from any and all damages, costs and expenses (including attorney’s fees) relating to any claim arising from or relating to the design, distribution, manufacture, marketing, sale, or use of the Product or arising from or relating to a claim that such Product furnished by Buyer to Seller, or its components, infringed any patent or intellectual property of Seller or Buyer. Seller agrees to defend, or at its option, settle any such claim and will not settle any such claim without the prior written consent of Buyer.

9. Software License
(a) Buyer may acquire knowledge of Seller Confidential Information (as defined below) in connection with Products and/or its work hereunder and agrees to keep Seller Confidential Information in confidence during and following termination or expiration of this Agreement. “Seller Confidential Information” includes but is not limited to all information, whether written or oral, in any form, including, without limitation, information relating to research, development, production, product with it is included. No other use is permitted and Seller retains for itself (or, if developed by Seller expressly objects to and rejects any additional or different terms or conditions, which shall be ineffective. Buyer is solely responsible for any claims and expenses (including attorney’s fees) relating to any claim arising from or relating to the design, distribution, manufacture, marketing, sale, or use of the Product or arising from or relating to a claim that such Product furnished by Buyer to Seller, or its components, infringed any patent or intellectual property of Seller or Buyer. Seller agrees to defend, or at its option, settle any such claim and will not settle any such claim without the prior written consent of Buyer.

10. Confidentiality
(a) Buyer may acquire knowledge of Seller Confidential Information (as defined below) in connection with Products and/or its work hereunder and agrees to keep Seller Confidential Information in confidence during and following termination or expiration of this Agreement. “Seller Confidential Information” includes but is not limited to all information, whether written or oral, in any form, including, without limitation, information relating to research, development, production, product with it is included. No other use is permitted and Seller retains for itself (or, if developed by Seller expressly objects to and rejects any additional or different terms or conditions, which shall be ineffective. Buyer is solely responsible for any claims and expenses (including attorney’s fees) relating to any claim arising from or relating to the design, distribution, manufacture, marketing, sale, or use of the Product or arising from or relating to a claim that such Product furnished by Buyer to Seller, or its components, infringed any patent or intellectual property of Seller or Buyer. Seller agrees to defend, or at its option, settle any such claim and will not settle any such claim without the prior written consent of Buyer.

11. Software License
(a) Buyer may acquire knowledge of Seller Confidential Information (as defined below) in connection with Products and/or its work hereunder and agrees to keep Seller Confidential Information in confidence during and following termination or expiration of this Agreement. “Seller Confidential Information” includes but is not limited to all information, whether written or oral, in any form, including, without limitation, information relating to research, development, production, product with it is included. No other use is permitted and Seller retains for itself (or, if developed by Seller expressly objects to and rejects any additional or different terms or conditions, which shall be ineffective. Buyer is solely responsible for any claims and expenses (including attorney’s fees) relating to any claim arising from or relating to the design, distribution, manufacture, marketing, sale, or use of the Product or arising from or relating to a claim that such Product furnished by Buyer to Seller, or its components, infringed any patent or intellectual property of Seller or Buyer. Seller agrees to defend, or at its option, settle any such claim and will not settle any such claim without the prior written consent of Buyer.

12. Changes in Product Design or Manufacture
Buyer shall have the right to modify or to modify the design and construction of any of its products and substitute material equal to or superior to that originally specified.

13. Software License
Software, if included with a Product, is hereby licensed and not sold. The license is nonexclusive, and is limited to use solely in accordance with the instructions, limitations or other requirements provided in the Software documentation. The Software may not be reverse engineered, disassembled, or otherwise used to reproduce the Software in whole or in part, or in any way, for any purpose. Seller shall not copy, disclose or display any such software, or otherwise make it available to others.

14. Compliance with Laws
Buyer and Buyer’s agent shall provide all information requested by Seller relating to Buyer’s voluntary or mandatory compliance with any law or regulation, and Buyer shall indemnify Seller for any losses or damages that are incurred by or arising from Buyer’s or Buyer’s Agent’s failure to provide the information requested by Seller.

15. Waiver
No waiver of any provision of these terms and conditions (or any right or default hereunder) shall be effective unless in writing and signed by an authorized representative Seller. Such waiver shall be effective only for the provision or provisions waived and shall not operate as a waiver with respect to any other rights or obligations under these terms and conditions or applicable law in connection with any other instances or circumstances.

16. Language
These terms expressly require that these terms and conditions be prepared in the English language. Les parties aux présentes ont expressément exigé que les présentes termes et les bons de commandes émis aux termes de présentes présentes soient rédigés en langue Anglaise.

17. Choice of Law and Dispute Resolution
(a) These terms and conditions shall be governed by and construed in accordance with the laws of the State of Texas, without reference to its choice of law rules. If both Seller and Buyer are incorporated within the United States of America, any claim or litigation arising out of or relating to Products shall be brought exclusively in a court of competent jurisdiction in Harris County, Texas. If Buyer is incorporated outside of the United States of America, any dispute will be resolved by arbitration in accordance with the laws of the state or federal jurisdiction in which the arbitration is held. The language of the arbitration will be English. In all cases, Buyer and Seller expressly exclude from application the United Nations Commission on Contracts for the International Sale of Goods.

18. Assignment
Buyer or Seller may assign, transfer or subcontract the performance of its services, or any of its rights and obligations hereunder, without Seller’s prior written consent.

19. Severability
If any provision of these terms and conditions is determined to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions of these terms and conditions will not be affected and, in lieu of such invalid, illegal, or unenforceable provision, there will be added, as part of these terms and conditions, one or more provisions as similar in terms to as may be legal, valid and enforceable under applicable law.

20. CBL 023111