

DOTCHI, LLC. (DBA CRESCENT GARDEN COMPANY)
GENERAL TERMS AND CONDITIONS

1. Applicability.

(a) These general terms and conditions of sale (as amended from time to time, these “T&Cs”) and the Buying Agreement, if any, identified in the applicable Sales Order Confirmations are the only terms which govern the sale of the goods described in the accompanying Sales Order Confirmation, Buying Agreement or invoice (such goods, the “Goods”, such Sales Order Confirmation, as amended from time to time, the “Sales Order Confirmation”, and such Buying Agreement, as amended from time to time, the “Buying Agreement”) by Dotchi, LLC. (DBA Crescent Garden Company) (“Seller”) to the buyer named in the Sales Order Confirmation, Buying Agreement or invoice, as applicable (“Buyer”).

(b) The Sales Order Confirmation, the Buying Agreement (if any), the most recent credit application between Buyer and Seller, and these T&Cs (collectively, the “Contract Documents”) comprise the entire agreement between Buyer and Seller with respect to the Goods, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, between them with respect to Goods. In the event of any inconsistencies, conflicts or other discrepancies between a provision, term, condition, or requirement (a “Provision”) contained in any Contract Document, the following shall govern the order of priority in connection with resolving such discrepancy: (i) first, a Provision contained in these T&Cs; (ii) second, a Provision contained in the Buying Agreement; (iii) third, a Provision contained in the applicable Sales Order Confirmation; and (iv) fourth, a Provision contained in the most recent credit application between Buyer and Seller. The Contract Documents prevail over any of Buyer’s general terms and conditions of purchase regardless of 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 the Contract Documents.

2. Delivery.

(a) Seller shall use commercially reasonable efforts to deliver the Goods on the delivery date specified in the Sales Order Confirmation (the “Required Arrival Date”), using Seller’s standard methods for manufacturing and/or procuring, packaging and shipping such Goods. Notwithstanding the foregoing, Seller may, at its option, deliver the Goods up to fourteen (14) days prior to the Required Arrival Date.

(b) Seller shall deliver the Goods to the delivery address specified in the Sales Order Confirmation (the “Delivery Location”), which may be Seller’s place of business. If the Delivery Location is Seller’s place of business, Buyer shall take delivery of the Goods within fourteen (14) days of Seller’s written Notice (as such term is defined below) that the Goods have been delivered to the Delivery Location.

(c) If for any reason Buyer fails to take delivery of the Goods pursuant to Section 2(b) or fails to accept delivery of any of the Goods on the actual date of delivery of the Goods (the “Delivery Date”), or if Seller is unable to deliver the Goods at the Delivery Location on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations, then on such date: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered to and (subject to Section 7) accepted by Buyer; and (iii) Seller, in its sole and absolute discretion, may resell, destroy or store the Goods until Buyer picks them up, whereupon, in any such event, Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance). Seller reserves the right, in its sole and absolute discretion, to store, resell, or destroy any Goods for which Buyer does not take or accept delivery or fails to provide appropriate instructions, documents, licenses or authorizations for such delivery, and Seller shall, in any such event, be relieved of any responsibility or liability with respect to those Goods.

(d) Buyer shall be responsible for all loading costs and shall provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Location.

(e) 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 the Sales Order Confirmation.

(f) Buyer may request a delayed delivery of the Goods, in which case Buyer assumes the risk of loss of such Goods as of the Required Arrival Date set forth in the applicable Sales Order Confirmation.

(g) 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 absent manifest error.

3. Delays and Non-delivery.

(a) Any date quoted for delivery is a good faith estimate only; provided, however, that Seller shall use commercially reasonable efforts to deliver all Goods on or before the Required Arrival Date. Subject to the foregoing, Seller shall not be liable for any non-delivery of Goods unless Buyer gives written Notice to Seller of the non-delivery no later than five (5) business days after the Required Arrival Date of such Goods.

(b) If any delivery of Goods is delayed for more than fourteen (14) days after the Required Arrival Date and if such delay is not due to any action or inaction of Buyer or otherwise excused in accordance with the terms of the Contract Documents, and

provided that Buyer notified Seller as required by Section 3(a), Buyer may as its sole remedy therefor, cancel the portion of the related Sales Order Confirmation covering the delayed Goods by giving Seller written Notice within thirty (30) days of the Required Arrival Date. Subject to Buyer's rights under this Section 3(b), no delay in the shipment or delivery of any Good relieves Buyer of its obligations under the Contract Documents, including accepting delivery of any remaining installment or other orders of Goods.

(c) Seller's liability for non-delivery of the Goods shall be limited to providing the Goods within a reasonable time after a Notice in accordance with Section 3(a) or adjusting the corresponding invoice to reflect the actual quantity of such Goods delivered.

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 applicable Sales Order 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 applicable Sales Order Confirmation adjusted pro rata.

5. Shipping Terms. Unless otherwise set forth in the applicable Sales Order Confirmation, delivery of the Goods shall be made FCA Delivery Location INCOTERMS® 2010.

6. Title and Risk of Loss. Except as otherwise set forth in the Contract Documents, title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Location. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a first-priority 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 Florida Uniform Commercial Code.

7. Inspection and Rejection of Nonconforming Goods.

(a) Buyer shall inspect the Goods within three (3) business days after delivery of such Goods ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as is reasonably required by Seller. "Nonconforming Goods" means only: (i) Goods that are materially different from the ones identified in the Sales Order Confirmation; or (ii) Goods whose 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 (as defined below) for such Nonconforming Goods, together with any reasonable shipping and handling expenses, if any, incurred by Buyer in connection therewith. If authorized by Seller, Buyer shall ship, at its risk of loss and at Seller's expense, the Nonconforming Goods to Seller's place of business. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Seller's risk of loss and expense, the replaced Goods to the Delivery Location.

(c) THE REMEDIES SET FORTH IN SECTION 7(B) ARE BUYER'S EXCLUSIVE REMEDIES FOR THE DELIVERY OF NONCONFORMING GOODS SUBJECT TO BUYER'S RIGHTS UNDER SECTION 10(F) FOR ANY REPLACEMENT GOODS FOR WHICH BUYER HAS ACCEPTED DELIVERY UNDER THIS SECTION 7. EXCEPT AS PROVIDED UNDER SECTION 7(B) AND 10(F), ALL SALES OF GOODS TO BUYER ARE MADE BY SELLER ON A NON-RECOURSE BASIS AND BUYER HAS NO RIGHT TO RETURN GOODS PURCHASED UNDER THE CONTRACT DOCUMENTS TO SELLER.

8. Price. Buyer shall purchase the Goods from Seller at the price set forth in the Buying Agreement or Sales Order Confirmation, as applicable (as such price may be increased by Seller from time to time, with prior written Notice to Buyer, to reflect increases in the costs of production) on the Delivery Date of such Goods (the "Price"). Except to the extent set forth in the Sales Order Confirmation, the Price does not include (a) packaging, shipping and delivery costs, or (b) sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority, all of which are the responsibility of Buyer and shall be paid by Buyer.

9. Payment Terms.

(a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice, in U.S. dollars and by wire transfer or check.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month and the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs and expenses incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees and expenses. In addition to all other remedies available under the Contract Documents and at law (which Seller does not waive by the exercise of any rights and/or remedies hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder or breaches any of the Contract Documents.

(c) If at any time and for any reason whatsoever, the amounts payable under these T&Cs shall exceed the maximum rate permitted to be charged by Seller under applicable law, then, notwithstanding any such provision(s), such amounts or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate, as the case may be, as would not so result in the receipt by Seller of interest at a rate above the amount permitted by applicable law, such adjustment to be effected, to the extent necessary, as follows: first, by reducing the amount or rate of interest required to be paid to Seller under these T&Cs, and thereafter,

by reducing any fees, commissions, premiums and other amounts required to be paid to Seller which would constitute “interest” under applicable law.

(d) Buyer shall not have any setoff or compensation rights and shall not withhold payment of any amounts due and payable by reason of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy, insolvency or otherwise.

(e) Any payments by Buyer shall not constitute final settlement of Buyer’s account unless and until accepted as such by Seller, even if Buyer’s payment provides otherwise.

(f) If Seller has reasonable grounds for insecurity with respect to the performance by Buyer of its obligations under the Contract Documents, Seller may demand in writing adequate assurance of due performance and until Seller receives such assurance Seller may suspend any performance for which Seller has not already received the agreed payment from Buyer and such suspension shall not constitute a breach of or under any Contract Document.

(g) Buyer’s claim for discounts or allowances, if any, with respect to a Sales Order Confirmation shall be deemed waived unless made before the earlier of (i) the thirtieth (30th) day after the date of the relevant Sales Order Confirmation and (ii) the day the first shipment is made under the relevant Sales Order Confirmation.

(h) Buyer shall be responsible for all credit risks with respect to, and for collecting payment for, all Goods sold to its customers or other third parties. The inability of Buyer to collect the purchase price for any Good shall not affect Buyer's obligation to pay Seller for any Goods.

10. Limited Warranty.

(a) Seller warrants to Buyer that (i) with respect to Crescent-branded polyethylene rotational molded Goods, for a period of ten (10) years after the Delivery Date and (ii) with respect to all other Goods, for a period of ninety (90) days after the Delivery Date (each such time period, the “Warranty Period”), such delivered Goods will materially conform to Seller’s standard specifications and will be free from material defects in material and workmanship.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 10(a), SELLER MAKES NO WARRANTY OR CONDITION WHATSOEVER WITH RESPECT TO THE CONTRACT DOCUMENTS AND/OR THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OR CONDITION (i) OF MERCHANTABILITY; (ii) OF FITNESS FOR A PARTICULAR PURPOSE; (iii) OF TITLE; OR (IV) AGAINST INFRINGEMENT OF IP RIGHTS (AS DEFINED BELOW) OF A THIRD PARTY; WHETHER, IN ANY CASE, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Products manufactured by a third party (“Third Party Product”) may constitute, contain, be contained in, be part of, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 10(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR CONDITIONS WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY WARRANTY OR CONDITION (i) OF MERCHANTABILITY; (ii) OF FITNESS FOR A PARTICULAR PURPOSE; (iii) OF TITLE; OR (iv) AGAINST INFRINGEMENT OF IP RIGHTS OF A THIRD PARTY; WHETHER, IN ANY CASE, EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) Seller shall not be liable for a breach of the warranty set forth in Section 10(a) unless: (i) Buyer gives written Notice of the defect, and reasonably describes it, to Seller within five (5) business days from the time Buyer discovers or should have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving such Notice 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 are defective.

(e) Seller shall not be liable for a breach of the warranty set forth in Section 10(a) 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 instructions as to the storage, handling, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or attempts to repair such Goods.

(f) Subject to Section 10(d) and Section 10(e) above, with respect to any such Goods during the applicable Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such Goods (or the defective part thereof) or (ii) credit or refund the Price of such Goods at the pro rata contract rate. THE REMEDIES SET FORTH IN THIS SECTION 10(f) SHALL BE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(a).

11. Indemnity. With respect to any information, content, and materials as may be provided by Buyer to Seller hereunder, together with any associated service marks, trademarks, logos, names, and distinctive identification contained therein, including, without limitation, as may be provided by Buyer to Seller in connection with Seller’s delivery of any Goods hereunder (collectively, “Buyer Materials”), Buyer shall indemnify Seller and Seller’s officers, directors, employees, agents, advisors, shareholders, subsidiaries and affiliates (collectively, the “Indemnitees”) from, and defend and hold each Indemnitee harmless from and against, any and all losses, damages, liabilities, claims, actions, judgments, costs or expenses of whatever kind (including reasonable attorneys’ fees and expenses) (“Losses”) suffered, incurred or sustained by such Indemnitee or to which such Indemnitee becomes subject, resulting from, arising out of or relating to any claim that the Buyer Materials (or any part thereof) infringe upon the proprietary or

other rights of any third party and any Losses resulting from the specifications provided by Buyer and the use thereof; provided however, that Buyer shall not have any indemnification obligation hereunder for any Losses resulting solely from Seller's gross negligence or willful misconduct.

12. Ownership of Equipment; Intellectual Property Rights.

(a) Notwithstanding anything to the contrary in any of the Contract Documents, Buyer acknowledges and agrees that:

(i) Extrusion dies, tools, printing plates or cylinders and other equipment manufactured or acquired by Seller to fill the orders under the Contract Documents shall remain Seller's property and in its sole possession and control, unless otherwise agreed in writing between the parties. Any charges for printing plates or other equipment assessed by Seller are for the use of such equipment and convey no ownership or intellectual property rights to Buyer. Seller may, in its sole discretion, dispose of any of its equipment, including dies, tools, printing plates, and cylinders.

(ii) Except with respect to any Buyer Materials that Buyer has provided to Seller, any and all (1) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, drawings, specifications, software and documentation; (2) inventions, discoveries, trade secrets, business and technical information and know-how, patent disclosures and other confidential and proprietary information and all rights therein; (3) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other governmental authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); (4) rights in and to United States and foreign trademarks, service marks, trade dress, trade names, brand names, logos, corporate names and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any jurisdiction in the world ("Trademarks"); (5) internet domain names, whether or not Trademarks, websites and URLs; and/or (6) 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, such rights or forms of protection pursuant to the laws of any jurisdiction in the world (collectively, the "IP Rights"), used to create, embodied in, used in and otherwise relating to the Goods (including, without limitation, any of their component parts) and/or any other Seller products and/or materials (collectively, "Seller Materials") are the sole and exclusive property of Seller or its licensors and, except as expressly set forth in the Contract Documents, Buyer shall not acquire any ownership interest in any of Seller's IP Rights under the Contract Documents;

(iii) any goodwill derived from the use by Buyer of any Seller Materials, including any of Seller's IP Rights therein shall inure to the benefit of Seller; and

(iv) Buyer shall use all Seller Materials, including any of Seller's IP Rights therein, only in accordance with the Contract Documents and any instructions of Seller.

(b) Buyer shall not:

(i) take any action that may interfere with any of Seller's rights in or to any Seller Materials, and/or any of Seller's IP Rights therein, including Seller's ownership or exercise thereof;

(ii) challenge any right, title or interest of Seller in or to any Seller Materials, including any of Seller's IP Rights therein;

(iii) seek to register, record, obtain or attempt to pursue any IP Rights or protections in and/or to such Seller Materials;

(iv) adopt, adapt, use or display any marks, logos, names, distinctive identification or other material of any kind that is or may be likely to cause confusion or otherwise dilute or adversely affect Seller's rights;

(v) take any action, directly or indirectly, or fail to take any action required hereunder, which is or could be construed as detrimental, damaging or inconsistent with the rights of Seller; or

(vi) modify, decompile, reverse engineer, disassemble, translate, adapt, copy, and/or create derivative works based on or otherwise alter any Seller Materials, including, without limitation, altering, obscuring or removing any of Seller's Trademarks or copyright notices or any other proprietary rights notices placed on the Goods purchased under the Contract Documents, marketing materials or other Seller Materials that Seller may provide.

13. Limitation of Liability.

(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY FAILURE TO DELIVER OR DELAY IN THE DELIVERY OF GOODS OR ANY BREACH OF THESE T&CS OR ANY OTHER CONTRACT DOCUMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS

OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT DOCUMENTS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID BY BUYER TO SELLER FOR THE GOODS SOLD HEREUNDER.

(c) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE USE OF ANY GOODS, HOWEVER SUCH GOODS ARE USED AND WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY SELLER, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.

14. Compliance with Law. Buyer is in material compliance and shall continue to comply with all agreements relating to the transactions contemplated by the Contract Documents and with all applicable laws, regulations and ordinances, including, without limitation, all export and import laws, and all laws relating to the operation of its business, the purchase, use and resale of the Goods and its obligations under all Contract Documents. Buyer has obtained or shall obtain and thereafter maintain such registrations, permits, licenses or approvals as required by law to conduct its business generally, perform its obligations under the Contract Documents, and to purchase, use and resell the Goods.

15. FCPA. Buyer agrees that it has and shall continue to comply with Title 15, Section 78dd-1 of the United States Code (Foreign Corrupt Practices Act), as the same may be amended from time to time ("FCPA"). In general, the FCPA makes it illegal to bribe or make a corrupt payment to a government official for the purpose of obtaining or retaining business, directing business to any person, or securing any improper advantage. In addition to the FCPA, Buyer agrees that it will comply with any controlling local law designed to prevent bribery or corrupt payments.

16. Representations and Warranties.

(a) Buyer represents and warrants to Seller that:

(i) it is duly organized, validly existing and in good standing under the laws of the state where it is organized;

(ii) it is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required, except where the failure to be so qualified, in the aggregate, could not reasonably be expected to adversely affect its ability to perform its obligations under the Contract Documents;

(iii) it has the full right, power and authority to enter into these T&Cs and the other Contract Documents and to perform its obligations hereunder and thereunder;

(iv) the execution and delivery of the Contract Documents and Purchase Orders by its representatives have been duly authorized by all necessary action on the part of Buyer;

(v) the execution, delivery and performance of Purchase Orders and the performance of the Contract Documents by Buyer will not violate, conflict with, require consent under or result in any breach or default under (i) any of Buyer's organizational documents, (ii) any applicable law or (iii) with or without notice or lapse of time or both, the provisions of any agreement to which Buyer is a party;

(vi) it is not insolvent and is paying all of its debts as they become due; and

(vii) all financial information that it has provided by Buyer to Seller fairly presents the condition (financial or otherwise) of the Buyer in accordance with generally accepted accounting principles and is, in all material respects, accurate and complete and contains no material omission or misrepresentation.

(b) DISCLAIMER OF OTHER REPRESENTATIONS AND WARRANTIES; NON-RELIANCE. EXCEPT FOR THE EXPRESS REPRESENTATIONS, CONDITIONS AND WARRANTIES SET FORTH IN THE CONTRACT DOCUMENTS, (i) NEITHER SELLER NOR ANY PERSON ON SELLER'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION, CONDITION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR PERFORMANCE OF GOODS OR PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (ii) BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION, CONDITION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THE APPLICABLE CONTRACT DOCUMENT.

17. Termination.

(a) In addition to any remedies that may be provided at law or under the Contract Documents, Seller may terminate the Contract Documents, in which case all unpaid invoices shall become immediately due and payable, with immediate effect upon

written Notice to Buyer or upon the occurrence of the events described in this Section 17, if Buyer: (i) fails to pay any amount when due under the Contract Documents; (ii) has not otherwise performed or complied with the Contract Documents, in whole or in part; or (iii) 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.

(b) Any termination by Seller under the Contract Documents automatically operates as a cancellation of any deliveries of Goods to Buyer that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Goods had been accepted by Seller. With respect to any Goods that are still in transit upon termination of the Contract Documents, Seller may require, in its sole discretion, that all sales and deliveries of such Goods be made on either a cash-only or certified-check basis.

(c) The party validly terminating the Contract Documents, or in the case of the expiration of the Contract Documents, each of Buyer and Seller, shall not be liable to the other party for any damage, loss or expense of any kind (whether direct or indirect) incurred by the other party by reason of the expiration or earlier termination of the Contract Documents. Termination of the Contract Documents will not constitute a waiver of any of the terminating party's rights or remedies under the Contract Documents, at law, in equity or otherwise.

18. Certain Prohibited Acts. Notwithstanding anything to the contrary in the Contract Documents, neither Buyer nor any agent, employee, contractor or subcontractor engaged by Buyer shall:

(a) make any representations, warranties, conditions, guarantees, indemnities, similar claims or other commitments (i) actually, apparently or ostensibly on behalf of Seller, or (ii) to any customer or other person or legal entity with respect to the Goods, which are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims or other commitments by Seller in the Contract Documents or any written documentation provided by Seller to Buyer; or

(b) engage in any unfair, competitive, misleading or deceptive practices respecting Seller, Seller's Trademarks or the Goods, including any product disparagement.

19. Confidential Information. The provisions of this paragraph apply if the parties have not separately executed a confidentiality agreement applicable in connection with the transactions contemplated hereby. 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 the Contract Documents is confidential, solely for the use of performing the Contract Documents 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. Buyer acknowledges that Seller will suffer irreparable harm in the event Buyer breaches any of its confidentiality obligations contained herein and that monetary damages will be inadequate to compensate Seller fully for such breach. Buyer accordingly agrees that Seller shall be entitled to injunctive relief for any violation of this Section. Such injunctive relief will be in addition to any other rights and remedies to which Seller is or may be entitled at law or in equity or otherwise under the Contract Documents. This Section does not apply to information that is: (a) in the public domain (other than as a result of a disclosure by Buyer in violation of the Contract Documents); (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party not known by Buyer to be in breach of any legal or contractual obligation not to disclose such information to Buyer.

20. Force Majeure. Seller shall not be liable to Buyer, nor be deemed to have defaulted or breached the Contract Documents, for any failure or delay in fulfilling or performing any term of the Contract Documents 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, lock-outs, 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 or equipment, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of one hundred and eighty (180) days, Buyer shall be entitled to give written Notice to Seller of termination of the Contract Documents. Under any such circumstances, Seller shall have the additional time needed to complete delivery of the Goods and the right to allocate its available supply, in its sole discretion, to itself and among any or all of its customers, including any of its affiliates.

21. Amendment; Waiver. A Contract Document may only be amended or modified in a writing which specifically states that it amends such Contract Document and is signed by an authorized representative of Buyer and Seller. No waiver by a party hereto of any of the provisions of such Contract Document is effective unless explicitly set forth in writing and signed by such party. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Contract Documents 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.

22. Assignment. Neither party hereto shall assign any of its rights or delegate any of its obligations under the Contract Documents without the prior written consent of the other (except that Seller may assign its rights to payment under the Contract Documents without Buyer's consent). Any purported assignment or delegation in violation of this Section is null and void *ab initio*.

- 23. Relationship of the Parties.** The relationship between the parties hereto is that of independent contractors. Nothing contained in the Contract Documents shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties.
- 24. No Third-Party Beneficiaries.** Except for any indemnity obligation of the Buyer, the Contract Documents are 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 the Contract Documents.
- 25. Governing Law.** All matters arising out of or relating to the Contract Documents shall be governed by and construed in accordance with the internal laws of the State of Florida without giving effect to any choice or conflict of law provision. In the event of a suit, action or proceeding arising out of or relating to the Contract Documents, the prevailing party shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including actual attorneys' fees and expenses and court costs.
- 26. Submission to Jurisdiction; Waiver of Jury Trial.** Any legal suit, action or proceeding arising out of or relating to the Contract Documents shall be instituted in the federal courts of the United States of America or the courts of the State of Florida in each case located in the City of Miami and County of Miami-Dade, and each party hereto irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Each party hereto irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding in such courts and irrevocably waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND/OR THEREBY.
- 27. Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Sales Order 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 or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Contract Documents, 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.
- 28. Severability.** If any term or provision of the Contract Documents is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract Documents or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 29. Headings.** The headings in the Contract Documents are for reference only and do not affect the interpretation of the Contract Documents.
- 30. Survival.** Provisions of the Contract Documents which by their nature should apply beyond their terms will remain in force after any termination or expiration of these T&Cs including, but not limited to, Sections 10 through 15, 17, 19, 21 through 30 hereof.