



## STANDARD TERMS AND CONDITIONS OF SALE

*Curtiss-Wright Sensors & Controls (CWSC) terms and conditions herein apply to the following legal entities: Curtiss-Wright Controls, Inc., Curtiss-Wright Controls Integrated Sensing, Inc., Penny & Giles Controls Limited, Exlar Corporation, Exlar Europe GmbH and Novatronics Inc.*

### HEADINGS NOT CONTROLLING

The headings of these Terms and Conditions of Sale are solely for organization and reference and shall not affect their interpretation. Where the Contract requires, items stated in the plural herein shall be deemed to mean the singular and vice versa.

#### a) Definitions

“Buyer” means the person, firm or company identified on the face of the Contract with whom Seller is Contracting.

“Conditions” means the standard terms and conditions making up the Contract and includes any special terms and conditions agreed in writing between Seller and the Buyer.

“Contract” means the contract between Seller and the Buyer for the sale of the Products upon the terms and conditions set forth herein and Seller’s written acknowledgement of Order.

“Products” means the products (including without limitation (i) any installment of the products or (ii) some or all of the Products and in the case of installment some or all of the Products in that installment) which Seller agrees to supply under the Order.

“Order” means any order sent to Seller for the supply of Seller’s Products will be accepted entirely at the discretion of Seller and if so accepted will only be accepted upon these Conditions and by means of Seller’s Acknowledgement of Order. Each Order which is so accepted shall constitute an individually legally binding Contract between Seller and the Buyer.

“Seller” means the CWSC entity identified on the written acknowledgement of Order.

### APPLICABILITY/ACCEPTANCE OF TERMS/ENTIRE AGREEMENT

Unless otherwise provided, the sale of any Products and/or services described herein by Seller, shall be governed solely by these Conditions of Sale and such other provisions as may be agreed upon in writing by duly authorized representatives of Seller. Any oral understandings are expressly excluded. Buyer’s acceptance of these Conditions of Sale shall be deemed complete upon Buyer’s: (i) silence, (ii) issuance of a written acknowledgment, (iii) issuance to Seller of an Order, (iv) acceptance or use of goods and/or services covered under an Order, or (v) other authorization to proceed. Buyer’s acceptance is expressly limited to the terms contained in these Conditions of Sale, and any different, additional, or conflicting terms, including but not limited to, any such provisions contained or referenced in, or attached to, Buyer’s acknowledgment, Buyer’s Purchase Order Form, specifications, or any other documents, shall be wholly inapplicable and shall not be binding in any way on Seller. Seller shall not be deemed to have waived these Conditions of Sale if Seller fails to object to such Buyer provision. No



waiver, modification or addition to these Conditions of Sale shall be effective unless agreed to in writing explicitly indentifying the change and signed by an authorized representative of Buyer and Seller. These Conditions of Sale shall apply to any Order for goods and/or services whether or not they are referenced in such Order. Seller reserves the right to reject any Order submitted for its acceptance.

Buyer acknowledges that:

- i) Curtiss-Wright Corporation has posted a copy of Curtiss-Wright Corporate Policy No. 1, "Code of Conduct" on the world wide web at:  
<http://www.curtisswright.com/investors/corporate-governance/code-of-conduct/default.aspx>;
- ii) Buyer has reviewed a copy of the policy; and
- iii) Buyer agrees to comply with the provisions of the policy.

## **CANCELLATION AND SUSPENSION**

Buyer has no right to cancel or suspend this Order for any or all of the goods and/or services covered by this Order, absent the prior written agreement of Seller and upon payment of a cancellation fee. The cancellation fee will include Seller's costs and expenses of goods and/or services already completed or in process, plus termination charges assessed against Seller, plus overhead and a reasonable profit on such work.

## **PRICES**

Unit prices apply only to the specific quantities and delivery schedule shown. Any variation in quantity, specifications and/or rate of delivery may necessitate a revision in unit price. The unit prices set forth herein do not include any contingencies allowance to cover the possibility of increased costs to Seller resulting from increases in the prices of base metals during the period from the date of Seller's quotation and/or Order acceptance to the date of shipment of goods; Seller reserves the right to make an equitable adjustment in the unit price reflecting said change upon prior notice to Buyer and invoice accordingly. Prices shown do not include Federal, State or Local taxes. Selling prices do not cover the cost of environmental testing unless specifically so stated.

## **TERMS OF PAYMENT**

After formal credit approval, payment terms are net thirty (30) days from the date of invoice, unless otherwise specified in the Customer Quotation. Without credit approval, ten percent (10%) of the total price is due in advance, with the balance C.O.D., unless otherwise specified in the Customer Quotation. A one and one half percent (1.5%) monthly service charge or the maximum rate allowed by law, which ever is higher, will be added to invoices not paid within thirty (30) days of the Invoice date. Seller reserves the right to review, at any time, the financial condition and credit-worthiness of Buyer at any time. If, in Seller's sole judgment, the financial condition or credit-worthiness of Buyer does not warrant shipment of the Products ordered, or if Buyer is in default of this provision, Seller may at its option, take any or all of the following actions: (i) suspend



performance of services without liability to Buyer until payment of any overdue amount is made; (ii) require full payment prior to shipment; (iii) cash on delivery; or (iv) refuse to ship. The terms of any credit extended to Buyer may be revoked or altered at any time if, in Seller's sole discretion, Seller deems Buyer to be a potential or actual adverse credit risk. Buyer assumes all risks and damages that may be associated with or result from the exercise or enforcement of Seller's payment rights, or from Seller's refusal to ship Products or extend credit, or from Seller's revocation of credit. Upon Buyer's failure to timely pay any indebtedness when due to Seller, Seller may declare all outstanding amounts owed by Buyer immediately due and payable. In the event of any insolvency of Buyer or any failure to timely make any payment to Seller when due, Seller may enter upon Buyer's premises and reclaim or repossess all materials which have not been paid for by Buyer and Buyer waives all claims for any damages resulting therefrom. Such repossession shall not preclude recovery of any deficiency from Buyer in the event of a lawsuit or collection action by Seller.

### **CONFLICTING PROVISIONS**

In the event of any conflict between these Terms and Conditions of Sale, and the provisions contained in any purchase order, confirmation, long term supply agreement, or other similar document issued to Seller by Buyer, the provisions of these Terms and Conditions shall prevail.

### **ASSIGNMENT**

Neither party shall assign these Conditions of Sale and any Purchase Order or any portion thereof without the advance, written consent of the other party, which consent shall not be unreasonably withheld. The non-assigning party shall not have any obligation to an assignee of the assigning party unless such consent is obtained. Notwithstanding the foregoing, Seller may assign this agreement to any entity controlled by or under common control of Curtiss-Wright Corporation.

### **WAIVER**

Failure by Seller to assert all or any of its rights upon any breach of these Conditions of Sale shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment or service. No waiver of any right shall extend to or affect any other right Seller may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

### **INSPECTION**

Buyer shall inspect and accept or reject Products delivered pursuant to these Terms and Conditions and the Purchase Order promptly after Buyer takes custody of such Products. In the event the Products do not comply with the applicable specifications, Buyer shall notify Seller of such noncompliance and Seller shall have a reasonable opportunity to correct any such noncompliance. Buyer shall be deemed to have accepted any Products



delivered hereunder and to have waived any such noncompliance in the event Seller does not receive such notification from Buyer within fifteen (15) days after Buyer takes custody thereof.

## **WARRANTY**

Seller warrants that the Products and services delivered to Buyer shall be free from defects in material and workmanship, provided that the unit has not been subject to accident, abuse, or misuse, and that the unit has been operated in accordance with the manufacturer's recommendations. Such warranty shall be effective for a period of twelve (12) months after installation or eighteen (18) months after delivery, whichever occurs first. If a product is determined to be in breach of this warranty, Seller shall repair or replace such product, at its option, which shall be Buyer's sole remedy for such breach of warranty.

**THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER STATUTORY OR OTHERWISE, AND BUYER WAIVES ALL OTHER WARRANTIES, OBLIGATION OR LIABILITIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AN IMPLIED WARRANTY OF COMMERCIAL ACCEPTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY MAY NOT BE EXTENDED OR ALTERED EXCEPT BY WRITTEN AUTHORIZATION OF SELLER.**

## **CHANGES**

Seller at all times reserves the right, and is entitled in its sole discretion without consent of Buyer, to make changes, additions or improvements to the Products being delivered under a Purchase Order without liability or obligation to incorporate such changes, additions or improvements in any item manufactured, sold or delivered prior to incorporation of the change, addition or improvement.

## **EXCUSABLE DELAY**

The Seller shall be excused from delays in delivery and performance of other contractual obligations under the Purchase Order caused by acts or omissions that are beyond the reasonable control and without the fault or negligence of Seller including but not limited to Government embargoes, blockades, seizure or freeze of assets, delays or refusals to grant an export license or the suspension or revocation thereof, or any other acts of any Government, fires, floods, severe weather conditions, or any other acts of God, quarantines, labor strikes or lockouts, riots, strife, insurrection, civil disobedience, war, material shortages or delays in deliveries to Seller by third parties. If the excusable delay circumstances extend for six months, either party may, at its option, terminate these Conditions of Sale and the Purchase Order without penalty or liability and without being deemed in default or in breach thereof.



## **RETURNS FOR REPAIR**

When Products are returned for repair due to cause not covered by Seller's Limited Warranty, Buyer should notify Seller in writing and, after receipt of a return authorization number, Buyer may return the Product to Seller's Plant, transportation charges prepaid, for prompt attention. When necessary to make a return, Buyer shall give all possible information regarding the trouble experienced and complete details of the installation in which the Product was used.

## **RETURNS FOR CREDIT**

Returns for credit will not be accepted unless Seller's written permission has been obtained in each case, in advance. Credit will be based on prices prevailing at the time of return, or invoiced price, whichever is prevailing at the time of return, or invoiced price, whichever is lower, subject to deduction for handling and an additional deduction for expenses incurred in restoring Products to salable condition. Obsolete or specially manufactured Products can be accepted only to the extent of value to Seller in each case. No credit will be used to other than the original Buyer.

## **TITLE RETENTION AND SECURITY INTEREST**

Seller retains title to the Equipment until the Buyer performs all its obligations under this Agreement. Seller retains and Buyer grants a security interest in the Equipment to secure performance of all Buyer's obligations arising under this Agreement. At the request of Seller, Buyer will execute one or more financing statements in a form satisfactory to Seller, provided that, if Buyer shall refuse or fail to comply with Seller's request within five (5) days of such request, Seller may execute such financing statements as Buyer's attorney-in-fact.

## **SPECIAL TOOLING AND DATA**

Unless otherwise agreed in writing by Seller, all material, software, data, processes, equipment, facilities and special tooling, which term includes but is not limited to jigs, dies, fixtures, mold, patterns, special taps, special gages, special test equipment, other special equipment and manufacturing aids and replacements thereof, used in the manufacture of goods covered by an Order shall be and remain the property of Seller even though Buyer may be charged in whole or in part for the costs of such items. Buyer shall have no right to title, possession, or custody of such items unless specifically agreed to in writing by Seller. Seller retains all rights, title and interest in drawings, engineering instructions, specifications, and all other written data, if any, furnished with the goods. Such information shall not be reproduced, used, or disclosed to others by Buyer without Seller's prior written consent.



## **TIME OF DELIVERY**

Unless otherwise agreed to, in writing, by the Seller, delivery of the goods or services shall be made ex-works on a day nominated by the Seller, time not being of the essence, and the Buyer shall be responsible for their prompt collection, transport, off loading and storage. The Seller may, at the Buyer's request, arrange carriage of the goods or services, in which case the Buyer will be solely responsible for the prompt off-loading and the sole risk of loss and expense associated with such delivery of goods or services. In all cases, the Buyer shall be responsible for the safe and proper storage of the goods or services once they have been delivered to the Buyer. If the Buyer is not able for any reason to promptly accept delivery of the goods or services, or the Seller exercises its right to withhold delivery of the goods or services, the Seller may, at its discretion and as appropriate, charge the Buyer for any delay in collection or transport or off-loading of the goods or services and for their storage and may present its invoice to the Buyer for payment.

Any delivery dates notified to the Buyer by the Seller are given by the Seller in good faith, but are business estimates only and the Seller will not be liable to the Buyer for any loss or damage sustained by the Buyer as a result of the Seller's failure to comply with them for whatever reason.

The Seller may at its own discretion make delivery of the goods or services by installments. Each installment shall be treated as the subject of a separate Contract upon these Conditions and the Seller may invoice for each installment separately.

## **DOCUMENTATION AND MANUALS**

All documentation, installation, maintenance, and operations manuals will be in English. Any translation requirements are Buyer's responsibility.

## **LIMITATION OF LIABILITY**

The sole exclusive remedies of Buyer are those specifically set forth herein. Seller's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations under any Agreement with Buyer, including any warranty set forth herein, whether resulting from breach of Contract, breach of warranty, tort, Products liability, negligence or otherwise, shall not exceed the aggregate purchase price of the particular goods and services which are the subject of the claim. **UNDER NO CIRCUMSTANCES SHALL CURTISS-WRIGHT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR LOSS OF BUSINESS, LOST PROFITS, OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, EXEMPLARY, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF CURTISS-WRIGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**INTELLECTUAL PROPERTY INDEMNITY**

Except insofar as a Purchase Order calls for Products pursuant to Buyer's designs, drawings or specifications, Seller agrees to pay the amount of any final judgment against Buyer resulting from a suit claiming that any commercial Products manufactured or furnished hereunder, by reason of their manufacture, sale or use, infringes any United States patent which has issued at date of Contract, and Buyer's reasonable costs and expenses in defense of such suit if Seller does not undertake the defense thereof, provided Seller is promptly notified of the threat or commencement of such suit and is offered full and exclusive control to conduct the defense or settlement thereof.

Seller's indemnity shall not apply where infringement would not have occurred from the normal use for which the Products were designed. No responsibility is assumed for actual or alleged infringement of any foreign patent. Seller's liability for damages hereunder is limited to those computed solely on the value of any Products sold to Buyer. In no event shall Seller be liable for consequential damages or costs applicable thereto. In the event of any claim that a product furnished hereunder infringes any United States patent, Seller may at its option and expense (a) procure for Buyer the right to continue using the product, or (b) replace or modify the product so that it becomes non-infringing, or (c) grant Buyer a credit for such product, less a reasonable depreciation for use, damage, and obsolescence upon its return to Seller. Buyer agrees to pay all costs and expenses incurred by Seller in its defense and the amount of any judgment against Seller, in any suit or proceeding against Seller based upon a claim of infringement resulting solely from the Buyer combining any product furnished hereunder with any item not manufactured or furnished by Seller or from the sale or use of any such combination by Buyer. In the event any product to be furnished under the Purchase Order is to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer and is not the design of Seller, Buyer agrees to defend, indemnify and hold Seller harmless to the same extent and subject to the same requirements as set forth in Seller's obligation to Buyer as above. **THE RIGHTS AND OBLIGATIONS ABOVE ARE IN LIEU OF ANY OTHER INDEMNITY OR WARRANTY, EXPRESS OR IMPLIED BY SELLER OR BUYER, WITH RESPECT TO INTELLECTUAL PROPERTY (PATENTS, TRADE SECRET, MASK WORKS, TRADEMARKS, COPYRIGHTS, OR THE LIKE).**

**EXPORT CONTROL**

Each Party will comply with all export and import regulations, controls, sanctions, laws, and orders, as they may be amended from time to time ("Export Controls"), applicable to the export and re-export of goods, software, technology, or technical data ("Items") or services, of all countries involved in transactions associated with this agreement. Such Export Controls include, but not be limited to, the United States Department of Commerce's Export Administration Regulations ("EAR") and, to the extent applicable, the United States Department of State's International Traffic in Arms Regulations ("ITAR"), regulations and orders administered by the Treasury Department's Office of Foreign Assets Control, the UK Export Control Act administered by the UK Department



of Trade and Industry under its Export Control Organization and the Export and Imports Permit Act administered by the Canada Export and Import Controls Bureau.

The Seller shall notify Buyer of any Items or services that are controlled by the ITAR. If any Items or services are controlled by the EAR, Seller shall provide Buyer with the applicable Export Control Classification Number (“ECCN”), as well as the ECCNs of any components or parts thereof. To the extent that such goods, services or components were specifically designed, developed, configured, adapted or modified for a military application and are controlled under the EAR, Seller shall notify the Buyer of this fact and shall provide the Buyer with written confirmation from the United States Department of State that such Items are not subject to the jurisdiction of the ITAR.

Seller shall be responsible for obtaining, at no cost to the Buyer, all relevant official approvals, licenses and required authorizations for any export conducted by the Seller. Any Party conducting any re-export shall be responsible for obtaining any relevant official approvals, licenses, and required authorizations. Each Party shall reasonably cooperate and exercise reasonable efforts to support the other Party in obtaining any necessary licenses or authorizations required to perform its obligations under this Agreement.

Seller covenants and agrees at all times to protect, defend, hold harmless and indemnify Buyer, its parent and affiliated companies and their respective directors, officers, employees, successors and assigns from and against any and all claims of loss, damage or injury from and against any suits, actions, or legal proceedings of any kind brought against Buyer due to Seller’s non-compliance with the laws of any country. Furthermore, Seller shall, at its own cost and expense, pay all charges of attorneys, and all costs and expenses arising from or related to any of the aforesaid suits, actions or claims, or from any other claim for indemnity made by Buyer against Seller under this Order, including all charges of attorneys costs and expenses incurred by Buyer in connection with the enforcement of this clause against Seller in any suit, action or claim.

## **SOFTWARE LICENSE**

In the event that any software or software documentation is provided to Buyer by Seller in any form whatsoever under a Purchase Order and no software license agreement governing this sale has been signed between Buyer and Seller, Buyer and Seller agree to accept the terms and conditions stated below effective the date of the first delivery hereunder:

Subject to the terms and conditions herein, the Seller grants to Buyer a nonexclusive, transferable license to use the software or software documentation in connection with the Products and/or services being provided pursuant to this Agreement. Buyer may make a reasonable number of backup copies of such software and software documentation for evaluation, installation, and maintenance of Seller’s Products by Buyer.





## **TAXES**

Prices do not include any sales, use, excise, value added or similar taxes. Taxes shall be the sole responsibility of Buyer and Seller shall include them on all invoices, absent receipt of an appropriate exemption from Buyer. Accordingly, Seller reserves the right to revise its price after the execution of the Purchase Order between the parties to include any and all taxes or duties that may become due hereunder and Seller may invoice Buyer for said additional amount. This clause shall survive the acceptance and complete performance of the Purchase Order by the parties herein.

## **SEVERABILITY**

If any provision of these Conditions of Sale is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, and all other provisions shall remain in full force and effect.

## **RISK OF LOSS**

Unless otherwise agreed to in writing, all risk of loss, theft, or damage from any cause whatsoever, shall be on the Buyer and its insurers, if any, after the delivery by Seller to the carrier at F.O.B. point.

## **INSOLVENCY/BANKRUPTCY/FINANCIAL DEFAULT**

If the Buyer fails to pay any sum due to Seller hereunder, or shall fail to satisfy any of its obligations hereunder and such default shall continue for ten (10) days after notifying Buyer of such default, or if the Buyer by the subject of any proceedings under bankruptcy laws or other insolvency laws or being declared subject to judicial supervision or entering into liquidation, Seller shall have the right to immediately terminate this Agreement. Upon such termination, the Buyer shall remain liable for all unpaid charges and sums due to Seller under the current Purchase Order, and will pay to Seller for all damages and costs including reasonable attorney's fees and court costs, suffered or incurred by Seller as a result of the Buyer's breach of its obligations under this Agreement. The remedies provided herein shall be in addition to all other means and remedies available to Seller.

## **SETOFF**

All amounts that Buyer owes Seller under an Order shall be due and payable according to the terms of such Order. Buyer is prohibited from and shall not set off such amounts or any portion thereof, whether or not liquidated, against sums which Buyer asserts are due it, its parent affiliates, subsidiaries or other divisions or unites under other transactions with Seller, its parents, affiliates, subsidiaries or other divisions or units.

**INDEMNITY**

Buyer will indemnify, hold harmless and defend Seller from and against any claims, suits, judgments, expenses or liabilities of any nature (including without limitation all reasonable attorneys' fees) which are threatened or brought against, or are incurred by, Seller arising from any actions, omissions or misrepresentations of Buyer in the use, promotion, or sale of Products or services provided by Seller under this sale.

**DISPUTE RESOLUTION – FOREIGN**

A. If any party to this Contract is a non-U.S. entity, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration under the Rules of Arbitration of the International Chamber of Commerce (“ICC”) as in force at the commencement of the arbitration by one or more arbitrators appointed in accordance with the said Rules. If the dispute involves \$5 million or less, the arbitration shall be conducted by a sole arbitrator. Either party to this agreement may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. If, within 30 days after receipt by a party of a proposal made in accordance with this paragraph the parties have not reached agreement on the choice of an arbitrator, the sole arbitrator shall be appointed by the ICC in accordance with its Rules. If the dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators. Within 15 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator (who shall serve as the chairperson of the tribunal) within 10 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the ICC in accordance with its Rules. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner or shareholder.

B. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of any documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator(s), which determination shall be conclusive. All discovery shall be completed within 60 days following the appointment of the arbitrator(s).

C. The place of arbitration shall be Geneva, Switzerland. Any arbitral tribunal constituted pursuant to this Agreement shall apply the law of England to all disputes. The arbitration shall be conducted in English. The award of the arbitrator shall be final and binding upon the parties and may be entered and/or enforced in any court of competent jurisdiction. Notwithstanding the foregoing, Seller may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights. The parties acknowledge that this Agreement and any award rendered pursuant to it shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The award shall be made within nine (9) months of the filing of the notice of intention to arbitrate, and the arbitrator(s) shall agree to comply with this schedule before

accepting appointment. However, this time limit may be extended by agreement of the parties or by the arbitrator(s) if necessary.

D. The parties shall each bear and pay 50% of the fees and other expenses of the ICC in connection with the arbitration set forth herein; provided, however, that if the ICC identifies a prevailing party, then the non-prevailing party shall be responsible for reimbursing the prevailing party for all of its reasonable out-of-pocket costs and expenses incurred in connection with the resolution of the dispute, including all reasonable attorneys' fees, accounting fees and experts' fees, and shall also be responsible for paying all of the costs associated with the arbitration provided for herein, including all fees and expenses of the ICC in connection with the arbitration.

E. Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

#### **DISPUTE RESOLUTION – DOMESTIC**

A. If all parties to this Contract are U.S.-entities, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules then in effect. If the dispute involves \$5 million or less, the arbitration shall be conducted by a sole arbitrator. Either party to this Contract may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator. If, within 30 days after receipt by a party of a proposal made in accordance with this paragraph the parties have not reached agreement on the choice of an arbitrator, the sole arbitrator shall be appointed by the AAA in accordance with its Rules. If the dispute involves more than \$5 million, the arbitration shall be conducted by a tribunal of three arbitrators. Within 15 days after the commencement of arbitration, each party shall select one person to act as arbitrator and the two selected shall select a third arbitrator (who shall serve as the chairperson of the tribunal) within 10 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the AAA in accordance with its Rules. No arbitrator may be affiliated, whether directly or indirectly, with any of the parties, including, without limitation, as an employee, consultant, partner or shareholder.

B. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of any documents relevant to the issues raised by any claim or counterclaim. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator(s), which determination shall be conclusive. All discovery shall be completed within 60 days following the appointment of the arbitrator(s).

C. The place of arbitration shall be New York City, New York. Any arbitral tribunal constituted pursuant to this agreement shall apply the law of New York to all disputes. The award by the arbitrator or arbitrators shall be final, and judgment upon the award



rendered may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, Seller may initiate suit in any jurisdiction for protection and enforcement of its intellectual property rights. The award shall be made within nine (9) months of the filing of the notice of intention to arbitrate, and the arbitrator(s) shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the parties or by the arbitrator(s) if necessary.

The parties shall each bear and pay 50% of the fees and other expenses of the AAA in connection with the arbitration set forth herein; provided, however, that if the AAA identifies a prevailing party, then the non-prevailing party shall be responsible for reimbursing the prevailing party for all of its reasonable out-of-pocket costs and expenses incurred in connection with the resolution of the dispute, including all reasonable attorneys' fees, accounting fees and experts' fees, and shall also be responsible for paying all of the costs associated with the arbitration provided for herein, including all fees and expenses of the AAA in connection with the arbitration.

Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

#### **APPLICABLE LAW**

This Agreement shall be interpreted in accordance with the laws of the State of New York, exclusive of any choice of law provisions. The Seller and Buyer expressly agree to exclude from this Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

#### **COST OF COLLECTION AND ATTORNEYS FEES**

In the event any action is taken by Seller to collect amounts billed to Customer by Seller, Customer shall be liable for all costs and expenses incurred by Seller in relation thereto, including legal fees.

#### **EQUAL OPPORTUNITY EMPLOYER**

Buyer is a federal contractor which complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60; 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 and/or 60-300; and Executive Order 13201 and the applicable regulations contained in 29 C.F.R. Part 470.