

§ 1 Applicability

These terms and conditions of sale (these "Terms") govern all sales of goods (the "Goods") and/or services (the "Services") by Mayser USA, Inc. ("Seller"). Upon receipt by Buyer of an express acceptance by Seller or upon commencement of performance by Seller, these Terms and Buyer's purchase order (the "Purchase Order"), as modified by Seller's acceptance or order acknowledgment, become a binding contract between Buyer and Seller on the terms reflected in those documents (this "Contract"). In case of a conflict between these Terms and the Purchase Order, these Terms prevail except where Seller has expressly agreed to the conflicting term in the Purchase Order in its acceptance or order acknowledgment. In case of a conflict between the Purchase Order and Seller's acceptance or order acknowledgment, the acceptance or order acknowledgment prevails. Notwithstanding anything to the contrary contained in this Contract, Seller may, from time-to-time, revise these Terms in its sole discretion, wherein such revised Terms shall, following the date of any revision to the Terms, be applicable to any purchase of Goods or provision of Services ordered by Buyer.

§ 2 Delivery of Goods and Performance of Services

- (a) All Goods will be shipped FOB Seller's facility. For international transactions, delivery terms are EXW Seller's facility (Incoterms 2010). Any shipping schedule provided by Seller to Buyer is approximate, conditioned on prompt receipt of Seller of all necessary information and are subject to change by reason of factory conditions or other causes beyond Seller's control. Seller will have the right to select the carrier for delivery unless otherwise agreed, in writing, by Seller.
- (b) With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the Services and take all necessary steps to eliminate or remedy any obstacles to, or interruptions in, the performance of the Services; (ii) respond promptly, and in any event no later than forty-eight (48) hours, to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Contract; (iii) provide such customer materials, special equipment, personnel, or information as Seller may request to carry out the Services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) ensure that all necessary workplace safety and security measures are implemented at all times during the course of Seller's performance of Services.
- (c) Any time quoted for delivery is an estimate only; provided, however, that Seller shall use commercially reasonable efforts to deliver all Goods and Services on or before the requested delivery date. Seller is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver, delay in delivery, or partial delivery. No delay in the shipment or delivery of any Good or provision of any Service relieves Buyer of its obligations under this Contract, including accepting delivery of any remaining installment or other orders of Goods.

§ 3 Title; Risk of Loss

Title and risk of loss shall pass to Buyer upon delivery of the Goods at the point of shipment. As collateral security for the payment of the purchase price of the Goods and Services and performance in full of all the obligations of Buyer under this Contract, Buyer hereby grants to Seller a 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.

§ 4 Inspection and Rejection of Nonconforming Goods

- (a) Buyer shall inspect the Goods within fourteen (14) days of receipt (the "Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller, in writing, of any Nonconforming Goods (as defined herein) during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only those Goods which are: (i) shipped differently than identified in Buyer's purchase order; or (ii) labelled or packaged in such a manner which incorrectly identifies its contents.
- (b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace or repair such Nonconforming Goods, or (ii) credit or refund the price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the point of delivery.
- (c) Buyer acknowledges and agrees that the remedies set forth in Section 4(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as

provided under Section 4(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Contract to Seller.

§ 5 Taxes

All prices charged by Seller are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided that Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

§ 6 Payment Terms

- (a) Buyer shall pay all invoiced amounts due to Seller within thirty (30) days from the date of Seller's invoice. Buyer shall make all payments hereunder by check or electronic funds transfer and in US dollars.
- (b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. 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 the delivery of any Goods or performance of any Services if Buyer fails to pay any amounts when due hereunder and such failure continues for fourteen (14) days following written notice thereof.
- (c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller.

§ 7 Limited Warranty

- (a) Seller warrants to Buyer that the Goods shall conform to Seller's specifications set forth in the quotation, be free from defects in material and workmanship under normal use, maintenance, and installation, and be free of defects in design (except for designs provided by Buyer). Seller shall not be liable for a breach of the warranty under this Section 7(a) unless: (i) Buyer gives written notice to Seller within fourteen (14) days of the time when Buyer discovers or ought to have discovered the defect; (ii) if applicable, Seller is given a reasonable opportunity after receiving the notice of breach of the warranty set forth in this Section 7(a) to examine the Goods and Buyer (if requested to do so by Seller) returns the Goods to Seller's place of business and at Buyer's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective; (iv) Buyer's claim for breach of warranty under this Section 7(a) is made within the earlier of twelve (12) months from the date of shipment of the Goods or six (6) months from the date of installation of the Goods; and (v) Buyer does not repair the alleged defects without the consent of Seller. The warranty set forth in this Section 7(a) does not cover: (i) consumables and excludes defects to the extent caused by normal wear and tear, abuse or misuse, accident or damage, modification, improper installation or storage, or by Buyer's operation outside of the prescribed performance specifications or alteration or repair of the Goods without the prior written consent of Seller; (ii) accessories or components not supplied by Seller; and (iii) the inclusion of the Goods supplied by Seller into Buyer's manufacturing process. Seller shall, in its sole discretion, either (i) repair or replace the defective Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate.
- (b) Seller warrants to Buyer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Contract. Seller shall not be liable for a breach of the warranty under this Section 7(b) unless: (i) Buyer gives written notice to Seller within fourteen (14) days of the time when Buyer discovers or ought to have discovered the defect in the Services; (ii) Seller reasonably verifies Buyer's claim that the Services are defective; and (iii) Buyer's claim for breach of warranty under this Section 7(b) is made within twelve (12) months after the performance of the Services. The warranty set forth in this Section 7(b) does not cover training or advisory services provided by Seller to Buyer. Seller does not warrant to Buyer any result in respect of its provision to Buyer of any training or advisory services. Seller shall, in its sole discretion, either (i) re-perform the defective Services or (ii) credit or refund the price of such Services at the pro rata contract rate.
- (c) The performance and safety of the Goods and Services mentioned herein is contingent upon proper installation, the use of suitable process materials, and operation and maintenance by properly trained personnel, and that Buyer implements the safety measures referred to in the Purchase Order as Buyer's scope according to Seller's instructions and laws, ordinances, rules, regulations and orders of any public authority.

- (d) EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 7(A) AND (B), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; OR (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, AND INCLUDING FURTHER, ANY WARRANTIES OR CONTRACTUAL LANGUAGE SET FORTH IN BUYER'S PURCHASE ORDER, REQUISITION OR OTHER SIMILAR DOCUMENTATION UNLESS SUCH LANGUAGE SPECIFICALLY REFERENCES THIS PROVISION AND IS ACKNOWLEDGED BY BOTH PARTIES IN WRITING.
- (e) Any warranty claim made pursuant to this Section 7 shall be made in writing, include a return authorization number from Seller, and shall be mailed to: Mayser USA, Inc., 4812 Dewitt Road, Canton, Michigan 48188, Attn: Warranty Manager.
- (f) All costs in connection with the inspection and diagnosis of defects in the Goods or Services shall be borne by Buyer. Buyer shall bear the costs related to the de-installation and re-installation of Goods.
- (g) THE REMEDIES SET FORTH IN SECTION 7(A) AND (B) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 7. ANY WARRANTY REPAIR, REPLACEMENT OR RE-PERFORMANCE BY SELLER SHALL NOT EXTEND OR RENEW THE APPLICABLE WARRANTY PERIOD.

§ 8 Limitation of Liability

- (a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, 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 OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- (b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT PAID BY BUYER UNDER THE PURCHASE ORDER GIVING RISE TO THE CLAIM.

§ 9 Seller Software License

The sale of Goods hereunder includes Seller granting to Buyer a license to use any software and/or firmware (the "Software") which is preloaded, or to be loaded into such Goods. Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

§ 10 Compliance with Law

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Contract. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods and Services under this Contract or any resale thereof. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Contract if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods or Services.

§ 11 Intellectual Property

Buyer acknowledges and agrees that this is an agreement for the sale (or the design, manufacture and sale) of goods and/or services, and that no transfer of any intellectual property rights is intended. All patents and patent rights, copyrights, trade secret rights, and other intellectual property rights throughout the world associated with any ideas, concepts, techniques, know-how, inventions, processes, designs or works of authorship developed or created by Seller or its personnel, alone or in collaboration with Buyer, during the course of performing work hereunder (the "Intellectual Property") will belong exclusively to Seller. Buyer hereby assigns and agrees to assign, and will cause its personnel to assign, without further consideration, any right, title or interest it or they may have in the Intellectual Property from time to time. Buyer will take such further actions as Seller may reasonably request to give full effect to the assignment. Buyer will defend, indemnify and hold Seller harmless from and against any claim, expense, loss or damage resulting from actual or alleged infringement or violation of any patent, copyright, trademark or other Intellectual Property right as a result of Seller's compliance with Buyer's designs, specifications or instructions.

§ 12 Termination

In addition to any remedies that may be provided under these Terms, Seller may terminate this Contract with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Contract and such failure continues for fifteen (15) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, 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.

§ 13 Confidential Information

Trade secrets, specifications, drawings, notes, instructions, engineering data and analyses, compositions of matter, financial data, and other technical and business data which are owned, supplied or disclosed by Seller or Seller's agents, representatives or sub-contractors or sub-suppliers in connection with this Contract, in each case that are marked or otherwise identified (orally or in writing) as confidential or where their confidential nature is apparent at the time of disclosure ("Confidential Information"), will be deemed confidential and proprietary to, and remain the sole property of Seller or Seller's agents, representatives or sub-contractor, or sub-supplier, as the case may be. Buyer may not disclose Confidential Information or use Confidential Information for any purpose other than as contemplated under this Contract. Upon request by Seller, Buyer will promptly return or destroy the original and all copies of Confidential Information received. Buyer shall not use the Confidential Information in whole or in part, including without limitation drawings prepared by Seller, to procure goods or services from any third party or affiliate. The confidentiality obligations set forth in this Section shall be in addition to any confidentiality agreement that has been executed by and between the parties.

§ 14 Indemnification

Buyer shall hold harmless, indemnify and defend Seller and its affiliates, directors, officers, employees, agents and subcontractors against any and all losses, damages, liabilities, claims, costs, or expenses of whatever kind, including professional fees and attorneys' fees, arising out of (i) Buyer's breach of these Terms; (ii) Seller's compliance with Buyer's designs, specifications or instructions; (iii) Buyer's negligent use or any end-user's negligent use of the Goods or Services; or (iv) any claim, action or lawsuit initiated by Buyer against Seller in which Seller prevails.

§ 15 Miscellaneous

- (a) **Waiver.** No waiver by Seller of any of the provisions of this Contract is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Contract 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.
- (b) **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Contract without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Contract.
- (c) **Relationship of Parties.** Seller and Buyer are independent contracting parties and nothing in this Contract shall make either party the agent or legal representative of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other.
- (d) **No Third-Party Beneficiaries.** This Contract is 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 these Terms.
- (e) **Governing Law.** This Contract, including all exhibits, schedules, attachments and appendices attached hereto, and all matters arising out of or relating to this Contract, are governed by, and construed in accordance with, the laws of the State of Michigan, USA, without regard to the conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods does not apply and is expressly disclaimed of application.
- (f) **Dispute Resolution.** Any legal suit, action or proceeding arising out of or relating to this Contract shall be instituted in the federal courts of the United States of America or the courts of the State of Michigan, in each case located in the City of Detroit and County of Wayne, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
- (g) **Force Majeure.** Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract 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, 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, materials or telecommunication breakdown or power outage, provided that, if the event in question continues for a continuous period in excess of one hundred fifty (150) days and after another period of forty-five (45) days the parties have failed to achieve an agreement on an adjustment of the Contract, Buyer shall be entitled to give notice in writing to Seller to terminate this Contract.

- (h) **Severability.** If any term of this Contract is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of this Contract shall remain in full force and effect.
- (i) **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Contract including, but not limited to, the following provisions: Section 3 (Title; Risk of Loss), Section 4 (Inspection and Rejection of Nonconforming Goods), Section 5 (Taxes), Section 6 (Payment Terms), Section 7 (Limited Warranty), Section 8 (Limitation of Liability), Section 9 (Seller Software License), Section 10 (Compliance with Law), Section 11 (Intellectual Property), Section 13 (Confidential Information), Section 14 (Indemnification), and Section 15 (Miscellaneous).
- (j) **Entire Contract; Amendment and Modification.** The Contract, including these Terms, constitutes the entire agreement between Seller and Buyer with respect to the matter contained herein and supersedes all prior oral or written representations and agreements, except that any confidentiality agreement that has been executed by and between the parties shall remain in effect according to its terms. The rights and remedies set out in the Contract for breach of any obligation, any guarantee, warranty or other duty of Seller under the Contract or in connection therewith are exclusive of any other remedies otherwise imposed or available by law or in equity. These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

Version dated February 2018