

## Terms and Conditions of Sale

v2022-06-15

### 1. Entirety of the Agreement.

- (a) By engaging in conduct relating to the purchase of goods from Seller, including, but not limited to, the ordering and/or shipment of any goods, Buyer agrees, at minimum, to these *Terms and Conditions of Sale* and any agreement incorporating these *Terms and Conditions of Sale* (hereinafter, collectively, "Agreement").
- (b) Seller objects to and will not be bound by any additional, different, or inconsistent terms or conditions in Buyer's purchase order or other documents from Buyer, and shipment pursuant to a purchase order of Buyer that contains additional, different, or inconsistent terms does not constitute acceptance of such terms.
- (c) If the provisions of the Agreement and any written agreement, signed by an officer of Seller and an authorized representative of Buyer, pertaining to the same goods directly conflict, then the provisions of such written agreement signed by an officer of Seller and an authorized representative of Buyer will prevail.
- (d) No conditions, understandings, or agreements purporting to amend, waive, modify, extend, or vary any terms of the Agreement will be binding or of any force or effect unless hereafter made in writing and signed by an officer of Seller and an authorized representative of Buyer.
- (e) In the absence of a written agreement signed by an officer of Seller and an authorized representative of Buyer and pertaining to the same goods, the Agreement is intended as the final expression of Seller and Buyer and there are no oral representations, stipulations, warranties, agreements, or understandings with respect to the subject matter of the Agreement that are not fully expressed therein.
- (f) Neither the Agreement nor its execution has been induced by any representation, stipulation, warranty, agreement, or understanding of any kind other than those expressed in writing.
- (g) No prior course of dealing or performance or usage of trade not expressly set forth in the Agreement will be admissible to explain, supplement, modify, or contradict any terms or conditions of the Agreement.

### 2. Non-cancellation.

- (a) Buyer acknowledges and agrees that upon receipt by Seller of Buyer's purchase order, Seller will rely on the quantity of goods in such purchase order to procure raw materials and reserve production time and as such, (i) Buyer's order will be non-cancellable by Buyer and (ii) Buyer will be liable for the full purchase price of the goods.
- (b) Section 2(a) herein notwithstanding, Seller may choose, at its sole discretion, to accept a purchase order cancellation from Buyer and in such event, Buyer acknowledges and agrees it will be charged a restocking fee equal to forty percent (40%) of the purchase price of the goods (hereinafter "Restocking Fee").
- (c) Payment for any Restocking Fee will be due in accordance with Section 7(b) herein.

### 3. Delivery.

- (a) All sales are freight prepaid and allowed to Buyer's destination and unless Seller specifically agrees to pay all or some part thereof, Buyer will pay all other delivery and miscellaneous charges and inspection fees, if any, levied or imposed on the goods per delivery; and if Seller prepays such charges at Buyer's request or on behalf of Buyer, then Buyer will reimburse Seller therefor.
- (b) A surcharge may be imposed by Seller to each shipment to reflect increases in transportation costs.
- (c) Seller will deliver the goods to Buyer's destination as soon as reasonably practicable; provided, however, Buyer acknowledges and agrees that shipment dates are based on Seller's reasonable judgment and are subject to production limitations and factory schedules, and that delivery dates are not guaranteed.
- (d) If for any reason shortages occur in the supply of Seller's goods, then Seller may allocate such goods, in which case Seller will prorate the supply in a manner that in Seller's sole judgment is fair, taking into account factors Seller determines are relevant; such factors may include, but are not limited to, Seller's shipments to all buyers during the past year, the percentage of each buyer's requirements which such shipments represent, and each buyer's needs at the time of shortage.
- (e) Buyer acknowledges and agrees to delivery of the goods in ratable amounts over the life of the Agreement.
- (f) Each Truck (as defined herein) chartered by Seller for shipment of the goods to Buyer's destination is automatically subject to the following provisions, from the time such Truck departs Seller's shipping point until the time such Truck departs Buyer's destination following delivery.
  - (1) For purposes of the Agreement, "Truck" or "Trucks" means a motor vehicle capable of taking receipt of, and making delivery of, the goods sold pursuant to the Agreement, including, but not limited to, semi-trailer trucks with flatbed semi-trailers and/or tractor-trailers.
  - (2) A Truck will be deemed in Buyer's possession from the time such Truck constructively or actually arrives at Buyer's destination, whichever is first.
    - (A) For purposes of the Agreement, "constructive" when used with respect to arrival of a Truck means upon notification by the carrier that such Truck is available for receipt.
    - (B) Upon actual arrival at Buyer's destination, Buyer will unload the Trucks used to transport the goods as soon as reasonably practicable; provided, however, upon the expiration of two (2) hours from the time of actual or constructive arrival at Buyer's destination, whichever is first, holding charges will commence and Buyer will be liable for a holding charge of eighty U.S. dollars (\$80.00) per hour per Truck for each full or fractional hour thereafter (hereinafter "Truck Holding Charge").
    - (C) Seller may increase the Truck Holding Charge at its sole discretion.
  - (3) Buyer will unload and return any Truck to the carrier within the tariff or contracted period free of demurrage and/or detention charges; **Buyer will indemnify Seller from and against all demurrage and/or detention charges resulting from the use of Trucks by Buyer.**
  - (4) As soon as each Truck is unloaded, Buyer will surrender possession of or release same.
  - (5) Buyer will cause no liens of any kind, including tax liens, to be imposed on the Trucks.
  - (6) Buyer will immediately notify Seller whenever personal injury occurs to any person while a Truck is in Buyer's possession or under Buyer's control or stewardship; **Buyer will release and defend, indemnify, and save harmless Seller, its affiliates under common ownership, and its and their officers, employees, and agents from and against all suits, actions, losses, damages, claims, or liability of any character, type, or description, including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by, Buyer's use of the Trucks while same are on Buyer's premises or under Buyer's control or stewardship, except to the extent adjudicated as caused by the gross negligence or willful misconduct of Seller.**
- (g) Subject to Section 3(c) herein, the parties hereto contemplate delivery of the goods within thirty (30) days of manufacture thereof, provided that if the parties hereto agree, prior to Seller's release of Buyer's order confirmation and in accordance with Section 10 herein, to delayed shipment and storage of the goods at Seller's facility, then commencing thirty (30) days from the date of manufacture of the applicable goods Buyer will be liable for a storage charge of (i) fifty U.S. dollars (\$50.00) or (ii) 0.2% of the amount of the applicable invoice, **whichever is greater, per day**, for each day the goods remain in storage at Seller's facility.

4. Title and Risk of Loss.

- (a) Title with respect to the goods will transfer to Buyer when such goods are loaded onto the Truck at Seller's shipping point.
- (b) Risk of loss with respect to the goods will transfer to Buyer as follows: (i) if Buyer is using a Truck chartered by Seller, then upon actual or constructive arrival of such Truck at Buyer's destination; or (ii) if Buyer is using a Truck owned or chartered by Buyer, then when such goods are loaded onto the Truck at Seller's shipping point.
- (c) Seller reserves a security interest in goods for which payment has not been received and Seller may file financing statements and appropriate notices to competing secured parties to protect its interests therein.

5. Count. Upon delivery, Seller's count of the goods at Seller's shipping point will control unless proven to be in error.

6. Taxes.

- (a) Any tax, duty, or other governmental charge on the manufacture, sale, and/or shipment of the goods, or any component thereof, imposed by federal, state, provincial, or local authorities, will be added to the price of the goods and paid by Buyer.
- (b) While the *Superfund Tax* under 26 U.S.C. § 4661 and 26 U.S.C. § 4671, as applicable, is not a tax or charge the government requires Seller to collect from its customers, Buyer acknowledges and agrees that in accordance with Section 6(a) herein, the *Superfund Surcharge* assessed by Seller and paid by Buyer is intended to approximate and recover the costs incurred to collect and pay the *Superfund Tax*.
- (c) For certain export sales, exemptions to the *Superfund Surcharge* will apply or waivers of Seller's right to refund of the *Superfund Tax* will be provided; or if for other transactions Buyer desires the sale to be tax exempt or zero rated, then upon Seller's request, Buyer will provide Seller with exemption certificates or proof of qualifying export in a form acceptable to the appropriate taxing authority.
- (d) For any personal property taxes assessed against the goods, the party hereto having title to the goods at the time such tax liability accrues will be responsible for payment of such taxes.

7. Price and Payment.

- (a) Unless otherwise agreed in writing and signed by an officer of Seller and an authorized representative of Buyer, all orders will be priced in accordance with Seller's price quotation in effect on the date of shipment.
- (b) Unless otherwise agreed in writing and signed by an officer of Seller and an authorized representative of Buyer, payment will be made against Seller's invoice, via electronic funds transfer, such that funds are available to Seller no later than fifteen (15) calendar days from date of invoice, terms net cash, regardless of whether such day is a business day; Buyer will pay a finance charge of 1.5% per month or the maximum rate allowed by law, whichever is less, on any past due amounts.
- (c) If Buyer has a *bona fide* dispute concerning any portion of an invoice, then Buyer will pay the undisputed portion of the invoice and must promptly notify Seller in writing of such disputed item(s).
  - (1) Upon receipt of requisite notice concerning any disputed invoice item(s), the parties hereto will work together, in good faith, to promptly resolve the disputed amount and to mutually agree on which portions, if any, of the amount are rightly owed Seller.
  - (2) Upon determination that any of the disputed and unpaid amounts are rightly owed Seller, Buyer will promptly remit same.
- (d) Buyer will provide current financials upon request; additionally, if at any time, in Seller's opinion, the financial responsibility of Buyer becomes impaired or unsatisfactory, or inadequate to meet the obligations under the Agreement, then terms of payment may, at Seller's option, be revised or withdrawn, and Seller may require cash or other satisfactory security before making further shipments to Buyer, and the parties hereto acknowledge and agree any such change in credit terms is ordinary course and customary within the industry.
- (e) In addition to any other legal remedy, if Buyer fails to fulfill the terms of payment or is in default with respect to any other terms or conditions of the Agreement, then Seller may defer further shipment of goods under the Agreement or cancel the Agreement.
- (f) Buyer will pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any amount payable by Buyer under the Agreement.

8. Warranties.

- (a) Seller warrants that for a period of twelve (12) months from the date of shipment, the goods sold pursuant to the Agreement will materially conform to Seller's written specifications in effect on the date of shipment and applicable to such goods; provided, however, anything to the contrary in the Agreement notwithstanding, the warranty set forth in this Section 8(a) will not apply (i) when the goods have been subjected at any time to application or use in a manner inconsistent with product literature from Seller, ASTM International (hereinafter "ASTM"), or Plastics Pipe Institute (hereinafter "PPI"), including, but not limited to, internal pressure or external load in excess of Seller's, ASTM's, or PPI's recommended pressure, temperature, time, fluid, or environmental limitations during installation, testing, operation, or use of the goods, (ii) when the goods have been installed, joined, fused, or affixed with other goods (whether from Seller or a third party) in a manner inconsistent with product literature from Seller, ASTM, or PPI, (iii) when the goods have been subjected to mishandling, accident, damage, or abuse at any time after departure from Seller's shipping point, or (iv) when the goods have been subjected to damage, destruction, loss, injury, impairment, or stress arising from negligent or deficient installation, joining, backfill placement or compaction, trenchless installation, leak or pressure testing, disinfecting, or commissioning, or operation of heavy equipment over or near.
- (b) Seller further warrants that Seller will have good title to and the right to transfer the goods.
- (c) **Seller makes no other express or implied warranty, statutory or otherwise, concerning the goods, including, but not limited to, any warranty of fitness for particular purpose or merchantability.**

9. Remedies of Buyer.

- (a) Buyer's sole and exclusive remedy in the event of delivery of nonconforming goods is expressly limited, at Seller's option, to replacement of the nonconforming goods or repayment of the purchase price paid by Buyer, subject to, at Seller's option, credit or return of the nonconforming goods; and in the instance of return, Seller will be responsible for Buyer's reasonable freight and other external costs directly related to return of such nonconforming goods.
- (b) Upon delivery, Buyer will promptly notify Seller in writing of any and all claims, including, but not limited to, alleged defective goods, shortage, breach of warranty, or otherwise, and unless objection thereto is made in writing and received by Seller within ten (10) days from the date of delivery, Buyer's receipt of Seller's goods will be deemed unqualified acceptance.
- (c) Subject to the limitations in Sections 22 and 23 herein, any claim under the Agreement not asserted as a claim, counterclaim, defense, or setoff in a legal proceeding instituted before a court of competent jurisdiction within two (2) years from accrual of the claim will be forever waived, released, and barred.

10. Notice.

- (a) Notices and other communications required or permitted under the Agreement will be in writing and addressed to the addressee(s) set forth in the Agreement, or at such other address as a party hereto may designate in writing from time to time.
- (b) Notices and other communications required or permitted under the Agreement will be deemed given only if (i) delivered personally, (ii) mailed by first-class, certified or registered U.S. mail, return receipt requested, postage prepaid, (iii) sent by courier service, (iv) sent via electronic means expressly stipulated in the Agreement, or (v) sent via such other means as may be specified in writing and signed by an authorized representative of each party hereto.
- (c) Notices and other communications required or permitted under the Agreement will be deemed received on the business day on which such notice or communication was received; provided, however, any notice or communication received on a non-business day or after 5:00 P.M. local time will be deemed received the next business day.

11. Indemnification.

- (a) **Buyer will release and defend, indemnify, and save harmless Seller, its affiliates under common ownership, and its and their officers, employees, and agents from and against all suits, actions, losses, liabilities, damages, and claims of any character, type, or description (whether for personal injury, death, disease, property damage, including, but not limited to, environmental contamination, or otherwise), including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees, arising out of, or occasioned by, the transportation, delivery, storage, handling, or use, singly or in combination with other substances, of the goods *after* risk of loss transfers to Buyer, except to the extent adjudicated as caused by the gross negligence or willful misconduct of Seller.**
- (b) **Buyer will release and defend, indemnify, and save harmless Seller, its affiliates under common ownership, and its and their officers, employees, and agents from and against all suits, actions, losses, damages, claims, or liability of any character, type, or description, including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees, arising out of, or resulting from, infringement or alleged infringement of any patent, trademark, copyright, or other intellectual property right due to use by Buyer, its affiliates under common ownership, or its and their officers, employees, or agents, of any product, process, composition, machine, or article of manufacture, or any method, structure, apparatus, material, or other object or documentation, in conjunction with the goods sold pursuant to the Agreement.**
- (c) **Seller will release and defend, indemnify, and save harmless Buyer, its affiliates under common ownership, and its and their officers, employees, and agents from and against all suits, actions, losses, liabilities, damages, and claims of any character, type, or description (whether for personal injury, death, disease, property damage, including, but not limited to, environmental contamination, or otherwise), including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees, arising out of, or occasioned by, the transportation, delivery, storage, handling, or use, singly or in combination with other substances, of the goods *prior* to risk of loss transferring to Buyer.**
- (d) **To effectuate the indemnity obligations in Sections 3(f)(6), 11(a), 11(b), and 11(c) herein, the indemnitee must (i) provide the indemnitor prompt written notice of the claim, (ii) accede control and direction of the investigation, preparation, defense, and settlement of the claim to the indemnitor, and (iii) reasonably cooperate with the indemnitor in such defense and settlement of the claim.**
- (e) **Section 11(d) herein notwithstanding, (i) an indemnitee may participate, at its sole cost and expense, in the defense of any indemnified claim and (ii) the indemnitor will not settle any indemnified claim that would not result in a complete and final release of the indemnitee or would require the indemnitee to admit fault or liability or be subject to any equitable remedy, without the prior written consent of the indemnitee.**

12. Limitation of Liability.

- (a) **Excluding Sections 11(a) and 11(c) herein, the total liability of Seller with respect to the goods sold to Buyer pursuant to the Agreement, or otherwise arising in connection with the Agreement, whether such liability is based on contract, warranty, negligence, strict liability, or otherwise, will not exceed the purchase price of the goods in respect of which the claim is made.**
- (c) **In no event will a party hereto be liable to the other party hereto for lost profits of any nature or for any consequential, incidental, indirect, special, exemplary, or punitive damages arising out of, or related to, the Agreement, whether based on contract, warranty, negligence, strict liability, or otherwise.**

13. Force Majeure.

- (a) For purposes of the Agreement, "Force Majeure" means any cause not within the reasonable control of the party hereto claiming suspension of performance and which by the exercise of due diligence such party could not have prevented, including, but not limited to, physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes resulting in evacuation, floods, washouts, explosions, machinery malfunctions or breakdowns, inability to obtain fuel, power, or materials necessary for production, deficient transportation or delivery, power outages, strikes, lockouts, or other industrial disturbances, pandemics or epidemics, acts of a public enemy, sabotage, vandalism and/or malicious mischief, wars, blockades, insurrections, riots, acts of terror, and compliance with any law, order, rule, or regulation of any governmental authority.
- (b) A party hereto will not be liable to the other party hereto if rendered unable by an event of Force Majeure to perform in whole or in part any obligation or condition of the Agreement for so long as the event of Force Majeure exists and to the extent performance is delayed or prevented by the event of Force Majeure; provided, however, the party hereto unable to perform will use commercially reasonable efforts to avoid or remove the event of Force Majeure.
- (c) When performance has been prevented or delayed by an event of Force Majeure, the quantity of goods affected will be deducted from the amount required to be supplied or purchased under the Agreement, as the case may be, with no obligation to make up such goods.
- (d) During the period a party's performance has been suspended in whole or part by reason of an event of Force Majeure, the other party hereto may likewise suspend the performance of all or part of its obligations to the extent such suspension is commercially reasonable, except for any payment and indemnification obligations.
- (e) The party hereto rendered unable to perform will provide notice to the other party hereto within a reasonable time after learning of the occurrence of a Force Majeure event; such notice will state the nature and extent of the Force Majeure condition claimed, the expected duration of the Force Majeure event, and the quantity of goods affected.
- (f) The suspension of performance afforded by this Section 13 (i) will not apply until requisite notice in accordance with Section 13(e) herein is given, (ii) will not be available to a party hereto failing to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with reasonable dispatch, and (iii) will not relieve Buyer of the obligation to pay for goods, title to which has transferred to Buyer.
- (g) The requirement that any Force Majeure be remedied with reasonable dispatch will not require the settlement of strikes or labor controversies by acceding to the demands of the opposing party or parties.
- (h) The party hereto rendered unable to perform will apportion its available supply or its purchases, as the case may be, fairly, including among its affiliates under common ownership and own units, departments, and divisions under common ownership, without incurring liability for failure to perform.

- (i) The parties hereto acknowledge and agree that Seller will supply the goods sold pursuant to the Agreement from its own production and that in the event of Force Majeure, Seller will not be required to acquire, by purchase or otherwise, additional quantities of goods from other suppliers or otherwise supplement its available supply of goods.
14. Technical Information and Safety.
- (a) Seller may discontinue shipment of any goods, the manufacture, sale, or use of which in its opinion may involve patent or other intellectual property infringement.
- (b) Any technical advice given by Seller in reference to the use of the goods is provided *gratis* and without any warranty whatsoever as to advice given or results obtained.
- (c) Buyer acknowledges and agrees it has been adequately warned by Seller of the risks associated with transporting, storing, handling, using, and disposing of the goods and is familiar with the goods, and acknowledges Seller's current Safety Data Sheet (SDS) concerning the goods posted at [www.wlplastics.com/documents/engineering-info](http://www.wlplastics.com/documents/engineering-info); Buyer further acknowledges and agrees it assumes such risks and has separate and independent knowledge of such risks, which risks are known in Buyer's industry.
- (d) Each party hereto will maintain compliance with all applicable safety and health related governmental requirements concerning the goods and will take all steps required by applicable law to inform, warn, and familiarize its employees, agents, contractors, and customers concerning all hazards associated with the goods, including transportation, storage, handling, use, and disposal thereof.
- (e) Buyer acknowledges and agrees that while the non-destructive techniques of (i) time-of-flight diffraction, (ii) phased array, and (iii) microwave examination (hereinafter, collectively "NDE Techniques") may predict the performance properties of the goods sold pursuant to the Agreement, (a) the use of NDE Techniques has been **neither** adopted as industry standard **nor** endorsed by ASTM or PPI, and (b) the results of NDE Techniques are speculative and inexact.
- (1) Strictly as an accommodation to Buyer, Seller may choose, at its sole discretion, to allow Buyer to perform NDE Techniques at Seller's facilities on the goods sold pursuant to the Agreement.
- (2) As a result of NDE Techniques performed pursuant to Section 14(e)(1) herein, Seller may choose, at its sole discretion, to accept the results of such NDE Techniques and replace the goods deemed nonconforming.
- (3) **For the avoidance of doubt and anything to the contrary the Agreement notwithstanding, Buyer acknowledges and agrees (i) that Seller has no obligation whatsoever to perform or facilitate NDE Techniques relative to the goods sold pursuant to the Agreement and (ii) that Seller has no duty or liability whatsoever arising from the results of any NDE Techniques performed relative to the goods sold pursuant to the Agreement, regardless of the results.**
15. Survivability. The provisions of the Agreement which, by the nature of their content, are intended, expressly or impliedly, to continue and have effect regardless of the termination of the Agreement whether by default or otherwise, will survive and continue to bind the parties hereto, including, but not limited to, Sections 3(f)(3), 3(f)(6), 9(c), 11, and 12 herein.
16. Assignment. The Agreement will not be assignable or transferable by Buyer without the prior written consent of Seller and any attempted assignment or transfer without such consent will be void.
17. No Third-party Beneficiaries. The Agreement is intended solely for the benefit of the parties hereto and their permitted assigns and will not impart rights enforceable by any other person or entity.
18. Non-waiver.
- (a) No waiver by either party hereto of one or more defaults by the other party hereto in the performance of any provisions of the Agreement will operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.
- (b) No indulgence, leniency, or extension of time granted by either party hereto to the other party hereto will operate or be construed as an estoppel against the party so granting.
19. Severability. The invalidity or unenforceability of any particular provision of the Agreement will not affect the other provisions hereof, and the Agreement will be construed in all respects as if such invalid or unenforceable provision was omitted.
20. Headings. The titles and headings in the Agreement have been included solely for ease of reference and will not be considered in the interpretation or construction of the Agreement.
21. Compliance. The parties hereto acknowledge and agree (i) that each will maintain a *Code of Conduct* or similar policy, (ii) that in the performance of the Agreement, each will comply with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and all other applicable law concerning anti-bribery and anti-corruption, (iii) that each will not engage in any direct or indirect sales to any *Specially Designated National* (SDN) or prohibited country or regime identified by the Office of Foreign Assets Control, U.S. Department of the Treasury, in violation of U.S. law, and (iv) that the Agreement neither contemplates nor involves the sale or purchase of tin, tantalum, tungsten, or gold (hereinafter "Conflict Minerals") or products containing Conflict Minerals.
22. Jurisdiction; Venue.
- (a) All provisions of the Agreement will be governed by and construed in accordance with the laws of the State of Texas, excluding any choice of law rules that may direct the application of the laws of any other jurisdiction.
- (b) The rights and obligations of the parties hereto arising from the Agreement will not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods, application of which is expressly excluded pursuant to Article 6 thereof.
- (c) Any suit, action, or proceeding relating to or arising from the Agreement must be brought exclusively in the state or federal courts of Tarrant County, Texas, and each party hereto waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of such suit, action, or proceeding in such court or that any such suit, action, or proceeding which is brought in such court has been brought in an inconvenient forum.
- (d) **Each party hereto waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury with respect to any action, claim, or proceeding arising out of or in any way relating to the Agreement or the transactions contemplated thereunder.**
23. Dispute Resolution.
- (a) With respect to any claims, counterclaims, demands, causes of action, disputes, controversies, and other matters in question involving the parties hereto and arising out of or relating to the Agreement, including any questions concerning its existence, validity, or termination, any provision hereof, the alleged breach

thereof, or in any way relating to the subject matter of the Agreement or the relationship between the parties hereto created by the Agreement, and not resolved in the ordinary course of business (hereinafter "Dispute"), a party hereto must initiate the dispute resolution procedures set forth in this Section 23.

- (1) A party hereto desiring to initiate dispute resolution must provide written notice of the Dispute to the other party hereto (hereinafter "Dispute Notice").
  - (2) The Dispute Notice will include (i) a statement of the issuing party's position and a summary of arguments supporting that position, and (ii) the name(s) and title(s) of the executive who will represent such party in the negotiations and of any other person who will accompany the executive.
  - (3) Executives appointed to represent the parties hereto pursuant to any Dispute Notice must have the authority to settle the controversy and must be of a level of management higher than those directly involved in the Dispute.
  - (4) If one party hereto has issued a Dispute Notice, then the other party hereto will likewise promptly issue (i) a statement of its position and a summary of arguments supporting that position, and (ii) the name(s) and title(s) of the executive who will represent such party in the negotiations and of any other person who will accompany the executive; thereafter, the parties hereto will promptly attempt in good faith to resolve the Dispute by negotiations between the executives so appointed.
- (b) Should a Dispute fail to be resolved pursuant to Section 23(a) herein within thirty (30) days of receipt of the Dispute Notice, either party hereto may seek whatever remedies available at law or in equity subject to the limitations in Section 22 herein and in the event of litigation, the prevailing party hereto will be entitled to all costs and expenses associated therewith, including attorneys' fees.