

Bosch Rexroth Corporation



Terms and Conditions of Sale

1. GENERAL

1.1 Your purchase order(s), when accepted, will be subject to the following terms and conditions. The terms and conditions contained herein constitute the entire agreement between you ("Buyer") and Bosch Rexroth Corporation ("BRUS") with respect to the transaction(s) covered by your purchase order(s) as confirmed by BRUS.

1.2 No modification or waiver of any of the terms and conditions contained herein and no additional or different terms or conditions shall be effective unless (i) modified by BRUS's quotation or sales acknowledgement, or (ii) agreed to in a single writing signed by both parties. No oral agreement, course of performance or other means other than such written agreement signed by both parties expressly providing for such waiver shall be deemed to waive the terms of this document.

1.3 The terms and conditions set forth below shall become binding on the parties by:

1.3.1 BRUS's written acknowledgment of Buyer's purchase order,

1.3.2 Signature of Buyer and BRUS on an agreement for the purchase and sale of goods, or

1.3.3 BRUS's delivery of the Goods, in whole or part.

2. PRICES AND TAXES

2.1 All prices are based upon the material cost and labor rates in effect on the date of the quotation, unless an earlier date is indicated on the face of the quotation; are for your guidance in submitting orders; and are subject to change with notice. On requirements contracts, which are orders that are subject to periodic releases and cover requirements of Buyer for a specific future period of time, prices may be adjusted as labor rates and material costs change. Buyer agrees that the quantities committed affect the price of such units or parts, and that if Buyer hereafter makes any change in the quantities committed from those shown on the front of the purchase order, the price of such units or parts shall be adjusted to meet BRUS's price applicable to the quantities committed as changed. Each quantity committed must be scheduled by Buyer for shipment within 90 days following the initial shipment.

2.2 The Prices do not include any applicable Federal, State or local sales, use, excise, value-added or similar-type tax or assessments applicable to the price, sale, use or delivery of the Goods ordered by Buyer. Such taxes and assessments will be included in BRUS's invoice and paid by Buyer unless Buyer's purchase order plainly states on its face the existence of an exemption from any such tax or assessment and Buyer provides BRUS with evidence of such exemption from the applicable taxing authority.

3. DELIVERY, TITLE & RISK OF LOSS

3.1 Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. All shipments shall be made FCA loading dock at BRUS plants/warehouses (Incoterms 2010). After the Goods are delivered to a carrier for shipment, all risk of loss, damage, theft, or destruction will be the responsibility of Buyer. Subject to the provisions of section 10.3, title to the equipment will pass to you upon delivery to the carrier for shipment to you. Shipments will only be insured at Buyer's request and expense.

3.2 In the event Buyer requests changes in specifications after these Terms and Conditions have become binding, such changes shall become part of the purchase order only upon

acceptance by BRUS in its sole discretion, whereupon delivery dates will be reasonably extended, BRUS shall be compensated for all costs incurred in connection with such change and the price shall be adjusted to maintain BRUS's anticipated profit margin.

3.3 BRUS reserves the right to under- or over ship orders by 5% of quantity specified with an appropriate adjustment in the aggregate price charged. No claims for errors in shipment will be considered unless made within 10 days after receipt of materials nor unless accompanied by necessary papers or documents to substantiate the claim. Claims for loss or damage in transit must be entered and prosecuted by Buyer.

4. INSTALLATION

4.1 The Goods shall be installed by and at the expense of the Buyer unless otherwise expressly stipulated herein. Upon request, BRUS will provide a competent superintendent to supervise the setting up and/or starting of the Goods. The Buyer shall pay BRUS for the service of said superintendent at the rate stipulated plus traveling and all reasonable expenses. The superintendent shall be considered an employee of BRUS, but BRUS shall not be liable for injury to persons or damage to property occurring in the course of, or as a result of, the superintendent's presence upon the premises of Buyer.

4.2 BRUS shall not be liable for material and equipment or the acts of Buyer's employees, agents or contractors, nor has it any responsibility for the performance of Goods not set up or started under the supervision of its superintendent unless deficient performance is caused by defects independent of the installation and within the scope of the warranty set forth in section 5.

4.3 BRUS assumes no responsibility for damages due to deterioration during periods of storage by the Buyer prior to installation and operation. If provided for in the proposal or for an extra charge, BRUS will if notified prior to shipment that the Goods are to be stored, apply preservations to minimize the deterioration.

4.4 BRUS reserves the right to make changes in design or additions to or improvements in its products without liability to install such changes, additions or improvements in any product manufactured prior thereto.

5. WARRANTY POLICY

5.1 BRUS warrants all Products manufactured by it to be free from defects in material and workmanship under normal operating conditions and proper application in accordance with specifications for operation as described in the Data Sheet which accompanies such Products. The applicable warranty periods are as follows:

5.1.1 For hydraulic power units manufactured by BRUS, the warranty period shall be thirty-six (36) months after date of shipment, provided the hydraulic system utilizes properly installed and maintained genuine Bosch Rexroth Filtration Products from the date the product was put in service. In the event genuine Bosch Rexroth Filtration Products were not utilized in the hydraulic system, the warranty period shall be (i) eighteen (18) months after date of shipment to the customer, or (ii) twelve (12) months after the Product is placed in service, whichever occurs first. Vendor or customer-supplied items on systems, assemblies or power units are warranted per original manufacturer's warranty policy.

5.1.2 For all other BRUS Products, the warranty period shall be (i) eighteen (18) months after date of shipment to the customer, or (ii) twelve (12) months after the Product is

placed in service, whichever occurs first. Vendor or customer-supplied items on systems, assemblies or power units are warranted per original manufacturer's warranty policy.

5.2 Limitations on Warranty

THE FOREGOING WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Buyer's sole and exclusive remedy under this warranty shall be limited to the repair or exchange of warranted products at BRUS's option FCA BRUS's plant/warehouse. No attempt to repair or improve the Goods or parts by any of BRUS's representatives shall change or extend this warranty.

5.3 If the Buyer (as that term is hereafter defined) or Agent grants to an enduser any warranty which is greater in scope, time period or labor allowance than the warranty stated herein, BRUS shall not be liable beyond this stated warranty. Except as otherwise provided under the Warranty Processing Procedures section of this warranty, equipment and accessories not manufactured by BRUS shall not be the responsibility of BRUS. The term "Buyer" as used herein means the person or firm that purchased the product directly from BRUS, and includes direct OEM customers and BRUS distributors.

5.4 Warranty Processing Procedures

No products shall be returned without prior authorization from BRUS. Buyer shall prepay all transportation charges for the return of such products to BRUS's factory or authorized factory service center. BRUS will not accept any charges for labor and/or parts incidental to the removal and remounting of products repaired or replaced under this warranty. All repair and replacement parts provided under this warranty will assume the identity, for warranty purposes, of the part replaced and the warranty on such replacement parts will expire when the warranty on the original part would have expired. Claims must be submitted within 30 days of failure or be subject to rejection. This warranty is not transferable beyond the first using purchaser.

5.5 The foregoing warranty does not cover conditions over which BRUS has no control, including, without limitation, contamination, incorrect power supply, pressures in excess of recommended maximum, products damaged or subjected to voltage, humidity, or temperature outside of specified range, accident, abuse or misuse after shipment from BRUS's factory, products altered, disassembled or repaired by anyone other than BRUS personnel, BRUS authorized factory service center personnel or persons so designated in writing by BRUS's Service Department prior to commencement of said work.

5.6 Types of failures which are not attributable to defects in materials and/or workmanship and which are not considered by BRUS as part of its warranty include, but are not limited to the following:

- Damages due to deterioration during periods of storage by the Buyer prior to installation and operation.
- Damage of any kind from erosive or corrosive action of any gases or liquids handled by the machinery.
- Lack of or incorrect type of fluid, lubricants, air line additives.
- Contamination of the fluid, lubricants, air line additives, or oil systems.
- Damage attributable to accident, abuse, neglect.
- Stripped splines or keyways on drive shaft.

- Incorrect mounting of external gears, pulleys, etc.
- Operating beyond the recommended maximum speeds, pressure, temperatures, voltage or humidity or below the recommended voltage.
- Improper filtration.
- Repairs by unauthorized service personnel.
- Use of the product in a manner or purpose for which it was not designed or intended by BRUS.
- Misalignment, mis-wiring, high vibration.
- Ordinary wear and tear.

5.7 Whenever possible, each provision of the foregoing warranty shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this warranty shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this warranty.

6. CONFIDENTIAL INFORMATION

6.1 Any and all information concerning the Goods or the transaction covered hereunder which BRUS discloses to Buyer, or which Buyer otherwise obtains knowledge of hereunder, remains the exclusive property of BRUS and shall not be made available to third parties without BRUS's express written consent. Buyer shall have no right whatsoever to such information other than to use it for evaluation for the purpose of the transaction covered hereunder.

6.2 Any information, suggestions or ideas transmitted by Buyer to BRUS in connection with performance hereunder are not to be regarded as proprietary or confidential unless expressly provided in a writing signed by BRUS.

7. FORCE MAJEURE

7.1 BRUS shall not be liable for delays or failures in delivery, damage to Goods, or performance due to acts of God, governmental authority or public enemy, fire, flood, strike, labor disturbance, epidemic, war, riot, civil disturbance, power failure, embargoes, shortages in materials, components or service, boycotts, transportation delays or any other cause beyond BRUS's control.

7.2 In the event of such delay or failure, Buyer's order shall not terminate, but the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

8. PATENTS

8.1 BRUS warrants that the Goods shall not infringe any U.S. patent. If Buyer provides timely notice, information and assistance, BRUS shall indemnify and defend Buyer from and against any claimed infringement which would constitute a breach of this warranty. In the event the Goods are found to infringe any U.S. patent, BRUS shall at its option procure for Buyer the right to continue use, replace the Goods with non-infringing goods, modify the Goods so that they are non-infringing or upon return of the Goods to BRUS, refund the purchase price less reasonable depreciation. BRUS grants no license, express or implied, other than the right of Buyer to use the Goods.

8.2 BRUS makes no warranty with respect to and shall not be liable for, any infringement relating to or arising out of:

8.2.1 Goods manufactured to Buyer's design or specifications.

8.2.2 Use of the Goods in conjunction with any other product not furnished by BRUS or in a combination not furnished by BRUS. With respect to any claimed infringements arising out of circumstances described in this Section 8.2 Buyer shall indemnify and defend BRUS against any and all loss,

damage, costs and expenses including reasonable attorney fees.

8.3 Buyer agrees to hold BRUS harmless from any liability of BRUS for infringement of patents by reason of manufacturing according to Buyer's design or by reason of the incorporation of said part in a more comprehensive assembly than sold by the BRUS.

9. CANCELLATION AT DEFAULT OF BUYER

9.1 BRUS may cancel Buyer's order without liability effective upon written notice to Buyer, upon occurrence of any of the following Events of Default:

9.1.1 Buyer's failure to make timely payment of any sum owing to BRUS for the orders accepted and shipped by BRUS or otherwise;

9.1.2 Buyer's failure to conduct its operation in the normal course of business (including the inability to meet obligations as they accrue);

9.1.3 Institution of any proceedings by or against Buyer under any bankruptcy, insolvency or similar law;

9.1.4 Appointment or application for a receiver for Buyer;

9.1.5 An assignment by Buyer for the benefit of creditors;

9.1.6 Failure of Buyer to furnish BRUS with a written representation reaffirming Buyer's solvency (it being understood that Buyer's order hereunder constitute a representation by Buyer that it is solvent);

9.1.7 Failure of Buyer to maintain any insurance required as herein provided; or

9.1.8 Failure of Buyer to maintain the Goods free and clear of any and all Liens of third parties prior to Buyer's payment of the full purchase price.

9.2 Upon cancellation, at BRUS's option:

9.2.1 Buyer shall pay for all Goods delivered and for all Goods completed or in process pursuant to purchase orders accepted by BRUS;

9.2.2 With respect to all Goods for which BRUS has not received full payment, BRUS may stop delivery, retake (or retain) possession of the Goods wherever located (all without notice, demand or legal process) and retain, lease or resell (at public or private auction or otherwise) without accounting to Buyer, and any payments received by BRUS from Buyer or otherwise may be retained as liquidated damages;

9.2.3 BRUS may declare any outstanding balance immediately due and owing and collect same from Buyer without further notice or demand, together with interest at the maximum rate permitted by law;

9.2.4 Refuse to deliver except for cash payment for all Goods.

9.3 The rights of cancellation and remedies provided in this Section are cumulative and are in addition to any other rights and remedies of BRUS in law or equity.

10. PAYMENTS TERMS

10.1 Except as otherwise specified by BRUS in writing, terms of payment are net thirty (30) days from date of invoice, with no discount allowed for earlier payment and no right of set-off for amounts due or allegedly due from BRUS to Buyer. BRUS reserves the right to alter or suspend credit terms, require C.O.D. or advance payment, whenever BRUS has reasonable doubt as to Buyer's credit worthiness. If Buyer becomes delinquent in payment or refuses to accept C.O.D. shipments, BRUS shall have the right, in addition to any other right it may have, to cancel any order of Buyer's, withhold further deliveries, and declare all unpaid amounts for products or goods previously delivered immediately due and payable.

Each shipment shall be considered a separate and independent transaction and payment therefor shall be made accordingly. Amounts past due may be subject to an interest charge of 1.5% per month. All costs and expenses incurred by BRUS as a result for non-payment or delinquent payment by Buyer, including collection costs, interest, and reasonable attorneys' fees, shall be paid by Buyer. All invoices are due and payable in cash in United States of America funds.

10.2 In the event BRUS consents to delay shipments after completion of the Goods or any portion thereof, payment shall become due upon notice to Buyer that such Goods are ready for shipment and such Goods shall thereafter be held at Buyer's risk and expense.

10.3 Buyer grants to BRUS a purchase money security interest in the goods, products and/or equipment supplied hereunder. Failure of Buyer to make any payment when due shall entitle BRUS, in its sole discretion, to declare all obligations of Buyer immediately due and payable; in such event BRUS shall have all the rights and remedies of a secured party under applicable law. Buyer agrees to execute upon request such documents which may be deemed necessary or appropriate by BRUS to create, perfect and maintain the perfection of its security interest under applicable law. Buyer hereby appoints BRUS as its attorney-in-fact to sign and file a financing statement and such other documents as BRUS deems necessary to create, file, perfect and maintain the perfection of its security interest.

10.4 In the event Buyer fails to fulfill the terms of payment of any invoice, or if the financial responsibility of the Buyer shall become impaired or unsatisfactory to the BRUS, or if necessitated by any acts of any governmental authority, including financial disclosures mandated by Section 409 of Sarbanes Oxley Act, BRUS reserves the right to change terms of payment and/or deter or discontinue further shipments without prejudice to any other lawful remedy, until past due payments are made and satisfactory assurances of Buyer's credit standing are received by BRUS or until such acts or requirements of such governmental authority shall have been complied with.

10.5 BRUS also reserves the right to cancel the contract in the case of any of the events described in Section 10.4, in which event Buyer shall compensate BRUS for any commitments, obligations, expenditures, expenses, and costs including attorney fees, BRUS may have incurred in connection with the contract. Each shipment by BRUS shall be considered a separate transaction and if payment is not received therefore within the periods specified herein, BRUS at its option may bring a separate suit to recover the contract price of each such shipment.

10.6 If any of the following events occur, BRUS shall have the right to demand assurance from Buyer that payment in full will be made:

10.6.1 Buyer is delinquent in making payment hereunder for a period of 45 days after payment was due.

10.6.2 Buyer fails to meet his obligations with one or more other suppliers as the obligations occur.

10.6.3 A Writ of Attachment or Judgment is entered in any court of competent jurisdiction.

On written demand for assurance by BRUS, Buyer shall, within five (5) days after receipt thereof, furnish, in amount sufficient to secure the full payment of the balance of any monies due hereunder on account of the purchase price, either a penalty bond issued by a competent surety company, or financial security, bank irrevocable letter of credit, or other liquid collateral to be held in escrow by an attorney at law as designated by BRUS, to secure the payment of the purchase price aforesaid.

10.7 All funds received by or owed to Buyer from a third party, to the extent that such funds relate to Items furnished by BRUS pursuant to this Agreement shall be held in trust for the benefit of

BRUS ("Trust Funds"). Until such time as BRUS has been paid in full for the Items supplied hereunder, Buyer shall account to BRUS, and within seven (7) days from Buyer's receipt of such Trust Funds from a third party, pay over to BRUS all such Trust Funds received by Buyer. Buyer further agrees to direct any third party holding any such Trust Funds to pay over such funds to BRUS upon BRUS's request. Buyer shall retain no greater percentage or amount from the BRUS than that retained from Buyer by any third party to the extent that such funds relate to Items furnished by BRUS pursuant to this Agreement.

10.8 All waivers executed by BRUS shall be effective only to the total dollar amount of payments actually received without any bankruptcy filing ninety days thereafter. Buyer agrees that BRUS retains its mechanic's lien, payment bond or other legal rights for unpaid deliveries, regardless of what other documents have been presented to BRUS for signature that may imply otherwise. Buyer further agrees that BRUS has the right to determine, in its sole discretion, how to apply payments, and which invoices to pay with all payments, received on account, despite any advice to the contrary.

11. LIMITATION OF LIABILITIES

11.1 BRUS SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF BUSINESS, REVENUE, PROFIT OR GOODWILL, DOWNTIME COSTS, DAMAGE TO ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE GOODS, FACILITIES OR SERVICES, OR CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES, OR OTHER COMMERCIAL OR ECONOMIC DAMAGES OR COSTS, THAT MAY ARISE OUT OF, IN CONJUNCTION WITH OR RELATE TO, THE FAILURE OF ANY GOODS SOLD BY BRUS TO BUYER, UNDER ANY LEGAL THEORY OR CAUSE OF ACTION, INCLUDING, WITHOUT LIMITATION, TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR FEDERAL, STATE OR LOCAL STATUTE, ORDINANCE OR REGULATION. IN NO EVENT SHALL BRUS'S LIABILITY EXCEED THE PRICE OF THE GOODS WHICH GIVE RISE TO THE CLAIM.

11.2 Buyer agrees that if it transfers title to or leases the Goods to any third party Buyer shall obtain such party's agreement to the limitations of section 11.1.

11.3 BRUS shall have no liability with respect to or arising out of information or advice furnished by BRUS which is not contractually required by these Terms and Conditions or other written agreement signed by both parties.

12. FEDERAL CONTRACT REQUIREMENTS

12.1 If the Goods are purchased under a government contract or sub-contract, Buyer shall promptly notify BRUS of the provisions of any government procurement laws and regulations which are required to be included in the contract covering the products or goods ordered. If compliance with such provisions increases BRUS's costs or liability, BRUS shall be entitled, at its option, to adjust the prices accordingly, request separate payment of the additional costs, or terminate this agreement with Buyer being responsible for all costs incurred by BRUS.

12.2 Subject to the provisions of section 12.1 above, BRUS represents that its performance hereunder is in compliance with all applicable provisions as may be amended from time to time (and same are incorporated herein by reference) including, but not necessarily limited to:

12.2.1 The Fair Labor Standards Act,

12.2.2 Executive Order 11246, including section 202,

12.2.3 The Vietnam Era Veterans Readjustment Assistance Act of 1974,

12.2.4 Worker's Compensation, and

12.2.5 The Rehabilitation Act of 1973.

13. SOFTWARE LICENSE

In the event the Goods covered by Buyer's order include or incorporate any Software or Licensed Program (as defined in BRUS's Software License) then Buyer's rights with respect to such Software and Licensed Program shall be governed by the terms of the Software License.

14. EXPORT CONTROLS

BRUS and Buyer acknowledge and agree that the Goods covered by Buyer's order are subject to export controls imposed by the United States Government under various federal laws including but not limited to the Export Administration Act of 1979, as amended (the Act), or any successor legislation, and the regulations promulgated thereunder. Buyer agrees not to export or re-export any Goods without complying with the Act. Buyer further certifies that the Goods: (a) are not intended to be used for any purpose prohibited by the Act or regulations including, without limitation, nuclear related activities or chemical/biological weapons or missiles; (b) are not intended to be released, shipped or re-exported, either directly or indirectly, to Cuba, Iran, North Korea, Sudan or Syria, or to any other destination to which the United States has prohibited shipment; and (c) are not intended to be released, shipped or re-exported, either directly or indirectly, to any persons identified on the Denied Persons List published by the U.S. Department of Commerce Bureau of Industry and Security. This Section shall survive any termination or expiration of Buyer's order.

15. CANCELLATION AND CHANGES BY BUYER

Buyer's orders may NOT be canceled or changed by Buyer without the prior written consent of BRUS, which consent may be granted or withheld in BRUS's sole discretion. In the event of such cancellation, Buyer shall be liable for BRUS's anticipated profit and for all costs incurred prior to cancellation.

16. TOOLING AND DIE; DRAWINGS

16.1 Tool and die charges, if any, are for the use of tooling and are in addition to the price for the product and are due and payable upon completion of the tools and dies. Charges for tools and dies do not convey title to Buyer or the right of Buyer to remove any tool or die from BRUS's factory or vendor's factory nor prevent their use of such tools or dies for other purposes, except in the case of an agreement in writing signed by both parties. Buyer agrees to pay for alterations to casting patterns and for replacement and repairs necessitated by ordinary wear and tear.

16.2 Prints or drawings attached to Buyer's order or otherwise furnished by BRUS to Buyer in connection with BRUS's performance under Buyer's order are the property of BRUS and are proprietary. BRUS retains all patent and other rights, including exclusive rights of use and/or manufacture and/or sale. Prints and drawings are to be reviewed only by authorized personnel of the Buyer. BRUS does not convey any permission to show, reproduce, or manufacture the article or articles shown herein, such permission to be granted only by specific authorization in writing signed by an officer or other authorized agent of BRUS.

17. RELEASE AND INDEMNIFICATION

Buyer acknowledges that it will use the Products in applications for which BRUS has performed no testing or analysis. As such, Buyer agrees to release BRUS from, and to hold harmless and, upon request, defend BRUS for, from and against, any and all claims, suits, actions or legal proceedings brought against BRUS, their affiliates and their officers, directors, employees and representatives, seeking injunctive relief or damages to recover

any loss, damage or injury to person or property, including reputation and goodwill, whether brought by a federal, state or local governmental agency, or any other person, caused by or arising out of Buyer's purchase or use of the Products. This release, hold harmless and indemnification shall apply, regardless of whether such claims, lawsuits, judgments, demands, actions or causes of action allege or are based on negligence, breach of implied warranty, strict liability, reckless or intentional conduct, or any other nature or manner of legal theory or cause of action. The sole exception to this agreement is if such claims, suits, actions or legal proceedings arise exclusively from failure of the Products to meet the warranty set forth in Paragraph 5 above.

18. MISCELLANEOUS

18.1 NOTICE. All notices in connection with Buyer's order shall be in writing and shall be given by Federal Express or other reputable next day courier service or U.S. mail, postage prepaid, certified or registered, return receipt requested. Each notice shall be addressed to the party at the address set forth on the face of this Agreement or at such other address as a party shall provide by notice to the other party. Notice shall be deemed effective upon delivery.

18.2 WAIVERS. No waiver shall be effective unless it is in writing. The failure of either party to require performance under any provision of this Agreement shall in no way affect the right of such party to require full performance at any subsequent time, nor shall the waiver by either party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision.

18.3 SEVERABILITY. These Terms and Conditions shall be deemed severable and if any portion hereof shall be held to be invalid for any reason, the remainder shall not be deemed invalid but shall remain in full force and effect.

18.4 GOVERNING LAW/ARBITRATION. These Terms and Conditions shall be governed and construed in accordance with the laws of the State of Illinois except for its choice of law provisions. The United Nations Convention of the International Sale of Goods shall not apply. The parties agree to submit all such disputes to binding arbitration which shall be held in Chicago, Illinois, in accordance with the rules of the American Arbitration Association ("AAA") pertaining to commercial arbitration. Within 30 days after either party has notified the other in writing that it is submitting a dispute to arbitration, three arbitrators shall be appointed in accordance with said rules. Neither party shall be allowed to object to an arbitrator appointed by the other party. The arbitrators shall have no authority to award punitive damages or any other damages excluded herein. The arbitration award shall be by a written decision containing findings of fact and conclusions of law and shall be final and binding. It may be entered in and enforced by any court of competent jurisdiction. The party prevailing in the arbitration or any other legal proceedings shall be entitled to recover its costs including reasonable attorney's fees incurred due to the arbitration or other legal proceedings.

18.5 MODIFICATION. These Terms and Conditions may not be amended, modified or supplemented at any time except by a written document signed by the parties.

18.6 ENTIRE AGREEMENT. This is the complete and final agreement between the parties related to the subject matter of these Terms and Conditions and supersedes all prior writings, conversations, understandings or agreements.

18.7 CREDIT. BRUS reserves the right to grant, deny or stop advancing credit at any time in its sole discretion. BRUS's credit policies are subject to change at any time without notice.

a. CREDIT INFORMATION. Buyer hereby consents to BRUS giving or obtaining credit information to or from third parties regarding Buyer.

b. CREDIT CHECK AUTHORIZATION. Buyer authorizes BRUS to conduct a credit investigation for the purpose of extending credit to Buyer. Buyer agrees to supply such information as may be required by BRUS to: (i) warrant the future extension of credit; (ii) enable BRUS to perfect liens; or (iii) recover upon any bond issued for its protection.

c. Buyer further agrees to inform BRUS of any material change in the condition of its business or of any changes in its legal structure.

18.8 PARTIES IN INTEREST. These Terms and Conditions shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

18.9 ASSIGNMENT. Buyer shall not assign Buyer's order without the prior written consent of BRUS, which consent may be granted or withheld in the sole discretion of BRUS.

18.10 ENFORCEMENT. Buyer shall indemnify BRUS against all costs and expenses (including attorney fees) reasonably incurred in the enforcement of Buyer's order and these Terms and Conditions.

18.11 SERVICE. All service provided by BRUS is governed by the BRUS's conditions for dispatching service personnel which are hereby incorporated by reference.

18.12 ENGINEERED SYSTEMS ORDERS. All Engineered Systems orders from BRUS are governed by the BRUS's conditions as set forth in the Industrial Engineered Systems Sales Agreement, which are hereby incorporated by reference.

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